

**IN THE
INTERNATIONAL COURT OF JUSTICE
AT
THE PEACE PALACE, THE HAGUE,
NETHERLANDS**

Republic of Nicchia, Applicant

v.

Republic of Mercuria, Respondent

February 1991

On Submission to the International Court of Justice

MEMORIAL FOR THE RESPONDENT

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iv
STATEMENT OF JURISDICTION	ix
STATEMENT OF FACTS	x
QUESTIONS PRESENTED	xiii
SUMMARY OF THE ARGUMENT	xiv
ARGUMENT	1
I. The Republic of Nicchia has violated international law as interpreted and applied by the International Court of Justice in the domestic manufacture and foreign sale of electromobiles (EMOs).	1
II. Nicchia's restrictive business practices are in direct violation of GATT and Mercuria is justified in imposing import restrictions on EMO's.	1
A. GATT condemns Nicchia's illegal use of export subsidies to limit foreign competition.	2
B. GATT prohibits Nicchia's illegal use of domestic subsidies which adversely affect the conditions of normal competition.	4
C. Nicchia's restrictive trade practices authorize Mercuria to impose import restrictions upon Nicchia pursuant to article XXIII and XIX of GATT.	7
1. GATT article XXIII compels Nicchia to discontinue administrative support of all restrictive business practices in Mercuria.	7
2. Mercuria is entitled to impose a quota in response to Nicchia's illegal use of subsidies under conventional international law.	10

a)	GATT article XXIII authorizes Mercuria to suspend its obligation under the Agreement in appropriate circumstances.	10
b)	GATT article XIX authorizes Mercuria to suspend its obligation under the Agreement in order to prevent further injury to its EMO industry.	10
III.	International antitrust law prohibits Nicchia's anti-competitive and unfair trade practices.	13
A.	As evidence of customary international antitrust law, and as a formal agreement between states which must be upheld under conventional international law, fundamental GATT principles require that Nicchia abandon its anti-competitive trade practices.	13
B.	Nicchia's anti-competitive and unfair trade practices are per se violations of customary international antitrust law evidenced by the United Nations Restrictive Business Practices Code; The Treaty Establishing the European Economic Community, Codes of Conduct for Multinational Enterprises, and the domestic laws of states.	16
1.	The United Nations Restrictive Business Practices Code (Code) expressly rejects domestic price fixing, foreign market allocation, and domestic market protectionism.	16
2.	The Treaty of Rome establishing the European Economic Community rejects domestic price fixing, foreign market allocation, and domestic market protectionism as per se antitrust violations.	18
3.	Codes of Conduct for Multinational Enterprises (MNEs) condemn domestic price fixing, foreign market allocation, and domestic market protectionism as unfair trade practices.	19
4.	The domestic antitrust laws of states expressly reject domestic price fixing, foreign market allocation, and domestic market protectionism.	20

IV. The Republic of Mercuria’s actions are justified as an appropriate response to Nicchia’s violation of international antitrust law under the exercise of competent jurisdiction.	21
A. Under international law, the Mercurian Cartel Office maintains competent extraterritorial jurisdiction over Nicchian acts which affect the Mercurian EMO market.	21
B. Considerations of comity between states do not preclude Mercuria’s exercise of competent jurisdiction.	23
C. Even if a balancing approach is adopted, comity considerations between Mercuria and Nicchia favor Mercuria’s exercise of competent extraterritorial jurisdiction.	25
CONCLUSION AND PRAYER FOR RELIEF	25

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STATEMENT OF JURISDICTION

Jurisdiction of the International Court of Justice is pursuant to article 36(1) of the Statute of the International Court of Justice. By mutual assent, the Republic of Nicchia and the Republic of Mercuria have submitted this matter to the International Court of Justice. Accordingly, the Court has jurisdiction to decide all legal questions submitted by these parties for adjudication and resolution.

STATEMENT OF THE FACTS

Utilizing advanced technology developed in part by the Republic of Mercuria (Mercuria), electromobiles (EMOs) are quiet, non-polluting transport vehicles. EMOs have largely replaced gasoline-powered automobiles for intra-city transport. The international EMO market has grown rapidly to include manufacturers in newly industrialized countries. Restructuring among EMO manufacturers and markets internationally resulted in a shift in production volume from developed nations, like Mercuria, to newly industrialized nations, like the Republic of Nicchia (Nicchia).

The Nicchian EMO industry developed with extensive government intervention. Nicchia's Department of Economic Affairs (DEA) has continuously aided the Nicchian Association of EMO Manufacturers (NAME) since 1972. While the development of the Nicchian EMO industry has created some jobs in previously undeveloped areas of Nicchia, NAME and DEA use unfair anti-competitive trade practices to protect and develop the domestic industry. These practices include: 1) domestic EMO price fixing, 2) allocation between Nicchian manufacturers of export markets, including the Mercurian market, and 3) mandatory restrictive licensing and distributorship requirements for foreign EMO manufacturers operating in Nicchia. These tactics effectively protect the Nicchian market from foreign competition.

As a result, Nicchia maintains a government-sponsored export advantage into free foreign markets, while the Nicchian market remains closed. COMCAR and ELEC, dominant Nicchian manufacturers who entered the Mercurian market in 1983-1984, illustrate this point. While COMCAR AND ELEC steadily increase their share of the Mercurian market at a rate of 1.5% per year, Mercurian EMO manufacturers have lost domestic market share are prevented from

penetrating the Nicchian market.

Increased Nicchian EMO sales in Mercuria by COMCAR and ELEC, aided by the Nicchian DEA and NAME have serious detrimental effects on the Mercurian economy. These effects include widespread regional unemployment of electromobile workers. Concerned at the effect of predatory Nicchian trade practices on their industry, the Mercurian Electromobile Manufacturers Association (MEMA) lobbied the Mercurian government to control Nicchian imports. Although the Mercurian government took no action, trade talks between MEMA and NAME resulted in voluntary limitation of Nicchian EMO sales in Mercuria to 14% of total EMO sales in June 1989.

In September 1989, COMCAR announced it would begin to manufacture EMOs in Mercuria, followed by ELEC. MEMA recognized that production of EMOs in Mercurian facilities would circumvent the agreed-upon 14% limitation. As a result, the Mercurian Union of EMO Workers (UEW) and MEMA lobbied the Mercurian government to formally restrict Nicchian EMO imports.

Responding to Nicchia's anti-competitive and unfair trade practices and the lobbying efforts, Mercuria amended its Law Against Restraints on Competition. In September 1989, a bill was passed which allowed the Mercurian Cartel Office to limit to a "reasonable level" the sale of goods manufactured by foreign persons when those sales materially benefit from anti-competitive trade practices which affect the Mercurian market. The bill allows the Cartel Office to impose fines on offending manufacturers.

In March 1990, the Cartel Office determined Nicchia's price fixing, market allocation, and restrictive licensing protectionist regulatory practices violated Mercurian law. To remedy the

situation, the Cartel Office temporarily restricted Nicchian imports into Mercuria to 14% of total EMO sales. It also ordered COMCAR and ELEC to cease their anti-competitive trade activities. The Mercurian Supreme Court subsequently upheld the Cartel Office ruling. The Nicchian government contested Mercurian jurisdiction and the ruling on grounds of national sovereignty.

On September 11, 1990 Nicchia and Mercuria agreed to submit the matter to the International Court of Justice (ICJ). The government of Nicchia requests that the Cartel Office order of March 1990 be vacated and that the November 1989 amendment to the Mercurian Law Against Restraints on Competition be repealed. Mercuria seeks dismissal of Nicchia's complaint and counterclaims that Nicchia's anti-competitive trade practices, including domestic price-fixing, market allocation, and restrictive licensing and protectionist regulation, be discontinued.

Nicchia and Mercuria are members of the United Nations and parties to the Statute of the ICJ. They are contracting parties to GATT, as well as the Vienna Convention on the Law of Treaties. (Neither is a party to the Tokyo Rounds of GATT or the Organization for Economic Cooperation and Development, nor do they have bilateral agreements between themselves.)

QUESTIONS PRESENTED

- 1. Is the Republic of Mercuria entitled to impose compensatory quantitative controls on Nicchian EMO imports under the General Agreement on Tariffs and Trade and fines under Mercurian domestic law which do not violate international antitrust law?**
- 2. Do anti-competitive Nicchian trade practices, including domestic price fixing agreements, foreign market allocation, and restrictive licensing and protectionist regulatory practices, which deny access to the Nicchian EMO market violate international antitrust law and the General Agreement on Trade and Tariffs?**

SUMMARY OF THE ARGUMENT

Nicchia's anti-competitive and unfair trade practices violate conventional and customary international law. As a party to GATT, Nicchia is bound to its terms. GATT condemns the use of government subsidies which benefit the manufacture or distribution of goods and distort world trade. Nicchia illegally subsidizes EMO manufacture and distribution. The DEA sets domestic EMO prices and uses the burgeoning profits to finance EMO exports by COMCAR and ELEC to Mercuria. Nicchia requires restrictive licensing and obligatory distributorship arrangements which protect its domestic market and the large profits derived from it. Nicchia allocates foreign markets to domestic manufacturers. As the direct result of these tactics, Nicchia maintains a closed domestic market, but competes in free international EMO markets from an advantaged position maintained with the benefit of government subsidies.

GATT compels Nicchia to terminate its restrictive business practices, therefore Mercuria's imposition of controls on Nicchian exports is justified. GATT's primary goal is liberal international trade between nations in free markets. GATT's objectives and benefits are nullified by Nicchia's illegal use of subsidies. The illegal use of subsidies is prima facie evidence of the nullification and impairment of GATT benefits.

The GATT Panel allows quantitative trade restrictions to countervail illegal subsidies which distort competition and nullify unreciprocated GATT benefits. Therefore, Mercuria is justified in implementing import controls as a response to Nicchia's illegal subsidies. Furthermore, emergency action preventing or remedying an injury caused by the illegal use of subsidies is justified under GATT. Mercuria's EMO industry suffers from serious injury caused by the increase in imports made possible through the illegal use of subsidies and price supports

in Nicchia. In order to protect itself from Nicchia's illegal trade practices, Mercuria may implement quantitative controls on Nicchian imports for as long as necessary to remedy the situation.

Anti-competitive and unfair Nicchian trade practices also violate international antitrust law. International antitrust law sustains fundamental economic principles which dictate that the advantages of international trade are only achieved by lowering barriers to free trade among states. These principles lie at the heart of GATT. As a party to GATT, Nicchia is bound by conventional international law to act in accord with the free-trade objectives of GATT and abandon its anti-competitive and unfair trade practices.

Furthermore, Nicchia's trade practices constitute per se violations of customary international antitrust law. As compelling evidence of state practices acknowledging legal obligations, prohibitions and condemnations of price-fixing, market allocation, and protectionist tactics are found in the United Nations Restrictive Business Practices Code, The Treaty Establishing the European Economic Community, Codes of Conduct applicable to multinational enterprises, and the domestic law of states.

Because these trade practices are intended to, and have produced direct, foreseeable, and substantial effects in the Mercurian EMO market, Mercurian courts can assert competent extraterritorial jurisdiction over Nicchia under international antitrust law. The Mercurian Cartel Office's findings of antitrust violations by Nicchian EMO manufacturers do not violate international law. Moreover, neither the act of state doctrine, nor the doctrine of foreign sovereign immunity is a valid defense to Mercuria's exercise of competent jurisdiction over Nicchia.

Customary international law does not require judicial deference for reasons of comity between states. Even in the event that consideration is given to foreign relations between the disputing states, Nicchia's outright violations of substantive norms of international antitrust law uphold exercise of competent jurisdiction by Mercuria's Cartel Office and courts.

ARGUMENT

I. The Republic of Nicchia has violated international law as interpreted and applied by the International Court of Justice in the domestic manufacture and foreign sale of electromobiles (EMOs).

The anticompetitive and unfair trade practices pursued by the Republic of Nicchia in the manufacture for export of electromobiles violates international. The status of states under international law is one of sovereign equality.¹ Sovereign states may engage in activity which does not violate the rule(s) of international law.² The principles of international law are determined from a variety of sources. Pursuant to Article 38 of the Rules of the International Court of Justice, these sources may include treaties between states involved in the dispute, states custom or practice as evidence of acknowledged legal obligation, general principles of law recognized by civilized nations, and the persuasive authority of qualified commentators and publicists.

II. Nicchia's restrictive business practices are in direct violation of GATT and Mercuria is justified in imposing import restrictions on EMO's.

Nicchia is in direct violation of GATT provisions as well as principles underlying the creation of GATT. Although GATT was created to address the problems of tariffs, GATT has more recently been applied to the elimination of nontariff barriers, such as subsidies.³ In addition to obligations, GATT contains a large number of exceptions that are necessary to allow the

1. United Nations Charter, June 26, 1945, 59 Stat. 1031, T.S. No 993, 3 Bevans 1153, art. 2, paragraph 1.

2. Case Concerning the S.S. Lotus (Fr. v. Tur.), 1927 P.C.I.J. (ser. A/B) No. 10.

3. R. Folsom, M. Gordon, & J. Spanogle, International Business Transactions 17 (1986) [hereinafter Folsom, Gordon, & Spanogle].

Agreement to be viable.⁴ The particular articles invoked by Nicchia's action are:

1. article XVI, prohibiting the use of subsidies to increase exports or decrease imports.⁵
2. article III, prohibits the use of any regulations on distribution to protect domestic production.⁶
3. article XI, prohibits the use of quotas, except in limited circumstances.⁷
4. article XXIII, allows parties to suspend their GATT obligations when certain factors are present.⁸
5. article XIX, allows parties to suspend their GATT obligations when certain factors are present.⁹

Analysis of the relevant articles and their application demonstrates the illegality of Nicchia's actions under GATT.

- A. GATT condemns Nicchia's illegal use of domestic subsidies which distort the conditions of normal competition.

Nicchia is in direct violation of GATT article XVI¹⁰ by using subsidies which distort world trade and limits foreign competition. A subsidy is a benefit granted by the government on the production, manufacture, or distribution of goods and services that has the effect of

4. Jackson & Davey, International Economic Relations 293 (1986) [hereinafter Jackson and Davey].

5. General Agreement on Tariffs and Trade, 55 U.N.T.S. 194 (1947) article XVI [hereinafter GATT].

6. Id. art. III.

7. Id. art. XI.

8. Id. art. XXIII.

9. Id. art. XIX.

10. GATT, supra note 5, art. XVI.

distorting world trade and depriving countries of legitimate trade opportunities.¹¹ These subsidy-induced benefits can be so severe as to cause real economic harm to competing industries in other countries.¹² A definition of what constitutes a subsidy has never been reached,¹³ although an illustrative but non-exhaustive list exists in the GATT Subsidies Code.¹⁴

Nicchia is using a form of a price support in direct violation of GATT article XVI.¹⁵ Parties to GATT are to cease using subsidies, including any form of a price support, to increase exports or decrease imports.¹⁶ Additionally, GATT prohibits export subsidies when the result is an export price lower than the comparable domestic price for like products in the domestic market.¹⁷ The DEA sets artificially high prices in the Nicchian domestic market. The manufacturers are therefore able to sell the EMO's at an artificially low price in Mercuria, all financed through the excessive profits that are directed by the government to the exporters. By

11. Id.

12. Folsom, Gordon, and Spanogle, supra note 3 at 535.

13. The possibility of defining a subsidy was considered by a GATT panel in 1958, but it was decided that it would be too impractical. See GATT, BISD, 10th Supp. 201.

14. Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code), Geneva, 1979, GATT, 26th Supp. BISD 56 (1980) [hereinafter GATT Subsidies Code].

15. GATT, supra note 5, art. XVI.

16. GATT, supra note 5, art. XVI:4 states that a subsidy is "[A]ny form of income or price support, which operates directly or indirectly to increase exports or any product from, or to reduce imports of any product into, its territory"

17. GATT, supra note 5, at art. XVI, which states: [C]ontracting parties shall cease to grant either directly or indirectly any form of a subsidy on the export of any product . . . which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market."

directing the profits made on EMO's to the Nicchian manufacturers, COMCAR and ELEC are able to export an abnormally high quantity of EMO's into the Mercurian market. Foreign competition is therefore unable to compete with the artificially low prices.

- B. GATT prohibits Nicchia's illegal use of domestic subsidies which adversely affects the conditions of normal competition.

Nicchia is using domestic subsidies which violates article XVI of GATT.¹⁸ A domestic subsidy is actionable if it is provided by the government to any specific enterprise or industry or any group of specific enterprises or industries, and which adversely affects the conditions of normal competition.¹⁹ Examples include any government provisions of supply distribution or any other operational or support services or facilities.²⁰ These domestic subsidies are to be avoided if they cause or threaten to cause injury to another signatory and where they interrupt normal competition.²¹ Nicchia violates article XVI in at least three ways: the use of an obligatory distributorship, restrictive licensing arrangements, and market allocations.

Nicchia's use of an obligatory distributorship requirement violates article XVI of GATT, and customary international law²² indicates this conduct is illegal. The European Community Court of Justice held in Hasselblad (GB) Ltd. v. Commission of the European Communities,²³

18. GATT, supra note 5, at art. XVI.

19. Folsom, Gordon, and Spanogle, supra note 3, at 506.

20. GATT Subsidies Code supra note 14, art. 11.

21. Id.

22. Statute of the ICJ, supra note 1 at art. 38.

23. Hasselblad (GB) Ltd. v. Commission of the European Communities, 1984 E. Comm. Ct. J. Rep. 883, 1 Comm. Mkt. L.R. 559.

that a selective distribution system based on quantitative factors violates of article 85(1) of The Treaty of Rome.²⁴ The Nicchian government required obligatory domestic distributorship agreements limiting contracts between manufacturers and distributors. The agreement requires EMO distributors terminating contracts to refrain from domestic distribution for five years. New Nicchian manufacturers cannot contract with terminating distributors for five years, which restricts the total number of EMO manufacturers who are able to penetrate the Nicchian market. This effectively protects the Nicchian EMO market from foreign exports.

Current Nicchian manufacturers maintain artificially high domestic prices and export at extremely low prices, producing large net profits. This conduct is a direct violation of article XVI of GATT,²⁵ which states that any form of price support which adversely affects normal competition is a subsidy.

Nicchia's licensing arrangement, tying service functions to distributorships, is in direct violation of GATT article III and XI. Under GATT article III,²⁶ contracting parties to GATT recognize that any regulations affecting the distribution or maintenance of products to afford protection to domestic production violates GATT. Furthermore, the licensing restriction is a form

24. Treaty Establishing the European Economic Community, March 25, 1957, art. 85, 298 U.N.T.S. 3, which states prohibited practices "[H]ave as their objective or effect the prevention, restriction or distortion of competition within the common market . . . [hereinafter Treaty of Rome].

25. GATT, supra note 5, at art. XVI.

26. GATT, supra note 5, at art. III, which states that any, "[R]egulation or requirement . . . affecting the internal sale, offering for sale, purchase . . . should not be applied to imported or domestic products so as to afford protection to domestic production."

of a quota and violates article XI of GATT.²⁷ Under Nicchian law, only distributors of the respective EMO manufactures are licensed to offer the necessary monthly battery maintenance or replacement services. If a contract between a manufacturer and a Nicchian distributor is broken, the required maintenance agreement is also broken. This tying policy forces consumers to purchase from a manufacturer who will continue to have a strong relationship with distributors, namely the Nicchian manufacturers, in order to guarantee they will have the availability of the monthly service maintenance. This behavior is evidenced in the "buy Nicchian" attitude among consumers. The few manufacturers are afforded protection in the Nicchian market by keeping the prices of EMO's high in the Nicchian market while selling at a low price in Mercuria.

Nicchia's use of market allocation to direct the exporting efforts of COMCAR and ELEC is in direct violation of article XVI²⁸ of GATT, which is evidenced in customary international law. The Court of International Trade held in Roses, Inc. v. United States,²⁹ that the government marketing technique of targeting specific exports of an industry is a subsidy and violates GATT. The Nicchian government has been allocating the exporting efforts of COMCAR and ELEC since 1983 and 1984, respectively. By using the marketing technique of allocating markets, Nicchia is once again in direct violation of GATT article XVI.

The International Trade Commission³⁰ stated in the Cases of Certain Steel Products,³¹

27. GATT, supra note 5, at art. XI, which states, "No prohibitions or restrictions, . . . whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product"

28. GATT, supra note 5, art. XVI.

29. Roses, Inc. v. United States, 743 F. Supp. 870 (Ct. Int'l Trade 1990).

30. This is evidence of customary international law. See supra note 1.

that the use of voluntary export restraints is often due to the fact the product is being subsidized. Nicchia and Mercuria have entered into a voluntary export restraint agreement in 1989, and Nicchia has offered to continue this agreement at the present time, which indicates that the EMO's are indeed being subsidized by the Nicchian government.

- C. Nicchia's restrictive trade practices authorize Mercuria to impose import restrictions upon Nicchia pursuant to article XXIII and XIX of GATT.
 1. GATT article XXIII compels Nicchia to discontinue administrative support of all restrictive business practices in Mercuria.

Article XXIII provides relief to a party when the benefits or objectives of the Agreement are being nullified or impaired by the failure of another party to carry out its obligation under GATT.³² Article XXIII plays an important role in obtaining compliance with the GATT obligations. Gatt's primary goal is to liberalize international trade by establishing an international trading economy with open markets for all nations.³³ The term "benefits" are not only those specific benefits under an article of GATT, but all the benefits that countries derive from the general acceptance of the Agreement.³⁴ The definition of "benefit" is to be used in a context

31. Termination of Countervailing Duty and Antidumping Investigations: Certain Steel Products from Belgium, 47 Fed. Reg. 49058, reprinted in 21 I.L.M. 1376 (1982). See also Lowenfeld, Public Controls on International Trade 420-49 (2d ed. 1983).

32. GATT, supra note 5, at art. XXIII:1 which states "If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of (a) the failure of another contracting party to carry out its obligations under this Agreement"

33. See generally J. Jackson, World Trade Law and the Law of GATT, (1969) [hereinafter Jackson]; K. Kock, International Trade Practice in the GATT: 1947-67 (1969).

34. U.N. Doc. E/PC/T/A/PV/12, at 7 (1947).

of a very wide sense. Although there is no substantive definition and the meaning is to be determined in actual cases,³⁵ the benefits are those which are the reasonable expectations of parties under the Agreement.³⁶ Mercuria can reasonably expect to benefit from a market free of subsidies such as price fixing, distributorship restrictions, tying requirements, and market allocation which distort world trade and limits normal competition under the general principles of GATT.

A breach of an obligation under GATT raises a prima facie case of nullification and impairment under the Agreement.³⁷ Customary international law demonstrates that a subsidy is prima facie evidence that the benefit under the agreement is impaired or nullified.³⁸ Furthermore, when a subsidy disrupts the competitive relationship, an impairment of the Agreement exists.³⁹ Nicchia is similarly using subsidies by way of price fixing, using restrictive distributorship requirements, tying service functions to distribution, and using market allocations, all of which are prima facie evidence of the nullification of benefits under the Agreement.

Article XXIII of GATT, provides for a decision making body which could make third

35. R. Hudec, Retaliation Against "Unreasonable" Foreign Trade Practices: The New Section 301 and Gatt Nullification and Impairment, 59 Minn. L. Rev. 461, 476 (1975).

36. Jackson, supra note 33.

37. Understanding Regulation, Notification, Consultation, Dispute Settlement and Surveillance, GATT 26th Supp. BISD 210 (1980) (hereinafter Understanding). See also Jackson & Davey supra note 4 at 341. See generally, GATT, 23rd Supp. at 124-25 (1977).

38. The Australian Subsidy on Ammonium Sulphate, Report by Contracting Parties GATT/CP.4/39 (April 3, 1950), reprinted in GATT, BISD Vol. II, 188 (1952).

39. Id.

party determinations on the merits of the nullification claim.⁴⁰ Because Mercuria and Nicchia have waived all dispute settlement procedures, the ICJ is able to issue a ruling, recommendation, or in serious cases, an authorization for the complaining member to withdraw from an obligation under the Agreement as they determine to be appropriate under the circumstances. If a prima facie nullification is found, a ruling needs to be made to recommend cessation of measures complained against, unless the offending country is able to carry the burden of proof against the recommendation, including the burden that no nullification or impairment has occurred.⁴¹ The first objective is usually to secure the withdrawal of measures concerned if they are inconsistent with GATT in the absence of an agreed solution.⁴² In numerous decisions, the GATT Panel issued a ruling or a recommendation against a violating country to stop their restrictive business practices. Countries have been ordered to discontinue using subsidies,⁴³ marketing laws,⁴⁴ as well as regulations distributorships and licensing on imports.⁴⁵ Nicchia similarly is using subsidies, marketing requirements such as allocation of markets, and regulations on imports which are prima facie evidence of a violation of GATT. Therefore, Nicchia is compelled to

40. See generally, E/CONF/2/78 (March 24, 1948); reprinted as U.N. Doc. ICITO/1/4 (1948). See also, R. Hudec, The Gatt Legal System and World Trade Diplomacy (1975).

41. Jackson & Davey, supra note 4 at 351.

42. Understanding Regulation, supra note 37.

43. Australia complained to the Panel about the French export subsidy on wheat flour, and the panel ordered a price change. GATT, 7th Supp. BISD 46 (1958).

44. Several countries complained about the German use of marketing law and Germany were ordered to discontinue these laws. GATT Doc. L/821 (1958).

45. The United States complained about the Cuban restrictions and regulations on imports and the Panel issued the restrictions to be discontinued. GATT/CP.2/SR.22, (Sept. 9, 1948).

discontinue the restrictive business practices they are using which is disrupting normal competition.

2. Mercuria is entitled to impose a quota in response to Nicchia's illegal use of subsidies under conventional international law.

a) GATT article XXIII authorizes Mercuria to suspend its obligation under the Agreement in appropriate circumstances.

Customary international law demonstrates that imposing a quantitative restraint is proper in certain situations. A prima facie violation of the obligations under GATT would automatically require consideration of whether the circumstances are serious enough to authorize the suspension of obligations under GATT.⁴⁶ When article XXIII is used, the matter should be decided according to previous practices.⁴⁷ In 1952, a GATT Panel allowed the Netherlands to impose a discriminatory quantitative restraint on the United States exports of wheat flour.⁴⁸ The retaliation had been provoked by the illegal use of quotas on dairy products, which were imposed without any serious justification. The United States agreed to a quantitative restraint, thereby admitting the use of the illegal quota. Similarly, Nicchia is using subsidies without any justification. They have agreed to a quantitative restriction with Mercuria, thereby admitting their illegal use of the subsidies. The ICJ would be in line with past rulings to allow the use of the quota to offset the imbalance caused by Nicchia.

b) GATT article XIX authorizes Mercuria to suspend its obligation under the Agreement in order to prevent further injury to its EMO industry.

46. Understanding Regulation, supra note 37.

47. Id.

48. GATT Doc. L/127 Sept. 15, 1953 reprinted in GATT, 2d Supp. BISD 28 (1953).

Under GATT article XIX, any country is allowed to suspend or modify any obligation under the Agreement for the amount of time necessary in order to prevent or remedy an injury when certain conditions are met.⁴⁹

Unforeseen circumstances have caused a substantial increase in the amount of like products (EMO's) imported into Mercuria by the Nicchian manufacturers. An increase in imports can occur in one of two ways: (1) the absolute volume of imports may increase or (2) the import share of the domestic market may increase, even if the total volume is decreasing.⁵⁰ Although GATT states that the imports be in increased "quantities," GATT panel decisions suggest that the increase may be in relative terms.⁵¹

Customary international law shows in Stainless Steel and Alloy Steel Tool,⁵² that an increase in market share coupled with a decrease in the market share of the domestic producers was enough to fulfill the requirement of increased imports. The Nicchian manufacturers have gained 1.5 percent per year of the Mercurian EMO market since 1984 in Mercuria. At the same time, the three Mercuria manufacturers have had a corresponding loss. Additionally, the EMO's

49. GATT, supra note 5 art. XIX which states:

If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under the Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting parties shall be free, . . . and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or part or withdraw or modify the concession.

50. Jackson & Davey, supra note 4 at 551.

51. GATT/CP.2/22/Rev.1, Section 30, at 7, Vol. II/39.

52. Inv. No. TA-201-5, Pub. No. 756, 1 I.T.R.D. 5404 (1976).

imported into Mercuria are a "like product" of what is sold by the Mercurian manufacturers and are directly competitive. Therefore, there is a sufficient increase in imports to fulfill the first requirement under the emergency clause of GATT.

The increase of imports into Mercuria is caused by the severe undercutting of prices in Mercuria, the restrictions on distributorships and licenses, as well as the allocation of markets by the DEA. Mercuria had no way of knowing that Nicchia would use these specific restrictive business practices, or any further illegal practices they may use in the future. The impact upon consumers, evidenced by the "buy Nicchian" attitudes similarly could not have been foreseen by Mercuria.

Mercuria suffers serious injury due to the increased imports into the Mercurian EMO industry and a threat of future injury exists. Further evidence of customary international law indicates that a number of factors indicate what constitutes serious injury. In the United States escape clause,⁵³ the statute requires that the International Trade Commission (ITC), in order to determine serious injury, should consider the following factors: "the significant idling of productive facilities in the domestic industry, the inability of a significant number of firms to operate at a reasonable level of profit, and a significant unemployment or underemployment within an industry." In evaluating the threat of serious injury, the ITC should consider: "a decline in sales, a higher growing inventory . . . and a downward trend in production, profits, wages or employment (or increasing underemployment)."

Starting in 1984, and continuing to the present, the Mercurian manufacturers have lost an

53. Trade Act of 1974 § 201(b)(2)(B), 19 U.S.C.A. § 2251(b)(2)(B) [hereinafter Trade Act].

average of 1.5 percentage points per year in the Mercurian EMO market share. Future threat of local production in Mercuria by Nicchian manufacturers will cause further erosion of the Mercurian EMO market share. In addition, the loss in a substantial portion of the qualified workforce will further injure the Mercurian EMO industry. This trend in lost sales to the entire EMO industry in Mercuria, along with the further threat of underemployment in Mercuria indicates that there is serious injury in Mercuria and a threat of further injury.

In Heavyweight Motorcycles,⁵⁴ two of the commissioners found that although other factors may have contributed to the serious loss of the industry, the "substantial" cause⁵⁵ was the increase in imports and therefore the use of the escape clause was justified. The imports are increasing every year due to the abnormally low prices being charged in Mercuria made possible by price fixing in Nicchia. Therefore, Mercuria is justified in imposing a quota for as long as necessary in order to remedy the injury in the EMO industry and to prevent further injury.

III. International antitrust law prohibits Nicchia's anti-competitive and unfair trade practices.

- A. As evidence of customary international antitrust law, and as a formal agreement between states which must be upheld under conventional international law, fundamental GATT principles require that Nicchia abandon its anti-competitive trade practices.

GATT requires that parties act consistently with its fundamental principles of free trade

54. Inv. No. TA-201-47, Pub. No. 1342, 4 I.T.R.D. 2469 (1983).

55. A substantial cause is "an important cause that is not less than any other cause," Trade Act, supra 53 sec. 201(b)(4).

and reciprocal advantage conferred between member states.⁵⁶ Nicchia's anti-competitive and unfair trade practices violate these principles. Price-fixing, foreign market allocation, and domestic protectionism increase barriers to trade between states. These tactics are therefore inconsistent with the principles of GATT. Because Nicchia is required to act consistently with agreements to which it is a party as a matter of conventional international law, it must abandon its use of these illegal trade practices.

The advantages of free trade and the high costs of protectionism have long been recognized by states.⁵⁷ International trade increases the total amount of goods available to the consumers of all states.⁵⁸ States' consumers only benefit from the allocative and productive

56. The Preamble to the text of GATT states;

Recognizing that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods,

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce,

Have through their Representatives agreed as follows. . .

GATT, supra note 5, Preamble.

57. Lochman, The Japanese Voluntary Restraint on Automobile Exports: An Abandonment of the Free Trade Principles of the GATT and the Free Market Principles of United States Antitrust Laws, 27 Harvard Int'l L.J. 99, 114 (1986).

58. See, e.g., Kindleberger, International Economics, 310-319 (3d. ed. 1963), M. Kreinin, International Economics: A Policy Approach, 234-40 (3d. ed. 1979), R. Caves and R. Jones, World Trade and Payments 20-23 (4th ed. 1985).

efficiency of foreign manufacturers where domestic markets are open to free international trade.⁵⁹

Comparative advantages exist where capital, labor, and natural resources are used most efficiently in production.⁶⁰ States with a comparative advantage will export that good in exchange for other goods.⁶¹ An absolute advantage will be gained by all states where individual states freely trade goods produced at a comparative advantage in exchange for goods produced at a comparative advantage by other states.⁶²

International trade barriers contribute to inefficient production of goods and raise costs to the consumers of all states; including social costs derived from the waste of capital, labor, and natural resources.⁶³ Nicchian maintains mandatory licensing and distribution agreements which effectively close Nicchia to foreign EMO competition. Because only Nicchian EMO distributors can maintain EMO batteries in Nicchia, foreign competitors cannot export EMOs into Nicchia.

In the absence of foreign competition, NAME has fixed high domestic prices. Inflated profits from domestic sales are used to support individual manufacturer's export efforts into Mercuria. The net result of these practices is "discriminatory treatment in international

59. Lochman, supra note 57, at 109. "[F]ree trade promotes a mutually profitable division of labor, greatly enhances the potential real national product of all nations, and makes possible higher standards of living all over the globe." P. Samuelson, Economics 692 (9th ed. 1973).

60. B. Ohlin, Inter-regional and International Trade (1933).

61. Id.

62. See, D. Ricardo, On the Principles of Political Economy and Taxation (1819).

63. Posner, Antitrust Law 11-13 (1976), See also, Posner, The Social Costs of Monopoly and Regulation, 83 J. Pol. Econ. 807 (1975), Hovenkamp, Distributive Justice and the Antitrust Laws, 51 Geo. Wash. L. Rev. 1 (1982).

commerce" for EMO between Nicchia and Mercuria. This violates GATT, to which Nicchia is a party, and therefore violates conventional international law.

B. Nicchia's anti-competitive and unfair trade practices are per se violations of customary international antitrust law evidenced by the United Nations Restrictive Business Practices Code, The Treaty Establishing the European Economic Community, Codes of Conduct for Multinational Enterprises, and the domestic laws of states.

1. The United Nations Restrictive Business Practices Code (Code) expressly rejects domestic price fixing, foreign market allocation, and domestic market protectionism.

Nicchian trade practices violate customary international antitrust law evidenced in the U.N. Restrictive Business Practices Code. The U.N. has adopted, through its General Assembly, the United Nations Restrictive Business Practices Code.⁶⁴ The Code is universal in its application to member states, as well as private enterprises.⁶⁵

Characterized as containing "far-reaching antitrust provisions of world-wide application,"⁶⁶ the Code is clear evidence of states' practice and customary international law.⁶⁷ The Code defines "restrictive business practices" as conduct which "limits access to markets or

64. United Nations Restrictive Business Practices Code, U.N. Doc. TD/RBP/CONF/10 (May 2, 1980), reprinted 19 Int'l Legal Materials 813 (1980). Adopted by resolution of the U.N. General Assembly. G.A. Res. 63, 35 U.N. GAOR, Supp. (No. 48) 123, U.N. Doc. A/35/48 (1980).

65. Benson, The U.N. Code on Restrictive Business Practices: An International Antitrust Code is Born, 30 Am. Univ. L. Rev. 1031, 1036 (1981).

66. W. Fikentscher, United Nations Codes of Conduct: New Paths in International Law, 30 Am. J. Comp. Law 577, 577 (1982).

67. See, Brower and Tepe, The Charter of Economic Rights and Duties of States: A Reflection or Rejection of International Law?, 9 Int'l Law 295, 302 (1975); Davidow and Chiles, The United States and the Issue of the Binding or Voluntary Nature of International Codes of Conduct Regarding Restrictive Business Practices, 72 Am. J. Int'l L. 247, 256 (1978).

otherwise unduly restrains competition" through abuse of a "dominant market position."⁶⁸

Section D, paragraph 3 of the Code expressly proscribes antitrust violations which have, or are likely to have, adverse affects on international trade.⁶⁹ These include: "(a) agreements fixing prices including as to exports and imports, (c) market or customer allocation arrangements, and (g) collective denial of access to an arrangement, or association, which is crucial to competition."⁷⁰ Section D, paragraph 4 proscribes "predatory behavior towards competitors, such as using below cost pricing to eliminate competitors."⁷¹

The Republic of Nicchia's Department of Economic Affairs promotes Nicchian distribution and licensing agreements which effectively prohibit Mercurian EMO manufacturers' entrance into the Nicchian market. Because EMO battery service is subject to mandatory distribution agreements requiring distributors to refrain from servicing Mercurian EMOs, Nicchia's market is effectively closed to competition. This establishes a position of unequivocal dominance in Nicchia for Nicchian manufacturers.

Nicchia has abused its dominant market position. In direct violation of Code section D, paragraph 3(a) and international antitrust law, it has set domestic EMO prices. Furthermore, with the support of the DEA, NAME has allocated the Mercurian EMO export market to ELEC and

68. United Nations Restrictive Business Practices Code, supra note 64, at § D, para. 3.

69. United Nations Restrictive Business Practices Code, supra note 64, at § B(i), para. 1.

70. This definition is in accord with other major provisions of international antitrust law found in the U.S. Sherman Act (The Sherman Act, 15 U.S.C. §§ 1, 2 (1976) and the Treaty Establishing the European Economic Community (Treaty Establishing the European Economic Community, Mar. 25, 1957, arts. 85-86, 298 U.N.T.S. 3). These subsections are analogous to the "per se" violations found in U.S. antitrust violations, particularly the proscriptions against market allocation and price fixing. See Benson, supra note 65 at 1040.

71. United Nations Restrictive Business Practices Code, supra note 64, at § D, para. 4(a).

COMCAR. This violates section D, paragraph 3(c) of the Code and international antitrust law.

The combined effect of a closed Nicchian market and artificially determined prices has been to predatorily compete in the Mercurian EMO market at below cost prices, a violation of Code section D, paragraph 4. As a result, a large number of former Mercurian EMO manufacturers have been eliminated while Nicchian sales have steadily increased.

2. The Treaty of Rome establishing the European Economic Community rejects domestic price fixing, foreign market allocation, and domestic market protectionism as per se antitrust violations.

Further evidence of customary international antitrust law expressly prohibiting Nicchian anti-competitive trade practices is found in Articles 85 and 86 of the Treaty Establishing the European Economic Community (Treaty of Rome).⁷² Express prohibitions incompatible with the common market include price-fixing, market allocation or sharing, and discriminatory treatment between trading parties.⁷³ Agreements which accomplish these prohibited practices are automatically void under the treaty.⁷⁴ Abuse of dominant market position, defined as "applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage" is also expressly prohibited.⁷⁵

The Nicchian trade practices described above violate the express provisions of the Treaty

72. These provisions of the treaty are explicated further and expanded upon in European Economic Community Antitrust Regulations, EEC Council Regulation No. 17/62 and Commission Regulation No. 27/62, Documents V-A(2)(a) and V-A(2)(b), Basic International Economic Law Documents (CCH) (1989). See also, Schlieder, European Competition Policy, 50 Antitrust L.J. 647 (1982).

73. Treaty of Rome, supra, note 24 at arts. 85(1) (a), (c), (d).

74. Id. at art. 85(2).

75. Id. at art. 86(c).

of Rome. Fixing domestic prices and allocating markets has enabled Nicchia to establish and maintain a dominant position and exploit it, leaving Mercuria at a competitive disadvantage in equivalent transactions.

3. Codes of Conduct for Multinational Enterprises (MNEs) condemn domestic price fixing, foreign market allocation, and domestic market protectionism as unfair trade practices.

Anti-competitive and unfair trade practices which hinder competition, distort market forces, or prevent free trade are condemned by Codes of Conduct for MNEs. As further evidence of customary international law, these Codes proscribe actions taken by private Nicchian EMO manufacturers as well as Nicchia.

Because multinational enterprises (MNEs) wield considerable economic weight in international trade, various international organizations have proposed codes of conduct for private enterprises involved in international trade.⁷⁶ The United Nations International Code of Conduct for the Transfer of Technology contains provisions on anti-competitive and unfair trade practices between states.⁷⁷ It expressly addresses price fixing as a practice which should be avoided. The Organization for Economic Cooperation and Development (OECD) has also proposed a code which addresses anti-competitive and unfair trade practice.⁷⁸ The OECD Guidelines suggest that enterprises should "refrain from actions which would adversely affect competition." Particular

76. Charney, Transnational Corporations and Developing Public International Law, 1983 Duke L.J. 748, (1983).

77. Draft International Code of Conduct on the Transfer of Technology, Chap. 4, Section B(6), U.N. Doc. TD/CODE TOT25, (June 2, 1980), reprinted in Int'l Legal Materials 773, 782 (1980).

78. Organization for Economic Cooperation and Development, Guidelines for Multinational Enterprises, 15 Int'l. Legal Materials 969, 974 (1976).

emphasis is placed on "discriminatory pricing" and the use of discriminatory pricing to affect competition.

4. The domestic antitrust laws of states expressly reject domestic price fixing, foreign market allocation, and domestic market protectionism.

Price-fixing, market allocation, and discriminatory domestic market protectionism pursued by Nicchia are per se violations of states' domestic antitrust law. Modern antitrust policy has grown rapidly and most developed nations in the free world have enacted domestic legislation which restricts anti-competitive business practices.⁷⁹

The United States has the most well developed competition law in the world. Section 1 of United States Sherman Act prohibits anti-competitive agreements or concerted actions between two or more parties.⁸⁰ Because collusive behavior between parties is difficult to prove, United States courts have adopted per se violations of antitrust laws for certain types of offenses.⁸¹ These violations reflect restraints of trade so unambiguously anti-competitive that their nature or effects needs no further consideration.⁸² Price fixing, market allocation, and quantitative restrictions on production as a means of indirectly controlling price,⁸³ are considered per se

79. Rahl, International Application of American Antitrust Law: Issues and Proposals, 2 Nw. J. Int'l. L. Bus. 336, 355-57 (1980). See also, Von Kalinowski, World Law of Competition, Overview (1987)(summarizing the antitrust and competition law of the United States, Canada, Great Britain, Germany, France, Belgium, Denmark, Ireland, Luxembourg, The Netherlands, Italy, Switzerland, Spain, Sweden, Greece, Brazil, Venezuela, Argentina, Chile, Taiwan, South Korea, Philippines, and Australia).

80. The Sherman Act, 15 U.S.C. § 1 (1976).

81. Lochman, supra note 57 at 132.

82. Id.

83. Id.

antitrust violations.

Foreign antitrust provisions do not vary widely from those of the United States.⁸⁴ For example, Canadian antitrust law contains almost identical provisions concerning per se violations of antitrust.⁸⁵ Germany also has antitrust provisions very similar to that of the United States, including per se prohibitions of the same anti-competitive activities.⁸⁶ The Swedish Competition Act of 1983 contains per se prohibitions against the equivalent of price fixing and market allocation.⁸⁷ Clear evidence of states practices found in domestic law proscribes the trade tactics employed by Nicchia to manipulate the Mercurian EMO market from a discriminatorily achieved position of dominance.

IV. The Republic of Mercuria's actions are justified as an appropriate response to Nicchia's violation of international antitrust law under the exercise of competent jurisdiction.

- A. Under international law, the Mercurian Cartel Office maintains competent extraterritorial jurisdiction over Nicchian acts which affect the Mercurian EMO market.

Customary international law recognizes that Mercuria is competent to adjudicate foreign antitrust violations which affect its economy. In The Case Concerning the S.S. Lotus, concerning the territorial basis for prescriptive jurisdiction, "It does not, however, follow that international law prohibits a state from exercising jurisdiction in its own territory, in respect of

84. Barton and Fisher, International Trade and Investment 553 (1984).

85. Hunter, Survey of Canadian Antitrust Laws, 50 Antitrust L.J. 699, 703 (1982)(citing Combines Investigation Act, Can. Rev. Stat. (1970), c.C. 23, Section 32.2).

86. Gerber, The Extraterritorial Application of German Antitrust Laws, 77 Am. J. Int'l. Law 756, 757 (1983). See, Gesetz gegen Wettbewerbsbeschränkungen, 1957 Bundesgesetzblatt [BGBl] I 1081.

87. Konkurrenslagen, Svensk Forfarningssamling (SFS) 1982-789.

any case which relates to acts which have taken place abroad..."⁸⁸ The P.C.I.J. held in Lotus that states may exercise extraterritorial jurisdiction where no rule of international law prevents that exercise.

No rule of international law prohibits Mercuria's exercise of jurisdiction where Nicchia commits per se violations of international antitrust law. The "effects doctrine" described in U.S. v. Aluminum Co. of America (Alcoa),⁸⁹ provides a fundamental basis for extraterritorial jurisdiction involving foreign antitrust violations affecting a domestic market. As evidence of the custom and practice of states, the modern U.S. definition of the doctrine predicates extraterritorial jurisdiction on direct, substantial, and foreseeable effects of an international act giving rise to domestic jurisdiction.⁹⁰ The extraterritorial application of other states' antitrust jurisdiction is similar to that of the U.S. EEC cases, as well as German, British, and Canadian cases have been cited as applying extraterritorial jurisdiction in antitrust cases.⁹¹ Furthermore, In Laker Airways Ltd. v. Sabena,⁹² the court held that these conditions alone are sufficient to establish competent jurisdiction.

Nicchia's protectionist regulations and domestic price fixing were intended to give

88. Case Concerning the S.S. Lotus, (Fr. v. Tur.), 1927 P.C.I.J. (ser. A/B) No. 10.

89. 148 F.2d 416 (2d Cir. 1945).

90. See, Restatement 3d, Foreign Relations Law of the United States § 402 (1986); United States Dept. of Justice, Antitrust Guide for International Operations 1977; Foreign Trade Antitrust Improvements Act, 15 U.S.C. 6a (1982).

91. Meesen, Antitrust Jurisdiction Under Customary International Law, 78 Am. J. Int'l Law 783, 790 (1984). See also, J. Atwood and K. Brewster, Antitrust and American Business Abroad §§ 13.17-13.18 (2d ed. 1981).

92. 731 F.2d 909 (D.C. Cir. 1984).

Nicchian EMO manufacturers a dominant domestic position. The effects of these acts were therefore foreseeable and the direct cause of substantial injury to Mercuria. Nicchia's predatory trade practices have resulted in widespread regional unemployment in Mercuria, causing considerable concern to Mercurian labor, government, and industry representatives.

Furthermore, the act of state doctrine, the doctrine of foreign sovereign compulsion, nor the sovereign immunity doctrine can be asserted by Nicchia as valid defenses to jurisdiction by Mercuria. These doctrines concern judicial restraint where sovereign independence and respect for the equality of states may limit the authority of domestic courts.⁹³ No rule of international law requires application of the act of state doctrine.⁹⁴ Moreover, because Nicchia itself was intimately associated with and caused each of the illegal acts violating international law, foreign sovereign compulsion cannot be applied. Finally, before an international tribunal having given its assent to jurisdiction, sovereign immunity cannot be asserted.

B. Considerations of comity between states do not preclude Mercuria's exercise of competent jurisdiction.

International law does not require Mercurian forums to balance comity between Mercuria and Nicchia once a basis for jurisdiction over Nicchia is established. Comity is a recognition between states that due regard must be given to the laws, policies, and practices of others where

93. The act of state doctrine asserts that judicial abstention should be applied to inquiries into the validity of acts by foreign governments. It is essentially a doctrine limiting the scope of judicial inquiry. The foreign sovereign compulsion doctrine suggests that acts by private parties that are compelled by sovereign states should not fall within the judicial scrutiny of states. The sovereign immunity doctrine suggest sovereign states should have immunity from certain types of jurisdiction.

94. Banco Nazionale de Cuba v. Sabatino, 376 U.S. 398 (1964).

prescriptive jurisdictions may overlap.⁹⁵ In Laker, the court held that once extraterritorial jurisdiction is established, no further room would exist for subsequent considerations of comity between disputing nations. The Laker court concluded, "Additionally, there is no evidence that interest balancing represents a rule of international law."⁹⁶

A limited number of U.S. cases have considered additional factors to determine whether extraterritorial jurisdiction exists, the most significant of which is the degree of conflict with foreign law or policy and international comity.⁹⁷ However, as Laker makes clear, these have not been universally followed and do not therefore constitute a rule of international law. Furthermore, U.S. courts have recently de-emphasized the importance of comity.⁹⁸

Finally, commentators have argued that comity is not appropriately used by courts to justify judicial deference where substantive norms of international law recognized by a majority of states have been violated.⁹⁹ Nicchia has violated norms of international antitrust law supported by a majority of states. Deference by Mercuria to comity concerns is therefore not necessary or appropriate under international law .

95. Hilton v. Guyot, 159 U.S. 113 (1985). See also, Restatement 3d of Foreign Relations Law of the United States § 40 (1986).

96. 731 F.2d at 950. See also, Meesen supra note 91.

97. Timberlane Lumber Co. v. Bank of America, 349 F.2d 597 (9th Cir. 1976), Mannington Mills v. Congoleum Corp., 595 F.2d 1287, at 1297-98 (3rd Cir. 1979).

98. See, W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp., 110 S.Ct. 701 (1990)(declining to apply the doctrine); Volkswagen Aktiengesellschaft v. Schlunk, 108 S.Ct. 2104 (1988)(completely ignoring possible application of comity); Societe Nationale Industrielle Aerospatiale v. United States District Court, 488 U.S. 522 (1987)(requiring a case-by-case analysis of comity). See also, Swanson, Comity, International Dispute Resolution Agreements, and the Supreme Court, 21 Law & Pol'y Int'l Bus. 333 (1988).

99. Falk, The Role of Domestic Courts in the International Legal Order 9 (1964).

- C. Even if a balancing approach is adopted, comity considerations between Mercuria and Nicchia favor Mercuria's exercise of competent extraterritorial jurisdiction.

Though comity is neither appropriate nor required under international law, if a balancing approach is adopted, consideration of Nicchia's laws, policies, and practices does not preclude Mercurian jurisdiction. Nicchia cannot show that foreign policy concerns outweigh its per se violations of international antitrust law. Because Nicchia has violated substantive norms of international antitrust law, the effect of these illegal acts on international trade must also be considered under any balancing approach, including the effect on all internationally-trading states, EMO exporters, and GATT signatories. The nature of international trade requires vigorous enforcement of prohibitions under conventional and customary international law against barriers to free trade. Because these considerations are overwhelmingly important to the free exchange of goods in world trade and to the maintenance of amicable relationships between states, no judicial balancing of interests between states should result in a decision upholding Nicchia's anticompetitive and unfair trade practices.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons the Republic of Mercuria respectfully requests the International Court of Justice to:

1. **DECLARE** that Nicchian EMO trade practices are illegal under the General Agreement on Tariffs and Trade and international antitrust law.
2. **DECLARE** the Mercurian Cartel Office of March 13, 1990 valid under international law.
3. **DECLARE** the amended Mercurian Law Against Restraints of Competition of November 1989 valid under international law.

Respectfully submitted,
Team No. 122R
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