

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

THE EUROPEAN COMMUNITY,  
acting on its own behalf and on behalf of the  
MEMBER STATES it has power to represent,  
and the Kingdom of Belgium,  
Republic of Finland,  
French Republic, Hellenic Republic,  
Federal Republic of Germany,  
Italian Republic,  
Grand Duchy of Luxembourg,  
Kingdom of the Netherlands,  
Portuguese Republic, and  
Kingdom of Spain, individually,

Plaintiffs,

v.

RJR NABISCO, INC.,  
R.J. REYNOLDS TOBACCO COMPANY,  
R.J. REYNOLDS TOBACCO INTERNATIONAL,  
INC., RJR ACQUISITION CORP., f/k/a  
NABISCO GROUP HOLDINGS CORP.,  
RJR NABISCO HOLDINGS CORP.,  
R.J. REYNOLDS TOBACCO HOLDINGS, INC.,  
PHILIP MORRIS INTERNATIONAL INC.,  
PHILIP MORRIS COMPANIES, INC.,  
PHILIP MORRIS INCORPORATED, d/b/a  
PHILIP MORRIS U.S.A.,  
PHILIP MORRIS PRODUCTS, INC., and  
PHILIP MORRIS DUTY FREE, INC.,

Defendants.

CASE NO: 01-Civ-5188  
(NGG) (VVP)

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SUBMIT A  
PROFFER OF EVIDENCE CONCERNING THE LINK BETWEEN CIGARETTE  
SMUGGLING IN THIS CASE AND TERRORISM**

## PRELIMINARY STATEMENT

This Memorandum of Law is respectfully submitted by Plaintiffs, the European Community and Member States, to respond to a point raised by the Court at oral argument on January 11, 2002, concerning whether there is any link between the allegations in this case and terrorism. At the time of argument, it was not anticipated that any such proffer would be necessary given that the money laundering predicates relied upon by Plaintiffs in support of their civil RICO claim, as well the USA Patriot Act of 2001, are not limited to money laundering in the furtherance of terrorism.<sup>1</sup> For this reason, as well as client instructions that limited counsel's ability to address this matter in open court, counsel for Plaintiffs was not in a position to speak with authority to the issue raised by the Court. Plaintiffs' counsel has now been authorized to

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<sup>1</sup> The USA Patriot Act of 2001 underscores that money laundering, in connection with foreign crimes, such as tax violations, is a violation of United States law, where those violations would subject the offender to extradition under a multilateral treaty, such as the 1988 Vienna Convention or the Palermo Convention. See Patriot Act § 315. See also Statement of Under Secretary of State for Global Affairs, Frank Loy, at 2-3 (Palermo Convention characterized as "binding international instrument" and its "cornerstone" is the "protection of the victims" of crimes covered by the Convention) (Exhibit A to the Declaration of John J. Halloran, Jr., dated January 31, 2002); Exhibit B at 1 ("The December 2000 signing of the United Nations Convention against Transnational Organized Crime in Palermo, Italy represents another significant development in the effort to promote international cooperation against money laundering and other forms of organized crime. . . . Once again, the drafting and signing of this Convention demonstrate the recognition by the international community that it must stand together to effectively fight international organized crime and money laundering"); Exhibit B at 37 (U.S. describes the Palermo Convention as "the first legally binding multilateral treaty specifically targeting transnational organized crime"). The protections and remedies created by the Patriot Act do not relate to terrorism alone. See Patriot Act § 302(b)(1) (one purpose of the Patriot Act is "to prevent, detect and prosecute international money laundering and the financing of terrorism") (emphasis added). It is clear, however, that cigarette smuggling and associated money laundering as alleged in this case provide a vehicle to finance terrorism and, as such, compel judicial cooperation of the widest possible scope among the United States and Plaintiffs under treaty, law and comity. Furthermore, a review of the legislative history of the money-laundering sections of the Patriot Act demonstrates that these money-laundering provisions had been under consideration for a number of years. See 147 Cong. Rec. S11026-29 (daily ed. Oct. 25, 2001). As such, they clearly pre-date the events of September 11, 2001, and are not limited to threats of terrorism.

answer the Court's inquiry. Based upon documents in the public domain, and other evidence available to counsel, counsel will demonstrate a direct link between cigarette smuggling related to this case and terrorism. For the following reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' motion to submit the accompanying proffer of evidence concerning the link between cigarette smuggling related to this case and terrorism.

### **ARGUMENT**

There is clear and convincing evidence that there is a link between cigarette smuggling and terrorism, and that has been confirmed by Congress and the Executive Branch.

Senator John F. Kerry, in his clear statement of "the intent of the legislature" concerning the anti-money laundering provisions of the USA Patriot Act of 2001, stated that "[s]muggling, money laundering, and fraud against our allies are an important part of the schemes by which terrorism is financed." See Exhibit C. Senator Kerry set forth the "legislative intent of the Counter-Money Laundering and Foreign Anti-Corruption Act of 2001" and therefore addressed the links between smuggling and terrorism on behalf of the entire Senate. Id. As one of the original sponsors of the "Counter-Money Laundering and Foreign Anti-Corruption Act of 2001" (Exhibit D), Senator Kerry's statement of legislative intent is authoritative.

In March 2000, the Commissioner of the U.S. Customs Service, Raymond W. Kelly, testified: "International cigarette smuggling has grown to a multi-billion dollar a year enterprise linked to transnational organized crime and international terrorism." See Exhibit E at 9. The Secretary of the Treasury Paul H. O'Neill has similarly observed that the proceeds of criminal activities often finance terrorism, and "cigarette smuggling" was a source of financing for the Hizballah organization. See Exhibit F at 5. This "global spread of international crime threatens vital US interests at home and abroad." See Exhibit G at 2.

Accordingly, the policy-making branches have found that cigarette smuggling is a source of financing for terrorist groups. This general view is confirmed by the accompanying proffer, which specifically shows several links between cigarette smuggling related to this case and terrorism, and thereby provides a compelling basis for this Court to apply the letter and intent of the Patriot Act to this case and provide access to the United States courts and laws to combat illicit conduct.

## POINT I

### **THERE IS A CLEAR AND DIRECT LINK BETWEEN CIGARETTE SMUGGLING IN THIS CASE AND THE KURDISTAN WORKERS' PARTY (PKK) AND THE IRAQI REGIME**

The following proffer links cigarette smuggling related to this case, which includes distribution routes from the United States through the European Community and the Member States, to terrorist organizations and to Iraq.

#### A. Cigarette Sales Through The European Community Into Iraq Occurred With The Involvement Of The PKK

Since the early 1990s, United States tobacco companies have distributed their products from the United States through the European Community and into Iraq. For example, cigarettes produced in the United States have been shipped to and through ports in the European Community, including Valencia, Spain, to companies in Cyprus, including Audeh Trading for years. See Exhibit H at 1 (Declaration of Theodouli Tourapi (Officer of Customs and Excise, Nicosia Office of Customs and Excise, Cyprus)).<sup>2</sup> Indeed, since 1996, approximately 5,000,000

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<sup>2</sup> Recognizing that the Tourapi Declaration includes many exhibits that are somewhat difficult to follow, Plaintiffs submit, as Exhibit I, a summary of documents to aid the Court and the parties in tracking the cigarette shipments from the point of their production in the United States – through Spain, Cyprus and Turkey -- to the point of their ultimate delivery in Iraq. Hereafter, exhibits related to this routing will be as identified in the summary (Exhibit I) for the

master cases have been sent by RJR (and its successor, Japan Tobacco) to Cyprus (Audeh Trading/ICBS). Approximately one-half of such shipments were exported from Cyprus to Mersin, Turkey in transit. Id. at 1.

For many years, R.J. Reynolds Tobacco International S.A.(Geneva) provided consignments to Cypriot companies, often for massive amounts of Winston brand cigarettes. Id. at 3 & Annex M1. Part of the scheme was to falsely declare that the shipments were destined for export (i.e., to “Russia”) when, in fact, the products were destined for countries outside of Cyprus and Russia (i.e., Iraq). Id. at 4 & Annex P1. It is hard to exaggerate the scope of the scheme inasmuch as since August 1999 – during a time when both RJR and Japan Tobacco had responsibility for management or oversight of the operations – approximately 570,000 master cases (or 5.7 billion cigarettes) were distributed through Cyprus. See Exhibit J (chart). A substantial percentage of those cigarettes was delivered to and through ports in the European Community, including Valencia, Spain. As shown below, many of these shipments were destined for Iraq.

RJR and Japan Tobacco International S.A. distributed hundreds of container loads of cigarettes from Puerto Rico, to Valencia, Spain, to Limassol, Cyprus, to Beirut, Lebanon, to Mersin, Turkey, which products were then offloaded onto trucks and shipped overland to the Habur border crossing, and sold into Iraq. This scheme has been in place since at least August, 1999, at a time when RJR managed operations for Japan Tobacco under contract. Id.<sup>3</sup>

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convenience of the Court. This routing is also corroborated by a document provided to the Court for in camera review. If the Court were to consider whether to unseal that document, Plaintiffs request reasonable advance notice so that the party providing the document can be given notice and be afforded an opportunity to be heard on the issue.

<sup>3</sup> The Plaintiffs submit herewith, as Exhibit K, the purchase agreement by which Japan Tobacco, Inc. purchased RJR's international operations, including the Puerto Rico plant. The attached

As one example of this scheme, the accompanying proffer shows how RJR/Japan Tobacco manufactures products in the United States and ships them to Spain, and then to Cyprus, for ultimate delivery into Iraq. The steps of this scheme may be summarized as follows.

1. Japan Tobacco, located in Puerto Rico and acting under license of RJR, shipped containers of Winston brand cigarettes from the United States to Valencia, Spain by cargo ship. See Exhibit I at ¶¶ 1-3.

2. In Spain, the containers were off-loaded and later re-loaded onto a second vessel using the Spanish port facilities. From Spain, the containers were shipped to Cyprus. Id. at ¶¶ 4-11.

3. In Cyprus, the containers were unpacked and the Winston brand cigarettes were reloaded into new containers, bearing different markings. Id. at ¶ 12.

4. Subsequently, the containers containing the Winston brand cigarettes were exported from Cyprus, with “Russia” as the declared country of final destination. Id. at ¶ 12 & Exhibit I-12.

5. The five forty-foot containers with the Winston brand cigarettes (packed with 5,340 master cases) were shipped to Lebanon and then to Turkey. Id. at ¶¶ 13-16.

6. Those five containers were then shipped overland through Turkey to the Habur border crossing and into Iraq. Id. at ¶¶ 17-19.

It is important to note that each of the bills of lading for these shipments states specifically: “UNITED STATES LAW PROHIBITS DISPOSITION OF THESE

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agreement provides for transitional services to be provided by RJR. The transitional services agreement itself was not a part of the SEC filing and, as such, is unavailable to the Plaintiffs. However, available drafts of the transitional services agreement provided that the agreement would be in place until Dec. 2001 and that Japan Tobacco, Inc. was not allowed to terminate the agreement until at least one year after the execution of the purchase agreement. In that the purchase agreement was executed in May 1999, it is therefore reasonable to infer that the transitional services agreement remained in place until at least May 2000.

COMMODITIES TO NORTH KOREA, VIETNAM, IRAQ, OR CUBA UNLESS OTHERWISE AUTHORIZED BY THE UNITED STATES.” See Exhibits I-1, I-2, I-3.

Based upon international cooperation in this matter, the European Community has learned that the scheme to ship cigarettes into Iraq involved the Kurdistan Workers’ Party, known as the PKK. The PKK is considered by the United States to be a “terrorist group.” See Exhibit G (Turkey); Exhibit L at 8 (U.S. identifies the PKK as a Foreign Terrorist Organization (FTO), noting that it operates in Europe and destroyed diplomatic and commercial facilities in dozens of West European cities). “PKK members in Europe have been involved in wholesale and retail distribution of heroin, as well as other criminal activities, to help fund their operations.” See Exhibit G (Turkey). Plaintiffs are submitting a document that authoritatively shows that the cigarette shipments into Iraq were linked to the PKK. In order to protect the confidentiality of the party providing the document, this document is being submitted to the Court for in camera review and consideration.<sup>4</sup>

B. Cigarette Smuggling Into Iraq Finances The Iraqi Regime

It is prohibited by United States law to export goods, directly or indirectly, to Iraq.<sup>5</sup> The United States has recognized that “[k]ey regime officials and support organizations” in Iraq

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<sup>4</sup> If the Court were to consider whether to unseal that document, Plaintiffs request reasonable advance notice so that the party providing the document can be given notice and be afforded an opportunity to be heard on the issue. This showing concerning the PKK is relevant, at a minimum, to the public nuisance claim of the European Community and Member States – a claim to abate harm that is completely unrelated to the loss of revenue. One can hardly imagine a more harmful “public nuisance” than one that is carried out from American soil and fosters terrorist groups or regimes.

<sup>5</sup> According to the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC): “Goods . . . cannot be exported from the United States, or, if subject to U.S. jurisdiction, exported or reexported from a third country to Iraq” and “[a]ny activity that promotes or is intended to promote a prohibited exportation or reexportation, or the transshipment of goods . . . subject to U.S. jurisdiction through a third country, is also prohibited.” See Exhibit M at 1.

“live off the revenues generated through illicit trade.” See Exhibit N at 9 (Statement of DCI George J. Tenet). Among such persons is Uday Hussein, son of Saddam Hussein, who is said to be Saddam Hussein’s “heir-apparent.” Exhibit O at 1.

It is a matter of public record that Uday Hussein controls the cigarette smuggling operations in Iraq. Uday Hussein’s principal assistant, Abbas Al-Janabi, has said that he supervised cigarette smuggling operations for Uday Hussein. Exhibit P at 8. Al-Janabi defected from Iraq in 1998. The “main reason” that he defected was because he “supervised a cigarette importing transaction worth hundreds of millions of dollars. During negotiations with the other side, Uday accused [him] of leaning towards the interests of the other side as [he] came up with a proposal on which [the parties] could have reached an agreement.” Id.

Al-Janabi has described the Iraqi cigarette smuggling operation in great detail. He states that Uday Hussein controls “all the trade of cigarettes.” Exhibit O at 3. Al-Janabi also observed that “Uday is the single largest beneficiary of the sanctions, since he controls many facets of smuggling in Iraq. He controls the smuggling of whiskey, tobacco, fertilizers, petrol and others. His business interests extend to Turkey, Iran and Jordan. Uday Hussein has trading links with Iranians, through intermediaries in Paris.” Exhibit P at 6.<sup>6</sup>

Distribution of U.S.-brand cigarettes into Iraq continues on virtually a daily basis. As the affidavit of Tugrul Ozsengul shows:

On December 5, 2001, I went to Habur border gate of Turkey with Iraq and I witnessed that Winston cigarettes and Philip Morris brand cigarettes were being shipped across the border into Iraq. I questioned people working and living in the area about these shipments and learned that almost every day lorries, mainly of the above-mentioned brands, have been shipped to Iraq, and this situation has

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<sup>6</sup> Mr. Al-Janabi’s interview with the BBC is available, on video, at <http://news.bbc.co.uk/olmedia/video/events98/htiraq/htiraq40.ram>. It details and confirms the “illegal” smuggling transactions involving Iraq.

persisted for several years. Additionally, I learned that some of these cigarettes were being taken to Iran from Iraq.

Exhibit Q. These continuing shipments run afoul of U.S. law and sanctions. See fn. 5, supra.

## POINT II

### THE PROFFER IS RELEVANT TO THE COURT'S ABSTENTION ANALYSIS

Defendants, in a preemptive opposition to this proffer, argue that the proffer is “irrelevant.” Nathan Letter, dated January 24, 2002. This proffer is submitted in response to an inquiry from the Court on a matter of grave significance and it is relevant for this reason alone. Moreover, abstention, by its very nature, requires a court to go beyond the four corners of the pleading, and indeed, it would be an abuse of discretion for the Court not to consider all relevant factors in an abstention analysis, including the accompanying proffer.

There is no longer any dispute about the revenue rule; it is a prudential rule that permits the Court to abstain.<sup>7</sup> The law of abstention makes it eminently clear that the district court is required to weigh and balance all relevant factors; such factors should not be applied in a mechanical manner; no list of factors may be said to be exhaustive and the relevant factors may vary from case to case; no single factor is determinative; and the burden to overcome the presumption favoring the exercise of jurisdiction rests with the party opposing federal jurisdiction.<sup>8</sup> It is equally clear that while the district court is vested with discretion, such

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<sup>7</sup> The Panel’s decision confirmed that the revenue rule is a “prudential” or discretionary rule (Attorney General of Canada v. R.J. Reynolds, 268 F.3d 103, 129 (2d Cir. 2001)). The Panel did not hold that the revenue rule is a rule of subject matter jurisdiction, and indeed, made it clear that the rule was not “absolute.” Id., 268 F.3d at 113. Consistent with the discretionary nature of the revenue rule, the Panel repeatedly stated that the rule permits a court to “abstain.” Id. at 115, 119, 127.

<sup>8</sup> See Burnett v. Physicians Online, Inc., 99 F.3d 72, 77 (2d Cir. 1996) (there is no mechanical checklist and the district court must balance the relevant factors in reaching an abstention decision); Cohen v. Reed, 868 F. Supp. 489, 499 (E.D.N.Y. 1994) (while each factor must be considered, they are not to be applied “mechanically” but weighed as required by the case’s

discretion must be exercised in light of the heavy presumption favoring the exercise of jurisdiction (particularly where, as here, a federal question is presented), and failure to consider all relevant factors is, in and of itself, an abuse of discretion. See Bethlehem Contracting Co. v. Lehrer/McGovern, Inc., 800 F.2d at 328 ("failure to consider factors weighing against dismissal had the result of turning the presumption in favor of exercising jurisdiction on its head"). Accordingly, this Court should consider all relevant factors, including the accompanying proffer, that demonstrate the compelling basis for federal jurisdiction consistent with the letter and spirit of the Patriot Act, and indeed, it would be clear error to refuse to do so.

A review of abstention doctrine cases reveals that as to each form of abstention there are various factors that the court must consider. For example, in the case of Colorado River abstention, the court is required to consider such factors as the inconvenience of the federal forum, the desirability of avoiding piecemeal litigation, the order in which concurrent fora were invoked, whether the plaintiff has asserted a claim under federal law, and whether abstention would protect the federal plaintiff's rights. See Colorado River Water Conservation v. United States, 424 U.S. 800, 818 (1976); De Cisneros v. Younger, 871 F.2d 305, 307 (2d Cir. 1989).

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circumstances with the balance heavily favoring exercise of jurisdiction) (citing De Cisneros v. Younger, 871 F.2d 305, 307 (2d Cir. 1989)); Village of Westfield v. Welch's, 170 F.3d 116, 120 (2d Cir. 1999) (citation omitted) (the court's "discretion to abstain must be exercised within the 'narrow and specific limits' prescribed by the particular abstention doctrine involved") (quoting Dittmer v. County of Suffolk, 146 F.3d 113, 116 (2d Cir. 1998)); American Alliance Co. v. Eagle Ins. Co., 961 F. Supp. 652, 655-56 (S.D.N.Y. 1997) (abstention factors cannot be viewed as presenting a mechanical or exhaustive checklist); Colorado River Water Conservation v. United States, 424 U.S. 800, 818 (1976) ("no one factor is necessarily determinative"); Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 16 (1983) ("the weight to be given to any one factor may vary greatly from case to case, depending on the particular setting of the case"). It is clear error to impose upon Plaintiffs the burden to establish that this Court should not abstain; the burden rests with defendants to show that this Court should exercise its discretion to abstain. Arkwright-Boston v. City of New York, 762 F.2d 205, 210 (2d Cir. 1985).

While a court may weigh these factors on a case by case basis, for a court to ignore the factors would constitute an abuse of discretion.

In the final analysis, the revenue rule is simply another abstention doctrine, and there are several factors which the Court must analyze in order to determine whether abstention is appropriate. Because there is so little case law concerning an abstention analysis under the revenue rule, and the Panel in the Canada case did not purport to identify an exhaustive list of factors to be considered, this Court has not been foreclosed from considering any relevant factors that were not, and could not have been, before the Second Circuit in the Canada case. The Plaintiffs would submit that the factors traditionally associated with most abstention doctrines such as prejudice to the plaintiff, availability of an alternative remedy, undue delay, convenience of the forum, avoidance of piecemeal adjudication, and others are all applicable and must be considered by the Court, and all weigh against abstention.

In addition, the Second Circuit in Canada has identified other factors which should be taken into account for a court to abstain, to wit, (1) whether the Legislative Branch has taken a position on the issue; (2) whether the Executive Branch has taken a position on the issue, pursuant to treaty or otherwise. The Second Circuit has never mandated, nor could it mandate, that a district court must mechanically abstain from exercising jurisdiction (in a case in which the district court clearly has subject matter jurisdiction) without conducting the appropriate analysis. Accordingly, Canada requires that, at a minimum, this Court consider the positions of the Legislative Branch and the Executive Branch in this analysis, along with relevant treaties.

Since the ruling in Canada, the Legislative Branch has explicitly stated its position in regard to this matter when it refused to “carve-out tobacco companies from RICO liability for foreign excise taxes” (147 Cong. Rec. S11007 (daily ed. Oct. 25, 2001)), a view that was

unanimously adopted by the Senate on motion of Sen. Leahy (id. at S11005), and endorsed by the House as well. 147 Cong. Rec. H7198 (daily ed. Oct. 23, 2001). That and other pronouncements in conjunction with the Patriot Act, being the only statements from Congress that are germane to this analysis, must be accorded substantial weight. Because this Court has raised the point that the applicability of the Patriot Act may turn on a link to terrorism, this Court is compelled to either consider the Plaintiffs' proffer or conclude that the Patriot Act provides evidence of legislative intent whether or not there is a link to terrorism. To fail to consider the proffer would clearly constitute an abuse of discretion in light of the heavy burden placed upon the defendants to show that abstention is required, and the burden upon this Court to justify a decision to depart from its virtually unflagging duty to exercise jurisdiction.

Similarly, the Second Circuit in Canada has mandated that this Court consider the position of the Executive Branch in regard to this case and the facts surrounding this case. The evidentiary proffer submitted herewith shows that this case implicates issues of transnational organized crime, with links to terrorism, that were not before the Panel in Canada. These claims naturally implicate treaties and conventions that were not, and could not have been, at issue in Canada. Therefore, along with the proffer, this Court must consider the multilateral treaties cited by the Plaintiffs, including the 1988 Vienna Convention and the United Nations Convention against Transnational Organized Crime ("Palermo Convention"), just as the Second Circuit considered the one tax treaty in Canada. That these multilateral treaties were not before the Second Circuit in Canada underscores the importance of considering such expressions of Executive Branch policy in an abstention analysis.

The proffer, with its description of illicit conduct occurring on a global scale with links to narcotics trafficking and terrorism, justifies Plaintiffs' reliance on two multilateral treaties: the

1988 Vienna Convention and the Palermo Convention. Both treaties evince an Executive Branch policy of affording the widest possible judicial cooperation, including access to the courts, in proceedings related to money laundering. The 1988 Vienna Convention, which has been ratified, compels judicial cooperation of the widest possible scope in connection with money laundering linked to narcotics trafficking, which is one of the main subjects of the complaint. See 1988 Vienna Convention, Art. 7(1). Indeed, the 1988 Vienna Convention confirms that the cooperation provided for in the Convention is not exclusive. Id. at Art. 7(3). In addition, while it has not yet been ratified, the Palermo Convention is, at a minimum, strong evidence of a policy decision by the Executive Branch to provide for judicial cooperation in cases involving money laundering (as here) and provide for restitution and compensation to victims of money laundering (such as Plaintiffs). See fn. 1, supra. Thus, the 1988 Vienna Convention and the Palermo Convention, viewed separately or together, evidence an Executive Branch policy to afford Plaintiffs access to federal court to combat illicit conduct that falls within the framework of those treaties.<sup>9</sup>

The accompanying proffer only confirms the appropriateness of invoking the Palermo Convention and the 1988 Vienna Convention. Plaintiffs respectfully submit that if this Court were to consider abstaining in this case, it would have to conclude that those treaties cannot apply to any of the claims in this case (including civil claims predicated on money laundering

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<sup>9</sup> As the Member States have testified in their un rebutted affidavits on the motion to dismiss, the tax treaties relied on by Defendants are irrelevant to whether Plaintiffs should be afforded access to the courts on claims for injunctive relief and damages arising under domestic law. That the United States permits mutual administrative assistance in income tax matters has no bearing on whether claims in this case, predicated on allegations and evidence of a money laundering scheme, should be heard in federal court. The tax treaties do not speak to the claims in this case; the 1988 Vienna Convention and the Palermo Convention do speak to the claims in this case, and those instruments evince a policy of wide judicial cooperation that this Court is not free to disregard.

and organized crime) and/or that they do not set forth the policies of the Executive Branch in regard to access to the courts in international money laundering and organized crime cases. This Court should not override the expressed policy of judicial cooperation in money laundering and organized crime cases, and should decline to abstain.

Finally, in order to clarify one remaining matter, this Court mentioned the possibility of the motion to dismiss, if denied, being the subject of an interlocutory appeal. At the hearing, the undersigned attorneys indicated that we were “not necessarily opposed” to an interlocutory appeal. This statement was made without having the opportunity to discuss this matter with the Plaintiffs. Having now discussed this matter with the Plaintiffs, they have confirmed that they will not oppose an interlocutory appeal in the event that all or part of the motion to dismiss is denied.

### **CONCLUSION**

This proffer raises very grave concerns that militate against abstention. If a link between cigarette smuggling in this case and terrorism is necessary to invoke the USA Patriot Act of 2001, or is otherwise relevant to this Court’s abstention analysis, the foregoing proffer only underscores the fundamental federal interest in this case and its consonance with United States vital interests. For these reasons, the links between this case and the PKK and Iraq confirm both that there is a compelling federal interest allowing this case to proceed, and that providing a federal forum to Plaintiffs will advance, not frustrate, United States interests. Thus, Plaintiffs respectfully request that the motion to submit the accompanying proffer of evidence be granted.

Dated: New York, New York  
February 1, 2002

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Plaintiffs' Memorandum of Law in Support of Motion to Submit a Proffer of Evidence Concerning the Link Between Cigarette Smuggling in this case and Terrorism was served via the court's electronic filing system on February 1, 2002, on the following:

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