

This document was compiled by ASH and outlines Racketeering legal action against the tobacco companies. This Section is on Ecuador and Belize  
Note links were correct at time of last update – 04/11/2002

## **Racketeering legal action (RICO) against tobacco companies for smuggling**

Tobacco companies are facing legal action over their involvement in cigarette smuggling in civil actions under the Racketeer Influenced and Corrupt Organizations (RICO) legislation in the United States ([See text of the RICO Act: link http://www4.law.cornell.edu/uscode/18/ch96.html](#)). This law was introduced in 1970 to deal with organised crime and the Mafia, and been used to tackle corporate crime and conspiracies ([more information on RICO link: http://www.ricoact.com/](#)).

In these actions, the companies are accused of operating a 'smuggling enterprise' in which they control the market for contraband as if it is a regular distribution channel. They do not do the smuggling themselves, but act in such a way as to ensure that it happens and that they control it through middlemen.

There are five cases underway. These are the cases in Ecuador and Honduras and Belize.

### **4. Ecuador**

[Ecuador files suit against several tobacco companies - Associated Press](#)  
Link: [http://polkonline.com/stories/060600/bus\\_ecuador.shtml](http://polkonline.com/stories/060600/bus_ecuador.shtml)

[Full filing by the Republic of Ecuador](#) : see attached

### **5. Honduras and Belize**

[Honduras and Belize claim that tobacco firms evaded taxes](#)  
8 May 2001. A smuggling related RICO claim is to be brought in the Miami Dade courts by Honduras and Belize. Reported by Reuters – Link no longer works

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY,  
FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 00-13920 CA10

THE REPUBLIC OF ECUADOR,

Plaintiff,

vs.

PHILIP MORRIS COMPANIES, INC.;  
PHILIP MORRIS INCORPORATED;  
R. J. REYNOLDS TOBACCO COMPANY;  
RJR NABISCO, INC.;  
RJ REYNOLDS TOBACCO INTERNATIONAL, INC.;  
RJR-MACDONALD, INC.;  
NORTHERN BRANDS INTERNATIONAL, INC.  
B.A.T. INDUSTRIES, PLC;  
BRITISH AMERICAN TOBACCO CO., LTD.;  
BATUS HOLDINGS, INC.;  
BROWN & WILLIAMSON TOBACCO CORPORATION;  
LIGGETT GROUP, INC.;  
LIGGETT & MYERS, INC.;  
LORILLARD TOBACCO COMPANY;  
LORILLARD CORPORATION;  
LOEWS CORPORATION;  
AMERICAN BRANDS, INC.; and  
THE BROOKE GROUP LTD. INC.

Defendants.

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**COMPLAINT FOR DAMAGES AND INJUNCTIVE AND**

**DECLARATORY RELIEF FOR TOBACCO SMUGGLING AND/OR**

**OTHERWISE ILLEGALLY AVOIDING THE TAXATION OF TOBACCO PRODUCTS**<sup>[1]</sup>

The Plaintiff, THE REPUBLIC OF ECUADOR, sues the Defendants, PHILIP MORRIS COMPANIES, INC.; PHILIP MORRIS INCORPORATED; R. J. REYNOLDS TOBACCO COMPANY; RJR NABISCO, INC.; B.A.T. INDUSTRIES, PLC; BRITISH AMERICAN TOBACCO CO., LTD.; BATUS HOLDINGS, INC.; BROWN & WILLIAMSON TOBACCO CORPORATION; LIGGETT GROUP, INC.; LIGGETT & MYERS, INC.; LORILLARD TOBACCO COMPANY; LORILLARD CORPORATION; LOEWS CORPORATION; THE AMERICAN TOBACCO COMPANY; AMERICAN BRANDS, INC.; THE BROOKE GROUP LTD. INC., and alleges as follows:

## **GENERAL ALLEGATIONS**

### **APPLICABLE TO ALL COUNTS**

This is an action for damages in excess of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest, costs and attorney's fees.

The Government of Ecuador brings this action in Miami-Dade Circuit Court and wishes that this jurisdiction (State Court) resolve the claims since it has jurisdiction to do so. The Government of Ecuador recognizes that it may have the right to have these claims adjudicated in a Federal Court, but has deliberately exercised its right to bring these claims in State Court.

The Government of Ecuador further brings these claims in this jurisdiction since it can obtain personal jurisdiction over the Defendants in one location and much of the evidence is in this jurisdiction. Furthermore, the Government of Ecuador is investigating its prosecutorial options with respect to the responsible parties, but is not likely to obtain jurisdiction in Ecuador at this point, over those individuals.

## **I. INTRODUCTION**

To protect its youth from the health hazards of smoking, and to implement anti-tobacco programs and other public benefits, and to otherwise act in its citizen's best interest, the Government of Ecuador has taxed tobacco manufacturers and/or distributors and/or importers of tobacco products. Tobacco duty and tax, and the resulting higher tobacco prices, held the promise of deterring young people from becoming addicted to a harmful drug and otherwise serving a public interest. Tobacco duty and tax increases also held the promise of encouraging established smokers to quit and furthermore, to otherwise serve a public purpose.

The Defendants frustrated these goals by engaging in a pervasive tobacco smuggling scheme. The Defendants violated the laws of Ecuador as well as the United States and thwarted the anti-

tobacco public policies of Ecuador by engaging in various enterprises to smuggle tobacco into Ecuador and/or otherwise avoid paying these taxes.

Ecuador brings this action under the laws of Ecuador as well as the United States (specifically the laws of Florida where much of this wrongful conduct occurred) to recover damages suffered by Ecuador, to restrain Defendants from engaging in further fraud and other unlawful conduct in the future, and to compel Defendants to disgorge the proceeds of their wrongdoing.

Twenty-one individuals and one of the corporate Defendants in this action have already pled guilty to criminal charges under United States' laws stemming from illegal tobacco smuggling.

Those pleas were obtained in the Case No. 97-CR-199, United States District Court for the Northern District of New York, presided over by the Honorable Thomas J. McAvoy. Other guilty pleas were obtained in Case Nos. 98-CR-561 and 99-CR-93, also presided over by Judge McAvoy.

This action results in part from the discovery and development of facts obtained as a result of those guilty pleas. The facts uncovered show an elaborate scheme by Defendants and their co-conspirators to smuggle tobacco products without paying applicable duties and taxes, and the Government of Ecuador has a reasonable basis to believe that similar tactics were employed to cause Ecuador damages.

The specific means will be fully discovered in these proceedings, but for pleading purposes, it is clear that the Defendants sold enormous amounts of Ecuadorian tobacco to a small group of foreign distributors. These distributors then resold the tobacco primarily to smugglers who transported the untaxed "black market" tobacco products back into Ecuador.

Defendants further participated in a scheme to smuggle foreign grown tobacco into Ecuador without paying taxes.

Defendants acted in concert with each other to further their fraudulent scheme. Defendants subverted a lawful association-in-fact "enterprise" within the meaning of Chapter 892 of the Florida Statutes and the common law, turning it away from its purpose of providing tobacco, subject to Ecuador's regulatory scheme, from farmers to smokers. At the same time, Defendants and their various agents, employees, and co-conspirators, also formed a series of "enterprises" within the meaning of Chapter 892 of the Florida Statutes and the common law. These enterprises functioned to illegally transport tobacco to Ecuador in violation of Ecuadorian as well as United States law, for sale on the black market.

Each Defendant participated in the operation and management of the lawful enterprise as well as these unlawful enterprises. Each Defendant committed numerous acts to acquire and maintain and operate the various enterprises. These acts included a pattern of unlawful activity within the

meaning of Chapter 892 of the Florida Statutes and the common law, including mail and wire fraud.

While Ecuador suspected that smuggling was occurring along its borders, it was not aware of Defendants' participation in smuggling especially as it relates to tobacco products. The activity has had a devastating impact upon Ecuadorian society and the integrity of the Ecuadorian regulatory framework. The activity is ongoing and constitutes a continuing wrong.

To avoid discovery of their fraudulent conduct, Defendants engaged in a scheme to frustrate Ecuadorian authorities by making false and deceptive representations and by concealing facts that they knew would have exposed their scheme.

Ecuador pursued all smuggling activity with reasonable diligence. However, given the complexity of the activity and because of Defendants' efforts to conceal their activities, Ecuador only recently discovered sufficient evidence to bring claims for relief against Defendants for their involvement in the smuggling.

Defendants' unlawful conduct caused Ecuador to abandon its attempt to decrease smoking by raising duties and taxes, to lose substantial revenue from duties and taxes, and to spend significant sums investigating the smuggling scheme and combating associated criminal activity. In addition, Defendants' conduct produced immense illegal profits. The effect of Defendants' fraudulent scheme and wrongful conduct continues to the present.

## **II. JURISDICTION AND VENUE**

1. Plaintiff's claims for relief are based on, among other things, common law fraud and this Court has jurisdiction over the subject matter of this action. Plaintiff's claims for relief allege, among other things, violations of Florida RICO Act, Fla. Stat. § 895 (1998) *et seq.*

2. Personal jurisdiction and venue are proper in this Court because a substantial part of the events and omissions giving rise to the claims occurred in Miami-Dade, and each Defendant in person or through an agent transacts or has transacted business within the State of Florida and/or this County, or contracts or has contracted to supply goods or services within the State of Florida and/or this County, or has committed a tortious act within Florida and/or this County and/or maintains a registered agent in the State of Florida for service of process. In addition, all Defendants did and continue to do business within the State of Florida and this County, made contracts to be performed in whole or in part within the State of Florida and this County, and/or performed acts that were intended to, and did, result in the sale and distribution of cigarettes

within State of Florida and this County for distribution elsewhere.

### **III. PARTIES**

3. At all times material, the Plaintiff, the Republic of Ecuador ("the Republic"), was and is a sovereign country.

4. At all times material, the Defendant, Philip Morris Companies, Inc., is a Virginia corporation whose principal place of business is located at 120 Park Avenue, New York, New York 10016. Philip Morris Companies, Inc., is the parent corporation of Philip Morris Incorporated and has participated in the manufacture and distribution of cigarettes and other tobacco products both individually and through its agent and alter ego the Defendant, Philip Morris Incorporated.

5. At all times material, Hill B. Wellford, Jr., Hunton & Williams, 951 E. Byrd Street, Richmond, VA 23219, was and is the Registered Agent of Philip Morris Companies, Inc. and is authorized to accept service of process pursuant to Florida Statute § 48.193.

6. At all times material, the Defendant, Philip Morris Incorporated, a subsidiary of Philip Morris Companies, Inc. is a Virginia corporation whose principal place of business is located at 120 Park Avenue, New York, New York 10016.

7. At all times material, CT Corporation System, 1200 S. Pine Island Road, Plantation, FL 33324, was and is the Registered Agent of Philip Morris Incorporated and is authorized to accept service of process pursuant to Florida Statute § 48.091.

8. At all times material, the Defendant, R.J. Reynolds Tobacco Company, is a New Jersey corporation whose principal place of business is located at Fourth and Main Streets, Winston-Salem, North Carolina and has participated in the manufacture, advertisement and sale of cigarettes and other tobacco products.

9. At all times material, Prentice-Hall Corporation System, Inc, 1201 Hays Street 105, Tallahassee, FL 32301, was and is the Registered Agent of R.J. Reynolds Tobacco Company and is authorized to accept service of process pursuant to Florida Statute § 48.091.

10. At all times material, the Defendant, RJR Nabisco, Inc., is a Delaware corporation whose principal place of business is 1301 Avenue of the Americas, New York, New York 10015 and is the parent corporation of R.J. Reynolds Tobacco company.

11. At all times material, Prentice-Hall Corporation System, Inc, 1013 Centre Road,

Wilmington, DE 19805, was and is the Registered Agent of RJR Nabisco, Inc. and is authorized to accept service of process pursuant to Florida Statute § 48.193.

12. Prior to June 1999, RJ Reynolds Tobacco Holdings, Inc. was known as RJR Nabisco, Inc. (“RJR Nabisco”). At all times pertinent to this Complaint, RJR Nabisco (currently RJR Holdings) was the parent corporation of the following RJR entities: RJ Reynolds Tobacco Company, RJ Reynolds Tobacco International, Inc.; RJR-Macdonald, Inc., RJ Reynolds Tobacco Company Pr, and Northern Brands International, Inc., (collectively the “RJR Subsidiaries”, and, together with RJR Holdings, the “RJR Companies”).

13. The RJR Subsidiaries have acted within the course and scope of their agency and employment, and with the knowledge, consent, permission, and authorization of RJR Nabisco. Actions of the RJR Subsidiaries were ratified and approved by the officers, directors, and managing agents of RJR Nabisco. At all times pertinent to this Complaint, RJR Nabisco has participated substantially in the management and control of the RJR Subsidiaries. At all times pertinent to this Complaint, RJR Nabisco, individually and through the RJR Subsidiaries, its agents, alter egos, subsidiaries, parent companies and divisions, materially participated in smuggling.

14. Prior to June 1999, RJ Reynolds Tobacco Holdings, Inc. was known as RJR Nabisco, Inc. (“RJR Nabisco”). At all times pertinent to this Complaint, RJR Nabisco (currently RJR Holdings) was the parent corporation of the following RJR entities: RJ Reynolds Tobacco Company, RJ Reynolds Tobacco International, Inc.; RJR-Macdonald, Inc., RJ Reynolds Tobacco Company PR, and Northern Brands International, Inc., (collectively the “RJR Subsidiaries”, and, together with RJR Holdings, the “RJR Companies”).

15. The RJR Subsidiaries have acted within the course and scope of their agency and employment, and with the knowledge, consent, permission, and authorization of RJR Nabisco. Actions of the RJR Subsidiaries were ratified and approved by the officers, directors, and managing agents of RJR Nabisco. At all times pertinent to this Complaint, RJR Nabisco has participated substantially in the management and control of the RJR Subsidiaries. At all times pertinent to this Complaint, RJR Nabisco, individually and through the RJR Subsidiaries, its agents, alter egos, subsidiaries, parent companies and divisions, materially participated in smuggling. At all times pertinent to this Complaint, RJR Nabisco materially participated, conspired, assisted, encouraged, ratified, and otherwise aided and abetted one or more of the other Defendants in the unlawful, misleading, and fraudulent conduct alleged herein.

16. To effectuate the scheme, RJR Nabisco established Defendant Northern Brands International, Inc. (“NBI”) as its alter ego. NBI was created for the purpose of concealing the RJR Defendants’ active involvement in smuggling tobacco. NBI was a mere instrumentality of

RJR Nabisco and was so completely dominated by RJR Nabisco that it had no will of its own. Instead, as a shell corporation, NBI provided another layer of insulation between RJR Nabisco and the smuggling activities. NBI did not retain its own revenues. NBI retained insufficient capital by immediately transferring its revenue to other RJR entities. RJR Nabisco completely disregarded NBI's separate identity and used NBI to perpetrate the fraud. Although RJR Nabisco was NBI's direct parent, RJR Nabisco also allowed its other subsidiaries R.J. Reynolds Tobacco Company, R.J. Reynolds International, Inc., and RJR-Macdonald, Inc. to disregard NBI's corporate form and to use NBI to perpetrate the smuggling scheme.

17. To effectuate the scheme, RJR Nabisco established Defendant Northern Brands International, Inc. ("NBI") as its alter ego. NBI was created for the purpose of concealing the RJR Defendants' active involvement in smuggling tobacco. NBI was a mere instrumentality of RJR Nabisco and was so completely dominated by RJR Nabisco that it had no will of its own. Instead, as a shell corporation, NBI provided another layer of insulation between RJR Nabisco and the smuggling activities. NBI did not retain its own revenues. NBI retained insufficient capital by immediately transferring its revenue to other RJR entities. Although RJR Nabisco was NBI's direct parent, RJR Nabisco also allowed its other subsidiaries R.J. Reynolds Tobacco Company, R.J. Reynolds International, Inc., and RJR-Macdonald, Inc. to disregard NBI's corporate form and to use NBI to perpetrate the smuggling scheme.

18. At all times material, the Defendant, B.A.T. Industries, PLC, is a British corporation with its principle place of business at Windsor HO, London, England SW1H ONL. British American Tobacco Co., Ltd. is or was a subsidiary or division of B.A.T. Industries, PLC.

19. At all times material, Donald E. Hahamovitch, 7770 W. Oakland Park Blvd., Suite 470, Sunrise, FL 33351-6746, was and is the Registered Agent of B.A.T. Industries, Inc. and is authorized to accept service of process pursuant to Florida Statute § 48.091.

20. At all times material, the Defendant, British American Tobacco Co., Ltd. ("BATCO"), is a British corporation whose principal place of business is Millbank, Knowle, Green, Staines, Middlesex, England TW181DY. Brown & Williamson Tobacco Corporation is or was a subsidiary or division of British American Tobacco Co., Ltd.

21. At all times material, The Corporation Trust Company, 1209 Orange Street, Willmington, DE 19801, was and is the Registered Agent of British American Tobacco Inc. and is authorized to accept service of process pursuant to Florida Statute § 48.193.

22. At all times material, the Defendant, Batus Holdings, Inc., is a Delaware corporation with its principal place of business at 1500 Brown & Williamson Tower, Louisville, Kentucky 40202. Batus Holding, Inc., is a subsidiary of B.A.T. Industries PLC. Batus Holdings, Inc. is or has been the parent corporation of Brown & Williamson Tobacco Corporation and has participated in the

manufacture and distribution of cigarettes and other tobacco products both individually and through its agent and alter ego the defendant Brown & Williamson.

23. At all times material, The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801, was and is the Registered Agent of Batus Holdings, Inc. and is authorized to accept service of process pursuant to Florida Statute § 48.193.

24. At all times material, the Defendant, Brown & Williamson Tobacco Corporation, is a Delaware corporation whose principal place of business is located at 1500 Brown & Williamson Tower, Louisville, Kentucky 40202. Brown & Williamson Tobacco Corporation is or was a subsidiary or division of Batus Holdings, Inc., and is a subsidiary or division of B.A.T. Industries PLC.

25. At all times material, CT Corporation System, 1200 S. Pine Island Road, Plantation, FL 33324, was and is the Registered Agent of Brown & Williamson Tobacco Corporation and is authorized to accept service of process pursuant to Florida Statute § 48.091.

26. At all times material, the Defendant, Liggett Group, Inc., is a Delaware corporation whose principal place of business is located at Main & Fuller Streets, Durham, North Carolina 27702, and has participated in the manufacture and distribution of cigarettes and other tobacco products both individually and through its agent and alter ego the Defendant, Liggett & Myers, Inc.

27. At all times material, Corporation Service Company, 502 E. Park Avenue, Tallahassee, FL 32301, was and is the Registered Agent of Liggett Group Inc. and is authorized to accept service of process pursuant to Florida Statute § 48.091.

28. At all times material, the Defendant, Liggett & Myers, Inc., is a Delaware corporation whose principal place of business is located at 700 W. Main Street, Durham, North Carolina 27702, and is a wholly owned subsidiary of Liggett Group, Inc.

29. At all times material, The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801, was and is the Registered Agent of Liggett & Myers, Inc. and is authorized to accept service of process pursuant to Florida Statute § 48.193.

30. At all times material, the Defendant, Lorillard Tobacco Company, is a Delaware corporation whose principal place of business is located at 1 Park Avenue, New York, New York and has participated in the manufacture and distribution of cigarettes and other tobacco products.

31. At all times material, Prentice-Hall Corporation System, Inc, 1201 Hays Street 105, Tallahassee, FL 32301, was and is the Registered Agent of Lorillard Tobacco Company and is authorized to accept service of process pursuant to Florida Statute § 48.091.

32. At all times material, the Defendant, Lorillard Corporation, is a Delaware corporation whose principal place of business is located at 1 Park Avenue, New York, New York and has participated in the manufacture and distribution of cigarettes and other tobacco products both individually and through its agent and alter ego the Defendant, Lorillard Tobacco Company.
33. At all times material, The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801, was and is the Registered Agent of Lorillard Corporation and is authorized to accept service of process pursuant to Florida Statute § 48.193.
34. At all times material, the Defendant, Loews Corporation, is a Delaware corporation whose principal place of business is located at 1 Park Avenue, New York, New York and has participated in the manufacture and distribution of cigarettes and other tobacco products both individually and through its agent and alter ego the Defendant, Lorillard Tobacco Company.
35. At all times material, United States Corporation Company, 1013 Centre Road, Wilmington, DE 19805, was and is the Registered Agent of Loews Corporation and is authorized to accept service of process pursuant to Florida Statute § 48.193.
36. At all times material, the Defendant, The American Tobacco Company, is a Delaware corporation whose principal place of business is located at Six Stamford Forum, Stamford, CT and has participated in the manufacture and distribution of cigarettes and other tobacco products. The American Tobacco Company was a subsidiary or division of American Brands, Inc. and on December 21, 1994 was purchased by B.A.T. Industries, PLC.
37. At all times material, United States Corporation Company, 1013 Centre Road, Wilmington, DE 19805, was and is the Registered Agent of The American Tobacco Company and is authorized to accept service of process pursuant to Florida Statute § 48.193.
38. At all times material, the Defendant, American Brands, Inc., is a Delaware corporation whose principal place of business is located at 1700 East Putnam Avenue, Old Greenwich, CT 06870 and has participated in the manufacture and distribution of cigarettes and other tobacco products both individually and through its alter ego the American Tobacco Company.
39. At all times material, United States Corporation Company, 1201 Hays Street 105, Tallahassee, FL 32301, was and is the Registered Agent of American Brands, Inc. and is authorized to accept service of process pursuant to Florida Statute § 48.091.
40. At all times material, the Defendant, The Brooke Group Ltd. Inc., is a Delaware corporation whose principal place of business is located at 100 Southeast 2nd Street, Miami, FL and has participated in the manufacture and distribution of cigarettes and other tobacco products both individually and as the parent corporation of the Liggett Group, Inc. and Liggett & Myers.

For jurisdictional purposes, The Brooke Group Ltd. Inc., is a Florida corporation since its principal place of business is in Dade County, Florida.

41. At all times material, CT Corporation System, Inc, 1200 S. Pine Island Road, Plantation, FL 33324, was and is the Registered Agent of Brooke Group Ltd. Inc. and is authorized to accept service of process pursuant to Florida Statute § 48.091.

42. All of the foregoing Defendants may also be collectively referred to herein as "Big Tobacco."

43. At all times pertinent to this Complaint, each Defendant was a "person" within the meaning of Florida law because each Defendant was "capable of holding a legal or beneficial interest in property."

44. In addition to the corporate Defendants, there are individuals who, by reason of their position, exercised supervision or control over the scheme alleged and implemented. By functional job description and in fact, these individuals were the corporate Defendants' main decision-makers. These individuals understood that the corporate Defendants were active participants in the smuggling of tobacco into Ecuador, and conducted their respective businesses to hide these facts. The identities and specific evidence of individual culpability await review of discovery.

#### **IV. DEFINITIONS**

45. As used in this Complaint, "mail," "mails," "mailed," "mailing" or "letter" includes the use of these terms as defined in Florida law.

46. As used in this Complaint, "wire," "wires," "wired," "wiring," "wire communication" or "telephone" includes the use of these terms as defined in Florida law.

#### **V. THE SCHEME TO DEFRAUD**

47. Ecuador obtains revenue by imposing duties and taxes on the sale of tobacco.

48. The precise date is currently unknown, but many years ago Defendants and others devised a scheme to defraud, corrupt, cheat, steal, and conceal in violation of the laws of Ecuador as well as the United States ("the scheme"). The primary objective of the scheme was to realize illicit profits through smuggling tobacco out of and/or into Ecuador for sale on the black market.

This scheme inflicted substantial injury upon Ecuador, by among other things, interfering with Ecuador's efforts to discourage smoking among its population. The scheme also caused Ecuador substantial monetary damages, including the necessity of spending significant resources combating and investigating smuggling.

49. The scheme was successful; however, at this stage the exact amount of the illegally obtained increase in profits and loss of tax revenues is currently unknown but is believed to be in the hundreds of millions, if not billions of dollars, not to mention the damage caused to the Government's efforts to control the importation of tobacco products.

## VI. FACTS COMMON TO ALL CLAIMS

### A. Ecuador Regulates Tobacco

#### i. Efforts to Combat Tobacco Use

50. Tobacco consumption is a serious national public health problem. It is a leading cause of premature death and disease in Ecuador. Thus, Ecuador regulates tobacco use by promoting policies that discourage smoking.

51. Ecuador has taken numerous steps to combat tobacco use and control its distribution.

52. While Ecuador is a tobacco-producing nation, and tobacco has been important as a domestically consumed product, the financial dependence of small to medium-scale farmers on the tobacco companies is nearly absolute.

53. According to Defendant, Philip Morris, it has provided more agricultural technical assistance to the Republic of Ecuador than in any other country where it has licensed or directly owned manufacturing interests.

54. There are different types of levies on tobacco products manufactured or produced inside and/or outside of Ecuador.

55. One such levy, the December 1989 *ad valorem* taxes, varied for different tobacco products, with the *ad valorem* tax rate being the highest on cigarettes made with foreign or imported tobacco, and the lowest being the unfiltered domestic brands. This tax structure seems to impact the lower socioeconomic consumers.

56. Tobacco moved “in-bond” (or in transit) is not subject to any of the levies. Tobacco may be moved in-bond only when it is not intended for consumption in Ecuador. In-bond tobacco must be stored in an excise bonding warehouse. To enter and remove tobacco from an excise bonding warehouse, the tobacco manufacturer must prepare export documentation in which the manufacturer represents to Ecuador the amount of product included in each shipment that is not to be consumed in Ecuador.

57. Tobacco intended for export must be marked “Not For Sale In Ecuador.” Tobacco intended for domestic duty-free sale must be marked “Duty Not Paid.”

58. Goods that are legally imported must be declared and excise duty and tax are payable by the importer of record at the time of importation.

59. The government imposed tobacco duty and taxes only on tobacco intended for consumption in Ecuador.

60. Ecuador has periodically adjusted the duties and taxes on tobacco to reduce tobacco consumption and to otherwise raise legitimate governmental revenues.

61. The profit margin on smuggled tobacco was even greater if the smuggler had access to Ecuadorian or United States cigarettes free of United States and/or Ecuadorian duties and taxes. Such profits could be had with the participation of countries who had free trade zones. At this point in time, the Government is aware of such Free Trade Zones which were used in Aruba and in Panama to accomplish some of Defendants’ illegal activities.

62. Foreign Trade Zones (FTZs) outside of Ecuador provided another opportunity for Defendants to increase the profit margin between smuggled cigarettes from the United States and those sold legally in Ecuador or illegally on the black market. Thus, FTZs serve to insulate goods from taxation while stored in the FTZ until they are sent into the customs territory of Ecuador. As further described below, Defendants and Participants utilized the FTZs to avoid paying Ecuadorian duties and taxes, since the tobacco was shipped to the FTZs rather than Ecuador customs territory.

B. Defendants Smuggled Tobacco

i. The Ecuadorian Tobacco Industry

63. The market is shared between two large cigarette-manufacturing companies operating in Ecuador: Tabacalera Andina, a licensee of Philip Morris, and Fabrica de Cigarillos El Progreso, a

licensee of R.J. Reynolds, with the other named Defendants sharing in a certain sector of the market.

64. Cigarettes are normally packaged into packages of 20 or 25. The packages are further packaged into cartons of 200 cigarettes (either 8 or 10 packages). Cartons are then packaged into cases of 10,000 cigarettes (50 cartons). Cases of cigarettes are typically shipped in a trailer or container. One trailer or container usually contains 1,000 cases or 10 million cigarettes.

65. Fine cut tobacco is normally packaged into 200 gram tins. Tins are then packaged into cases of 6,000 grams (30 tins).

66. Before 1990, smuggling of tobacco is believed to have existed on a much smaller scale than that which ultimately developed after the 1989 *ad valorem* tax increase. But the roots of the smuggling problem, including the involvement of RJR's various corporate entities had, unknown to Ecuador, taken hold.

67. By way of example, one of the Defendants, RJR International, established a Special Markets division, which was operated by Thomas Brock and Franco Gabriele, in Winston-Salem, North Carolina. The Special Markets Division sold duty-free tobacco to Latin America, South America, the Caribbean, Mexico and Ecuador.

68. From about 1987 this division was responsible for overseeing and directing this scheme to avoid taxes.

69. By the end of 1992, a high level decision had been made within the Defendant RJR companies to establish Northern Brands International (NBI) in the United States to insulate RJR-Macdonald from selling directly to smugglers and making it more difficult to discover that Defendants were involved in the smuggling scheme.

70. In March 1993, RJR-Macdonald's Peter MacGregor gave a presentation at RJR's Graylyn Conference Center in Winston-Salem, North Carolina. The presentation was part of RJR International's annual financial conference. Senior officials from RJR U.S. and RJR International attended the presentation. Those officials included RJR International's Chief Financial Officer, Jaap Uittenbogaard. MacGregor's presentation detailed reasons for setting up NBI.

71. Various RJR entities, named as Defendants herein, substantially participated in the establishment, management, control, and concealment of NBI's real purpose. For instance

- a. NBI was established as a subsidiary of RJR Nabisco.
- b. NBI was incorporated independently of the domestic and international

tobacco companies.

c. NBI was housed on RJR U.S.'s campus in the building occupied by RJR International in Winston-Salem, North Carolina, at 401 North Main Street.

d. Two employees, Leslie Thompson and Peter MacGregor, were transferred from RJR-Macdonald in Toronto to NBI in Winston-Salem.

e. The pay checks for NBI's employees were issued by RJR International and charged back to RJR-Macdonald.

f. NBI's employees participated in RJR U.S.'s health care, dental care, and credit union programs.

g. NBI officers and directors were also executives of the other RJR entities. For example, Jaap Uittenbogaard, CFO and Vice President of RJR International, served as an NBI director. Thomas Brock and Franco Gabriele, directors of RJR International's Special Markets Division, also served as NBI officers. J. Thomas Pearson, Senior Vice President of Taxation for RJR Nabisco from 1992 through 1997, also served as an NBI officer.

72. In 1992, RJR's Senior Sales Manager, Leslie Thompson, gave the RJR Operating Committee a second presentation on the advantages of entering the smuggling market. This presentation was perfunctory, describing the potential volume and earnings to be obtained by selling to smugglers. Lang complimented Thompson on the presentation.

73. It is believed that these same meetings and/or schemes took place with the other Defendants in a similar manner.

74. Ecuador was unaware of Defendants' participation in tobacco smuggling until recently.

75. Defendants engaged in hundreds of transactions with multiple customers and, as a result of these transactions, among other things, Defendants in effects laundered millions, if not billions, of dollars.

76. Even though the exportation of tobacco products became significant in the early 1980s, Ecuador had an estimated negative trade balance for tobacco in 1980. One of the attributing factors is an illegal trade in cigarettes.

77. It is now known that the bonuses of senior management at RJR, and other Defendants, depended on yearly financial results. The Defendants depended on illegitimate customers to artificially to bolster year-end revenues.

78. As example of using the smuggling network to boost executive bonuses, at least one Defendant, RJR, counted as sold billions of cigarettes that were sitting in FTZs waiting to be

smuggled - even though the cigarettes were not yet sold.

79. The senior management of Defendant, RJR, received substantial bonuses in 1992 based in large part on the millions of dollars of sales of tobacco that they knew were to be smuggled.

80. By the end of 1992, a high level decision had been made within the Defendant RJR companies to establish Northern Brands International (NBI) in the United States to insulate it from selling directly to smugglers.

81. In March 1993, RJR's Peter MacGregor gave a presentation at RJR's Graylyn Conference Center in Winston-Salem, North Carolina. The presentation was part of RJR International's annual financial conference. Senior officials attended the presentation. The presentation detailed reasons for setting up NBI, including reducing exposure for failure to comply with product identification codes designed to track smugglers.

82. Various RJR entities, substantially participated in the establishment, management, control, and concealment of NBI's real purpose. For instance:

- a. NBI was established as a subsidiary of RJR Nabisco; and
- b. NBI was incorporated independently of the domestic and international tobacco companies.

83. NBI obtained a higher profit margin on smuggling sales than it made lawfully on legitimate sales by Defendant, RJR.

84. RJR entities knew of NBI's role in the smuggling scheme. Executives of various RJR entities participated in or ratified NBI's role in smuggling.

85. As a result of the government of the United States vigorously prosecuting these cases, on June 20, 1997, the United States Attorney for the Northern District of New York indicted 21 people, including NBI customers, for being involved in smuggling.

86. By November 1998, 19 of those indicted in 1997 for violations of United States law resulting from tobacco smuggling had pled guilty, including the following:

- a. On June 5, 1997 Toni Chase and William L. Leclair pled guilty to violations of 18 U.S.C. § 371 for conspiring to aid and abet smuggling.
- b. On June 6, 1997 Norman Treptow pled guilty to a violation of 18 U.S.C. § 371 for conspiring to aid and abet smuggling.
- c. On August 4, 1997 Shawn Burke pled guilty to a violation of 18 U.S.C. § 371 for conspiring to aid and abet smuggling.

- d. On February 13, 1998, Robert Browning pled guilty to violating 18 U.S.C. § 371 for conspiring to aid and abet outbound smuggling and to defraud agencies of the United States. As part of the plea, Browning admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.
- e. On July 27, 1998, Timothy Glines pled guilty in the Northern District of New York to a violation of 18 U.S.C. § 371 for conspiring to aid and abet smuggling and to defraud agencies of the United States, for not filing the necessary reporting forms required for cash transactions over \$10,000. As part of the plea, Glines admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.
- f. On September 10, 1998 Victoria Glines pled guilty to a violation of 18 U.S.C. § 371 for conspiring to aid and abet smuggling.
- g. On September 11, 1998, Richard Rancati pled guilty to violating 18 U.S.C. § 371 by conspiring to aid and abet smuggling and to defraud agencies of the United States. As part of the plea, Rancati admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.
- h. On September 29, 1998 L. David Jacobs pled guilty to a violation of 18 U.S.C. § 1962(c).
- i. On October 29, 1998, Fabian Hart, Charles White, Larry Thompson and Sheila Loran pled guilty to violations of 31 U.S.C. § 5313 (a) for willfully failing to prepare reports containing taxpayer identification information of currency transactions of more than \$10,000 in cash with the United States Department of Treasury, Internal Revenue Service. As part of the plea, they admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.
- j. On November 3, 1998, Robert Tavano and Lewis Tavano pled guilty to violating 18 U.S.C. § 1956(h) in a wire fraud scheme to defraud the United States and Ecuador of revenue. As part of the plea, they admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.
- k. On November 3, 1998, John Fountain pled guilty to a violation of 18 U.S.C. § 1956(h) stemming from a wire fraud scheme to

defraud the United States and Ecuador of revenue. As part of the plea, Fountain admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.

l. On November 4, 1998, Anthony Laughing pled guilty to a money laundering conspiracy and to conducting the affairs of an enterprise in violation of 18 U.S.C. § 1956 (h) and 18 U.S.C. § 1962 (c). As part of the plea, Laughing admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.

m. On November 5, 1998, Larry Miller pled guilty to violating 18 U.S.C. § 1956(h) in a wire fraud scheme to defraud the United States and Ecuador of tax revenue through financial transactions intended to promote underlying criminal activity related to tobacco smuggling. As part of the plea, Miller admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.

n. On November 6, 1998, Loran Thompson pled guilty to a violation of 18 U.S.C. § 1956(h), resulting from a conspiracy and money laundering scheme in connection with smuggling cigarettes into Ecuador. As part of the plea, Thompson admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove, some of which form the basis of allegations in this Complaint.

87. On December 22, 1998, a subsidiary of Defendant RJR pled guilty to knowingly and willfully aiding and abetting others who entered and introduced and attempted to enter and introduce, into the commerce of the United States, imported merchandise by means of false and fraudulent practices in violation of 18 U.S.C. §§ 2, 542. As part of the plea, it admitted certain facts and further acknowledged and accepted a statement of facts that the United States was prepared to prove. The other Defendants operated in a similar fashion, the details of which will be learned through discovery.

88. More than 11,000 pages of documents from named Defendants, British American Tobacco, including its United States company, Brown & Williamson, were analyzed by the International Consortium of Investigative Journalists (ICIJ), a project of the Center for Public Integrity in Washington, D.C. The documents revealed that for decades Big Tobacco secretly encouraged tax evasion and cigarette smuggling in a global effort to secure market share and lure generations of new smokers. The Republic of Ecuador, is mentioned in those documents as a country being utilized in smuggling efforts. The identity and specific documents await review of

discovery. Those documents further implicate the Defendants in the conspiracy alleged herein.

89. Defendants fraudulently concealed the existence of the conspiracy from Ecuador through continuous and multiple affirmative acts.

90. Defendants, individually and collectively, took steps to avoid detection, including

- a. The creation of companies to serve as shields;
- b. Taking actions to circumvent regulations on cigarette package labeling designed to aid in the tracking and identification of smuggled products;
- c. Commissioning studies on the source of tobacco smuggling that implicated organized crime, without mentioning involvement by Defendants, to focus blame elsewhere; and
- d. Repeatedly issuing public statements disavowing any knowledge about, or corporate responsibility for, the source of smuggling, and falsely blaming “organized crime” for the smuggling.

91. Defendants’ scheme to fraudulently conceal their complicity and active involvement in smuggling dates back to at least 1988.

92. The public denials, individually and cumulatively, have served to conceal the Defendants’ active involvement in tobacco smuggling and to derail and misdirect investigations.

93. When the government of the United States began its investigations into various known smuggling enterprises, many of certain Defendant’s employees who had participated in the smuggling were moved overseas and/or otherwise hidden to avoid detection and deny access to these knowledgeable persons.

94. Defendants succeeded, at least for many years, in their continuous and elaborate plan to avoid detection.

95. Because of Defendants’ conduct giving rise to equitable estoppel and constituting fraud in the concealment, on which Ecuador reasonably relied, Ecuador only recently discovered sufficient evidence to bring a claim for relief against Defendants for their involvement in the smuggling. Thus, the applicable statute of limitations was tolled until the point that Ecuador through reasonable diligence could bring a claim for relief against Defendants for their involvement in the smuggling.

96. Ecuador took strong and immediate steps to combat smuggling, including:

- b. Tighter government controls over the distribution and sale of

duty-free tobacco products including changing the rules governing the sale of duty-free tobacco to customs bonded warehouses to restrict resale to diplomats and duty-free shops; and

c. Expanded use by Customs of flexible response teams and extended hours of operation at certain entry ports.

97. To determine those responsible for tobacco smuggling and to learn the true magnitude of the problem, Ecuador took steps that included:

a. Ecuador Customs increased border investigations, including “border blitzes,” to target commercial trucks at ports having compliance problems.

e. Ecuador increased investigations of avenues for smuggled tobacco entering Ecuador at points other than ports of entry.

f. Ecuador increased the prosecution of tobacco smugglers, as evidenced by the increase of tobacco contraband.

98. Even with these enhanced regulatory and investigative measures, until recently Ecuador believed that tobacco smuggling was not occurring or, to the extent it occurred, was in the control of organized crime.

99. At all relevant times, at least the following “enterprise” existed within the meaning of Fla. Stat. § 892.02. Each of these “enterprises” is an entity that engaged in activities affecting interstate and foreign commerce, and each was an enterprise at all times relevant to this Complaint. The Defendants participated in the operation and management of each of these enterprises and conducted their affairs through their pattern of unlawful activity within the meaning of § 895.02, *et. seq.*, including execution of their scheme to defraud, corrupt, cheat, steal and convert the money and property of Ecuador. Each Defendant has knowingly and intentionally engaged in acts to further the conspiracy to smuggle cigarettes and conceal the existence of the enterprises.

**100.** The enterprise is an association-in-fact enterprise that was comprised by many involved in the manufacture, distribution and sale of tobacco. It is included as an enterprise because each of the Defendants was associated with this enterprise and has conducted or participated, directly or indirectly, in the management and operation of the affairs of this enterprise through a pattern of unlawful activity within the meaning of § 895.02, *et. seq.* Defendants also conspired to engage in such conduct, and conspired to acquire or maintain an interest in or control through unlawful activity.

101. At all relevant times, the purposes of the enterprise were to avoid taxes, duties and fees

payable on legitimate sales: (1) to sell the tobacco to participants; (2) to have the tobacco trans-shipped through various companies; (3) to smuggle the tobacco into Ecuador; (4) to sell the tobacco on the black market in Ecuador; and (5) to make illicit profits by engaging in unlawful activities in connection with the manufacture and sale of Ecuadorian tobacco.

102. Planning. The members of the enterprise formulated a broad-ranging plan to manufacture, distribute, and sell tobacco on the black market without paying applicable taxes. The members of the enterprise recognized that the success of its plan was dependent on avoiding the payment of legitimate taxes.

103. Manufacturing. The Defendants manufactured and processed Ecuadorian tobacco so that it could be sold on the black market without paying the applicable taxes.

104. Selling. The Defendants used their resources and personnel to sell tobacco to the participants so that the participants could supply it to other places for smuggling into Ecuador and sale on the black market.

105. At all relevant times, the Defendants used the enterprise to further their illegitimate purpose of smuggling tobacco into Ecuador to defraud, corrupt, cheat, steal, obtain by fraud and convert the money and property of Ecuador . Ecuador as well as the government of the United States, the intended victims of the scheme, were defrauded and cheated out of its ability to impose taxes, to monitor the collection of taxes, and to protect the health of the Ecuadorian people - in particular, its children.

106. At all relevant times, the Enterprise was an ongoing association-in-fact enterprise composed of entities and individuals with a common purpose, a continuity of structure and personnel, and a consensual decision-making structure that was used to effect its scheme to defraud, corrupt, cheat, steal, obtain by fraud and convert the money and property of Ecuador. The roles that were performed by the various members of the enterprise.

107. As described herein, the Enterprise was separate and apart from the pattern of unlawful activity within the meaning of § 895.02, *et. seq.*, because the enterprise engaged in a variety of unlawful activity and its structure was beyond that required for the commission of the pattern of unlawful activity. The members of the enterprise included innocent parties unaware of the Defendants' and participants' scheme or the use of the enterprise in its execution.

108. At least with some of the Defendants, the enterprise was created at least a decade ago when the Defendants were facing increases in taxes on a worldwide basis and formed the smuggling plan to illegally avoid such taxes and maximize profits.

109. Some of the members of the Enterprise, including each of the Defendants and

participants, acted with culpability in their conduct of its affairs. Other members of the enterprise were the unwitting instruments or victims of the culpable members of the Enterprise.

110. At all times relevant to this Complaint, as previously alleged herein, Defendants devised, intended to devise and carried out a scheme to defraud, corrupt, cheat, steal, deprive, obtain by fraud and convert the money and property of Ecuador as well as the United States. The scheme to defraud involved the use of material misrepresentations and/or omissions and other deceptive practices reasonably calculated to deceive Ecuador. The scheme to defraud involved depriving Ecuador of its property by trick, deceit, chicanery and overreaching.

111. In executing or attempting to execute this scheme and to receive the financial benefits of the scheme, Defendants repeatedly used the United States and foreign mails and interstate and foreign wire communications.

112. Defendants thus engaged in a pattern of unlawful activity within the meaning of Fla. Stat. § 895.

## COUNT I

### FRAUD, INTENTIONAL MISREPRESENTATION

113. Plaintiff realleges paragraphs 1 through 129 above.

114. Big Tobacco intentionally engaged in a pervasive tobacco smuggling scheme.

115. Big Tobacco knowingly and intentionally lied to and deceived the Republic, as well as the public and residents of Ecuador.

116. Big Tobacco knowingly and intentionally thwarted the anti-tobacco public policies of Ecuador by engaging in the smuggling of tobacco into Ecuador and/or otherwise avoid paying taxes.

117. As a result of Big Tobacco's fraud, the Republic did indeed fail to take prompt and adequate measures to address the illegal smuggling of tobacco into Ecuador, as Big Tobacco fully intended. Had such measures been taken, economic losses in Ecuador would have been reduced.

118. As a further result of Big Tobacco's fraud and criminal conduct, the Republic of Ecuador did not collect taxes that were due on smuggled tobacco.

**WHEREFORE**, the Plaintiff, the Republic of Ecuador, sues Big Tobacco for compensatory damages, costs and such other relief this Court deems appropriate. Furthermore, the Plaintiff, the Republic of Ecuador, demands a trial by jury of all issues triable as a right by a jury.

## COUNT II

### CONSPIRACY AND CONCERT OF ACTION

119. Plaintiff realleges paragraphs 1 through 135 above.

120. Big Tobacco participated in and cooperated with each other in the aforementioned conspiracy which enabled each and every manufacturer and distributor of cigarettes defraud, corrupt, cheat, steal and convert the money and property of Ecuador. Each Defendant has knowingly and intentionally engaged in acts to further the conspiracy to smuggle cigarettes and conceal the existence of the enterprises.

121. In order to carry out their conspiracy, Big Tobacco, among other things:

- a. Created companies to serve as shields;
- b. Took actions to circumvent regulations on cigarette package labeling designed to aid in the tracking and identification of smuggled products;
- c. Commissioned studies on the source of tobacco smuggling that implicated organized crime, without mentioning involvement by Defendants, to focus blame elsewhere; and
- d. Repeatedly issued public statements disavowing any knowledge about, or corporate responsibility for, the source of smuggling, and falsely blaming “organized crime” for the smuggling.

122. As a result of the conspiracy, Big Tobacco was able to continue:

- a. to sell the tobacco to participants;
- b. to have the tobacco trans-shipped through various companies;
- c. to smuggle the tobacco into Ecuador;
- d. to sell the tobacco on the black market in Ecuador; and
- e. to make illicit profits by engaging in unlawful activities in connection with the manufacture and sale of Ecuadorian tobacco.

123. As a result of the conspiracy, the Republic and the residents of Ecuador were intentionally and willfully misled and deceived; thereby making it impossible for the Republic

uncover the elaborate scheme by which Defendants and their co-conspirators were smuggling tobacco products without paying applicable duties and taxes, and the Government of Ecuador has a reasonable basis to believe that such similar tactics were employed by all Defendants to cause Ecuador damages.

124. As a direct and proximate result of Big Tobacco's actions, the Republic of Ecuador and, as a result, its citizens, suffered damages in lost duties and taxes.

125. Furthermore, the Republic suffered economic damages for lost tax revenues.

**WHEREFORE**, the Plaintiff, The Republic of Ecuador, sues Big Tobacco for compensatory damages, costs and such other relief this Court deems appropriate. Furthermore, the Plaintiff, The Republic of Ecuador, demands a trial by jury of all issues triable as a right by a jury.

### **COUNT III**

#### **CLAIM FOR RELIEF**

#### **(RICO Violation of Fla. Stat. §895)**

126. Plaintiff realleges paragraphs 1 through 142 above.

127. Plaintiff is a “person” under Chapter 895 of the Florida Statutes.

128. Each of the Defendants is a “person” under Chapter 895 of the Florida Statutes.

129. The enterprises constitutes “enterprise” within the meaning of Chapter 895 of the Florida Statutes, which enterprise(s) was engaged in activities affecting interstate and foreign commerce at all times relevant to this Complaint

130. Each of the Defendants was associated with the enterprise and has conducted or participated, directly or indirectly, in the management and operation of the affairs of the enterprise through a pattern of unlawful activity within the meaning of Chapter 895 of the Florida Statutes, to wit:

- a. Multiple, repeated and continuous instances of mail fraud in violation of Chapter 895 of the Florida Statutes; and
- b. Multiple, repeated and continuous instances of wire fraud in violation of Chapter 895 of the Florida Statutes.

131. Plaintiff suffered injury to its business or property within the meaning of Chapter 895 of

the Florida Statutes by reason of the violation of Chapter 895 of the Florida Statutes committed by the Defendants.

132. Ecuador reasonably and justifiably relied upon Defendants' representation that they did not owe Ecuador taxes on the tobacco listed as destined for "export." Had Ecuador known about Defendants' participation in the scheme, it would not have permitted these tax and duty-free "exports." The facts concealed and misrepresented by the Defendants were material to Ecuador's decision.

133. Plaintiff suffered and continues to suffer actual damages due to these wrongful acts, which Defendants conspired to induce or participate in.

**WHEREFORE**, the Plaintiff, the Republic of Ecuador, sues Big Tobacco for compensatory damages, costs and such other relief this Court deems appropriate. Furthermore, the Plaintiff, The Republic of Ecuador, demands a trial by jury of all issues triable as a right by a jury.

## **JURY DEMAND**

Plaintiff demands a trial by jury of any and all issues triable of right.

## **PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff, the Republic of Ecuador, sues Big Tobacco for compensatory damages, punitive damages, costs and such other relief, as follows:

1. Actual damages incurred by the Plaintiff owing to the wrongful acts and omissions of the Defendants herein;
2. Treble damages for awards entered under the Claims for Relief, in addition to the cost of investigating and prosecuting this suit and reasonable attorney fees;
3. Equitable relief as may be appropriate, including but not limited to:
  - a. Restitution for the unjust enrichment of Defendants by virtue of their conduct, in an amount to be determined at trial;
  - b. Direction of an equitable accounting for all benefits, consideration and profits received, directly or indirectly, by any of the Defendants, including the imposition of a constructive trust, the voiding of any unlawful transfers, and the disgorgement of all ill-gotten gains

and profits;

c. Imposition of reasonable restrictions on the future activities or investments of any of the Defendants;

d. Imposition and execution of equitable liens that may be appropriate; and

e. Declaration that Defendants are liable, jointly and severally, for all lost taxes and for enforcement costs incurred by Ecuador resulting from the past tortious and wrongful conduct of Defendants.

4. Punitive damages, in an amount to be determined at trial, on the grounds that the wrongful acts and omissions of Defendants established herein were committed willfully, maliciously, with intent to injure and damage Ecuador, and with reckless disregard of Ecuador's legal rights and the sanctity of its relationships;
5. Reasonable attorney fees incurred in the prosecution of this action;
6. All costs, expenses and other fees incurred in the prosecution of this action;
7. Pre-judgment and post-judgment interest on actual damages incurred; and
8. All other and further relief that the Court deems just and proper.

**DATED** this 5<sup>th</sup> day of June, 2000.

Respectfully submitted,

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By: \_\_\_\_\_

\_\_\_\_\_  
Approved by:

STEVEN C. MARKS

The Honorable Ramon Jimenez Carbo

Fla. Bar No. 516414

Attorney General the Republic of Ecuador

(Not appearing as counsel of record)

[1]

/This claim, while brought against some of the same parties, is unrelated to Ecuador's claim for damages for healthcare related costs. Case No.00-1951 CA 27.