Laker Antitrust Litigation: The Jurisdictional Rule of Reason Applied to Transnational Injunctive Relief

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THE LAKER ANTITRUST LITIGATION: THE JURISDICTIONAL "RULE OF REASON" APPLIED TO TRANSNATIONAL INJUNCTIVE RELIEF

INTRODUCTION

Laker Airlines' 1982 lawsuit against several American and European rivals alleging violations of the Clayton Act sharply brought into focus the problems raised by extraterritorial application of American antitrust laws. In such cases foreign courts frequently have jurisdiction over the same parties and issues involved in the United States litigation, and concurrent assertions of jurisdiction by both the United States and foreign courts often result in dispute. In the Laker litigation, the United States and British courts' failure to resolve their jurisdictional conflict forced courts on both sides of the Atlantic to resort to the use of an extraordinary equitable remedy: the transnational antisuit injunction.

Twice during the course of its antitrust litigation, Laker Airlines requested United States courts to enjoin named defendants in its United States suit from initiating foreign proceedings designed to vitiate the jurisdiction of United States courts. Traditionally, United States courts have relied on general principles of comity to guide their discretion in enjoining suits in foreign courts, once the traditional requirements for injunctive relief have been satisfied. The federal courts in the Laker litigation, however, established new precedent by expressly engaging in a more structured weighing of specific foreign interests against competing United States interests. The method of analysis used by the Laker courts seems to closely parallel the jurisdictional rule of reason, an approach applied frequently by courts to the threshold question of whether to assert jurisdiction. The Laker courts appear to be the first to expressly apply the rule of reason to the question of whether to grant a transnational antisuit injunction.

Part I of this Note examines the doctrinal evolution of the jurisdictional rule of reason and explains why it is a test more sensitive to the interests of foreign nations than traditional principles of comity. Part I also delineates the traditional parameters of the proper use of transnational antisuit injunctions and examines the efficacy of the traditional comity doctrine as a check on a court's power to issue such injunctions. Part II traces the development of the Laker litigation and reviews the decision of the United States Court of Appeals for the District of Columbia Circuit affirming the District Court's issuance of an injunction against foreign defendants seeking relief in
British courts. Additionally, Part II reviews the subsequent decision by the United States District Court for the District of Columbia not to further enjoin the British defendants from petitioning their own government for redress. Part III analyzes Judge Wilkey's opinion for the D.C. Circuit and concludes that it properly refines the traditional equitable doctrine governing the issuance of antisuit injunctions and, by considering the interests of the competing foreign forum, takes an important step toward adopting the jurisdictional rule of reason in the context of transnational injunctive relief. Part III also reviews Judge Greene's subsequent District Court decision and concludes that his express use of the rule of reason is a positive development in the use of transnational antisuit injunctions. Finally, the Note explores the benefits derived from the use of a rule of reason analysis to decide whether transnational injunctive relief should be granted.

I.

HISTORICAL BACKGROUND

In the course of a suit stemming from the extraterritorial application of American law, a United States court first has to determine whether it has jurisdiction over any foreign parties involved. If jurisdiction exists, a party may then request the court to enjoin the foreign parties from suing in other countries, and the court must then decide if such an injunction is proper. A court's decisions to assert jurisdiction and to issue a transnational antisuit injunction are similar in that both tread heavily on the interests of foreign nations. However, the United States courts have traditionally adopted different rules to govern the making of each of these decisions.

A. The Extraterritorial Jurisdictional Rule of Reason

Assertions of prescriptive jurisdiction by the United States courts resulting from extraterritorial application of American law often conflict with the interests of foreign nations. Until recently, United States courts embraced expansive jurisdictional doctrines, asserting jurisdiction over all foreign activity that "affected" American commerce. Considerations of comity have since led to the development of a judicial doctrine designed to assist courts in determining the advisability and reasonableness of extraterritorial exercises of jurisdiction. This doctrine, which has become known as the jurisdictional "rule of reason," is basically a balancing-of-

1 See infra notes 11-12 and accompanying text.
2 See infra notes 7-12 and accompanying text.
3 See infra notes 12-31 and accompanying text.
4 Timberland Lumber Co. v. Bank of Am., 549 F.2d 597, 613 (9th Cir. 1976). The
interests test that requires courts to weigh the importance of the United States interests involved in an extraterritorial assertion of jurisdiction against competing foreign interests.\textsuperscript{5} The jurisdictional rule of reason is distinguishable from general principles of comity.\textsuperscript{6}

The jurisdictional rule of reason evolved in reaction to the numerous and intense transnational judicial conflicts generated by the extraterritorial enforcement of United States antitrust law.\textsuperscript{7} Prior to the development of the rule of reason, American courts followed the rule established in \textit{United States v. Aluminum Corporation of America (ALCOA)}:\textsuperscript{8} the Sherman Act applies to wholly foreign activity transpiring entirely outside the United States if it affects American commerce, and United States courts have jurisdiction over foreign parties engaged in this activity.\textsuperscript{9} The development of the \textit{ALCOA} "effects" test, coupled with the Sherman Act's express application to commerce with foreign nations,\textsuperscript{10} permitted almost limitless extraterritorial application of American law and assertion of United States jurisdiction, much to the resentment and disapproval of the international community.\textsuperscript{11}

In the mid 1970s, courts began to develop a doctrine that limited the extraterritorial reach of their jurisdiction.\textsuperscript{12} The seminal

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\textsuperscript{5} See infra notes 12-19 and accompanying text.

\textsuperscript{6} See infra notes 22-31 and accompanying text.


\textsuperscript{8} 148 F.2d 416 (2d Cir. 1945).

\textsuperscript{9} Id. at 443-44.

\textsuperscript{10} Section 1 of the Sherman Act reads in part: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce . . . with foreign nations, is declared to be illegal . . . ." 15 U.S.C. § 1 (1982).


\textsuperscript{12} This shift in judicial policy coincided with the shift in executive policy to avoid conflicts with other nations that result from a mechanical and overly expansive applica-
decision confronting the defects and parochialism of the *ALCOA* effects test, and expressly considering the interests of the foreign forum, was *Timberlane Lumber Co. v. Bank of America.*

In *Timberlane* an Oregon partnership that milled and exported lumber from Honduras alleged that the Bank of America conspired with others to shut down its milling operation and that its resulting inability to export Honduran lumber to the United States harmed American commerce. The court found that a mere application of the effects test was "incomplete" and insensitive because it "fail[ed] to consider the other nation's interests" or "take into account the full nature of the relationship between the actors and this country."

In lieu of the effects test, the Ninth Circuit, taking guidance from the 1965 *Restatement of Foreign Relations,* ruled that after finding a restraint upon United States commerce significant enough in its effect to be cognizable under the Sherman Act, a court should review a long list of factors based on comity and fairness before asserting jurisdiction.

The *Timberlane* court listed seven factors that courts should consider:

1. the degree of conflict with foreign law or policy,
2. the nationality or allegiance of the parties and the locations or principal places of business of corporations,
3. the extent to which enforcement by either state can be expected to achieve compliance,

The *Restatement* lists factors for a court to consider in determining whether or not to assert jurisdiction:

(a) the vital national interests of each of the states,
(b) the extent and nature of the hardship that inconsistent enforcement actions would impose upon the person,
(c) the extent to which the required conduct is to take place in the territory of the other state,
(d) the nationality of the person, and
(e) the extent to which enforcement by action of either state can reasonably be expected to achieve compliance with the rules prescribed by that state.


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13 549 F.2d 597 (9th Cir. 1976).
14 Id. at 603-05.
15 Id. at 611-12.
16 One commentator has suggested that the jurisdictional rule of reason owes its "intellectual roots and justification in U.S. law" to the 1965 *Restatement (Second) of the Foreign Relations Law of the United States.* See D. Rosenthal & W. Knighton, supra note 7, at 25-26. The *Restatement* lists factors for a court to consider in determining whether or not to assert jurisdiction:

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17 549 F.2d at 613.
the relative significance of effects on the United States as compared to those elsewhere,
the extent to which there is explicit purpose to harm or affect American commerce,
the foreseeability of such effect,
the relative importance of the violations charged on conduct within the United States as compared with conduct abroad.\[18\]

This case-by-case balancing of competing interests to determine the reasonableness of a court’s assertion of jurisdiction is now recognized as the jurisdictional rule of reason.\[19\]

Three years later, the Third Circuit adopted the jurisdictional rule of reason and further refined it. In *Mannington Mills, Inc. v. Congoleum Corp.*,\[20\] the court restated the *Timberlane* factors and added several additional considerations:

[1.] [a]vailability of a remedy abroad and the pendency of litigation there . . . [,]
[2.] [p]ossible effect upon foreign relations if the court exercises jurisdiction and grants relief . . . [,]
[3.] [i]f relief is granted, whether a party will be placed in the position of being forced to perform an act illegal in either country or be under conflicting requirements by both countries . . . [,]
[4.] [w]hether an order for relief would be acceptable in this country if made by [a] foreign nation under similar circumstances . . . [,]
[5.] [w]hether a treaty with the affected nations has addressed the issue.\[21\]

A number of commentators have described the jurisdictional rule of reason as merely an application of comity.\[22\] Others have noted that the factors constituting the jurisdictional rule of reason involve much more than mere notions of comity.\[23\]

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\[18\] *Id.* at 614. The *Timberlane* court remanded the case to the district court for consideration of these factors. *Id.* at 615.

\[19\] See *supra* note 4 and accompanying text. One year later, the Ninth Circuit interpreted its *Timberlane* test in *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406 (9th Cir. 1977). In *Wells Fargo*, the court explained that, when considering the factors outlined in *Timberlane*, the absence or presence of any one factor is not, by itself, determinative of the reasonableness and appropriateness of the extraterritorial application; the enumerated factors must, on balance, weigh in favor of asserting jurisdiction. *Id.* at 428-29.

\[20\] 595 F.2d 1287 (3d Cir. 1979).

\[21\] *Id.* at 1297-98.


\[23\] See, e.g., Note, *supra* note 7, at 148 n.9.
comity does not lend itself to precise definition. It has been described as "a blend of courtesy and expediency" and as "neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other." Although the "essence of comity is self-restraint," it is a doctrine that commentators have argued leaves a court great flexibility and little guidance. In contrast, the jurisdictional rule of reason provides "an absolute (not merely discretionary) basis for limiting instances of United States antitrust enforcement that undermines foreign laws and policies.

Furthermore, disagreement exists over whether courts should use the jurisdictional rule of reason to make their threshold jurisdictional determinations or, similar to comity, as an abstention doctrine applicable to a later stage of the proceedings. The resolution of this dispute is not essential, because under either view the importance of the rule of reason is that it departs from the traditional doctrine of comity by providing a specific list of factors sensitive to foreign interests to guide the determinations of courts.

Critics of the jurisdictional rule of reason argue that it causes

24 See Note, supra note 22, at 1593-94 (suggesting that comity "takes on whatever shape the exigencies of the moment require").
25 Canadian Filters (Harwich) Ltd. v. Lear-Siegler, Inc., 412 F.2d 577, 578 (1st Cir. 1969).
26 Hilton v. Guyot, 159 U.S. 113, 163-64 (1895).
27 Note, supra note 22, at 1595.
28 See generally id. at 1593-97.
30 See Dominion Americana Bohio v. Gulf & W. Indus., Inc., 473 F. Supp. 680, 688 (S.D.N.Y. 1979) (doctrine can be "reviewed as part of the threshold jurisdictional decision or in connection with a subsequent determination regarding abstention"); Note, supra note 7, at 155 n.55 (citing supporting authority for both positions).
31 The factors enumerated by the 1965 Restatement (Second) of Foreign Relations, and the Timberlane and Mannington Mills courts are not identical. See supra notes 16, 18, & 21 and accompanying text. A tentative draft of the revised Restatement presents a fourth alternative list of factors, restating some of those found in the other sources and adding others:

(a) The extent to which the activity (i) takes place within the regulating state, or (ii) has substantial, direct, and foreseeable effect upon or in the regulating state;
(b) the links, such as nationality, residence, or economic activity, between the regulating state and the persons principally responsible for the activity to be regulated, or between that state and those whom the law or regulation is designed to protect;
(c) the character of the activity to be regulated, the importance of regulation to the regulating state, the extent to which other states regulate such activities, and the degree to which the desirability of such regulation is generally accepted;
(d) the existence of justified expectations that might be protected or hurt by the regulation in question;
(e) the importance of regulation to the international political, legal or economic system;
(f) the extent to which such regulation is consistent with the traditions of the international system;
uncertainty in result\textsuperscript{32} and forces courts to consider matters beyond their competence.\textsuperscript{33} Nonetheless, the rule of reason is still widely regarded as a proper and "constructive" framework for analyzing extraterritorial assertions of jurisdiction because it counsels reasonableness and thereby moderates the possible insensitivity of extraterritorial assertions of United States jurisdiction.\textsuperscript{34}

B. Transnational Antisuit Injunctions

American courts have the power to enjoin a party from litigating in another forum, domestic or foreign. Antisuit injunctions are discretionary: after a party has made the showings traditionally necessary to invoke a court's equitable power, the court considers other equitable factors that favor or disfavor granting injunctive relief. In addition, comity may suggest self-restraint. When a United States court is asked to enjoin litigation in a foreign country, principles of international comity counsel consideration of the foreign forum's interests. Until the \textit{Laker} litigation, however, United States courts had not openly applied the rule of reason to the question of whether to enjoin foreign litigation but had relied instead on vague notions of comity.

1. \textit{Background}

It is well settled that American courts have the power to enjoin

\begin{itemize}
\item[(g)] the extent to which another state may have an interest in regulating the activity;
\item[(h)] the likelihood of conflict with regulation by other states.
\end{itemize}

\textit{Restatement of Foreign Relations Law of the United States (Revised)} § 403 (Tent. Draft No. 2, 1981). These factors are to be considered in determining the reasonableness of the exercise of jurisdiction, but they are not intended to be comprehensive. \textit{Id.} at comment b.

\textsuperscript{32} As one commentator noted, the uncertainty of result inherent in the rule of reason's balancing tests does not produce "counsellable law" because it fails to provide foreign business enterprises with a clear picture of their obligations under United States law. D. \textsc{Rosenthal} & W. \textsc{Knighton}, \textit{supra} note 7, at 28 (attributing comment to Kingman Brewster).

\textsuperscript{33} For an extensive but fair discussion of the weaknesses of the rule of reason, see \textit{id.} at 26-28. Other critics are less reserved. \textit{See} Note, Timberlane: \textit{Three Steps Forward, One Step Backwards}, \textit{15 Int'l. Law} 419, 425 (1981) (because \textit{Timberlane} test "calls for resolution of issues beyond the competence of the courts[,] it fails to clarify relevant issues and in fact further confuses them"); \textit{see also} Maier, \textit{Interest Balancing and Extraterritorial Jurisdiction}, \textit{31 Am. J. Comp. L.} 579 (1983) (courts not proper or effective forum for balancing foreign policy interests). Courts have also expressed discomfort with the rule of reason. \textit{See, e.g., In re Uranium Antitrust Litigation}, 480 F. Supp. 1138, 1148 (N.D. Ill. 1979) (because court is ill-equipped to "balance the vital national interests . . . to determine which interests predominate . . . the balancing test is inherently unworkable"), \textit{aff'd}, 617 F.2d 1248 (7th Cir. 1980); \textit{accord}, National Bank of Can. v. Interbank Card Ass'n, 666 F.2d 6 (2d Cir. 1981).

\textsuperscript{34} \textit{See} D. \textsc{Rosenthal} & W. \textsc{Knighton} \textit{supra} note 7, at 28, 86; \textit{Note, supra} note 7, at 165 n.98 (citing authority in support of rule of reason test).
a party from litigating in another forum. The traditional view is that such power derives from a court's in personam jurisdiction over litigating parties properly before it and therefore does not interfere with the sovereignty of the competing forum. Courts have the authority to control persons over whom they exercise in personam jurisdiction and the power to issue an order or decree that binds the parties even beyond the territorial boundaries of the state. This power clearly extends to the enjoining of litigation in foreign countries. That the proceedings to be enjoined are in a foreign forum is relevant only to the advisability of such action, not to the authority of the court to so act. Because they are extraordinary measures, antisuit injunctions are generally disfavored. Courts particularly disfavor antisuit injunctions aimed at foreign forums because they

35 See, e.g., Cole v. Cunningham, 133 U.S. 107 (1890) (antisuit injunctions enjoining proceedings in another state violate neither full faith and credit clause nor interstate privileges and immunities clause of federal constitution); Seattle Totems Hockey Club, Inc. v. National Hockey League, 652 F.2d 852 (9th Cir. 1981) (federal court may enjoin party from bringing its compulsory counterclaim in foreign court), cert. denied, 457 U.S. 1105 (1982). For an excellent discussion and a comprehensive list of supporting authorities, see Note, supra note 22, at 1585-88. For a much earlier discussion of the same issue, see Messner, The Jurisdiction of a Court of Equity Over Persons to Compel the Doings of Acts Outside the Territorial Limits of the State, 14 MINN. L. REV. 494, 495-506 (1930).

36 See Note, supra note 22, at 1587; see also Messner, supra note 35, at 495-96.

37 The Supreme Court has expressly recognized both the constitutionality of antisuit injunctions, Cole v. Cunningham, 133 U.S. 107 (1890), and the in personam nature of such relief, Steelman v. All Continent Corp., 301 U.S. 278, 291 (1937). See also Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399, 427 (1923) ("The proceeding in the enjoining court is solely in personam . . . .").

Several commentators and courts have criticized the in personam basis of an antisuit injunction as a fiction, claiming that in reality such relief interferes with the jurisdiction of another court. See Campagnie des Bauxites de Guine v. Insurance Co. of N. Am., 651 F.2d 877, 887 (3d Cir. 1981) (in ordinary in personam action one court generally will not interfere with or try to restrain proceedings in another court), aff'd on other grounds, 456 U.S. 684 (1982); Medtronic, Inc. v. Catalyst Research Corp., 518 F. Supp. 946, 954 (D. Minn.) (injunction would indirectly affect powers of foreign court), aff'd, 664 F.2d 660 (8th Cir. 1981); 11 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2942, at 377-78 (1975); Note, supra note 22, at 1587.


39 See Note, supra note 22, at 1587.

40 E.g., Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Eng'rs, 398 U.S. 281, 295 (1970) (where two courts have concurrent jurisdiction, neither is ordinarily free to prevent either party from pursuing claims in both courts); Note, supra note 22, at 1588 ("Injunctions are extraordinary remedies . . . .").

41 See 11 C. WRIGHT & A. MILLER, supra note 37, § 2942, at 377-81 (courts employ injunctions sparingly); Note, supra note 22, at 1588 (same).
directly affect the jurisdiction of the foreign sovereign. Therefore, United States courts seldom issue injunctions restraining litigants from bringing suit in the courts of foreign nations.

The decisions of American courts to grant or deny antisuit injunctive relief in both the domestic and transnational contexts are largely governed by traditional equity doctrines. Courts consider enjoining litigation in other forums only if the party requesting the injunctive order can meet "the usual equitable tests of irreparable injury and absence of an adequate remedy at law."

Once the power to enjoin is thus established, courts weigh several discretionary equitable factors to determine whether injunctive relief is appropriate. These factors include the enforceability of the injunction, the injustice and unfairness that might otherwise result, whether the foreign proceedings sought to be enjoined would frustrate an important policy of the issuing forum, and the need to protect the issuing court's jurisdiction. Finally, courts re-

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42 Canadian Filters (Harwich) Ltd. v. Lear-Siegler, Inc., 412 F.2d 577, 578 (1st Cir. 1969) (transnational antisuit injunctions should be issued "only with care and great restraint"). See also Garpeg Ltd. v. United States, 583 F. Supp. 789, 798 (S.D.N.Y. 1984) (such measures are disfavored, "especially when an injunction . . . is tantamount to enjoining the tribunal of a foreign sovereign").

43 See, e.g., Sperry Rand Corp. v. Sunbeam Corp., 285 F.2d 542 (7th Cir. 1960) (injunction against German proceedings denied); Philip v. Macri, 26 F.2d 947 (9th Cir. 1928) (injunction to halt Peruvian proceedings denied). See also Note, supra note 22, at 1585 (courts "sparingly" issue transnational antisuit injunctions).

44 Note, supra note 22, at 1588.

45 Id. (quoting 17 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4226, at 347 (1978)).

46 See C. Wright & A. Miller, supra note 37, § 2945, at 403 (if injunction unenforceable, courts will avoid "futile gesture" of issuing it). See generally Note, supra note 22, at 1590-93 (discussing broad range of practical considerations affecting efficacy of injunctive relief). The traditional equitable doctrine counseling that a court not issue unenforceable or impractical orders has led several courts to reject requests for such injunctive relief. See, e.g., Garpeg, Ltd. v. United States, 583 F. Supp. 789 (S.D.N.Y. 1984) (where Hong Kong secrecy law might prohibit intervenor-bank from disclosing Garpeg's bank records, bank could not enjoin Garpeg, in domestic action, from proceeding against bank in Hong Kong court).

47 Messner, supra note 35, at 496.

48 See, e.g., Cole v. Cunningham, 133 U.S. 107, 122-23 (1890) (defendant tried to evade state insolvency law by proceeding in different state); Seattle Totems Hockey Club, Inc. v. National Hockey League, 652 F.2d 852, 856 (9th Cir. 1981) (policies behind Fed. R. Civ. P. 13(a)); In re Unterweser Reederei, GMBH, 428 F.2d 888, 896 (5th Cir. 1970) (foreign court might enforce contract provisions contrary to American policy); rev'd on other grounds sub nom. The Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972); Cargill, Inc. v. Hartford Accident & Indem. Co., 531 F. Supp. 710, 715 (D. Minn. 1982) (policy of judicial economy); see also C. Wright & A. Miller, supra note 37, § 2942, at 379 (injunction justified if "the action sought to be halted was instituted to circumvent some policy or law of the forum state").

quested to enjoin proceedings in a foreign forum may apply principles of international comity before granting or denying injunctive relief. In this context, comity functions only as an "abstention doctrine" after the party seeking relief has satisfied the traditional equitable requirements. Comity in no manner undermines a court's power to grant transnational injunctive relief, but it may lead a court to decline to exercise that power.

2. The Current Approach

In deciding whether to issue transnational antisuit injunctions, United States courts recently have considered traditional equitable considerations, which focus on fairness to the parties, but have glossed over considerations of comity, which focus on the interests of the foreign forum. In *Garpeg, Limited v. United States*, a United States federal court was requested to enjoin proceedings in Hong Kong. The court ruled that foreign litigation should be enjoined "'when it would (1) frustrate a policy in the forum issuing the injunctions, (2) be vexatious, (3) threaten the issuing court's in rem or quasi in rem jurisdiction, or (4) where the proceedings prejudice other equitable considerations.' " The "other equitable considerations" to which the court refers would support the issuance of an antisuit injunction in circumstances where the proceedings in the competing forum would result in " 'unnecessary delay, substantial inconvenience and expense to the parties and witnesses, and where separate adjudications could result in inconsistent rulings or a race..."
The court did not list comity as a factor in its test.\textsuperscript{56}

The \textit{Garpeg} test reveals that courts faced with requests for transnational injunctive relief are concerned with ensuring fairness to the \textit{parties} involved and furthering and protecting American policies. Although it is not included in the test articulated in \textit{Garpeg}, comity may play a significant role in courts' decisionmaking.\textsuperscript{57} Even if the issuance of a transnational antisuit injunction serves both to protect important American interests and ensure fairness to the litigating parties, considerations of comity may compel a court to take a path of judicial restraint.\textsuperscript{58} But comity is a nebulous concept that leaves a court with little guidance and much flexibility;\textsuperscript{59} commentators have criticized its effectiveness in limiting courts' discretion in cases involving foreign interests.\textsuperscript{60} Because comity does not require a court formally to consider specific foreign interests, upon request United States courts often issue injunctions to "protect" readily apparent American interests.\textsuperscript{61}

\section*{II}
\textbf{THE LAKER LITIGATION}

\section*{A. Background}

Laker Airways Ltd. (Laker) was a British corporation, founded by Sir Freddie Laker in 1966, that featured a low-fare transatlantic
“skytrain” service between New York and London. In 1981 Laker experienced severe financial difficulties, which, compounded by a sharp devaluation of the pound, rendered the company unable to meet its large outstanding debt obligations and forced it into bankruptcy on February 5, 1982.62 On November 24, 1982, Laker, then in liquidation, filed a $1.7 billion antitrust action under the Clayton Act in the United States District Court for the District of Columbia.63 Laker asserted that several American, British, and other foreign airlines conspired to undermine and destroy its business of providing novel low-fare transatlantic air services.64 Laker alleged that the conspirators established a predatory pricing scheme and pressured Laker’s creditors to withhold previously promised financing necessary for Laker to successfully reschedule its debt obligations.65

On November 29, 1982, Midland Bank, a British corporation that had been involved in Laker’s abortive refinancing scheme and thus feared that it might be the target of similar allegations, obtained an order from the United Kingdom’s High Court of Justice enjoining Laker from naming it as a defendant in any United States antitrust action.66 Shortly thereafter, several of the named defendants, British Airways, British Caledonian Airways, Lufthansa, and Swissair, filed suit in the United Kingdom’s High Court of Justice seeking a declaration of nonliability and an order permanently en-
joining Laker from prosecuting its antitrust claims against them in United States federal courts. The British High Court issued an ex parte injunction barring Laker from interfering with the British proceedings aimed at halting his United States antitrust action.

In March 1983, in response to the order of the British High Court, Laker obtained an injunction in its United States District Court suit restraining those defendants that had not yet appeared in England from taking action abroad that would vitiate or interfere with the District Court’s jurisdiction or Laker’s freedom to prosecute its United States antitrust claim. Thus restrained from joining the English proceedings, defendants KLM and Sabena appealed the district court’s decision to the United States Court of Appeals for the District of Columbia Circuit, seeking reversal.

KLM and Sabena argued that the district court’s order was an abuse of discretion and violated international principles of comity. While the KLM-Sabena appeal was pending before the D.C. Circuit, the British High Court dissolved its earlier injunctive orders on the ground that jurisdiction was properly before the United States District Court. The British parties took an emergency appeal to the English Court of Appeal where they were granted a temporary restoration of the injunctions pending resolution of their appeal. Before the Court of Appeal ruled on the matter, the British Secretary of State for Trade and Industry invoked the British Protection of Trading Interests Act (PTIA) and issued an order prohibiting anyone carrying on business in or with the United Kingdom from complying with United States antitrust measures in the district court. The order issued under the PTIA would have made compliance with discovery requests a criminal offense and would have had the general effect of frustrating the ability of the United States courts to fairly and fully adjudicate the case. Laker appealed this matter to the English Court of Appeal, which concluded that the PTIA order was within the power of the Secretary of State, and that its effect would be to render the United States action “wholly untriable,” inevitably producing a “total denial of justice” to the British

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67 Id. at 918.
68 Id.
69 Pan Am. I, 559 F. Supp. at 1124.
70 The district court’s injunction also applied to the four American defendants—TWA, Pan Am, McDonnell Douglas, and McDonnell Douglas Finance, Inc.—but these defendants chose not to appeal. Sabena, 731 F.2d at 921 n.18.
71 Id. at 921.
73 Sabena, 731 F.2d at 918.
74 Protection of Trading Interests Act, 1980, ch. 11.
75 See Sabena, 731 F.2d at 919.
defendants in the United States action. Because the British defendants thus could not get a fair trial in United States courts, in July 1983 the Court permanently enjoined Laker from pressing his American claims.

B. The D.C. Circuit's Opinion

In March 1984, the D.C. Circuit affirmed the district court's assertion of jurisdiction and its order enjoining KLM and Sabena from joining the suit in England. Although the court declined to use the jurisdictional rule of reason to assess the propriety of jurisdiction, it expressly balanced specific foreign and American interests in affirming the antisuit injunction. In doing so, the court implicitly endorsed rule of reason analysis in the context of transnational injunctive relief.

Judge Wilkey, writing for the D.C. Circuit, reasoned that both the United States and British courts had valid grounds for jurisdiction and that the conflict arising from their concurrent assertions of jurisdiction was unavoidable. United States jurisdiction rested on the principle of territoriality; British jurisdiction was founded on the nationality principle. Wilkey rejected the jurisdictional rule of reason, considering it unhelpful in resolving the jurisdictional conflict in this case. Noting that courts have rarely accomplished neutral interest balancing in the jurisdictional context, Wilkey asserted that the court was not competent to balance the political fac-

77 See Sabena, 731 F.2d at 920.
78 Judge Wilkey considered the question of jurisdiction first, reasoning that "if there is no justification for the court's exercise of jurisdiction, the injunctive relief should necessarily fail." Id. at 921.
79 Id. at 955.
80 Id. at 922-26. States have prescriptive competence over activities within their territory. A natural extension of this principle is that states may legitimately prescribe and regulate conduct that occurs outside a state's territory but that causes harmful effects within its territorial borders. This notion provides the core of the ALCOA effects test—the basis for extraterritorial application of the United States antitrust laws—and has caused friction between the United States and many other nations. See supra notes 7-11 and accompanying text.
81 Sabena, 731 F.2d at 926. Although some of the allegedly conspiratorial activity took place in the United States, the thrust of the British jurisdictional claim stemmed from the fact that Laker and two of the defendants, British Caledonian and British Airways, were all British corporations. A second fundamental tenet of jurisdictional law is that a state has the right to control the conduct of its nationals abroad. Id. at 925.
82 See supra notes 12-31 and accompanying text.
83 Because of the conflicting policies behind the United States and British jurisdictional bases, Judge Wilkey described the Laker case as "perhaps the most pronounced example in recent years of the problems raised by . . . concurrent jurisdiction." Sabena, 731 F.2d at 916.
tors implicated in this case. Wilkey also rejected the defendants' claim that the principle of nationality should be given paramount status in cases of concurrent jurisdiction. He concluded that the jurisdictional conflict could not be resolved, and consequently, because a legitimate basis for United States jurisdiction existed, it should be asserted.

Wilkey also found the district court's injunction wholly justified to preserve the jurisdiction of the court and to protect American interests. The court recognized that transnational antisuit injunctions are rarely issued, but decided that when, as in this case, the injunction is needed to protect valid proceedings already underway from a similar action aimed at blocking them, the injunction is "defensive" in nature and should be issued. Finally, Wilkey noted that under principles of comity a United States court must give deference to foreign proceedings which parallel its own inquiry into the merits of a case. He held, however, that the English injunctions in this case were not "parallel," but rather interdictory, and "purely offensive" in nature. Consequently, he reasoned, comity did not restrain a court from issuing a defensive response in the form of an injunction.

At the time of the D.C. Circuit's decision, the United States and British courts seemed to be facing an unavoidable and unresolvable "deadlock." However, in July 1984, the House of Lords reversed the decision by the British Court of Appeal and dissolved the injunctions protecting the British defendants from the jurisdiction of the United States courts.

84 Id. at 948-53. In rejecting the jurisdictional rule of reason Wilkey relied upon the reasoning of the Seventh Circuit in In re Uranium, 480 F. Supp. 1138, 1148 (N.D. Ill. 1979). Like the Seventh Circuit, Wilkey determined that the jurisdictional rule of reason would not be useful if the court had to consider "purely political factors which the court is neither qualified to evaluate comparatively nor capable of properly balancing." Sabena, 731 F.2d at 949.

Judge Wilkey's seemingly emphatic rejection of the jurisdictional rule of reason must, however, be scrutinized in the context of the Laker litigation. Because the injunction sought by Laker was necessary to preserve the jurisdiction of the U.S. court, in shifting the focus of interest balancing analysis to the question of the propriety of injunctive relief, the court did in fact use rule of reason analysis to protect its jurisdictional assertion.

85 731 F.2d at 935 (adoption of such rule would be "entirely novel ... unknown in national and international law").

86 Id. at 949.
87 Id. at 930-33.
88 Id. at 938.
89 Id.
90 Id.
91 Id. at 945.
92 British Airways Bd. v. Laker Airways Ltd., 1985 A.C. 58. The House of Lords' decision of July 1984 did not resolve the initial antisuit injunction obtained against
The decision by the House of Lords to vacate the injunctions by no means ended the dispute. Fearing that British Airways and British Caledonian would again attempt to escape United States jurisdiction with the help of the British courts, Laker petitioned United States District Court Judge Greene for another antisuit injunction restraining the British airline defendants from once again instituting proceedings in England.\footnote{604 F. Supp. at 283-84.} Note\footnote{Laker Airways Ltd. v. Pan American World Airways, 596 F. Supp. 202, 204-05 \& n.8 (D.D.C. 1984) [hereinafter cited as \textit{Pan Am. II}].}\footnote{604 F. Supp. at 283-84.}\footnote{\textit{Id.} at 285.}\footnote{\textit{Id.} at 287.} The British defendants' past behavior legitimated Laker's fears and that further interference with the United States litigation would irreparably harm Laker,\footnote{\textit{Id.} at 287-90.} the district court enjoined the British defendants from "taking steps in a foreign court 'or otherwise' that would impair the jurisdiction of this Court. . . ."\footnote{\textit{Id.} at 287-88.} Because such a prohibition would extend to Parliament and all executive agencies, the defendants argued it contravened the first amendment,\footnote{\textit{Id.} at 287-90.} standards of international law,\footnote{\textit{Id.} at 287-90.} and principles

Although British Airways and British Caledonian conceded the competence of the district court and the propriety of its order enjoining them from proceeding in British courts, the defendants were concerned about the injunction's broad wording and appealed the matter for reconsideration by Judge Greene.\footnote{\textit{Id.} at 285.} They argued that the broad phrase "or otherwise" in the injunctive order would restrain the defendant airlines not only from bringing suit in England, but also from communicating with or petitioning their own government for relief.\footnote{\textit{Id.} at 287.} Because such a prohibition would extend to Parliament and all executive agencies, the defendants argued it contravened the first amendment,\footnote{\textit{Id.} at 287-90.} standards of international law,\footnote{\textit{Id.} at 287-90.} and principles

Laker by Midland Bank. Although a lower British court dismissed the Midland injunction on the basis of the House of Lords' action, in July 1985 the Court of Appeal held that Midland was not "in the same position" as British Airways and British Caledonian and reinstated the injunction barring Laker from pressing its claim against the bank in United States courts. The Court held that Midland's banking transactions with Laker were governed wholly by English law, the bank had no connection with any airlines operating in the United States, and none of the bank's actions was governed by United States antitrust legislation. \textit{Financial Times} (London), Aug. 2, 1985, at 27, col. 1.

\footnote{\textit{Id.} at 287-90.} The defendants' claim raised interesting first amendment questions beyond the scope of this Note. Essentially, the defendants argued that the first amendment right to petition one's government included the right of British citizens residing in the United States to petition the British government. \textit{Id.} at 287-88. The defendants also asserted that the \textit{Noerr-Pennington} doctrine, which allows antitrust immunity for the petitioning of governments, extends extraterritorially to prohibit the court from restraining such activity. \textit{Id.} For an introductory discussion of both of these points, see Davis, \textit{Solicitation of Anticompetitive Action from Foreign Governments: Should the Noerr-Pennington Doctrine Apply to Communications with Foreign Sovereigns?}, 11 \textit{Ga. J. INT'L \& COMP. L.} 395 (1981); Note, \textit{The Noerr-Pennington Doctrine and the Petitioning of Foreign Governments}, \textit{84 Colum. L. Rev.} 1343 (1984).
of comity.100

Although Judge Greene was unimpressed with the defendants’ first amendment claim,101 he nevertheless narrowed his order to preclude only the bringing of suit in England. Greene felt that principles of comity counselled such restraint.102 Adopting the rule of reason as articulated in *Mannington Mills*,103 the court concluded that “the interest of Great Britain in the political rights of British subjects” outweighed the competing American interests involved.104 The Court also noted that the unlikelihood of any British governmental action lessened the weight of the American interest in preserving its jurisdictional assertion.105

III
APPLICATION OF THE JURISDICTIONAL RULE OF REASON TO THE GRANTING OF TRANSNATIONAL INJUNCTIVE RELIEF

The *Laker* courts’ analysis of the appropriateness of transnational injunctive relief departs from the traditional manner in which courts have dealt with requests for such relief.106 The reasoning underlying the D.C. Circuit’s affirmance of the enjoinment of KLM and Sabena from participating in English proceedings aimed at vitiating United States jurisdiction reflects a structured consideration of foreign interests more closely akin to the jurisdictional rule of reason than the traditional analytical framework for injunctive relief.107 Moreover, the district court’s express use of the jurisdictional rule of reason108 in its subsequent decision not to enjoin the British defendants from petitioning their own government for relief is an explicit step toward the adoption of the rule of reason in the context of transnational injunctive relief. This trend is laudable; the application of rule of reason analysis to determinations of the appropriateness of enjoining proceedings in foreign forums will yield more reasonable and consistent results than analysis based on vague notions of comity.

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99 The defendants contended that the injunctive order would violate human rights conventions that guarantee the right of free speech, such as the Helsinki Accords. The court rejected this argument. *Pan Am. III*, 604 F. Supp. at 290-91.
100 *Id.* at 291-94.
101 *Id.* at 287-90; see supra note 98.
103 *Id.* at 292; see supra notes 20-21 and accompanying text.
104 604 F.Supp. at 292-93.
105 *Id.* at 293-94.
106 See supra part 1B.
107 See supra notes 78-90 and accompanying text.
108 See supra notes 103-05 and accompanying text.
A. The D.C. Circuit's Implicit Use of the Rule of Reason

The D.C. Circuit expressly rejected the jurisdictional rule of reason in approving the district court's assertion of jurisdiction and claimed merely to be applying comity in affirming the district court's injunction. However, by seriously and explicitly considering the interests of the foreign forum, and expressly weighing a factor identified in the rule of reason as articulated in *Mannington Mills,* the court actually analyzed the propriety of the antisuit injunction in a manner more similar to the rule of reason than to traditional analysis, which focuses primarily on fairness to the parties and gives short shrift to considerations of comity.

The court first indicated its departure from the traditional approach by demonstrating that it intended to give significant weight to foreign interests. For example, the court stated that equitable considerations dealing with fairness to the parties alone are not sufficient to "outweigh the respect and deference owed to independent foreign proceedings." In the past such considerations alone have routinely justified transnational antisuit injunctions; comity has rarely guided a court to withhold relief. In addition, the court felt that a transnational antisuit injunction should have "protected" the district court's jurisdiction only if there was a real danger that the foreign proceedings would completely destroy the court's "validly invoked jurisdiction." Mere frustration of jurisdiction by an inconsistent or conflicting foreign adjudication would not be sufficient for such relief.

Although the court clearly was concerned with the American interest in protecting United States commerce from extraterritorial anti-competitive practices, it did not weigh this interest in a vacuum, but rather against the British interests involved. The court's consideration of the interests of the competing forum departs from tradi-

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109 See supra notes 82-84 and accompanying text.
110 *Sabena,* 731 F.2d at 937-45.
111 See supra notes 53-61 and accompanying text.
112 731 F.2d at 929. The court felt that such factors better supported a motion to dismiss on *forum non conveniens* grounds. *Id.* at 928. For a proposal that the *forum non conveniens* inquiry should in large part control the granting of transnational injunctive relief, see Note, supra note 38, at 175-82.
113 See supra note 61 and accompanying text.
114 731 F.2d at 929-30.
115 *Id.* at 928-29. The court concluded, of course, that it was possible that KLM and Sabena would attempt to join the British defendants' antisuit injunction against Laker and thus destroy United States jurisdiction. See supra notes 87-90 and accompanying text. At the time of the court's decision the House of Lords had not yet dissolved the British injunction. See supra notes 91-92 and accompanying text. In the court's view, "the English injunction [was] purely offensive," whereas the United States injunction "was purely defensive" in character. 731 F.2d at 938 (emphasis in original).
tional injunctive analysis. The British interest in this case, the court rightly determined, was lessened by the nationality of the parties.\textsuperscript{116} Because KLM and Sabena are Dutch and Belgian corporations respectively, British trading interests were not adversely affected.\textsuperscript{117} In fact, the court reasoned that retaining KLM and Sabena as defendants actually furthered British trading interests.\textsuperscript{118}

Finally, the court considered the effect on the dispute of the Bermuda II Treaty,\textsuperscript{119} the agreement between the United States and Great Britain governing air services between the two countries. The court found it offensive that KLM and Sabena attempted to "ride on the coattails" of the British airlines under the treaty. The court reasoned that whatever immunity from antitrust prosecution the Bermuda II Treaty might yield would apply only to the British airline defendants and not to KLM or Sabena.\textsuperscript{120} Thus, the court found that the treaty was of little help to the defendants when balancing the interests of the competing forums.\textsuperscript{121}

Although the court found the Bermuda II Treaty unavailing to the defendants, its consideration of the treaty at all implies that the court's analysis did not end at traditional injunctive inquiry but was greatly influenced by the rule of reason. \textit{Mannington Mills} specifically enumerated consideration of a pertinent treaty with the "affected nation" as a factor for a court to weigh.\textsuperscript{122} Thus, by weighing the impact of the Bermuda II Treaty in its balancing process and by specifically balancing foreign against American interests, the court began to extend the rule of reason analysis into the transnational antisuit injunction context.

B. The District Court's Express Adoption of the Rule of Reason

Judge Wilkey's opinion for the D.C. Circuit implicitly adopted the rule of reason analysis, but Judge Greene's subsequent district

\begin{itemize}
\item[116] 731 F.2d at 932-33.
\item[117] Id.
\item[118] Id. at 933. The court reasoned that a judgment against a non-British defendant would contribute toward the satisfaction of creditors' claims against a British corporation, such as Laker, in liquidation. \textit{Id.} Therefore, retaining KLM and Sabena as defendants could conceivably advance British interests.
\item[119] Id. at 932; see Agreement on Air Transport Services, June 22-July 23, 1977, United States-United Kingdom, 28 U.S.T. 5367, T.I.A.S. No. 8641.
\item[120] The British defendants in the case, British Airways and British Caledonian, as well as the British government, asserted that the terms of the Bermuda II Treaty confer on them immunity from antitrust liability. No express provision in the treaty has this effect, and the United States did not accede to this interpretation. \textit{Sabena}, 731 F.2d at 932 n.75.
\item[121] Id. at 932-33.
\item[122] \textit{See supra} text accompanying note 21.
\end{itemize}
court decision openly embraced the jurisdictional rule of reason in the context of injunctive relief. Confronted with a motion to enjoin the British defendants from petitioning their own government for relief, Judge Greene expressly weighed the interests of the British government against those of the United States and correctly concluded that the scale tipped in favor of denying relief.

The court decided that comity should control its decision to grant relief. However, it then listed the factors that the *Mannington Mills* court determined should be considered when applying the rule of reason and stated that they "should generally govern when the issue of international comity is raised in litigation." The court thus did not limit the rule of reason's application to questions of jurisdiction, but rather expressly used it to determine the appropriateness of injunctive relief in this case. The court concluded that the important British interest of protecting the political rights of its citizens, including their right to petition their government, outweighed the United States court's interest in preserving its jurisdiction and protecting the rights of its litigant. Applying the rule of reason more specifically, the court noted that two other *Mannington Mills* factors, (1) the foreseeability of the harm to the United States interests and (2) the effectiveness of an order by the United States court, supported its denial of relief in this case.

The district court's express use of the *Mannington Mills* test represents a significant leap from the implicit use of the rule of reason in the D.C. Circuit's decision. A salutary effect of explicit adoption of the rule of reason lies in its example for future courts. The importance of formal articulation of a new rule cannot be overstated. As the *Timberlane* court noted in formalizing the jurisdictional rule of reason, the failure to articulate clearly the use of specific factors is "costly . . . for it is more likely that they will be overlooked or slighted in interpreting past decisions and reaching new ones."

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123 *Pan Am. III*, 604 F. Supp. at 292. See also supra notes 103-05 and accompanying text.
124 604 F. Supp. at 293-94.
125 *Id.* at 292 (emphasis added).
126 *Id.* at 292-93. The court did not state which factors in the *Mannington Mills* list required this interest balancing, but arguably the first two the court listed command balancing: "(1) the degree of conflict with foreign law or policy; (2) the nationality of the parties." *Id.* at 292. Alternatively, the court may have realized that the rule of reason is basically a test that balances specific foreign interests. See supra text accompanying note 5.
127 604 F.2d at 293 n.57. Finally, the court stated that its confidence that the British Parliament and executive authorities would not take further action interfering with the United States proceedings even absent an injunction made denying the requested relief easier. *Id.* at 293-94.
128 *Timberlane*, 549 F.2d at 612.
C. Benefits of Applying the Jurisdictional Rule of Reason to Requests for Transnational Injunctive Relief

The *Laker* courts' adoption of the jurisdictional rule of reason in the context of transnational injunctive relief should be perceived as a positive step.\(^{129}\) The same benefits that flow from the use of the rule of reason in determining whether to assert jurisdiction also would derive from its application to requests for transnational injunctive relief. United States courts using rule of reason analysis would render decisions more sensitive to foreign interests and would thereby encourage foreign courts to act similarly when requested to enjoin United States proceedings and to cooperate in enforcing United States judgments abroad. Also, by standardizing a method of analyzing requests for injunctive relief, adoption of the rule of reason would help parties plan their litigation strategies and aid appellate courts in reviewing lower court rulings. Finally, rule of reason analysis would maximize courts' sensitivity to foreign interests while preserving consideration of fairness to the parties.

The issuance of a transnational antisuit injunction necessarily trespasses on the sovereignty of a foreign tribunal.\(^{130}\) Courts' consideration of a list of specifically enumerated factors sensitive to foreign interests may lend credence to a decision to enjoin foreign proceedings. Although the traditional comity doctrine functions as a potential restraint on a court's ability to grant transnational injunctive relief, it is so flexible and uncertain a concept that its effectiveness in protecting foreign interests is questionable.\(^{131}\) The rule of reason, however, ensures structured consideration of all implicated foreign interests. A court would still have discretion as to what weight to afford the various factors, but the factors it must consider would be nondiscretionary. Hence, in the context of transnational injunctive relief, the rule of reason may be seen as a form of comity, which preserves some of the court's discretion but properly protects foreign interests. Use of the rule of reason thus would diminish the parochialism and insensitivity that potentially afflict decisions to enjoin foreign proceedings.\(^{132}\)

Parochial United States jurisprudence insensitive to foreign interests negatively affects American courts and litigants abroad.\(^{133}\)

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\(^{129}\) The desirability of such a result is not a foregone conclusion. At least one commentator, urging courts to enjoin the PTIA, has argued that a comparative consideration of competing United States and foreign interests along the lines of the jurisdictional rule of reason would be both inappropriate and ineffective in the context of injunctive relief. See Note, *supra* note 22, at 1598-1601.

\(^{130}\) See *supra* note 42 and accompanying text.

\(^{131}\) See *supra* notes 24-28, 59-61 and accompanying text.

\(^{132}\) See *supra* notes 11-12, 60-61 and accompanying text.

\(^{133}\) Foreign backlash to United States courts' use of the *ALCOA* effects test for juris-
The adoption by American courts of rule of reason analysis, incorporating consideration of factors such as the degree of conflict with foreign law or policy, the effect on existing treaty obligations, and the impact on foreign relations with the affected country\textsuperscript{134} will set a positive example for foreign courts faced with similar requests involving American interests. Furthermore, because the transnational recognition and enforcement of American judgments and injunctive orders depend largely upon discretionary application of comity by foreign courts, foreign courts must not perceive decisions by American courts as arbitrary and parochial in nature. The adoption of rule of reason analysis, which is more sensitive to foreign interests than the traditional comity doctrine, would increase international respect for and deference to decisions of American courts.

The adoption of rule of reason analysis in the context of transnational injunctive relief will inject an element of certainty and consistency into the decisionmaking process involving the use of such remedies.\textsuperscript{135} Balancing tests by their very nature produce unpredictable results. The interest balancing required by the rule of reason, however, will ensure predictability in courts' analysis in a manner impossible under traditional applications of comity. By requiring consideration of a specific set of enumerated factors, the rule of reason would not only provide courts with a more definitive framework for constructing their decisions, but also would aid litigants in assessing the efficacy of various arguments they might put before the court. Parties could structure their arguments around the specific factors enumerated in \textit{Timberlane} and \textit{Mannington Mills} and could dispense with the difficult task of guessing what facts or arguments a particular court might find convincing.

Rule of reason analysis also would facilitate appellate review. Because the traditional doctrine of comity allows courts much discretion, appellate review is extremely difficult. Rule of reason analysis would compel trial courts to employ a specific set of factors in their determinations and provide appellate courts with specific standards against which to review the propriety of lower court decisions. Just as the rule of reason would provide a trial court with a framework for determining the propriety of injunctive action, it also would provide an appellate court with a framework for review.

\textsuperscript{134} See supra text accompanying notes 18, 21.

\textsuperscript{135} The criticism most often leveled at the jurisdictional rule of reason—that it does not produce "counsellable law" as to the amenability of foreign defendants to United States jurisdiction, see supra note 32 and accompanying text, is not applicable to decisions regarding the propriety of transnational injunctive relief, which are made after the adjudication of whether the defendant is amenable to the United States jurisdiction.
Finally, the rule of reason does not preclude consideration of equitable factors concerned with fairness to the parties.\textsuperscript{136} Thus, adoption of the rule of reason would not represent a drastic departure from traditional analysis governing the propriety of injunctive relief. Rather, it would combine considerations of the interests of the litigants and competing forums, along with traditional notions of equity, in a coherent and efficacious framework. The consideration of equitable factors and factors sensitive to the interests of foreign nations makes the rule of reason approach ideal for determining the fairness and propriety of transnational antisuit injunctive relief.

\textbf{CONCLUSION}

The analysis of antisuit injunctions by United States courts in the \textit{Laker} litigation represents an important development in the evolution of transnational antisuit injunctive relief. The \textit{Laker} courts' application of the jurisdictional rule of reason in the antisuit injunction setting is sound and should be followed. At present, once the traditional equitable showings are made, courts confronted with requests for transnational antisuit injunctions are restrained only by the flexible doctrine of comity, the interpretation and application of which is left largely to their own discretion. The jurisdictional rule of reason, which specifically requires a balancing of competing interests, by contrast, would compel United States courts to consider the specific foreign interests affected by the issuance of transnational antisuit injunctions.

Uniform application of the jurisdictional rule of reason to requests for transnational injunctive relief would yield several salutary effects and should be encouraged. First, it would ensure decisions more sensitive to the interests of the foreign forum and would thus improve relations between United States and foreign courts. Second, it would help ensure consistency in judicial analysis and provide a more structured framework for appellate review. Finally, it would continue to maximize courts' fairness to the parties.

\textit{Daryl A. Libow}

\textsuperscript{136} The rule of reason, like comity, would function merely as an "abstention doctrine," guiding the court's discretion once the traditional equitable showings are made. See \textit{supra} notes 50-52 and accompanying text.