



GOVERNMENT OF ANTIGUA AND BARBUDA

Permanent Delegation to the World Trade Organization
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H.E. Mr. Rob Portman
United States Trade Representative
Executive Office of the President
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Excellency,

I have the honour to address you and to convey the concern of my government over the legislation introduced into the United States Congress on 16 February 2006 entitled the "Internet Gambling Prohibition Act" (the "Goodlatte Bill"), as well as the legislation introduced on 18 November 2005 as H.R. 4411, cited as the "Unlawful Internet Gambling Enforcement Act of 2005" (the "Leach Bill" and, collectively with the Goodlatte Bill, the "Bills"). Each of the Bills is in key respects expressly contrary to the rulings and recommendations of the Dispute Settlement Body (the "DSB") of the World Trade Organisation (the "WTO") in the dispute between Antigua and Barbuda and the United States, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285, commonly referred to as the "US – Gambling" matter.

Each Bill is not only non-responsive to the rulings and recommendations of the DSB, but as noted above each is directly contrary to the DSB rulings in our dispute in several key respects. We note first that the Goodlatte Bill is cast as an amendment to the federal criminal statute known as the "Wire Act," designed to expand the coverage of the Wire Act to most types of gambling services offered over the Internet, whereas the Leach Bill does not expressly purport to prohibit any class of remote gambling and betting or further criminalise remote betting *per se*. Rather, the Leach Bill seeks to criminalise facilitation of or participation in certain financial transactions associated with what the legislation defines as "unlawful Internet gambling." The Goodlatte Bill also includes prohibitions on certain financial transactions similar to those contained in the Leach Bill in its proposed amendments to the Wire Act.

Although addressed in slightly different ways, both the Goodlatte Bill and the Leach Bill contain three significant exceptions from their coverage. *First*, both of the Bills exclude from their coverage transactions made in accordance with the Interstate Horseracing Act of 1978, as amended (the "IHA"), effectively removing remote betting and gambling in accordance with the IHA from the scope of the legislation. *Second*, both of the Bills specifically exclude from their coverage transactions that the Leach Bill frankly calls "intrastate transactions," effectively allowing remote gambling that occurs wholly within the borders of an American state. *Third*, both of the Bills exclude from their coverage remote gambling

conducted by Native American tribes in accordance with existing federal legislation applicable to Native American gaming. Neither of the Bills provide Antiguan gambling and betting service operators with any access to consumers in the United States or are in any way responsive to the recommendations and rulings of the DSB in our case.

The defence of the United States in *US – Gambling* under Article XIV of the GATS was predicated on the notion that “remote” gambling—which the United States defined as gambling in which the bettor and the gambling service provider or an agent are not physically in the presence of each other when a wager is made—presents certain “risks” that are either not present or not present to a similar extent than when gambling is not “remote.” Although gambling over the Internet can be remote it is not the exclusive mode of remote gambling. As we repeatedly asserted during the course of our dispute, none of the federal laws that Antigua and Barbuda challenged prohibit *remote* gambling. What they prohibit are certain forms of *cross-border* gambling. And, of course, it was never alleged by the United States nor was it found by the WTO that *cross-border* gambling presents any special “risks” that could come within the scope of Article XIV of the GATS. Thus, while “cross-border” gambling may in most cases be “remote” it does not however hold true that all “remote” gambling is “cross-border.” Although the Appellate Body decided that the United States had established the three federal statutes in question as “necessary” to protect against “risks” associated with remote gambling, the failure of the United States to meet its burden of proof under the chapeau of Article XIV resulted in the overall failure of the Article XIV defence. The three exceptions to the coverage of the Goodlatte Bill and the Leach Bill mentioned above only serve to highlight the chapeau failure and the discriminatory and trade restrictive application of the United States laws by your government.

As Antigua and Barbuda has repeatedly argued, the three federal statutes have in fact nothing to do with the alleged “risks” of “remote” gambling, and everything to do with the federalist concept in the United States—that is, allowing states to by and large deal with gambling within their own borders as they see fit. All three of the proposed exceptions in the Bills are consistent with our position. With respect to the IHA, by its terms it excludes participation by non-domestic service providers. Currently, considerable gambling takes place in the United States under the authority of the IHA which is by any definition “remote.” Each Bill would continue this favoured status for domestic remote gambling on horseracing.

The proposed exceptions in each Bill for “intrastate transactions” are both problematic and illuminating. These exceptions confirm what we have long claimed—that under current United States law, including the three federal statutes at issue in *US – Gambling*, the 50 states are free to offer virtually unrestricted Internet and other forms of remote gambling within their own borders. At the same time, Antiguan service providers are unable to provide any gambling and betting services into those same states, simply due to the *cross-border* nature of the services. These particular provisions of both of the Bills would only serve to entrench and solidify what can only be described as the existing barriers to trade that the three federal statutes have erected.

We further observe that the “intrastate transactions” exceptions in the Bills implicitly recognise another point we made throughout the process—that means exist to verify the age, identity and location of persons using remote gambling services. Ironically, the provisions are solely focused on verification of

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age and location and identify none of the other "risks" that the United States argued before the WTO were prevalent in remote gambling.

As of today, with less than two months remaining on an 11 month and two week compliance period, to our knowledge no legislation has been introduced into the Congress that would seek to bring the United States into compliance with the DSB recommendations. Further, your government has given no indication to Antigua and Barbuda as to how the United States intends to effect such compliance. The only legislative efforts so far, the Goodlatte Bill and the Leach Bill, are baldly contrary to the rulings and recommendations of the DSB. We can only assume that this legislation was neither sponsored by nor enjoys the support of the USTR and the current American administration.

However, the existence of this legislation and the apparent lack of movement by the United States to comply with the rulings and recommendations of the DSB lead our government to be extremely concerned with the intentions of the United States in this matter. When we decided to bring this action against the United States one of the most consistent criticisms of our efforts was that the United States would simply fail to respect a decision if it were to be adverse. In response to this, we have maintained not only that the United States has a record of observing the determinations of the DSB, but it also has a vested interest in providing developing country members of the WTO with assurances that the WTO dispute resolution system is indeed a "two-way street" that provides a level and fair playing field for *all* members.

We trust that our confidence in the United States has not been misplaced, and we look forward to full and prompt compliance by your government with the rulings in *US – Gambling* within the reasonable period of time applicable to compliance, which will expire on 3 April 2006.

Please do not hesitate to contact me if you have any questions.

Accept, Excellency, the assurances of my highest consideration.



H.E. Dr. John W. Ashe
Ambassador/Permanent Representative to the WTO

