



National Conference of State Legislatures

The Forum for America's Ideas

John Adams Hurson
Chairman, Health & Government Operations Committee
Maryland House of Delegates
President, NCSL

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Ambassador Peter Allgeier
Acting U.S. Trade Representative
1724 F Street, N.W.
Washington, DC 20006

James E. Greenwalt
Director, Senate Information Systems and Administrative Services
Minnesota
Staff Chair, NCSL

William T. Pound
Executive Director

Dear Ambassador Allgeier:

As you are aware, the United States recently appealed the World Trade Organization panel decision that concluded that U.S. prohibitions on Internet gambling violate the United States' commitments under the WTO. Specifically, the Panel held that state and federal gambling laws that prohibit companies located in the Caribbean nation of Antigua and Barbuda from providing Internet gambling services to U.S. consumers conflict with international trade obligations under the General Agreement on Trade in Services (GATS). Writing in my capacity as Chair of NCSL's Standing Committee on Economic Development, Trade & Cultural Affairs, I am appreciative of USTR's efforts thus far to appeal this controversial decision; am concerned about the effects of this case on states' abilities to regulate this industry; and fear that this case may be a harbinger of things to come.

Despite USTR's efforts, this case highlights the continuing problem of inadequate consultation with state governments during the trade negotiation process. The legislative and regulatory authority over gambling varies extensively at the sub-federal level but is solidly rooted in the constitutional jurisdiction of state governments. Accordingly, to comply with the WTO panel decision, if the anticipated appellate decision does not favor the United States, the U.S. federal government would not only have to change its own laws but would have to override state authority to regulate gambling. The threat of preemption is very real in this case and state governments should have been consulted before specific commitments to "gambling and betting services" were originally made.

State legislatures have grappled with the challenges of balancing the economic development, tourism, and tax revenue prospects of gambling industries against community welfare and public morals concerns for years. This is an on-going debate and states have chosen different solutions, the sheer variety of which is the very basis for the Antigua complaint. NCSL and the Economic Development, Trade & Cultural Affairs Committee regularly publish articles and issue briefs on the gaming issue and hold hearings to examine the latest approaches in the states. USTR would do well to ensure that this expertise and these varied authoritative perspectives are considered as gaming and gambling issues are negotiated in Geneva.

USTR has indicated that if the United States loses the gambling case on appeal, we are unlikely to comply with the decision, choosing instead to alter our GATS schedule so as to deny countries like Antigua the ability to provide Internet gambling services to U.S. consumers. Such a

negotiation process under the Article XXI authority of GATS will not be easy, however, as the value of the Internet gambling industry (estimated at \$7.5 billion in 2004) might well require sizable trade concessions in other service areas. It is also worth noting that USTR's proposed solution of eliminating U.S. commitments to Internet gambling does not address the potential for similar WTO challenges to the bricks-and-mortar casino industry within the United States. Additionally, the threat would remain that individual gambling companies located in foreign jurisdictions could challenge U.S. restrictions via the investor-state provisions contained in NAFTA, CAFTA and other trade agreements.

The WTO Appellate Body is expected to reach a decision in the gambling case no later than April 7, 2005. Although the Appellate Body technically has the power to completely reverse the lower panel's holding, such an occurrence has come about in less than five percent of all WTO appeals. More likely than not, the threat of international challenges to U.S. gambling restrictions will remain following the release of the Appellate Body's decision. NCSL seeks a commitment from USTR for meaningful consultation with state legislatures both in the resolution of the gambling dispute and in future negotiations pertaining to international trade agreements. Such a written commitment would go a long way to assuaging the growing concern among state legislators that trade agreements do indeed pose a viable and palpable threat to state authority and sovereignty as is so vividly evidenced in this Antigua gambling case.

Should you have any questions or need additional information about NCSL's positions on preemption or trade agreements, please do not hesitate to contact Jeremy Meadows, Committee Director for NCSL's Standing Committee on Economic Development, Trade & Cultural Affairs. He can be reached in Washington, D.C. at jeremy.meadows@ncsl.org or 202-624-8664. I certainly look forward to receiving your response and to working with you on these important issues.

Sincerely,
Representative Sheryl Allen
Utah House of Representatives
Chair, NCSL Standing Committee on Economic Development, Trade & Cultural Affairs

CC: Senator Chuck Grassley, Chair, Finance Committee
Senator Max Baucus, Ranking Member, Finance Committee
Representatives Bill Thomas, Chair, Ways & Means Committee
Representative Charles B. Rangel, Ranking Member, Ways & Means Committee
Ms. Kay Alison Wilkie, Chair, Intergovernmental Policy Advisory Committee