

ANNEX D

**REQUEST FOR THE ESTABLISHMENT OF A PANEL
BY ANTIGUA AND BARBUDA**

**WORLD TRADE
ORGANIZATION**

WT/DS285/2
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(03-3174)

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**UNITED STATES – MEASURES AFFECTING THE CROSS-BORDER SUPPLY
OF GAMBLING AND BETTING SERVICES**

Request for the Establishment of a Panel by Antigua and Barbuda

The following communication, dated 12 June 2003, from the Permanent Delegation of Antigua and Barbuda to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

The Government of Antigua and Barbuda considers that certain measures of central, regional or local governments and authorities of the United States are inconsistent with the United States' commitments and obligations under the General Agreement on Trade in Services (GATS) with respect to the cross-border supply of gambling and betting services.

The rules applying to the cross-border supply of gambling and betting services in the United States are complex and comprise a mixture of state and federal law. The relevant laws are listed in Sections I and II of the Annex attached to this request. Although this is not always clear on the face of the text of these laws, relevant United States authorities take the view that these laws (separately or in combination) have the effect of prohibiting all supply of gambling and betting services from outside the United States to consumers in the United States. Section III of the Annex lists examples of measures by non-legislative authorities of the United States applying these laws to the cross-border supply of gambling and betting services. The measures listed in the Annex only come within the scope of this dispute to the extent that these measures prevent or can prevent operators from Antigua and Barbuda from lawfully offering gambling and betting services in the United States under conditions of competition compatible with the United States' obligations.

The total prohibition of gambling and betting services offered from outside the United States appears to conflict with the United States' obligations under GATS and its Schedule of Specific Commitments annexed to the GATS (and in particular Sector 10.D thereof) for the following reasons:

- (a) The central, regional or local authorities of the United States allow numerous operators of United States origin to offer all types of gambling and betting services in the United States (sometimes via exclusive rights or monopolistic structures). There

appears to be no possibility for foreign operators, however, to obtain an authorization to supply gambling and betting services from outside the United States. This appears to conflict with the United States' commitments and obligations under GATS, including Articles VI:1, VI:3, VIII:1, VIII:5, XVI:1, XVI:2, XVII:1, XVII:2 and XVII:3 and its Schedule of Specific Commitments.

- (b) The United States authorities also restrict international transfers and payments relating to gambling and betting services offered from outside the United States. Some of the non-legislative measures listed in Section III of the Annex are examples thereof: the measures described in the documents released by the Florida Attorney General and the New York Attorney General. These restrictions appear to violate Articles VI:1, XI:1, XVI:1, XVII:1, XVII:2 and XVII:3 of GATS and the United States' Schedule of Specific Commitments.

On 13 March 2003, the Government of Antigua and Barbuda requested consultations with the Government of the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article XXIII of the GATS regarding measures affecting the cross-border supply of gambling and betting services. The United States, and Antigua and Barbuda held such consultations in Geneva on 30 April 2003 but these consultations did not resolve the dispute.

Accordingly, Antigua and Barbuda respectfully requests the Dispute Settlement Body to establish a panel pursuant to Article 6 of the DSU to examine this matter with the standard terms of reference as set out in Article 7.1 of the DSU.

ANNEX

I. UNITED STATES FEDERAL LEGISLATION

The measures taken by the United States Congress which infringe on the obligations of the United States under the GATS include, without limitation, the following:

15 U.S.C. §§ 3001 to 3007
18 U.S.C. § 2
18 U.S.C. §§ 1081, 1084
18 U.S.C. §§ 1301 to 1307
18 U.S.C. § 1952
18 U.S.C. § 1953
18 U.S.C. § 1955
28 U.S.C. §§ 3701 to 3704
39 U.S.C. § 3005

II. STATE AND TERRITORIAL LEGISLATION

The measures taken by the various States and Territories of the United States which infringe on the obligations of the United States under the GATS include, without limitation, the following:

Alabama

ALA. CODE §§ 13A-12-20 to 13A-12-31 (1977).

Alaska

ALASKA STAT. § 05.15.180 (1997).
ALASKA STAT. §§ 11.66.200 to 11.66.280 (1978).

Arizona

ARIZ. REV. STAT. ANN. §§ 13-3301 to 13-3312 (2001).

Arkansas

ARK. STAT. ANN. §§ 5-66-101 to 5-66-119 (1987).

California

CAL. PENAL CODE §§ 319-337z (West Supp. 2003).
CAL. BUS. & PROF. CODE § 19800-19807 (West. Supp. 2003).

Colorado

COLO. CONST. art. XVIII, § 2.
COLO. REV. STAT. §§ 18-10-101 to 18-10-108 (1999).
COLO. REV. STAT. §§ 12-47.1-101 to 12-47.1-106 (1996).

Connecticut

CONN. GEN. STAT. §§ 53-278a to 53-278g (2001).

Delaware

DEL CONST. art. 2, §17.
DEL. CODE ANN. tit. 11, §§ 1401-32, 1470-73 (2002).

District of Columbia

D.C. CODE ANN. §§ 22-1701 to 22-1712 (2001).

Florida

FLA. STAT. §§ 849.01 to 849.46 (2000).

Georgia

GA. CONST. art. 1, § 2.
GA. CODE ANN. §§ 16-12-20 to 16-12-62 (2003).

Hawaii

HAW. REV. STAT. ANN. §§ 712-1220 to 712-1231 (Michie 1973).

Idaho

IDAHO CONST. art. III, § 20.
IDAHO CODE §§ 18-3801 to 18-3810 (1992).

Illinois

ILL. REV. STAT. ch. 720, §§ 5/28-1 to 5/28-9 (1993).

Indiana

IND. CODE §§ 35-45-5-1 to 35-45-5-8 (1998).

Iowa

IOWA CODE §§ 725.5 to 725.16 (1993).

Kansas

KAN. CRIM. CODE ANN. § 21-4303 to 21-4308 (1995).

Kentucky

KY. REV. STAT. ANN. §§ 528.010 to 528.120 (Baldwin's 1974).

Louisiana

LA. CONST. art. XII, § 6.
LA. REV. STAT. ANN. § 14:90.-.4 (West 1986).

Maine

ME. REV. STAT. ANN., tit. 17, §§ 330-347 (1983).
ME. REV. STAT. ANN., tit. 17, §§ 2305-2306 (1983).

Maryland

MD. CODE ANN., CRIM. LAW, §§12-101 to 12-307 (2002).

Massachusetts

MASS. GEN. LAWS ANN. ch. 271, §§ 1-50 (West 2000).

Michigan

MICH. COMP. LAWS ANN. §§ 750.301-750.315a (West 1990).

Minnesota

MINN. STAT. ANN. §§ 609.75-609.763 (Supp. 2003).

Mississippi

MISS. CODE ANN. §§ 97-33-1 to 97-33-203 (1999).

Missouri

MO. ANN. STAT. §§ 572.010-572.125 (West 1995).

Montana

MONT. CONST. art. III, §9.
MONT. CODE ANN. §§ 23-5-101 to 23-5-810 (1993).

Nebraska

NEB. REV. STAT. §§ 28-1101 to 28-1117 (1995).

Nevada

NEV. REV. STAT. § 202.450 (1999).
NEV. REV. STAT. § 463.160 (2001).

New Hampshire

N. H. REV. STAT. ANN. § 647:2 (1999).

New Jersey

N.J. CONST. art. IV, § 7.
N. J. STAT. ANN. §§ 2A:40-1 to 2A:40-9 (2000).
N. J. STAT. ANN. §§ 2C:37-1 to 2C:37-9 (1995).
N. J. STAT. ANN. § 5:5-63 (1996).
N. J. STAT. ANN. §§ 5:12-1 to 5:12-210 (1996).

New Mexico

N.M. STAT. ANN. §§ 30-19-1 to 30-19-15 (1978).

New York

N.Y. CONST. art. I, §9.

N.Y. EXECUTIVE LAW §§ 430-439a (McKinney 1996).

N.Y. PENAL LAW §§ 225.00-225.40 (McKinney 1999).

N.Y. GENERAL OBLIGATION LAW §§ 5-401 to 5-423 (McKinney 2001).

North Carolina

N. C. GEN. STAT. §§ 14-289 to 14-309.4 (1994).

North Dakota

N.D. CONST. art. 11, § 25.

N.D. CENT. CODE § 12.1-28-01 to 12.1-28-02 (1987).

Ohio

OHIO CONST. art. XV, § 6.

OHIO REV. CODE ANN. §§ 2915.01-2915.06 (1996).

Oklahoma

OKLA. STAT. ANN. tit. 3A, § 205.6 (West 1993).

OKLA. STAT. ANN. tit. 21, §§ 941-993 (West 2002).

Oregon

OR. REV. STAT. §§ 167.108-167.170 (2001).

Pennsylvania

PA. STAT. ANN. tit. 18, § 911 (Purdon 1998).

PA. STAT. ANN. tit. 18, § 5513 (Purdon 2000).

PA. STAT. ANN. tit. 66, § 2902 (Purdon 2000).

Rhode Island

R.I. CONST. art. VI, § 22.

R. I. GEN. LAWS §§ 11-19-1 to 11-19-45 (1993).

R. I. GEN. LAWS § 11-51-1 to 11-51-2 (1979).

South Carolina

S.C. CODE ANN. §§ 16-19-10 to 16-19-160 (Law Co-op. 1996).

South Dakota

S.D. CODIFIED LAWS §§ 22-25-1 to 22-25-51 (Michie 1976).

S.D. CODIFIED LAWS § 22-25A-1 to 22-25A-15 (Michie 2000).

Tennessee

TENN. CONST. art. XI, § V.

TENN. CODE ANN. §§ 39-17-501 to 39-17-509 (1989).

Texas

TEX. PENAL CODE ANN. §§ 47.01 to 47.10 (West 2003).

Utah

UTAH CODE ANN. §§ 76-10-1101 to 76-10-1109 (1998).

Vermont

VT. STAT. ANN. tit. 13, §§ 2133-2156 (1957).

Virginia

VA. CODE ANN. §§ 18.2-325 to 18.2-340 (Michie 1992).

Washington

WASH. REV. CODE ANN. § 4.24.070 (West 1988).

WASH. REV. CODE ANN. §§ 9.46.010 to 9.46.903 (West 1998).

West Virginia

W. VA. CODE §§ 61-10-1 to 61-10-5 (1970).

Wisconsin

WIS. CONST. art. IV, § 24.

WIS. STAT. ANN. §§ 945.01-945.13 (West 2001).

Wyoming

WYO. STAT. §§ 6-7-101 to 6-7-104 (1996).

Guam

9 GUAM CODE ANN. §§ 64.10 to 64.22A (2003).

Puerto Rico

P.R. LAWS ANN. tit. 33, §§ 1241 to 1259 (1949).

U.S. Virgin Islands

V.I. CODE ANN. tit. 14, §§ 1224-1226 (1985).

V.I. CODE ANN. tit. 32, §§ 602-646 (2001).

III. OTHER UNITED STATES FEDERAL AND STATE ACTIONS OR MEASURES

Other actions or measures taken by United States Federal and State administrative agencies, officials and judiciary which infringe on the obligations of the United States under the GATS include, without limitation, the following:

United States

United States v. Cohen, 260 F.3d 68 (2nd Cir. 2001), *cert. denied*, 122 S. Ct. 2587 (2002).

Florida

Florida Attorney General, *Press Release: Western Union Cuts Off Sports Betting Accounts* (December 23, 1997).

Kansas

Op. Att'y Gen. No. 96-31 (March 25, 1996).

Kansas Attorney General, *Internet Gambling Warning* (visited March 13, 2003)
<www.accesskansas.org/ksag/contents/consumer/internetwarning.htm>

Michigan

Michigan Gaming Control Board, *Frequently Asked Questions: Is it Legal to Gamble Over the Internet in Michigan* <www.michigan.gov/mgcb/0,1607,7-120-7863-19182--F,00.html>

Minnesota

Minnesota Attorney General, *Statement of Minnesota Attorney General on Internet Jurisdiction* (visited March 13, 2003) <www.jmls.edu/cyber/docs/minn-ag.html>

New York

Vacco ex rel. People v. World Interactive Gaming Corp., 714 N.Y.S.2d 844, 854 (N.Y. Sup. Ct. 1999).

New York Attorney General, *Press Release: Ten Banks End Online Gambling With Credit Cards + Spitzer Hails Establishment of New Banking Industry Standard* (11 February 2003).

New York Attorney General, *Press Release: Agreement Reached with Paypal to Bar New Yorkers from Online Gambling + Campaign Against Illegal Gambling Web Site in New York Continues* (21 August 2002).

Attorney General of the State of New York, Internet Bureau, *In the matter of PayPal, Inc.*, Assurance of Discontinuance (16 August 2002).

New York Attorney General, *Press Release: Financial Giant Joins Fight Against Online Gambling + Leading Credit Card Issuer Agrees to Block Key Internet Transactions* (14 June 2002).

Attorney General of the State of New York, Internet Bureau, *In the matter of Citibank (South Dakota), N.A.*, Assurance of Discontinuance (21 June 2002).
