

EU opens investigation into US Internet gambling laws under Trade Barriers Regulation (TBR) framework. Fact sheet - Brussels, 10 March 2008

What is the EU's concern with the existing rules in the United States?

Foreign companies are prevented from offering Internet gambling services in the US. The US authorities are investigating EU companies for services that they have offered in the past in the US. EU companies that had been active in the US have left the market, but this has not stopped the US Department of Justice (DOJ) from continuing to act against EU companies. In addition, EU companies argue that the DOJ has not been targeting US companies that were offering equivalent services.

The Remote Gambling Association (RGA) argues that the legal situation in the US as regards Internet gambling was unclear in the past. Despite statements by the DOJ that Internet gambling was not allowed, many local companies were actively supplying this type of service. In addition, the US had in the Uruguay Round undertaken legally binding GATS commitments to allow non-discriminatory access to its gambling market.

How does this impact EU companies?

The RGA complaint provides evidence showing that what the US is doing has had a serious negative impact both on the services trade between the EU and the US and on the EU gambling sector, with potential significant impact on the economy of the EU. Companies point to a loss of US revenue, loss of stock market value of affected companies, as well as the payment of substantial fines in settlements with the DOJ. The complaint further highlights the potential impact of US sanctions on the ability of the companies to run their business under normal conditions outside the US, as well as knock-on effects on related sectors, such as financial services, IT and professional services.

What rules or obligations in WTO law or agreements could the US measures breach?

The complaint concerns United States legislation that is interpreted as banning internet gambling; the measures taken to enforce that legislation; and the fact that the legislation is enforced in a discriminatory way. The RGA argues that the United States measures violate Articles XVI (market access) and XVII (national treatment) of the GATS.

What do we want the US to do?

The EU counts on the US to co-operate in the TBR investigation that has now been launched, and looks forward to discussing the issue with the US authorities with a view towards reaching a mutually acceptable solution as a result of these discussions. Commissioner Mandelson has repeatedly brought the concerns of EU industry to the attention of his USTR counterpart. Also, he has repeatedly made it clear, including in meetings at the US Congress, that there should not be discriminatory treatment of EU Internet gambling companies in the US.

What is the Trade Barriers Regulation? What is the procedure and timeframe for this?

The TBR is a legal instrument that gives EU enterprises, industries and associations the right to lodge a complaint with the European Commission. Complaints can be lodged if a third country has a trade barrier in place which adversely affects EU exports. The first step for the Commission is to take a decision on whether the complaint is admissible as just done in this case. The next steps are for the Commission to engage in a detailed examination of the factual and legal issues raised by industry within five to seven months and produce its

findings in an investigation report which can lead to the launch of WTO proceedings should this be warranted. The investigation includes the possibility for interested parties to be heard and provide relevant input. The procedure also provides a framework for formal dialogue with the relevant third country authorities.

How does this relate to the compensation deal on the withdrawal of US GATS Gambling commitments reached between the EU and the US in December 2007?

The Federal laws targeted by this complaint had already been condemned in a WTO dispute settlement case (WT/DS 285) brought by Antigua and Barbuda against the United States. However, the US did not comply with the relevant rulings, but announced instead its intention to withdraw for the future its GATS commitments on gambling and betting services in accordance with the procedures provided for in Article XXI of the GATS. The US is still negotiating compensatory adjustments in other sectors with affected WTO Members in exchange of this withdrawal. The EU and the US reached a deal on the compensation due to the EU on 17 December 2007.

The RGA argues that applicable US obligations would not disappear even after the completion of the current process of withdrawal of the United States' GATS gambling commitments. The reason for this is that the withdrawal would not have retroactive effects, that is, would only remove US obligations for the future, but not in respect of past events. In this particular case, the DOJ is only targeting past events (the Internet gambling offered by EU companies in the past) when US GATS commitments were in place.