



ROBERT WEXLER

CONGRESS OF THE UNITED STATES

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COMMITTEE ON  
FOREIGN AFFAIRS

COMMITTEE ON  
THE JUDICIARY

COMMITTEE ON  
FINANCIAL SERVICES

Attorney General Mukasey  
In care of the Office of Legislative Affairs  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW, Room 1145  
Washington, DC 20530

Dear Attorney General:

As a member of the House Committee on Foreign Affairs and Chairman of the Subcommittee on Europe as well as a Senior Member of the House Judiciary Committee, I am writing to you regarding a matter that may adversely impact United States-European Union (EU) relations as well as our standing in the international community.

As you are aware, the World Trade Organization (WTO) recently found the United States to be in violation of its commitments under the General Agreement on Trade in Services (GATS) with respect to international access to the US gambling services sector. In response to this ruling, the Administration took the unprecedented step of seeking to withdraw the US from a WTO commitment in response to an adverse decision. The Administration's action resulted in a claim for compensation from a number of other WTO members, including the EU, India, Japan, Antigua, Costa Rica and others. As it stands, this process has not been concluded, and while a prospective agreement has been reached with the EU, it has yet to take effect.

I and many of my colleagues are deeply concerned that this international issue could seriously damage America's reputation as it relates to open competition and free trade. What is particularly troubling is the fact that the Department of Justice (DOJ) is still pursuing investigations and threatening prosecutions of foreign Internet gambling companies, individual shareholders and major banks. The list of possible DOJ targets includes companies that are licensed, regulated and publicly listed in United Kingdom and elsewhere in Europe.

This situation is exacerbated by four additional circumstances. First, notwithstanding the announcements of agreements in principle, the US has not concluded the withdrawal of the obligation; consequently, the ostensible transgressions involve markets the US committed to open, and are thus in keeping with the US obligation under the GATS. Second, the laws that were supposedly violated have been described even by the US

PALM BEACH COUNTY:  
2500 NORTH MILITARY TRAIL  
SUITE 490  
BOCA RATON, FL 33431  
(561) 988-6302  
(561) 988-6423 FAX

WASHINGTON, DC:  
2241 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, D.C. 20515  
(202) 225-3001  
(202) 225-5974 FAX

BROWARD COUNTY:  
MARGATE CITY HALL  
5790 MARGATE BLVD.  
MARGATE, FL 33063  
(954) 972-6454  
(954) 974-3191 FAX

WEST PALM BEACH:  
(561) 732-4000

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Department of the Treasury, and the Board of Governors of the Federal Reserve as unclear. Third, American businesses in the horse racing sector continuously accept transactions that DOJ continues to assert as violative of US Internet gambling laws, with no enforcement consequences, and fourth, that US gambling business are allowed to operate freely in the EU, and do so.

Perhaps the most important aspect, when one looks at the public policy aspect of this situation, is that the immediate targets for the Department of Justice seem to be the companies (and individuals associated therewith and the banks that serviced them) which withdrew from the US market in 2006 when UIGEA was passed. Leaving aside the ongoing difficulties caused by this legislation, the idea that companies who actually respected Congressional intent expressed at that time, losing in some cases billions of dollars in revenue and market valuation, would be prosecuted demands some explanation. This situation seems to create a reverse incentive to comply and sends all the wrong messages with respect to encouraging lawful behavior. In addition, if the policy objective behind UIGEA was to force foreign companies out of the US market, it does not make sense to then prosecute those who did precisely that.

In short, the perception of our allies in the EU is that the U.S. has chosen to continue the enforcement of WTO-violating laws, which the US government itself says are unclear, in a fashion that selectively targets non-US and principally European entities, and then ignores similar actions by Americans. In response to this situation, the EU has commenced an investigation into the Administration's actions which is likely to strain American-EU relations. In all likelihood this issue will escalate and I understand could result in a WTO action focused specifically on how the US government enforces its laws. I cannot see how that can be in the interests of this country.

Accordingly, I am writing to ask you to request that the Department of Justice suspend all prosecutions and enforcement activity including advancing any negotiation or plea-bargaining exercises that may be in motion with respect to activity associated with or attendant to internet gambling services that were in operation prior to UIGEA. This is a matter that needs careful and proper consideration before unnecessary and avoidable escalation of this dispute with the EU occurs.

I appreciate your attention to this important matter and look forward to your prompt response.

Sincerely,

  
Robert Wexler