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Article XI

Payments and Transfers

1. Except under the circumstances envisaged in Article XII, a Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article XII or at the request of the Fund.

1.2 General

1. The Panel in *US – Gambling* made the following observations in the context of exercising judicial economy over a claim under Article XI. The Panel stated that:

"Article XI has not, as yet, been the subject of interpretation or application by either panels or the Appellate Body. In light of this and taking into account the limited facts and arguments submitted by the parties with respect to Antigua's claim under Article XI, we believe that there is not sufficient material on record to enable us to undertake a meaningful analysis of this provision and its specific application to the facts of this case. Moreover, in our view, the findings of violation under Article XVI in Section VI.D above of our Report should allow the parties to settle this dispute, even in the absence of a ruling on Antigua's Article XI claim. We will, therefore, exercise judicial economy and not rule on Antigua's claim under Article XI.

However, the Panel wants to emphasize that Article XI plays a crucial role in securing the value of specific commitments undertaken by Members under the GATS. Indeed, the value of specific commitments on market access and national treatment would be seriously impaired if Members could restrict international transfers and payment for service transactions in scheduled sectors. In ensuring, *inter alia*, that services suppliers can receive payments due under services contracts covered by a Member's specific commitment, Article XI is an indispensable complement to GATS disciplines on market access and national treatment. At the same time, the Panel is of the view that Article XI does not deprive Members from regulating the use of financial instruments, such as credit cards, provided that these regulations are consistent with other relevant GATS provisions, in particular Article VI."¹

Current as of: June 2018

¹ Panel Report, *US – Gambling*, paras. 6.441-6.442.