

## VIII. FINDINGS AND CONCLUSIONS

373. For the reasons set out in this Report, the Appellate Body:

- (a) with respect to the measures at issue,
  - (i) *upholds* the Panel's finding, in paragraph 6.175 of the Panel Report, that "the alleged 'total prohibition' on the cross-border supply of gambling and betting services ... cannot constitute a single and autonomous 'measure' that can be challenged in and of itself";
  - (ii) *finds* that the Panel *did not err* in examining whether the following three federal laws are consistent with the United States' obligations under Article XVI of the GATS:
    - Section 1084 of Title 18 of the United States Code (the "Wire Act");
    - Section 1952 of Title 18 of the United States Code (the "Travel Act"); and
    - Section 1955 of Title 18 of the United States Code (the "Illegal Gambling Business Act");
  - (iii) *finds* that the Panel *erred* in examining whether eight state laws, namely, those of Colorado, Louisiana, Massachusetts, Minnesota, New Jersey, New York, South Dakota and Utah, are consistent with the United States' obligations under Article XVI of the GATS;
- (b) with respect to the United States' GATS Schedule,
  - (i) *upholds*, albeit for different reasons, the Panel's finding that subsector 10.D of the United States' Schedule to the GATS includes specific commitments on gambling and betting services;
- (c) with respect to Article XVI of the GATS,
  - (i) *upholds* the Panel's findings that a prohibition on the remote supply of gambling and betting services is a "limitation on the number of service suppliers" within the meaning of Article XVI:2(a), and that such a prohibition is also a "limitation on the total number of service operations or on the total quantity of service output" within the meaning of Article XVI:2(c);

- (ii) *upholds* the Panel's finding, in paragraph 7.2(b)(i) of the Panel Report, that, by maintaining the Wire Act, the Travel Act, and the Illegal Gambling Business Act, the United States acts inconsistently with its obligations under Article XVI:1 and sub-paragraphs (a) and (c) of Article XVI:2;
  - (iii) *reverses* the Panel's finding, in paragraph 7.2(b)(ii) of the Panel Report, that four state laws, namely, those of Louisiana, Massachusetts, South Dakota and Utah, are inconsistent with the United States' obligations under Article XVI:1 and sub-paragraphs (a) and (c) of Article XVI:2; and
  - (iv) *need not rule* on the Panel's findings that restrictions on service *consumers* as opposed to service *suppliers* are neither limitations on "service suppliers" for the purposes of Article XVI:2(a), nor limitations on "service operations" or "service output" for the purposes of Article XVI:2(c);
- (d) with respect to Article XIV of the GATS,
- (i) *finds* that the Panel *did not fail* to satisfy its obligations under Article 11 of the DSU by deciding to examine the United States' defence under Article XIV;
  - (ii) as regards the burden of proof,
    - *finds* that the Panel *did not improperly assume* either the burden of establishing the defence under Article XIV(a) on behalf of the United States or the burden of rebutting the United States' defence on behalf of Antigua;
    - *need not rule* on Antigua's appeal relating to the Panel's treatment of the burden of proof in its analysis under paragraph (c) of Article XIV;
  - (iii) as regards paragraph (a) of Article XIV,
    - *upholds* the Panel's finding, in paragraph 6.487 of the Panel Report, that "the concerns which the Wire Act, the Travel Act and the Illegal Gambling Business Act seek to address fall within the scope of 'public morals' and/or 'public order'";

- *reverses* the Panel's finding that, because the United States did not enter into consultations with Antigua, the United States was not able to justify the Wire Act, the Travel Act and the Illegal Gambling Business Act as "necessary" to protect public morals or to maintain public order;
- *finds* that the Wire Act, the Travel Act, and the Illegal Gambling Business Act are "measures ... necessary to protect public morals or to maintain public order"; and
- *finds* that the Panel *did not fail* to "make an objective assessment of the facts of the case", as required by Article 11 of the DSU;

(iv) as regards paragraph (c) of Article XIV,

- *reverses* the Panel's finding that, because the United States did not enter into consultations with Antigua, the United States was not able to justify the Wire Act, the Travel Act and the Illegal Gambling Business Act as "necessary" to secure compliance with the Racketeer Influenced and Corrupt Organizations statute; and
- *need not determine* whether the Wire Act, the Travel Act, and the Illegal Gambling Business Act are measures justified under paragraph (c) of Article XIV;

(v) as regards the chapeau of Article XIV,

- *reverses* the Panel's finding, in paragraph 6.589 of the Panel Report, that "the United States has failed to demonstrate that the manner in which it enforced its prohibition on the remote supply of gambling and betting services against TVG, Capital OTB and Xpressbet.com is consistent with the requirements of the chapeau";
- *finds* that the Panel *did not fail* to "make an objective assessment of the facts of the case", as required by Article 11 of the DSU; and
- *modifies* the Panel's conclusion in paragraph 6.607 of the Panel Report and *finds*, rather, that the United States has not demonstrated that—in the light of the existence of the Interstate Horseracing Act—

the Wire Act, the Travel Act, and the Illegal Gambling Business Act are applied consistently with the requirements of the chapeau;

(vi) as regards Article XIV in its entirety,

- *modifies* the Panel's conclusion in paragraph 7.2(d) of the Panel Report and *finds*, instead, that the United States has demonstrated that the Wire Act, the Travel Act, and the Illegal Gambling Business Act are measures "necessary to protect public morals or maintain public order", in accordance with paragraph (a) of Article XIV, but that the United States has not shown, in the light of the Interstate Horseracing Act, that the prohibitions embodied in those measures are applied to both foreign and domestic service suppliers of remote betting services for horse racing and, therefore, has not established that these measures satisfy the requirements of the chapeau; and

(e) with respect to the remaining allegations of error.

- (i) *need not*, in the light of the above findings, *rule* on the claim relating to Article 6.2 of the DSU<sup>476</sup>, on the additional claims raised under Article 11 of the DSU<sup>477</sup>, or on Antigua's conditional appeal of the Panel's finding that "the restrictions on market access that are covered by Article XVI are only those listed in paragraph 2 of this Article".<sup>478</sup>

374. The Appellate Body *recommends* that the Dispute Settlement Body request the United States to bring its measures, found in this Report and in the Panel Report as modified by this Report to be inconsistent with the *General Agreement on Trade in Services*, into conformity with its obligations under that Agreement.

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<sup>476</sup> *Supra*, para. 127

<sup>477</sup> *Supra*, paras. 128, 156, 333 and 365

<sup>478</sup> *Supra*, para. 256

Signed in the original in Geneva this 23rd day of March 2005 by:

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Giorgio Sacerdoti  
Presiding Member

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Georges Abi-Saab  
Member

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John Lockhart  
Member