

*United States - Measures Affecting the
Cross-Border Supply of Gambling and Betting Services*

WT/DS285

**Closing Statement of the United States
at the First Substantive Meeting of the Panel**

December 11, 2003

1. Mr. Chairman, you have observed that this dispute raises a number of significant systemic issues. We agree that many of the issues are potentially significant, and the implications of the Panel's findings may be far-reaching.
2. However, the most significant systemic issue, one which has been squarely joined and which obviates the need to reach other potential issues, is one that should not be in doubt. And that is that a complaining party must through evidence and argumentation make a *prima facie* case that a responding party's measures are inconsistent with its WTO obligations. Mere assertions are not sufficient to establish a complaining party's *prima facie* case, nor may a complaining party seek to have the responding party or the panel make the *prima facie* case on the complaining party's behalf.
3. These principles have been uniformly accepted in prior WTO disputes, and there is no greater systemic interest at stake in this dispute than that these principles be reaffirmed, and applied. The more novel issues in this case become ripe for decision only if and when Antigua has met its threshold burden.
4. Yesterday Antigua gave you an apt metaphor for that task when it rejected the notion that it must assemble the "measure-by-measure 'puzzle'" of U.S. gambling restrictions. That "puzzle" is Antigua's *prima facie* case; it presently lies in disarray in hundreds of pieces of unknown shape and relevance. The task of assembling this into a *prima facie* case – an impossible task in our view – belongs to Antigua alone.
5. On the issue of the existence of U.S. commitments, Antigua and the third parties are expending a great deal of rhetorical energy in an effort to seek to modify the text of the U.S. schedule through dispute settlement. They would like very much through this process to write in references to the CPC where none currently exist in the U.S. schedule. There is more than a little irony to this, because some of those same parties are right now asking us to do exactly the same thing in negotiations. That, in fact, is the proper forum for that effort, and it is the only proper forum. The dispute settlement system is specifically proscribed from adding to or diminishing the rights and obligations of Members.
6. Here again, we are not confronting a novel issue. On this point, the Appellate Body in *EC-LAN* has already given us an unambiguous answer. The task of clarifying commitments in a GATS schedule, like the tariff schedule in *EC-LAN*, is one for all interested parties to achieve

through negotiations.

7. Of all the systemic issues facing the Panel, this issue certainly ranks among the most important. There are many provisions in the WTO agreements that one party or another considers to be less than ideal. And, as you've heard this morning, some parties consider it less than ideal that the U.S. schedule does not refer to the CPC. However, that schedule – without CPC references – is an integral part of the Agreement as accepted by all WTO Members. That schedule, and not the schedule others would have liked, sets forth U.S. commitments. And that schedule, like other WTO provisions, must be interpreted based on its ordinary meaning, in its context, and in light of the Agreement's object and purpose. And, as the Appellate Body has correctly concluded, a schedule may only be changed through negotiations, not through dispute settlement.

8. I won't repeat at length the U.S. comments of yesterday regarding the proper interpretation of the U.S. schedule. You have told us that you will have questions on this, and we look forward to the opportunity to respond. I only want to emphasize again these two points: first, that Antigua has presented a tapestry of mere assertions, and not the required *prima facie* case built brick-by-brick on evidence and argumentation as to real measures; and second, that it is clear that the United States made no commitment on gambling services in its GATS schedule when the actual text of that schedule is examined, rather than the text as Antigua would rewrite it.

9. Thank you for your patience and kind attention.