



## **Antigua Online Gaming Association**

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### **Statement of the Antiguan Online Gaming Association Regarding United States Compliance with its Commitment to Permit Cross-Border Remote Gaming Services Under the General Agreement on Trade in Services (GATS)**

#### **Testimony Submitted for the House Committee on Financial Services Hearing to Consider the Internet Gambling Regulation and Enforcement Act of 2007 (IGREA)**

6 June 2007

This statement is submitted by the Antiguan Online Gaming Association (AOGA) for the consideration of the House Committee on Financial Services as it deliberates regarding the proposed legislation known as the Internet Gambling Regulation and Enforcement Act of 2007 (IRGEA). The key purpose of this statement is to respectfully request the Committee, as it develops and hones the IRGEA, to recognize the existing treaty commitments of the United States under the General Agreement on Trade in Services (GATS) to allow Antiguan remote gaming operators access to the United States gambling market.

The World Trade Organization (WTO) has ruled that the United States remains out of compliance with its GATS commitments to permit Antiguan remote gaming operators access to the United States market. While the IRGEA, as proposed, does not bring the United States into compliance with its GATS commitments, the IRGEA presents an opportunity for Congress to realign United States gambling policy with the realities of the 21<sup>st</sup> century, and at the same time, prove to its international trading partners that the United States supports and adheres to the dispute resolution process of the WTO.

#### **A. The AOGA**

The Antigua Online Gaming Association (AOGA) is a nonprofit and nonpartisan trade organization consisting of select remote gambling operators who are licensed and regulated by the Government of Antigua and Barbuda. The AOGA was established with the goals of creating a better global understanding of the remote gaming industry and promoting the interests of remote gaming operators and their global customers.

#### **B. Introductory Comments on the IGREA**

For the past several years, Rep. Barney Frank has been a voice of logic and reason on the issue of online gambling in the United States. When his colleagues in the House of Representatives have moved to restrict the freedom of adult Americans to place wagers online from the comfort of their own home, Rep. Frank has been an advocate for the

rights of consenting adults to engage in recreational gambling in a responsible setting. Rep. Frank has commented that Americans love to gamble and will gamble online whether there are laws against such an activity. When Congress enacted the Unlawful Internet Gaming Enforcement Act (UIGEA) in 2006, a new tool for law enforcement to prosecute online gambling operations that access the American market, Rep. Frank rightfully called it one of the stupidest laws ever enacted.

On April 26, 2007, Rep. Frank introduced a bill known as the “Internet Gambling Regulation and Enforcement Act of 2007” (IGREA). IGREA envisions a federal framework to license and regulate certain types of online gambling. One of several positive aspects of the IGREA is that it presents Congress with a true opportunity to deliberate and enact a thoughtful, realistic and non-discriminatory system for online gambling in the United States.

However, there is an unintentional flaw in the way the IGREA treats Antiguan remote gambling operators. In simple terms, the IGREA, as presently drafted, improperly discriminates against Antiguan remote gaming operators, to the advantage of domestic gambling companies. The IGREA provides a framework for American gambling companies to offer remote gambling services by means of the Internet, telephone and other wireless devices. This same framework shuts out Antiguan operators from offering the exact same services.

The AOGA is confident that Rep. Frank does not intend for the IGREA to discriminate against foreign operators, or create a domestic-only industry. The AOGA is proposing a number of changes in this statement in the hope of assisting Rep. Frank and the Committee to fulfill this intent

The unintended trade discrimination built into this legislation, if left intact, would constitute additional violations of United States international trade commitments made in the GATS and, undermine the important dispute resolution system of the WTO.

### **C. The *US-Gambling Dispute Pending Before the WTO***

By way of background information, the AOGA wishes to point out to the Committee that the United States’ legislative and law enforcement actions over the past few years seeking to prohibit foreign operators from offering “remote gambling” has been deemed to violate the commitments made by the United States under the GATS to allow other countries to access the domestic remote betting market.

From 2003 to the present, the Government of Antigua and Barbuda has patiently, respectfully, and persistently requested that the United States honor its commitments under the GATS so that Antiguan providers can offer remote gambling services of a nature which already exists in the United States. The Antiguan government is requesting that its operators be afforded the opportunity to access the United States gambling market without the forms of harassment and intimidation currently directed at Antiguan operators. The Antiguan government and its operators have made it clear to federal

officials that they welcome an online gambling system that ensures customer fairness, protects customers from problem gambling, prohibits underage gambling and any other social problems associated with recreational gambling.

In March 2003, after the United States refused to negotiate over this matter, Antigua initiated the dispute resolution process of the WTO to squarely challenge the United States' prohibition of cross-border gambling services offered by Antiguan operators to consumers in the United States.

Antigua, one of the tiniest members of the WTO and a small developing nation, has prevailed at every stage of the WTO dispute. On April 7, 2005, the WTO issued the Appellate Body Report in this dispute ruling that the United States had made a commitment to free trade in cross-border betting and gambling services in its schedule of commitments to the GATS. The WTO further ruled that the United States had adopted "measures," or federal laws, that interfered with its obligation to provide free trade in betting and gambling services with Antigua. The WTO further found that the United States could not invoke a "moral defense" to its violation of the GATS. Under Article XIV of the GATS, a country can violate the terms of the free trade treaty if the violation is necessary to protect "public morals" or maintain the "public order." The WTO concluded its ruling that the United States could not justify why it permitted American-based companies such as horserace betting companies or Las Vegas sportsbooks to offer remote gambling in the form of telephone and Internet account deposit wagering while the United States prohibited Antiguan companies from offering remote gambling services. The United States was given until April 2006 to comply with the WTO ruling, but did not take any action to do so.

On March 30, 2007, the WTO released a Compliance Panel Report in the continuing WTO trade dispute. In the Compliance Panel Report, the WTO concluded that that the United States remains out of compliance with the earlier adverse WTO decision. The WTO also signaled that the UIGEA would be found to violate the GATS and the United States continues to engage in unacceptable protectionist activities favoring the domestic gaming industry over the foreign competition. As a result of this latest WTO ruling, Antigua is free to impose trade sanctions against the United States, if Antigua affirmatively decides to do so, directed at "encouraging" the United States to meet its international trade obligations to Antigua.

In response to the latest WTO ruling, the United States has stated it intends to possibly withdraw its GATS commitment to free trade in gambling services, even if to do so completely undermines the WTO dispute resolution system and opens the United States to massive trade sanctions by Antigua and other WTO member nations. Antigua is hard pressed to believe that the United States will actually withdraw this commitment, as to do so is in dire conflict with longstanding United States free trade policy, not to mention that the withdrawal of the commitment will permit Antigua and other large trading partners to obtain massive trade sanctions against the United States. To the extent the Committee is informed by other parties that the withdrawal of the GATS commitment minimizes the meaning of WTO case, we would strongly disagree.

Against this backdrop, and even though federal officials have shown little or no inclination to respect the rights of the first developing nation to commence and win a dispute in “services” case before the WTO, the Antiguan government and AOGA nevertheless remain hopeful that the United States will sit down and negotiate a resolution the *US-Gambling* case in a way that is mutually beneficial to both countries.

#### **D. The IGREA Violates United States GATS Commitments**

This statement is offered to assist the Committee in crafting online gambling legislation that complies with the United States GATS commitments and the ruling in the *US-Gambling* case. This is necessary because the IGREA, as it is presently drafted, would violate United States GATS’ commitments in several ways, to include:

- The federal remote gaming system envisioned in the IGREA gives a number of preferences to existing domestic gaming operators over foreign gaming operators. ***Above all, the IGREA must ensure that Antiguan operators who are licensed and regulated in Antigua have the right to offer the full array of remote gaming services to American customers.***
- The IGREA permits major sports leagues to “opt out” from allowing wagering on their games or contests. This discriminates in favor of domestic sportsbooks. ***The IGREA must permit licensed and regulated Antiguan sportsbooks to offer wagering on major sports leagues’ games and contests that can be wagered upon in the United States without regard to any “opt out” rights held by the major sports leagues. Under the GATS, Antigua is entitled to remotely offer these services without interference or barriers.***
- The IGREA affirms existing United States law that permit horse race wagering to be conducted through the existing Interstate Horseracing Act (IHA) framework, a framework that discriminates against offshore companies in a variety of ways. ***The IGREA must ensure licensed and regulated Antiguan race book operators access to the American horse betting market.***
- The IGREA contemplates regulations that will be drafted and enforced by a federal administrative agency. ***The IGREA must include protections to ensure that Antiguan operators are not faced with unjustified or inappropriate regulatory obligations or responsibilities that create undue or unique barriers to Antiguan operators who desire access the American gambling market, either on a remote or physical presence basis.***
- The Unlawful Internet Gaming Enforcement Act of 2006 (UIGEA), enacted in October 2006, provides additional tools to assist American law enforcement agencies in targeting, harassing, and in certain cases, destroying, foreign remote gaming operators that are licensed and regulated in Antigua and other responsible jurisdictions. ***The IRGEA must amend the UIGEA so as to exempt Antiguan***

*gambling operators from the reach of the UIGEA. This can be done so by amending the definition of unlawful gambling to exclude services provided by licensed Antiguan operators.*

- The provision of IGREA that bars existing Antiguan operators with criminal histories, particularly gaming-related convictions, from obtaining a license under its terms, does not comply with the GATS. This provision would preclude certain Antiguan operators, who established a reputable and highly-qualified remote gambling business, from getting an online federal gaming license. *To the extent individuals with past criminal histories are precluded from obtaining a federal license, the IGREA must provide an exemption for Antiguan operators from any the provision, where the operators' sole convictions were related to the cross-border provision of gambling services in accordance with the United States' GATS commitments.*

#### **E. Conclusion**

We appreciate your consideration of the vital trade issues discussed in this statement. The AOGA is certainly willing to provide further information or documentation to policymakers and legislators on how to make the IGREA compliant with the WTO ruling in the *US-Gambling* case, and to ensure that remote gambling fair and safe for all adults who enjoy recreational gambling.

Sincerely,

Richard W. George-John  
Secretary and Treasurer  
Antigua Online Gaming Association