

UNITED STATES – MEASURES AFFECTING THE CROSS-BORDER SUPPLY OF GAMBLING AND BETTING SERVICES, WT/DS285

Recourse of Antigua and Barbuda to Article 22.7 of the DSU

Pursuant to Article 22.7 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (the “DSU”) of the World Trade Organisation (the “WTO”), Antigua and Barbuda hereby requests authorisation by the Dispute Settlement Body of the WTO (the DSB”) to suspend, with regard to the United States of America (the “United States”), the application of concessions and obligations under the WTO’s *Agreement on Trade-Related Aspects of Intellectual Property Rights* (the “TRIPS”) on the basis described in this communication.

On 21st June, 2007 Antigua and Barbuda had provided a request (WT/DS285/22) to the DSB for authorisation to suspend the application to the United States of concessions and related obligations of Antigua and Barbuda under the WTO’s *General Agreement on Trade in Services* (the “GATS”) and the TRIPS as a result of the failure of the United States to implement the recommendations and rulings of the DSB in *United States–Measures Affecting the Cross-Border Supply of Gambling and Betting Services* (“DS285”). On 23rd July, 2007, the United States objected to the level of suspension proposed by Antigua and Barbuda pursuant to Article 22.6 of the DSU and claimed that Antigua and Barbuda had not followed the principles and procedures of Article 22.3 of the DSU in its request. At its meeting on 24th July, 2007, the DSB referred matter to arbitration in accordance with Article 22.6 of the DSU.

On 21st December, 2007, the Arbitrators determined in document WT/DS285/ARB (the “Award”) that Antigua and Barbuda could request authorisation from the DSB to suspend the obligations under Sections 1, 2, 4, 5 and 7 of Part II of the TRIPS at a level not exceeding US \$21.0 million annually. During the course of the arbitration Antigua and Barbuda had withdrawn its request to suspend concessions or obligations under the GATS, as on further evaluation this was considered to be impractical, a conclusion with which the Arbitrators agreed.

Since the release of Award, Antigua and Barbuda has been working in good faith to obtain a fair negotiated settlement to DS285 with the United States, but all efforts have proven fruitless. Article 22.7 of the DSU provides that “the DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request”. Accordingly, on the basis of and consistent with the conclusions and determinations of the Arbitrators in the Award and in accordance with Article 22.7 of the DSU, Antigua and Barbuda requests authorisation from the DSB to suspend concessions or other obligations under the TRIPS, and in particular Sections 1 (Copyright and Related Rights), 2 (Trademarks), 4 (Industrial Designs), 5 (Patents) and 7 (Protection of Undisclosed Information) of Part II thereof at a level not exceeding US \$21.0 million annually.

Until such time as the United States brings its measures into compliance with the rulings and recommendations of the DSB in DS285, every year Antigua and Barbuda will notify the DSB of the suspension of concessions or obligations it intends to adopt and actions it intends to take with respect thereto prior to bringing those suspensions into force or taking those actions. The notice will also specify how Antigua and Barbuda proposes to ensure that, in applying the suspension of concessions and obligations, they will not exceed US \$21.0 million per annum.