

Fact sheet : Trade Barriers Regulation investigation into US Internet gambling laws - Brussels, 26 March 2009

What is the current situation in this case?

According to the EU Trade Barriers Regulation (TBR), the Commission has to report to EU Member States when it has concluded a TBR examination. In accordance with this requirement, the Commission has submitted to the EU Member States the TBR report following an investigation into US gambling laws and their enforcement. Any comments from the Member States will then be considered by the Commission, and the report may still be subject to modifications.

The investigation was launched on 11 March 2008, as a result of a complaint lodged by the London-based Remote Gambling Association.

What are the main findings of the report?

The report finds that US laws on remote gambling and their enforcement against EU companies constitute a barrier to market access which has adverse effects on EU economic interests. Furthermore, EU companies are discriminated against: US companies are allowed to freely operate online gambling on horse racing in the US, while European companies and individuals cannot and even face legal action. This is incompatible with US WTO commitments on services, and specifically with GATS Articles XVI (on market access) and XVII (on national treatment).

The report concludes that there are serious adverse effects for the EU. They include revenue and stock market value lost by affected companies as a result of their absence from the US market, and also the threat of serious sanctions hanging over them that affect their normal conditions of operation outside the US. Moreover, the report also describes knock-on effects on other sectors which supply to the gambling industry, such as financial or professional services.

The report concludes that WTO action would be justified. However, the report does not include any recommendation for action and also suggests that the issue should be addressed with the US administration, with a view to finding an amicable solution.

The TBR report also addresses the question whether a possible withdrawal by the US of its commitments on gambling and betting services would have an impact on a potential WTO case. The conclusion is that a case would still be possible despite a withdrawal. The reason is that the withdrawal would only remove the relevant US obligations for the future, but not in respect of past trade. In the present case, legal proceedings against EU companies are based on Internet gambling that they supplied in the past, under the cover of US WTO-GATS commitments. If the US continues to act against EC companies with respect to their past activities, it will remain possible for the EC to make a case.

What is the basis for this dispute?

EU companies thought that it was legally possible to supply Internet gambling services in the US, based on an unclear domestic legal framework combined with a WTO-GATS commitment undertaken by the United States in the Uruguay Round to allow non-discriminatory access to its gambling market. As a result, until 2006 a number of European companies offered this type of service to US consumers.

Following changes of the regulatory framework in the US, European companies withdrew from the US market. However, US authorities started legal proceedings against European companies based on the gambling and betting services they had offered until 2006.

What is the TBR?

The Trade Barriers Regulation (TBR) is a trade policy tool that allows EU companies to formally request the Commission to start an investigation into trade barriers in third countries. The Commission has to examine whether there is a trade obstacle that is incompatible with the WTO obligations of the relevant third country, whether it has a negative economic impact on European companies and whether action against these barriers would be in the interest of the EU.