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DAVID AND GOLIATH: ANTIGUA CHALLENGES THE US IN THE WTO

Geneva, 24th June... In a David and Goliath scenario, the small Caribbean island of Antigua and Barbuda today challenged the United States of America at the World Trade Organisation requesting that a panel be established to settle a dispute between the two countries.

Antigua and Barbuda's Chief Foreign Affairs Representative, Sir Ronald Sanders, appeared before the WTO's Dispute Settlement Body in Geneva to make the request.

Speaking before a packed assembly, Sir Ronald described the small size of his country, its reliance on tourism and its vulnerability to hurricanes. He said that Antigua and Barbuda had tried to diversify its economy by developing financial services and electronic commerce and had been successful in attracting Internet Gaming to its shores.

"But", he said, "the United States has passed laws prohibiting the supply of gambling and betting services from other countries to consumers in the US, and the enforcement of this position prevents operators within Antigua from lawfully offering gambling and betting services in the US under conditions of competition compatible with the United States own obligations under WTO arrangements".

"The effect", Sir Ronald said, "is to threaten the jobs of many bright, computer literate young people in Antigua and to erode government revenues".

The Antigua and Barbuda senior diplomat told the WTO body, "My government has a duty of care to our population to defend their rights and the rights of the State under international law".

In response, the United States representative, Ambassador Linnet Deily, reiterated that cross border gambling is prohibited under US law, and she stated that allowing cross border gambling is not within the scope of US commitments under the WTO.

Sir Ronald said that this is precisely why Antigua and Barbuda is requesting a panel to settle the dispute. "The US is sticking to its guns, and so are we. A panel is necessary to adjudicate the matter".

The Dispute Settlement Body has agreed to consider the Antigua and Barbuda request at its next meeting on 21st July.

This is the first time that a small Caribbean country has challenged the United States at the WTO, and the case is being watched by the international community with great interest.

Sir Ronald Sanders' Statement to the WTO follows:

**STATEMENT
BY
SIR RONALD MICHAEL SANDERS
CHIEF FOREIGN AFFAIRS REPRESENTATIVE OF ANTIGUA AND BARBUDA
TO
THE DISPUTE SETTLEMENT BODY
OF THE WORLD TRADE ORGANIZATION
IN GENEVA, SWITZERLAND
ON TUESDAY, 24TH JUNE 2003**

Mr Chairman

May I first thank you and this body for the opportunity to appear before you to make a request for the establishment of a panel pursuant to Article 6 of the DSU.

By way of background, I should explain that my country, Antigua and Barbuda, is a small twin island state in the Caribbean.

It is highly dependent upon tourism for its economic survival, and it is also subject to violent hurricanes. Consequently, our tourism industry is held hostage to the vagaries of terrible tempests. At some occasions, they can be less harsh than at others, but they are always destructive. In the five years between 1995 and 2000, we endured the ravages of six hurricanes, two of them in one year.

With the passing of each one, our islands were ravaged, hotels destroyed, and infrastructure uprooted. The effect on our tourism industry was disastrous.

In an effort to diversify our economy, we developed electronic commerce. To do so, we invested in the development of the telecommunication infrastructure and we introduced computer training in our schools, and in special school for adult education.

In doing so, we were mindful that we were acting in pursuance of the urgings of the international community in several fora and public documents, not least of which is paragraph 34 of the Doha Declaration.

Amongst the industries we attracted to our country was Internet Gaming.

The Industry provides much needed employment to thousands of our bright and computer literate young people. It has provided them with a means of livelihood without which they might have been forced to turn to unlawful activity, such as the vibrant drug trafficking trade that now plagues the Caribbean region, which, unfortunately, is the transit area between the supplier countries and the markets in Europe and North America.

Additionally, the Internet Gaming industry provides the government with revenues that are critical for the continued provision of the basic goods and services that inhabitants of any country have a right to expect from its government. Importantly, these revenues are not affected by the ravages of the tempestuous storms that make unwelcome visits to our country. They are, therefore, vital to our economic survival and political stability.

The United States takes the view that its laws prohibit all supply of gambling and betting services from outside the United States to consumers in the United States. The enforcement of this position by the United States Authorities effectively prevents operators within Antigua and Barbuda from lawfully offering gambling and betting services in the United States under conditions of competition compatible with the United States own obligations under WTO arrangements.

I should mention a recent communication from the United States to the WTO entitled "An assessment of Services Trade and Liberalization in the United States and developing

economies". In that communication the United States explains that further liberalisation of trade in services, and in particular the cross-border supply of services, will be of great benefit to developing countries. Antigua and Barbuda fully agrees with that.

In any event, the effect of the United States enforcement of its laws is to hurt the small economy of Antigua and Barbuda which is struggling to survive in a world of intense competition in the trade of goods and services.

Antigua and Barbuda has always respected its international law obligations and has always cooperated with other countries even when it was strictly speaking not under a legal obligation to do so.

For instance, Antigua and Barbuda has fully cooperated with the Financial Action Task Force of the OECD countries on money laundering and counter terrorism issues. We were found by the FATF to be a fully cooperative jurisdiction in the fight against money laundering.

My country did not only amend existing legislation and introduce stringent new laws to meet the standards set by the FATF, we also spent scarce financial resources and devoted our best human resources to the effective regulation and supervision of our financial services, including Internet Gaming. This industry in Antigua and Barbuda is arguably the most tightly regulated and supervised industry of its kind anywhere in the world.

In 2002 the United States complained to Antigua and Barbuda that our reluctance to grant a licence for cellular telecommunications to the United States company AT&T violated WTO law. We looked into the matter and, although the participation of AT&T in our small economy affectively eroded the economic viability of an indigenous company creating unemployment and a loss of revenue to the Government, we agreed to allow AT&T to operate a system in Antigua although it produced less jobs than it displaced, and resulted in a flow of foreign exchange from the country even though its earnings were in local currency.

I am sure many small, developing countries here have made similar informal settlements that were beneficial to United States economic interests after being told their laws were in violation of WTO law.

Mr Chairman, while Antigua and Barbuda respects and upholds international law, my Government also has a duty of care to our population to defend their rights and the rights of the State under international law.

The United States is the centre of the world's gambling business.

Many of the largest gaming companies in the world are of United States origin, and a great number of them have international operations.

According to a trade association of American gaming companies, total consumer spending in commercial casinos in the United States reached almost US\$26 billion in 2001. That is US\$3 billion more than total consumer spending on sound recordings and movie box office sales combined. The figure of US\$26 billion relates to commercial casinos only, which is just one aspect of legalised gambling in the United States, and is not even the biggest.

Simultaneously, the United States prohibits all cross-border supply of gaming services from Antigua and Barbuda and there is no possibility for our operators to obtain an authorisation. This is despite the fact that the United States GATS schedule, when properly interpreted in the light of the WTO classification "W/120" and the CPC classification, implies a full commitment on the cross border supply of gambling and betting services.

Over the last three months Antigua and Barbuda has consulted in good faith with the United States and fully disclosed our legal position. Our consultations have been frank and cordial as befits two countries, which despite the great difference in their size and

resources, have enjoyed cooperative relations on a wide range of matters. But, in the end, we did not feel that that United States response addressed our legal position.

In the circumstances, to protect the jobs of our young people, to safeguard government revenues, and to ensure that our legal rights in the international community and under WTO rules are respected and upheld, we have no other choice than to request that this distinguished body establishes a panel to adjudicate this matter.

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