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EU Service Firms Could Gain U.S. Access
By John W. Miller
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BRUSSELS -- The Bush administration, pressured by an unfavorable ruling by the World Trade Organization, plans to push for legal changes that could make it easier for European service companies, from engineering firms to law firms and shipping companies, to do business in the U.S., officials say.

The U.S. is required to offer trading partners greater access to the American market because in May it lost a long-running dispute at the World Trade Organization over laws that banned foreign firms from offering Internet gambling services in the U.S.

Europe's online gambling firms were hit particularly hard and complained to the European Union's executive arm in Brussels. EU trade officials took up the matter with the WTO, seeking compensation for billions of euros in lost income. The EU invoked a rarely used WTO rule that requires a country that closes one market to foreign companies to open others to compensate trading partners.

A host of countries, including India, Japan and Canada, have filed similar claims for compensation, but the talks with the EU and its $8 trillion service sector promise to have the biggest financial impact. As a result, while any affected sectors would be opened to all 150 WTO members, European companies stand to gain the most.

The Office of the U.S. Trade Representative this month began talks with EU officials on opening some sectors of the U.S. services market to greater foreign competition.

To be sure, the issue will be contentious and subject to fierce lobbying. Congress and state legislatures would have to sign off on changing laws that now protect American service concerns. States generally control access to sectors like insurance, engineering and legal services. The federal government controls foreign access to activities like shipping, telecommunications and postal services.

The U.S. Internet gambling market is valued at more than $15 billion, so the outcome of the U.S.-EU negotiations will likely be worth billions of euros to European companies. "We have to offer something substantive," says a senior U.S. official.

Global trade in services is growing quickly. U.S. consumers bought $314.6 billion of foreign services in 2005, twice as much as in 1997, including banking, insurance and airplane trips. The areas in which European companies hope to gain greater access include insurance, legal services and mail delivery, says Pascal Kerneis, secretary-general of the European Services Forum, a Brussels lobbying group.

One example of the kind of practice the EU could seek to change: Today, a foreign lawyer or law firm can't practice law in New Jersey without residing in the U.S. (though they can in Maryland). Foreign companies are also prohibited from offering some forms of legal services in Delaware, a lucrative market because of the high number of corporate registrations in the state.

This means U.S. trade officials have to include states in their negotiations. Setting policy on trade in goods, by contrast, is relatively simple because the federal government controls tariffs on all imports.

According to several legal experts, the states might not be easy to win over. "Frankly, I'd be very surprised if the Bush administration pushes for federal legislation that would affect access to U.S. markets for foreign lawyers," says Laurel Terry, a professor at the Penn State Dickinson School of Law and an expert in the regulation of the legal industry. "The issue of lawyer regulation is very sensitive and has traditionally been handled by the state judiciary."

The U.S. is required to submit a formal offer of market access to the EU by Sept. 22. If the sides disagree, a WTO panel will arbitrate. That has never happened in a case on services, so the outcome would set a precedent. In the end, the U.S. could hope to mollify the EU by offering trade concessions in other protected areas where the EU and U.S. disagree, including agriculture, military contracts or subsidies to aircraft makers.

British gambling companies such as 888 Holdings PLC and Party Gaming PLC -- which drew more than half their revenue from the U.S. -- lost billions in stock-market value after a new U.S. law banned credit-card companies from receiving payments from foreign gaming Web sites.

The USTR could be bailed out by Congress were it to change the law to again allow foreign firms to offer online gambling. Several such bills are on the table.

"The U.S. could make this all go away by passing legislation," says Nao Matsukata, a former senior U.S trade official and a policy adviser at Alston & Bird, which represents clients on online-gaming issues.

So far, none of the bills have garnered enough support. European gambling companies say they have given up hope of doing business in the lucrative U.S. market for now.

The forced concession to the EU on services marks the end of a losing battle the U.S. has fought at the WTO, mainly with the Caribbean nation of Antigua and Barbuda. In 2003, the country challenged U.S. prosecution of foreign online-gambling companies. The U.S. argued it was entitled to ban foreign gambling companies because it couldn't have foreseen the rise of the Internet when it first pledged to open part of its services market in 1994.