

Op-Ed/Editorials - Internet Gaming: U.S. Beats Antigua In WTO

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In 2003, Antigua filed a formal complaint against the United States with the World Trade Organization (WTO) over the issue of Internet gaming. In 2004, after many briefs and hearings, a WTO panel ruled in favor of Antigua, igniting worldwide speculation that the U.S. would soon have to let Americans bet with foreign online operators.

In 2005, the Appellate Body of the WTO reversed. At the time this is written, just days after this latest decision was released, Antigua is claiming victory. The Report is 145 pages long, long enough to contain something for everyone.

But the truth is that this is a big win for the U.S.

First, the WTO decided not to look at U.S. state laws, which outlaw all unlicensed commercial gambling.

As for federal law, with just a little tweaking of the Interstate Horseracing Act, the U.S. will be in complete compliance with its WTO treaty obligations.

The entire controversy can be traced back to a mistake the U.S. federal government keeps making: It does not take gambling seriously.

Nations that sign trade treaties like the ones creating the WTO agree that they will let in some types of goods and services of other signatories. One category was "Recreational, Cultural & Sporting Services," which included everything from circuses to news agencies. Some other countries expressly stated that they were

not agreeing to open their doors to foreign gambling operations. But the U.S. agreed to let in every recreational service, "except sporting."

"Sporting" services were undoubtedly excluded to keep out foreign sports teams. The U.S. argued that "sporting" includes gambling. It didn't work.

The funny thing is that the U.S. did want to keep out gambling. And all it had to do was say so.

The U.S. signed the WTO treaty in 1994. Maybe the federal government did not know about Internet gaming then, but it should have. It certainly did know that foreign operators were trying to gain patrons from the U.S.: The federal government was seizing a million pieces of foreign lottery mail at the borders each year.

But the U.S. could still keep out Internet gambling if it could show that this was "necessary to protect public morals or to maintain public order."

The first panel held the U.S. had failed to show this because the U.S. had refused to talk with Antigua about changing its laws against Internet gaming. On appeal the WTO ruled that whether or not the U.S. had met with Antigua was irrelevant to the legal question of whether the anti-gambling laws were necessary.

The WTO held that the federal laws prohibiting interstate and international betting were necessary. Specifically, it said that the U.S. had established "a specific connection between the remote supply of gambling services" and dangers to the American public. It found the U.S. had presented evidence showing "a link in relation to money laundering, fraud, compulsive gambling and underage gambling."

This does not mean that any of this is true. Only that the federal government was able to show that it had reason to be concerned about foreign operators taking bets from at-home Americans. It focused on Internet gambling's "volume, speed and international reach," "virtual anonymity," "low barriers to entry," and "isolated and anonymous environment."

The WTO did reject the federal government's concern for organized crime, finding the U.S. had not submitted concrete evidence to show that remote gambling, as opposed to other forms of gambling, was particularly vulnerable to mob involvement.

This WTO ruling was the first ever to discuss "public morals," but it follows established international law. The High Court of Europe has consistently ruled that the nations of the European Community cannot keep out trade from other members — except gambling. Even in the U.S., we have long had the concept of a state's Police Power, the state's right to do just about anything to protect the health, safety, welfare and morality of that state's citizens.

But the U.S. laws had to pass one more test. A nation can enact laws to protect its residents from the perceived evils of gambling, but it cannot discriminate against foreigners just to protect its local businesses. One federal law failed this test.

In December 2000, Congress amended the Interstate Horseracing Act (IHA) to allow parimutuel betting on horse races by phone or computer. But the law on its face is limited to states in the U.S. where it is legal to place and accept bets.

Since foreign operators were expressly excluded, the WTO found the U.S. had failed to show there was no discrimination. The government lawyers did not help by making the silly argument that the IHA was only civil and that it did not repeal the criminal antigambling laws. Of course it did. That was why it was amended, so that off-tracking betting parlors would not be arrested for taking out-of-state bets.

Once again, the government did not bother to talk to anyone in the business. If it had, it would have learned that international betting on horseracing has been around for decades. Betting on the Kentucky Derby is very big in Canada and France, and I personally saw Hollywood Park taking bets on races in Hong Kong.

The WTO held the U.S. had not shown that it applied its prohibition on remote wagering on horse races in a nondiscriminatory manner.

But the solution is easy. Congress should immediately amend the IHA to allow what is already being done: expressly allow Americans to bet on foreign races and allow foreign bettors to wager on American races. The U.S. could then safely prohibit all other forms of Internet gambling, foreign and domestic.

Of course, if Nevada casinos ever start taking bets online, or state lotteries begin selling their tickets on the Internet, everything changes. At that point, Antigua might go back to the WTO, and this time, win.