

Offshore Internet Gambling and the World Trade Organization: Is it Criminal Behavior or a Commodity?

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Abstract

Internet gambling possesses an array of attractive attributes. For one thing, there is no necessity to leave home, with the associated outlay for lodging and meals, and the expenditure for transportation costs. For another, gambling at home avoids the noise and confusion of crowded confines, the distractions of seductive servers, the windowless gaming rooms, with no wall clocks to make customers aware of the time. Internet gambling is an industry that is growing exponentially and its perception as criminal is a matter of intense debate. On the transnational scene it has emerged as a public policy issue of significant ideological interest and of massive financial importance. This paper traces the development of the WTO case and attempts at its resolution and also offers a view of what is regarded as the most sensible, and probably the inevitable path that the trajectory of Internet gambling should and will take.

Keywords: Internet gambling; Disputes; WTO; International;

Introduction

Now one of the fastest growing industries, legal gambling already attracts more customers than baseball games or the movies. Most people see internet gambling as a recreational and leisure activity. However, for other people internet gambling can become a trap. It can gradually, or sometimes quickly, become the only thing important. All

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of an individual's resources and interests become focused on the next chance to gamble on the Internet. While the vast majority of those who participate in gambling do not experience problems, a small percentage of individuals do experience some problems with gambling. Studies have indicated that approximately 5% of the population experience current problems with gambling (Kossman, 2006). There are both positive and negative sides of internet gambling. For some persons at-home gambling also avoids discomfort about the wagering procedures at places such as blackjack tables with many eyes, most especially those of the dealer, focused on your movements. These advantages of gambling by means of a computer also can be regarded as negatives. Gambling in your own home can be a lonesome enterprise, the travel and the glitz of the casino world can be exhilarating, and the multitude of other customers at the betting venues can provide an assurance that one is participating in an exciting and respectable enterprise. These assets and debits of Internet gambling vis-à-vis brick-and-mortar gambling sites cannot readily be assayed in order to claim which of the two arrangements is "better."

Internet gambling contains many ingredients that characterize the outsourcing of manufacturing from a rich country, where wages and other costs tend to be high, to a poorer nation where the skill of workers is equivalent to that of the domestic labor force but where such workers command lower wages - in part because their cost of living is less than that of the country exporting the services. Outsourcing makes sense in a capitalist economy. In regard to Internet gambling it introduces moral and criminal elements that provide leverage for the exporting country to seek an interdict for the activity and to retain domestically whatever sums might otherwise move overseas.

The status of Internet gambling on the world scene has been notably addressed in the David and Goliath dispute between the United States and the small Caribbean islands of Antigua and Barbuda, which constitute a single nation. The dispute represented the first attempt by the World Trade Organization (WTO) to examine cross-border electronic services, with the added ingredient that the behavior itself under review has at certain times and in certain places been regarded as criminal. In this paper, we trace the development of the WTO case and attempts at its resolution. We also offer a view of what we regard as the most sensible, and probably the inevitable path that the trajectory of Internet gambling should and will take.

Antigua

Antigua, which gained its independence from Britain in 1981 (Sanders, 1982), is the largest of the English-speaking Caribbean countries. It is an island of 108 square miles, 14 miles long, and 11 miles wide. It was sighted by Columbus on his second voyage to the Americas in 1493, and legend has it that he named it for a Spanish church in Seville, Saint Maria Antigua.

In 1674, Christopher Codrington migrated to Antigua from Barbados where his father was governor-general. Codrington established Antigua's largest sugar plantation at Betty's Hope, a 700-acre property which today is in the process of restoration. For Antigua it was the "major turning point in the island's development" (Dyde, 2000, p. 20). The planting and harvesting of the cane relied on slaves imported from Africa who, if they worked in the fields, existed under excruciatingly harsh conditions, both before and after they were freed in 1834 (Gaspar, 1985; 1993).

Until the 1960s Antigua's economy relied on sugar cane exports, but a devastating decline in the price of the product on the world market in the 1990s led it to turn to tourism for revenue. That venture suffered a severe blow on September 5, 1995 when hurricane Lulu sent winds of 145 miles an hour through the island, knocking four hotels into the sea. Some other revenue-generating program was necessary, and Antigua chose telecommunications and Internet gambling. It edged out competitors with the development of an undersea fiber-optic link with the United States that guarantees Americans continuous telecommunications contact, even in the event of a hurricane (D. Schwartz 2005, p. 9). Antigua also created a free trade zone in which gambling operations were excused from paying import duties and local taxes. Antigua's economy benefited from the \$100,000 annual fee for a casino license and \$75,000 for a sports betting license.

The Jay Cohen Case (2001)

The international dispute between Antigua and the United States has its roots in the criminal prosecution of Jay Cohen, one of the founders of the World Sports Enterprise (WSE) that was licensed in Antigua in 1997 and became the second largest employer on the island. Customers were required to transmit \$300 before they were permitted to gamble, and the WSE exacted ten percent off the top of each wager. In its first fifteen months of operation the company took in \$3.5 million.

To establish a criminal case, FBI agents in America placed bets at WSE by means of telephone calls from jurisdictions where Internet betting was illegal. Thereafter, Cohen was charged in a New York court with violation of the Wire Act (U.S. Code, Title 18 §1604), a statute that was enacted in 1961, well before the dawn of Internet gambling, in an effort to keep organized crime syndicates from using communication networks to facilitate gambling, most particularly on horse races.

Cohen was the victim of a federal policy that, as one writer observes, has been marked by “fierceness” and has been “unpredictably inhospitable to online gambling,” despite an earlier bow to the prerogative of state governments to make what arrangements they desire about gambling, and the endorsement of Native-American tribal gambling (Hurt, 2006, p. 375). Similarly, another writer emphasizes what she believes is the U.S. Congress’ “obsession with sinful activities” which have moved it “to take aggressive (and aberrational) approaches to Internet gambling” (Crawford 2005, p. 697). In the *Cohen* case, the judge’s instructions to the jury after a ten-day trial left it no room to exonerate the defendant, had it been so inclined. The judge declared that if Cohen’s company had accepted bets over the telephone the jury was obligated to find him guilty. Cohen was sentenced to a 21-month prison term and incarcerated in a minimum-security institution located outside of Las Vegas, Nevada (*United States v. Cohen*, 2001). He later explained why he had returned home to defend himself while many of his colleagues remained in their Antigua haven:

‘I came back to the United States because I wanted to clear my name....Here I sit in the shadow of the [Las Vegas] Strip while billion-dollar corporations engage in the same activity every day for which I am serving a sentence. And for what? For running a legal business in another country (Massoud, 2004, p. 996).’

Cohen maintained that his Internet gambling business was no different than the stock market transactions he had conducted in an earlier job that he held in San Francisco. “I came from the stock market,” he asserted, “and if that isn’t gambling, I don’t know what is, except that the folks I work with now are less sleazy” (Lubben, 2003, pp. 321-322).

The World Trade Organization

The idea of an organization to deal with matters of international trade was fostered at the Breton Woods, New Hampshire meeting of the Allied leaders during World War II. It ultimately led to the General

Agreement on Tariffs and Trade (GATT), which from 1947 until 1974 was the primary agency addressing cross-border trade issue. It subsequently became evident that an updated treaty was required to cure the birth defects of GATT (Jackson, 2000). The result was the World Trade Organization which became operational in 1995. The WTO then put in place a General Agreement of Trade in Services (GATS) that was based upon an agenda agreed upon by WTO delegates at a meeting in September 1984 at the resort site of Punta del Este in Uruguay. In a series of conferences over the next seven and a half years delegates hammered out a treaty that sought to lower custom tariffs and other barriers to trade and to keep service markets open. Agreement also reached that special concessions were to be accorded to developing countries. The treaty covers 26,000 pages which even the WTO itself grants makes for “daunting” reading. It was ratified at Marrakesh, Morocco, on 15 April 1994. Today, the WTO has a membership of 148 countries which, taken together, are responsible for 95 percent of the world’s trade.

Among the four modes of supply specified by Article I.2(a) in the Treaty was “the supply of a series of products from the territory of one member into the territory of any other member.” An exception was provided in Article XIV(a) which indicated that trade could be restricted if the product constituted a danger to public morals or public order. Public order was defined as “the preservation of the fundamental interests of a society, as reflected in public policy and law.” Such fundamental interests related, inter alia, to standards of law, society, and morality. The rule specified that “the public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society” (WTO, 2004, p. 238). Other exceptions besides public morals and public order include the protection of human, animal, and plant life and health, and the protection of exhaustible natural resources. An instance of the legitimacy of a public morals claim would be the banning of the importation of alcoholic beverages into Muslim countries. But for that point to prevail, the Muslim countries must not permit the production of intoxicating beverages domestically, a situation far from the reality of gambling in the United States. The ambiguous wording would produce a good deal of semantic jousting in the dispute between Antigua and the United States, although the terms “sufficiently serious threat” and

“fundamental interests” would appear to erect a high barrier against readily granted exceptions.

Antigua Challenges the United States

Antigua’s Internet gambling business – “remote access gambling” as it was called—fell off dramatically in the wake of the *Cohen* decision, with a reported decline in sites from a high of 119 licensed operators, employing approximately 3,000 persons and accounting for ten percent of the country’s gross national product in 1999, to 29 sites employing fewer than a total of 500 persons in 2003. Prodded by Cohen (Blustein, 2006), Antigua filed a charge on March 13, 2003 with the World Trade Organization claiming that it was being denied access to a legitimate outlet in violation of the GATS provision that mandated open transnational markets for “recreational, cultural and sporting services.” The Antigua filing, the first charge made before the WTO by a country with a population under 100,000 persons, asked that the WTO “find that the United States’ prohibition on the cross-border supply of gambling and betting services and its measures restricting international money transfers and payments relating to gambling and betting services are inconsistent with its specific commitments to GATS” (WTO, 2004, p. 2). The United States pointed out that when it had signed the treaty in 1994 it had exempted itself from its open market obligation regarding “sporting services,” but this was interpreted to represent a desire to control overseas athletic teams from entering the American market, not wagering. As I. Nelson Rose, a leading expert on gambling law, notes: “The funny thing is that if the US did want to keep out gambling all it had to do was to say so” (Rose, 2005, p. 437). Senegal, for instance, had specifically ruled out its agreement to cross-border betting (WTO, 2005, p. 63). But the United States did not do so, and now it had been hauled before an international adjudicatory body to try to defend its position.

Antigua sought to override objections raised by the United States about possible irregularities in its arrangements for Internet betting. Typically, such criticisms focus on the prospect of underage gamblers participating in Internet gambling, fraud, money laundering, and the creation of compulsive pathological gamblers. The most prominent covert issue in this case obviously was the loss of revenue faced by the United States if its gamblers placed their bets offshore, but this matter was not addressed since it was contrary to the essence of the trade agreement.

Antigua pointed out that each of its Internet gambling operations maintained an “anti-fraud’ department with the objective of preventing...collusion among players, financial fraud and credit card abuse, underage playing, and other [undesirable] occurrences” (WTO, 2004, p. 4). It said that underage gambling was explicitly prohibited by Antiguan law and was monitored by a sophisticated age identification program and inhibited by the need to fund an account before wagering, which would require

access to instruments such as checks or bank accounts and involve a wire transfer. “This is a significant barrier which most minors are unable to overcome, particularly given the practice in the industry to either send winnings and deposits directly back to the account from which deposits were received or crediting winnings directly back to the applicable credit card” (WTO, 2004, p. 4). Ties to web sites such as “Cybersitter” and “Net Nanny” also were employed to screen minors. Antigua also noted that the United States was hardly in a position to assume a superior air in regard to underage persons, citing the report of the National Gambling Impact Study Commission which found that although selling lottery tickets to persons below the age of 18 was illegal throughout the United States, such sales occurred with “disturbing frequency.” A study in Minnesota had found that 27 percent of 15- to 18-year olds had purchased lottery tickets, while in several states the tickets were sold by vending machines which were readily accessible to youths. In Massachusetts, an experiment by the Attorney General’s office had determined that 80 percent of underage persons, some as young as nine, had been allowed to purchase lottery tickets (United States, 1999, pp. 3-4).

It was further noted in the Antigua filing that by law operators there are required to display warnings on their sites of the addiction possibilities of gambling and information about contacting organizations such as Gamblers Anonymous. It was claimed that “most operators appear to be able to detect patterns of problem gamblers either at the sign-up stage...or later during the course of the relationship with the player, in which event the player’s account often will be closed and the balance returned to the player” (WTO, 2004, p.4).

Money laundering and other organized crime involvement was said not to be a serious consideration in the Antiguan Internet gambling realm in large part because operators were not allowed to accept cash and were required to authenticate the bettor’s identity. The Antiguan

brief did not resist a jab here at its competing litigant. “This is in stark contrast,” it observed, “to land-based casinos and other gaming outlets in the United States, where not only can players wager with complete anonymity, but gamble almost exclusively with cash” (WTO, 2004, p. 5).

The Dispute Settlement Body Panel

After initial negotiations between Antigua and the United States had reached an impasse, Antigua requested the formation of a Dispute Settlement Body Panel. The United States representative to the WTO, Linnet Deily, a former investment banker, sought to block the move, declaring that “the United States has grave concerns over the financial and social risks posed by such activities to its citizens, particularly but not exclusively children.” He added, “We are surprised that another WTO member has chosen to challenge measures to address these concerns—particularly in an area in which the United States made no market access commitment” (Bissett, 2004, p. 371). Before long the United States would learn that it could not high-handedly employ these rather weak defenses against what it likely initially saw as a gnat that required a quick, decisive swat. It would be determined that the United States had indeed made an access commitment and that its expressed concern for children had constitutional free speech problems and other difficulties.

Unimpressed by the United States’ filing, the WTO Director-General, Supachai Panitchpakdi from Thailand, constituted a three-person group, presided over by B. K. Zushi, vice chairman of the Telecom Regulatory Agency of India (TRAI) and the former Indian ambassador to the WTO, who had co-authored a well-regarded article on negotiations (Self & Zushi, 2003). The other two members of the panel were Virachai Plaasai, director-general of the Department of Internal Affairs in Thailand, and Richard Plender, a Queen’s Council from the United Kingdom. Besides the contesting nations, Canada, the European Union, Japan, Mexico, and Taiwan joined the litigation as third parties, indicating the considerable international significance of the issue. In theory, third parties have a “significant interest” in the proceedings; in practice, they are any country that desires to contribute its views on the subject under consideration (Guohua, Mercurio & Yongje, 2005, pp. 99-108).

The United States claimed before the Panel that gambling was illegal in various American jurisdictions. It further argued that Internet

gambling offended the “public morals” of the country and therefore could legitimately be excluded from the embrace of the trade treaty (see generally Chanovitz, 1998). The United States’ response contained both condescension and a sizeable portion of obfuscation. At one point it scolded Antigua for inaccuracies in its summary of American gambling law and its tardiness in submitting corrections. It scored occasional debating points, arguing, for instance that “children have ready access to payment instruments, and no technology has yet been developed to enable constraints on Internet gambling approaching those that are possible in other settings where gambling can be confined and access to it strictly limited” (WTO, 2004, pp.14-15). Some of the dispute over legal matters focused on the entertainment and recreational services heading in the United Nations’ classification of products that included a subsection specifically listing “gambling and betting” (United Nations, 1991, Code 904). The United States argued that the roster was not binding and that its federal ban on interstate gambling in the Wire Act automatically exempted it from adherence to the UN schedule.

Antigua, for its part, adopted a somewhat feisty and combative tone in debating the American claims. “The US should not be allowed to in essence ‘hide behind’ the complexity and opacity of its own legal structure to deflect attention from the fundamental simplicity of this complaint” (WTO, 2004, p, 31). The Antiguan pleaders also put on record a biting criticism of the American presentation to the WTO of a television documentary presented by the Canadian Broadcasting System in October 2001:

‘Antigua submits that the video is offensive and totally irrelevant to the legal questions that arise in this proceeding: the fact that the United States seeks to adduce it as evidence at all...makes the ruse all the more obvious. The program portrays Antigua as a backwater, the Antiguan Solicitor General who is African and whose mother tongue is not English, finds himself depicted as incompetent...If the United States is struggling so much in this case that it needs to resort to a media hatchet job of a small developing country that does not have the clout to get a retraction, then the United States is really clutching at straws. The most offensive fact of all, however, is that by submitting this video as evidence, the United States implicitly adopts the view expressed in its own formal view vis-à-vis Antigua. If put in the context of the rest of the US argument, the United States is essentially saying that Antigua is backward, irredeemably incapable of operating a respectable gaming, or any other industry. This is

an astonishing statement [and] outright prejudice.' (WTO, 2004, pp. 86-87).

This protest may not have been altogether impelled by bruised national feelings, but could have been an attempt to call attention to the mandate of the WTO to pay special attention to the needs of Third World countries. It might also have been an effort to counteract what writers have interpreted as a bias in WTO decisions. Kok Pen Khor and Martin Khor (2005, p. 42), have claimed, "The global economy is not managed impartially [by the WTO], but favors rich countries and multinational corporations."

The Panel's report, issued on November 10, 2004, contained three major findings:

- (1) The GATS was applicable to betting and gambling;
- (2) The United States was in violation of the Treaty when it relied on the Wire Act and other laws to interdict Internet gambling with Antigua. Its actions violated the intent of fair trade and access to markets in Antigua by persons living in America; and
- (3) The United States had failed to demonstrate that its action was necessary to protect "public morals," defined as "standards of right and wrong conduct maintained on behalf of a country or a community" (WTO, 2004, *passim*).

On the third point, the Panel called into play an earlier Dispute Resolution Panel report that had set forth the procedure to be employed in determining the propriety of public morals and public order claims. In that case, it had been said that what was required was "a process of weighing and balancing factors which prominently include the contribution made by the compliance means for the enforcement of the law or regulation at issue." To be taken into account as well was "the importance of the common interests or values protected by the law or regulation, and the accompanying importance of the law or regulation on import or export" (WTO, 2000, para. 161). The Panel granted that the Wire Act and its two complementary statutes clearly were designed to protect public morals and public order in the United States. But it was well aware that some form of gambling is legal in all American states except Hawaii and Utah, and that Antigua had undertaken programs to deal with the risks enunciated by the United States. It thought that the United States had failed to diligently explore alternative approaches that might permit it to meet its trade treaty obligations to its own satisfaction, and it labeled the United States'

position as “a disguised restraint on trade” that “amounts to arbitrary and unjustifiable discrimination between countries” (Weiler, 2006, p. 816) and insisted that countries cannot unilaterally define what constitutes “public morals” (Maxwell, 2006).

The Appellate Body Ruling

Both the United States and Antigua appealed aspects of the Panel findings. The Appellate Body is required to be broadly representative of the WTO. Its members cannot be affiliated with any government, and serve four-year terms. The Antigua-United States Panel adjudicators were highly distinguished men, headed by Giorgio Sacerdoti, with Georges Al-Saab and John Lockhart the other two participants. The president of the panel had been a professor of International Law and European law at the University of Baioni; Al-Saab is an Egyptian with two law degrees from Harvard and a Ph.D. jointly awarded by Cambridge University and the University of Geneva, and teaches at New York University. Lockhart, who died early in 2006, had been a federal court judge in Australia.

Fundamentally, the Appellate Body’s decision upheld the original finding (though in some instances for different reasons) that the United States had acted in a manner inconsistent with its treaty obligations, but it disagreed with the earlier conclusion that federal anti-gambling laws in America were not fashioned to protect public morals and maintain public order. The Appellate Body also disagreed with the Panel’s consideration of many of the American state laws as relevant to its ruling. It focused considerable attention on the legislative tools that the United States was relying upon to try to end cross-border Internet gambling: the Wire Act, the Travel Act, and the Illegal Gambling Business Act.

Violation of the Wire Act, as noted earlier, had been successfully invoked to convict Jay Cohen of illegal gambling practices on the Internet. The Travel Act (U.S. Code Title 18 §1952) was, like the Wire Act, a 1961 enactment directed against organized crime, outlawing interstate or foreign commerce with the intent to distribute the proceeds of an unlawful activity, such as gambling. The Illegal Gambling Business Act (U.S. Code Title 18 §1952), passed in 1970, also was put in place as a weapon against organized crime, making it a federal offense to operate a gambling business that violates state law, providing other conditions are met, such as the involvement of at least five persons and

an operation that has existed for more than thirty days and that took in \$2,000 or more on any given day.

The core conclusion of the Appellate Body was that the three acts, the Wire Act, the Travel Act, and the Illegal Gambling Business Act, were measures necessary to protect public morals or maintain public order, though as one writer would note the Body employed “a very lax test” to reach this conclusion (Broude, 2005, p. 684). Nonetheless, the Body ruled that the United States had not shown, in particular in regard to the Interstate Horseracing Act, that its enforcement actions were carried out against both foreign and domestic service suppliers of remote betting services. Therefore, as Antigua had alleged, the United States was in violation of GATS as alleged by Antigua. The Interstate Horseracing Act (IHRA) (Title 15, U.S. Code §3001) had been passed in 1978 with a crucial amendment in 2000 that was put in place over the strong objections of the federal Department of Justice. It permits interstate wagering on race track events that are transmitted by means of telephone or other electronic means, presumably including the Internet, so long as the wagering is legal in both states. The United States had tried to finesse the inconsistency between the permissive IHRA and its claims of a legitimate exemption from the trade requirements by maintaining, rather awkwardly, that the horse racing stipulation did not replace the interdictions of measures such as the Wire Act. That claim was, of course, accurate, but beside the point, because the Wire Act could not be used against interstate wagering on horse races in a state that had legalized such betting. Simply put, the conclusion of the WTO Appellate Body was that the United States was using its laws relating to gambling selectively to punish Internet offshore gambling and gamblers while exempting some domestic operations from equal enforcement of the law interdicting Internet betting. At the same time, it needs noting that, as one commentator has said, the vast and dense verbiage of the Panel and the Advisory Body reports and the language and diction employed at times render its precise views “less than clear” (Hurt, 2006, pp. 437-438).

In conclusion, the report stated:

The Appellate Body *recommends* that the Dispute Settlement Body request the United States to bring its measures, found in this Report and in the Panel Report as modified by this Report to be inconsistent with the *General Agreement on Trade in Services*, into

conformity with its obligations under this Agreement (WTO, 2005, p. 126; italics in original).

The United States Trade Representative deemed this judgment to be “deeply flawed,” insisting that it was in contradiction of the evidence and that the amendment to the horse racing law did not contravene existing American criminal statutes. He said he hoped that Antigua and the WTO would disabuse themselves of this “misperception.” Negotiations again were inaugurated between the two countries that lasted four months but proved fruitless. An arbitrator turned down a request by the United States that it be granted an additional fifteen months to respond to the Appellate Body recommendations. Thereafter, Antigua announced that it would request the formation of another review body to decide what action the United States was required to take and, if it failed to adopt such remedies, what penalties should be imposed on it. Possibilities included an extra tariff on export products from America. For its part, Antigua was asking permission to copy and export American-made CDs and DVDs and similar products.

A comprehensive examination of WTO law and practice, however, points to a significant shortcoming in its adjudication process. “A problem with the implementation of WTO dispute settlement recommendations and rulings are a lack of guidance over what exactly a losing party must do to comply,” Matsuo Matsushita and his colleagues write, and then add wryly: “The tendency has been for the losing party to take minimal steps and declare itself in full compliance. The winning party often disagrees (Matsushita, Schoenbaum & Mavroidis, 2003, p. 30).

The European Union’s Third Party Submission

Among the submissions of the various third parties to the dispute between Antigua and the United States regarding offshore Internet gambling is that of the European Community which cut to the heart of what was at stake. The submission was by Carlo Trojan, Italian born but a Dutch citizen, who had been an EU secretary-general and now was the European Union ambassador to the WTO.

The EU’s third-party stance reflected a case involving England and Italy. In that case, Piergiorgio Gambelli and 137 other persons had appealed a charge of illegally taking bets in Italy for an English bookmaker in violation of the monopoly on betting enjoyed by the Italian government. The EU court noted that “if a Member state incites

and encourages customers to participate in lotteries and betting to the financial benefit of the state, the state may not use the pretext of protecting public order in order to justify restrictions” (*Gambelli v. Italy*, 2004; Del Nemo, 2004). The European Community’s submission on the Antigua-United States dispute was the only one to discuss what truly was at stake, echoing the earlier *Gambelli* situation:

All other conditions being equal, such prohibition [as sought by the United States] provides an incentive to consumers to turn to service providers within the US territory over like services supplied from the territory of other Members thereby modifying the conditions of competition. The incentive obviously is a particularly powerful one, since consumers who continue to gamble through websites operated e.g. from Antigua and Barbuda are doing so in breach of law (WTO, 2004, p. 125).

Conclusion

Both Antigua and the United States had sparred at great length, often in niggling terms, about whether or not an organized crime would infiltrate the Antiguan gambling endeavor or whether such gambling would allow underage participants and create additional compulsive, pathological gamblers. These in the nature of debating tactics, would hopefully persuade those judging the case to favor one or the other party. There was also a back-and-forth duel concerning the precise nature of the United States’ obligations under treaty provisions. Fundamentally, the United States was seeking to criminalize enterprises that outsourced gambling services. Outsourcing is a new and legitimate aspect of international trade, as market considerations move businesses from Bangor in Maine to Bangalore in Karnataka. The practice initially aroused strong public and political indignation in the United States in regard to the export of jobs. But later research indicated that the concern was greatly overrated. A 2006 study, for instance, found that more domestic jobs are created in a few months than are lost to external sites in a year. The McKinsey Global Institute in the United States found that 4.7 million Americans started new jobs in May 2005 alone; predictions for the years 2004 to 2008 are that about 1.4 million jobs would be outsourced overseas. Many factors work against outsourcing, most notably in the retail and health care sectors, where face-to-face interactions are required (Gross 2006:BU5). An influential essay by an economist in the highly-prestigious journal *Foreign Affairs* claimed that

“outsourcing actually brings more benefits; both now and in the long run” (Drezner, 2004, p. 23).

For some, the continued truculence in regard to offshore Internet gambling by the United States was seen as ‘an ineffective and futile stance on a crucial social issues’ (J. Schwartz 2005, p. 138) in the nature of a Luddite resistance to an emergent and vitalizing trend toward freer international commercial interaction. Most particularly it was regarded as a self-serving camouflage staged to divert attention from its real purpose which was ‘a marked attempt to channel American dollars away from offshore gambling into American casinos’ (Bissett, 2004, p. 403). Another move on the part of the United States in that direction took place in the closing moments of 2006 Congressional session when the leader of the Senate attached a rider to a port security measure that mandates that banks and credit card companies halt the use of credit cards for the transmission of Internet gambling stakes to overseas sites (Title 31, U.S. Code §§ 5361-5367). The bill was passed without being presented for committee consideration or floor debate. Commentators saw it primarily as a symbolic political gesture to appeal to conservative voters and predicted that it would merely force bettors to locate other routes for transferring funds. The law often was labeled by its critics as a “new prohibition.” comparable to the ill-fated ban against alcoholic beverages that had been put in place earlier in American history.

In a prescient appraisal of the likely developments that would ensue from, or perhaps despite, the Antigua-United States conflict in the realm of Internet gambling, I. Nelson Rose offers a prediction, a view with which we are in accord:

Eventually, those states that wish to license operators and allow citizens to wager online will be allowed to do so. As more developing countries turn to legalization, taxation, and regulation, and as more states pass enabling statutes, the U.S. federal government will be forced to shift away from a complete prohibitionist position to one of reluctant tolerance. Federal permission will, at first, be limited to state licensed operations, if for no other reason than foreign and non-licensed operations have no lobbying power in Washington (Rose 2000, p. 40).

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