David and Goliath at the WTO

Jay Cohen, an American citizen, once had a lucrative job in San Francisco trading options and derivatives. However, he wanted to start his own business and make more money. Pursuing this dream, he and two friends moved to the island nation of Antigua and Barbuda. There, with the government's blessing, they set up an Internet sports betting site. Their business was successful, perhaps too successful, luring Americans to bet online and provoking opponents of gambling. When Cohen again set foot on American soil, he was arrested and imprisoned. Prosecuted by his own country, he asked Antigua and Barbuda for help. Obligingly, the tiny nation then challenged the United States in the arena of the World Trade Organization.

This is the story of that challenge. It begins in the balmy Caribbean, about 1,300 miles to the southeast of Florida.

ANTIGUA AND BARBUDA

Antigua and Barbuda (henceforth, simply Antigua) is a sovereign nation of two small islands. It is a former British colony that achieved independence in 1981. Antigua (an-TEE-ga) is the larger island with 108 square miles and is more developed. Barbuda (bar-BOO-duh) is smaller with 63 square miles. The two low-lying bumps of limestone and coral are separated by 25 miles of ocean. The little country has a population of 87,000 and a GDP of $1.1 billion.

The major industry in Antigua is tourism. It has been a minor thorn in the side of the United States as an offshore haven for tax evaders, money launderers, and illicit drug shippers. Another nuisance was added in 1994 when it created a free trade zone for bookmakers, allowing them to operate tax free. It expected that gambling activity would create jobs for Antiguans. All any gambling entrepreneur needed to set up shop was a license costing $100,000. The government used this revenue to fund computer training schools for Antiguans, teaching the skills needed to work for online bookmakers.[1]

[1] Brett Pulley, "With Technology, Island Bookies Skirt U.S. Law," *The New York Times*, January 31, 1998, p. A1.

JAY COHEN'S MISADVENTURE

Jay Cohen and his partners, all U.S. citizens, founded World Sports Exchange Ltd. (WSE) in 1996. It operated from the second floor of a strip mall on the island of Antigua. Cohen was president. It was one of roughly two dozen businesses doing telephone and online betting from the island. It lured American bettors with radio, newspaper, magazine, and television ads.

Customers set up accounts by making credit card payments, wiring money, or sending cashier's checks. Then they used passwords to access their accounts with a toll-free telephone number or by going online. Once signed in, they instructed WSE to place bets for contests in football, basketball, baseball, soccer, and other sports. If they won, the amount was credited to their account. If they lost, it was subtracted. Within two years, WSE had 2,000 customers. In one 15-month period it collected $5.3 million in funds wired from the United States. Its profits came from taking a 10 percent commission on each bet.[2]

WSE was exporting a service. Its actions would have been unlawful for a U.S. company. Sports betting is illegal in every state but Nevada. However, like other gaming sites in Antigua, WSE operated with a sense of legitimacy. It was licensed by the government and open about its operations. "People are more comfortable with us than with the illegal bookmakers," Cohen said, "They know that when they win, we pay."[3]

Meanwhile, opponents of gambling in the United States were angered by what they saw as brazen flaunting of the law. They thought that online gambling sites, flourishing where the trade winds blew, would seduce teenagers, ruin compulsive gamblers, and undermine American morality. Major sports leagues refused WSE and other offshore operators permission to use team names or use links to official league Web sites.

Soon the FBI started a sting operation. As part of it, agents placed bets through WSE. In 1998 federal

[2] *United States v. Jay Cohen,* 260 F.3d. 68, at 70.

[3] Quoted in Brett Pulley, "With Technology Bookies Skirt U.S. Law," p. A1.

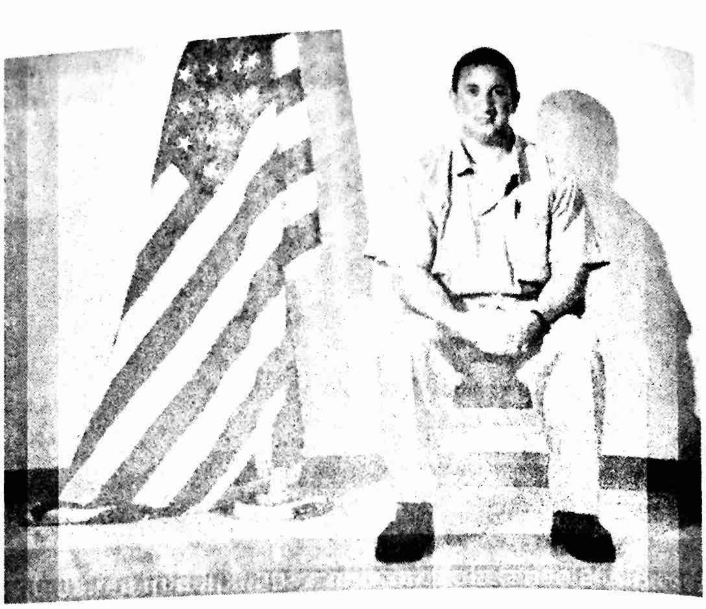
prosecutors charged 14 offshore gambling site operators with illegal use of interstate phone lines to place bets. Jay Cohen was one of them and he was shocked. "We're licensed to do what we do here by a sovereign government," he told one reporter.[4]

Cohen volunteered to return to the United States, convinced that its laws did not apply to his business in Antigua. He thought common sense was on his side. He was so wrong. Federal officers arrested him on his arrival, charging him with one count of conspiracy to violate the Wire Wager Act of 1961 (the Wire Act) and seven counts of specific violations. The Wire Act reads, in part:

> Whoever being engaged in the business of betting knowingly uses a wire communication facility for the transmissions in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.[5]

Maintaining his innocence, Cohen refused to plead guilty or plea-bargain. He went to trial at the federal courthouse in Manhattan where anyone could have walked from the courtroom and bought a New York State Lottery ticket at a nearby store. At trial, Cohen claimed that his business was a foreign corporation engaged in legal activities that took place entirely in Antigua. He argued, somewhat cleverly, that customer calls and Internet messages from the United States were not bets, only instructions to place bets. All betting was done from Antigua. Based on the advice of an attorney he consulted, he believed he had acted in good faith, without criminal intent. Finally, he claimed that the Wire Act did not apply to the Internet, which did not exist in 1961 when it was passed.

Prosecutors argued that Cohen was violating the plain provisions of the Wire Act. His license to operate in Antigua was no defense, because the statute made bets over phone lines illegal unless gambling was legal in both their place of origin and their place of destination. Although he may have believed he was acting in good faith, ignorance of the law is no excuse. They also charged Cohen with aiding and abetting violations of the Wire Act because, even after his arrest, he never tried to stop his company's American operations and continued to receive a salary.



Jay Cohen in a 2003 photograph taken at Nellis Federal Prison Camp in Nevada. Source: Photo Courtesy of *Las Vegas Sun*.

Cohen's arguments failed to persuade a federal jury, which convicted him on every count. In 2002 he was sentenced to 21 months in prison and went to a federal prison camp in the desert near Las Vegas.[6] Subsequent appeals were rejected.[7] He served 17 months and was released in 2004.

Cohen's partners still operate WSE. Although they live in the shadow of a criminal indictment they cannot be arrested on foreign soil, and Antigua refuses to allow their extradition to the United States. Enjoying the clement weather and graceful beaches of their tropical headquarters, these fugitives operate the business "to promote responsible gaming."[8] The business has done well, with profits rising to millions of dollars a year.

[4] Quoted in Benjamin Weiser, "14 Facing Charges in First U.S. Action on Internet Betting," *The New York Times*, March 5, 1998, p. A1.

[5] 18 U.S.C. §1084.

[6] Paul Blustein, "Against All Odds," *The Washington Post*, August 4, 2006, p. D1.

[7] See *United States v. Jay Cohen*, 260 F.3d 68 (2001) and *Jay Cohen v. United States* 122 S.Ct. 2587 (2002), and *Jay Cohen v. United States*, 128 Fed. Appx. 825 (2005).

[8] World Sports Exchange, "Social Responsibility Commitment," at www.wsex.com/, 2011.

GAMBLING IN AMERICA

Gambling has a long national history. It has moved through cycles of popularity and rejection. Today strong forces in favor and opposed are locked in battle.

In the colonial years the English settlers considered gambling harmless. The English Crown permitted lotteries to raise money for companies. In fact, the Virginia Company of London financed its Jamestown colony with a lottery. Later, the Colonists used lotteries to finance public works such as streets and harbors. Even churches, which would grow hostile to games of chance, were built with lottery funds. So were buildings at Harvard and Yale.

Gradually, however, taxation replaced lotteries as a source of public funding. By the 1860s only Delaware, Missouri, and Kentucky held state-authorized lotteries. Once gambling lost its civic justification, it was easy prey for moralists. State laws prohibiting various forms of gambling accumulated.

Gambling revived in the twentieth century and states began to reauthorize it in limited forms. A popular illegal game in the 1930s, the Irish sweepstakes, gave it new legitimacy. Ireland sold tickets that were smuggled into the United States. The proceeds were presumably used to finance hospitals in Ireland. Through the century gambling grew in popularity. Today only Hawaii and Utah prohibit it entirely. Other states' laws are inconsistent and vary widely. Playing online poker in Washington is a class C felony, putting it in the same category as rape.[9] But in Alabama or Massachusetts it is only a misdemeanor. Irrespective of this mix of rules, the country is awash in wagering. Many states that prohibit other kinds of gambling run state lotteries. And with the Internet, Americans gamble around the world from the comfort of their homes, though illegally.

Internet gambling attracts special ire from anti-gambling forces—including law enforcement organizations, church groups, conservative family groups, and sports leagues. They argue it is powerfully addictive and leads to bankruptcies, destruction of families, criminal activity, and a culture of betting that corrupts athletes. Especially alarming is the attraction of Internet gambling for young people, particularly adolescent males, who grew up on video games and are enticed by animated gaming sites. Without the maturity to predict the consequences, they are lured into a destructive habit.

[9] Michael Hiltzik, "Calling America's Bluff on Online Gambling," *Los Angeles Times*, October 19, 2009, p. B2.

ENTER THE WORLD TRADE ORGANIZATION

Jay Cohen believed that when the United States imprisoned him it might have violated international trade rules. He requested that Antigua challenge its actions in the World Trade Organization (WTO) and it did so. Thus, a speck of a nation took on the world's dominant superpower.

An important function of the WTO is to adjudicate trade disputes. These disputes are handled under an elaborate system of steps, procedures, and timetables, as shown in Exhibit 1. The first step is the consultation stage, in which members are given 60 days to resolve their dispute through discussions. If the parties cannot agree, an impartial panel of experts is formed to adjudicate the dispute. Panels are composed of three members chosen from lists of eligible participants agreed upon by all parties. Each is knowledgeable in the subject of the dispute. Panel members act independently of any government. Countries involved in a dispute can appeal a panel decision to a seven-member standing appellate body. Its members are appointed by the WTO for four-year terms. They cannot be government officials and must be broadly representative of WTO membership.

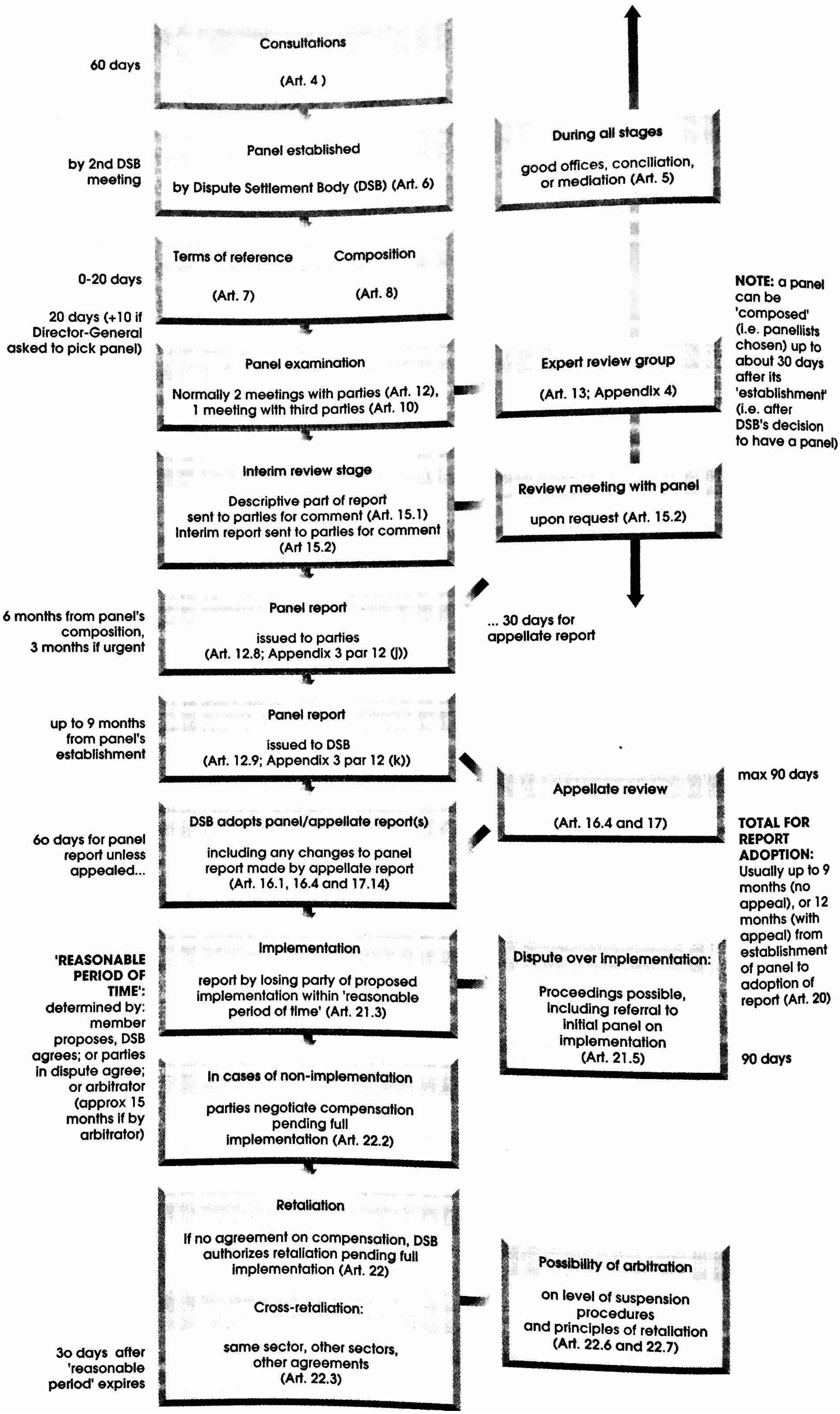
THE ANTIGUA COMPLAINT

In 2003 Antigua, which like the United States is a member of the WTO, started the dispute process by requesting a dispute settlement panel. Efforts by the two nations to settle their differences through consultations followed, but no agreement was reached and a panel convened to settle the dispute.

Antigua rejected the U.S. position that provision of gambling and betting services in the American domestic market by foreign companies was illegal. It argued that actions by the U.S. authorities to prevent or discourage cross-border gambling, including the imprisonment of Jay Cohen, violated U.S. obligations under a 1995 trade agreement known as the General Agreement on Trade in Services (GATS). Under this agreement, the United States had promised to open its borders to trade in a wide range of services, including online gambling.

EXHIBIT 1
The WTO Dispute Settlement Process

Source: Reprinted with permission of WTO Publications.



The GATS is one achievement of the Uruguay round of trade negotiations conducted under the auspices of the General Agreement on Tariffs and Trade (GATT), an international framework for trade that predated the WTO. Previous rounds had focused on tariffs and trade in goods. Services were mainly domestic businesses. But by the mid-1990s advances in communications and transport meant that companies in one nation could supply services in another, even at great distances. Trade in services was growing and the GATS was negotiated to lower barriers.

During the GATS negotiations, each country created a schedule of commitments for opening various trade sectors. Once it obligated itself to exchange services in these sectors, it had to treat imported services "no less favorably" than domestic services.

During the GATS negotiations the United States and other countries worked from a common document that classified services in detailed categories. One of these categories was "sporting and other recreational services," which was subdivided into "sporting services" and "other recreational services." The latter included its own subcategories, one of which was "gambling and betting services."

As the GATS was hammered out, U.S. negotiators excluded "sporting services" from its schedule of commitments, but not "other recreational services." This may have been a careless mistake. But it meant the United States was formally obligated to accept imports of gambling services.

All WTO member nations are signatories to the GATS. So, like the others, the United States is required to meet GATS' commitments. Because it had formally agreed to exchange "gambling and betting services," Antigua believed it had violated the rules by imprisoning Jay Cohen. Not only did the United States try to obstruct those services, but in doing so it also failed to treat them "no less favorably" than domestic gambling services. This was because the United States allowed gambling in casinos, bingo parlors, card clubs, racetracks, and state lotteries. Horse racing bets were legally placed through U.S.-based Internet sites using the same telephone lines as Jay Cohen's company.

THE U.S. RESPONSE

The United States thought it had a strong defense on both legal and moral grounds. It claimed that Antiguan online operators plainly violated its domestic laws, notably the Wire Act. Some state laws also prohibit illegal betting by wire, and two states, Utah and Hawaii, prohibit all gambling. These laws had been in existence for decades. The United States also alleged a sovereign right to ban goods and services that harmed its social fabric.

Unfortunately, argued the United States, when the GATS treaty was drafted in 1995, it failed to clarify that its market access provisions did not extend to "gambling and betting services." It had never meant to open its market to cross-border gambling and it should not now be forced to do so. Its government was obligated to protect public morals, including the protection of minors and other vulnerable groups. It cited evidence that Internet gambling was rapidly increasing in the United States, creating growing numbers of teenage gambling addicts.

PANEL DECISION

In late 2004 the WTO panel released its report.[10] The ruling favored Antigua. The panel held that application of U.S. gambling laws to offshore Internet gambling businesses was contrary to its GATS obligations, ruling that, whatever its current intentions, at the time the schedule of commitments was negotiated, the United States had clearly failed to exclude gambling services. U.S. laws that criminalized gambling were, therefore, a "disguised restriction on trade" constituting an "arbitrary and unjustifiable discrimination."[11] The United States denied offshore gambling operators the same freedom as domestic enterprises. The decision affirmed that the Antiguan businesses were lawful and entitled to enter the U.S. gambling market. Finally, the panel agreed that the restrictive gambling laws in question were designed to protect public morals, but ruled that the United States had failed to make a sufficient case that they indeed did so.

The United States quickly rebuffed the panel. A statement issued by the U. S. Trade Representative had this to say:

> This panel report is deeply flawed. In 1995 the [United States] clearly intended to exclude gambling from U.S. services commitments . . . Throughout our

10 World Trade Organization, "United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services: Report of the Panel," WT/DS285R, November 10, 2004.

11 Ibid., p. 270.

history, the United States has had restrictions on gambling . . . [I]t defies common sense that the United States would make a commitment to let international gambling operate within our borders.[12]

APPEAL

The United States appealed. In early 2005 an appellate body upheld most of the panel's decision.[13] It upheld the central finding that the United States acted inconsistently by barring cross-border online gambling while allowing domestic gambling companies to take Internet bets. It found particular significance in the Interstate Horseracing Act, which allows domestic betting services to take remote bets over the wires but prohibits foreign operators from taking the same bets. In such a situation, the moral justification raised by the United States lacked consistency and could not prevail.

However, the appellate body reversed the dispute panel's holding on the necessity of the U.S. laws for protecting public morals. It concluded that such laws could, in theory, be justified to protect the American public from immoral behavior. Nonetheless, it still agreed with the panel's finding that the United States violated terms of the GATS treaty requiring equal access for foreign operators.

NONCOMPLIANCE

WTO dispute settlement decisions are not binding. A sovereign nation cannot be forced to obey. However, if its members ignored the decisions, the multilateral trade regime, with all its mutual advantages, would crumble. The United States has generally, but not always, complied with WTO decisions. Between 1995 and 2007, for example, it encountered adverse rulings in 33 disputes. It complied with 26. It did not comply with seven.[14] The Antigua case would be one of these.

There was no further appeal. The Antiguan David had prevailed over the United States Goliath. The appellate body gave the United States one year to comply with its holding before considering sanctions. Compliance required either of two actions. It could change its laws to permit cross-border online betting with foreign gambling services, bringing it in line with its GATS commitment. Or it could change its laws to ban all domestic online gambling, including online horse races, allowing it credibly to assert a moral corruption defense and close its market.

Domestic politics precluded both. A bill to legalize Internet betting would be blocked by a powerful anti-gambling coalition. A bill to outlaw any existing form of gambling would be frustrated by entrenched pro-gambling interests. Instead, Congress took a third path, passing the Unlawful Internet Gambling Enforcement Act of 2006, a law to stop most, but not all, online gambling.

The statute made it illegal to place, receive, or transmit a bet over the Internet if the bet violated any law in the state where it was initiated. Existing Internet gambling, such as betting on horse races, could continue. The law blocked the flow of gambling payments. It prohibited an online gambling business from taking payments from bettors using credit cards, electronic fund transfers, checks, or other means of financial transactions. Banks were responsible for enforcement. If they assisted such transactions or received funds from gambling, they could be prosecuted.

By enacting this law Congress defied the WTO. The United States then took a second action, making an end run around the ruling. It declared it was withdrawing the commitment to gambling services in its GATS schedule. In other words, it would rectify its earlier oversight by removing its obligation, allowing it to close its gambling market to foreign providers. This withdrawal was allowed under GATS. However, it would be very expensive.

When a withdrawn commitment causes lost revenues in other countries, they can request compensation. Antigua requested compensation of $3.4 billion a year, a figure based on its estimated losses from denial of access to the entire U.S. gambling services market. The United States disagreed with this sum and requested a WTO arbitration proceeding.

RETALIATION

Arbitration went forth. In it, the arbitrator calculated Antigua's losses as only those resulting from lack of access to U.S. betting on horse races. The arbitrator

[12] Office of the United States Trade Representative, "Statement from USTR Spokesman Richard Mills Regarding the WTO Gambling Dispute with Antigua and Barbuda," press release, November 10, 2004.

[13] World Trade Organization, "United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services: Report of the Appellate Body," WT/DS285R/AB/R, AB-2005-1, April 7, 2005.

[14] Bruce Wilson, "Compliance by WTO Members with Adverse WTO Dispute Settlement Rulings: The Record to Date," *Journal of International Economic Law* 10 (2007), p. 397.

awarded it the right to retaliate by suspending its trade obligations with the United States in order to recover $21 million annually. Antigua was authorized to impose this $21 million penalty using trade preferences—tariffs or other barriers—that would ordinarily violate the most-favored-nation principle in WTO rules.

Retaliation has a place in the international trading system. It redresses an unfairly distorted trade relationship between a violator nation and its injured trade partner. It pays reparation to the harmed nation. And it encourages the violator to comply.[15] Ordinarily a country is awarded the right to retaliate in kind. That is, if the unfair trade practice is denial of services it is permitted to deny a like amount of services imported from the violating country.

At the time, Antigua imported about $102 million of services from the United States, mainly in transportation, insurance, travel, and telecommunications. In theory it could retaliate by suspending access or raising barriers in these areas. Yet that would be impractical. For example, it considered suspending telecommunications services from the United States, but calculated they were only worth about $5 million a year and doing so would subject Antiguans to much inconvenience.[16]

When a very small country imports relatively small dollar amounts of goods or services from a much larger one, the WTO sometimes allows a form of retaliation known as cross-retaliation, that is, it authorizes the injured nation to suspend its trade obligations in a different trade category from where the grievance arose. This is rare; it has happened only eight times in WTO disputes. However, the arbitrator thought it was justified and authorized Antigua to retaliate by suspending its obligation to protect U.S. intellectual property rights on copyrighted material up to the $21 million annual sum. This meant that companies in Antigua could request a license to copy and sell $21 million of U.S. music, films, and software each year without paying royalties or abiding by copyright protections.

For WTO members, intellectual property rights in trade are protected by the Agreement on Trade-Related Aspects of Intellectual Property (known as TRIPS), a companion agreement to the GATS that also was negotiated during the Uruguay round and went into effect in 1995. The arbitrator authorized Antigua to suspend its obligations under TRIPS. This was a highly unusual retaliation method. It had been used only once before under WTO rules when Ecuador was allowed to cross-retaliate against the European Union (EU) by suspending its TRIPS obligations and copying up to $201 million of sound recordings from EU countries.

Following Antigua's arbitration success, the European Union also requested compensation. Late in 2007 an agreement was negotiated. In it, EU nations were given new entries to service sectors in the U.S. economy including liquid natural gas storage, warehousing, and postal and courier services. No dollar figure was mentioned, but with this dramatic expansion of access the value of these concessions was "potentially massive."[17]

NO ENDING

Antigua has yet to exercise retaliation. It remains in confidential negotiations with the United States. In 2010 a Caribbean newspaper reported the United States had "apparently" offered Antigua $10 million a year if it agreed to shut down its online gaming businesses. A leader of the opposition party in Antigua urged rejection of the offer saying, "we must stand our ground . . . the U.S. government should not be allowed . . . to continue their casinos, horse and dog racing, [and] gambling sector while seeking to destroy our gaming sector."[18]

In the United States, the Motion Picture Association of America and the Recording Industry Association of America have pressed for a settlement before Antigua retaliates. They fear that if Antigua allows films and DVDs to be uploaded to the Internet, the economic harm would be far greater than the $21 million sanction. They also oppose setting a

[15] Gabriel L. Slater, "The Suspension of Intellectual Property Obligations Under Trips: A Proposal for Retaliating Against Technology-Exporting Countries in the World Trade Organization," *Georgetown Law Journal* 97 (2009), p. 1370–71.

[16] Ibid., note 35.

[17] Kevin F. King, "Geolocation and Federalism on the Internet: Cutting Internet Gambling 's Gordian Knot," *Columbia Science and Technology Law Review* 11 (2010), p. 56.

[18] "Deputy Opposition Leader Says that Antigua-Barbuda Should Not Bow to U.S. Pressure," *Caribbean News Now!*, November 16, 2010.

precedent for legalized "piracy" through a legitimate institution such as the WTO.[19]

A NEW DIRECTION?

The online gambling market is growing. In 2009 it generated global revenue of $26 billion.[20] According to some estimates at least half this revenue results from U.S. bettors gambling online illegally with offshore operators.[21] Internet gambling is still a small part, only 13 percent, of the $335 billion worldwide legal gambling market. However, it is growing rapidly and, as in other industries, it has the potential to be hugely disruptive. Already it is reducing revenues in horse racing because other sports events are opened for bets online. Operators of legal casinos and card clubs fear that gamblers may increasingly elect to stay home rather than visit brick-and-mortar establishments.

Technology now puts bookmaking in every living room and in every device with Internet access. At some point efforts to restrain consumers may be futile. In 2010 Rep. Barney Frank (D-Massachusetts) held hearings on a bill, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act, that would legalize Internet gambling. It would require online operators in any country to obtain a federal license before accepting wagers from Americans. Federal and state tax revenues would increase as these operators reported customers' winnings to the government.

Advocates of the legislation argue that the existing situation of a broad ban is unworkable. It only pushes online gaming underground, turning otherwise law-abiding citizens into criminals and subjecting them to risks of criminal activity and fraud. With government licensing, online gaming sites would need to meet regulatory standards. In addition, a basic American value is the right of personal freedom. If millions of people want to gamble in the privacy of their homes, the government should not prevent them. Minors are an exception and licensed operators would have to use safeguards on their sites to restrict underage use.[22]

The bill's opponents disagree. Conservatives such as Rep. Spencer Bachus (D-Alabama), opine that creating a new "Federal right to gamble" will "open casinos in every home, dorm room, library, iPod, BlackBerry, iPad, and computer in America, many of which belong to minors."[23] Filtering technology is so flawed that young people will easily bypass it. And they are not the only ones who should, but will not, be blocked.

> It is also persons who are alcoholics, sitting at home alone, drinking, gambling, and the person on the other end operating the Internet casino can't tell if that person is too drunk or not. A land-based casino operator can look at a person and say, gee, you are in too deep. It is time to stop . . .
>
> Likewise, the person operating the Internet casino cannot tell if that person who is gambling on the other end is a drug user and has gotten high and is gambling away his fortune; if that person is mentally ill or not; if that person is developmentally disabled. How do we stop the developmentally disabled from losing their money, which is often government support money, through gambling?[24]

States rights advocates fear "the extreme step of refuting and jettisoning our national history and tradition of letting local and state governments decide what vices will be prohibited or permitted."[25] A conservative group, Concerned Women for America, sees the bill as "a policy that would inflict major social damages on American families."[26] And some law enforcement officials believe that expanded gambling will encourage more criminal behavior, including the use of gaming sites for money laundering.

[19] Gabriel L. Slater, "The Suspension of Intellectual Property Obligations Under TRIPS: A Proposal for Retaliating Against Technology-Exporting Countries in the World Trade Organization," *Georgetown Law Journal*, June 2009, pp. 1371–72.

[20] "Shuffle Up and Deal," *The Economist*, July 10, 2010, special report, p. 4.

[21] "U.S. Defers Bank Rules on Internet Gambling," *The Wall Street Journal*, November 28–29, 2009, p. A2.

[22] See, for example, "Statement of Annie Duke, Professional Poker Player, on Behalf of the Poker Players Alliance," in *H.R. 2267, the Internet Gambling Regulation, Consumer Protection, and Enforcement Act*, hearing, Committee on Financial Services, U.S. House of Representatives, 111th Cong., 2nd Sess., July 21, 2010, p. 6.

[23] Rep. Spencer Bachus, in ibid., p. 1.

[24] Michael K. Fagan, in ibid., p. 29.

[25] Ibid., p. 8.

[26] Ibid., p. 67.

Should the bill languish, the United States will abide, as before, with an inconsistent policy of privileges and prohibitions based on a patchwork of state laws predating Internet technology. This policy is increasingly out of step with public behavior. It is also awkward to maintain it under global trade rules.

Questions

1. Was Jay Cohen's conviction justified?
2. Do you concur with the dispute settlement decisions in the World Trade Organization in this case? The panel report? The appellate decision? The arbitration ruling?
3. Should Antigua and Barbuda have the right to retaliate against the United States by exporting copyrighted entertainment material? Is that a bad precedent?
4. Should the United States have abrogated its commitment to gambling services under the General Agreement on Trade in Services (GATS)? Did it have better alternatives?
5. How can the dispute between the United States and Antigua and Barbuda be resolved now?
6. Do you support the proposed Internet Gambling Regulation, Consumer Protection, and Enforcement Act? Why or why not?
7. Are current state and federal laws on gambling optimal? Should the nation move in the direction of stricter prohibition? Or should it move to more permissive laws, including those to legalize online gambling?