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The Online Gambling Conflict: Antigua & Barbuda vs. The United States

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In December 2007, the WTO awarded Antigua the right to suspend obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) at a value of \$21 million. This decision represents the WTO's authority to address the concerns of developing countries while balancing the legitimate interests of developed nations. However, while Antigua has yet to carry out the suspension against the United States, the world waits to see what the implications of carrying out this remedy will be.

Introduction

Now one of the fastest growing industries, legal gambling already attracts more customers than baseball games or the movies.¹ 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 important thing.² All 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.³ Studies have indicated that approximately 5 percent of the population experience problems with gambling.⁴

There are both positive and negative effects of Internet gambling. For some persons, at-home gambling avoids the discomfort of wagering procedures at places such as blackjack tables with many eyes, especially those of the dealer, focused on your movements.⁵ However, these advantages of gambling by means of a computer can also be regarded as negatives. Gambling in your own home can be a lonesome enterprise, in comparison to the travel and glitz of the casino world and the multitude of other customers at the betting venues that provide assurance that one is participating in an exciting and respectable enterprise.⁶ These assets and debits of Internet gambling vis-à-vis brick-and-mortar gambling sites cannot readily be assayed in order to establish 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 labour force. Outsourcing makes sense in a capitalist economy.⁷ With 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.⁸ 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.

In 2003, the small country of Antigua and Barbuda (Antigua) staked its claim in the only World Trade Organization case instituted by a Caribbean nation, a case called "United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services."⁹ The laws regarding the legality of online gambling were so unclear in the United States that the online casinos moved offshore to welcoming destinations such as Antigua.¹⁰ The small country filed its claim with the WTO because it felt that U.S. laws threatened free flow of online gambling services to the United States.¹¹

Antigua accused the United States of violating international trade agreements, in an attempt to force the United States to comply with international law and to bind it to its previous international agreements, namely the General Agreement on Trade in Services (GATS) commitment to free trade in recreational services.¹² The United States violated this agreement in its efforts to prosecute foreign-based/offshore suppliers of online gambling services. As a result, the WTO empowered Antigua to suspend intellectual property rights held by U.S. firms.¹³

Formation of GATS

The idea of the WTO as an organization to deal with matters of international trade was fostered at the Bretton Woods, New Hampshire meeting of the Allied leaders during World War II, which ultimately led to the General Agreement on Tariffs and Trade (GATT), which from 1947 until 1974 was the primary agency addressing cross-border trade issues.¹⁴ It subsequently became evident that an updated treaty was required to cure the birth defects of GATT.¹⁵ The result was the World Trade Organization, which became operational in 1995.¹⁶ The WTO then put in place a General Agreement on Trade in Services 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.¹⁷ 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.¹⁸ The treaty covers 26,000 pages, and was ratified at Marrakesh, Morocco on 15 April 1994.¹⁹ Today, the WTO has a membership of 148 countries which, taken together, are responsible for 95 percent of the world's trade.²⁰ 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.²¹ Public order was defined as "the preservation of the fundamental interests of a society, as reflected in public policy and law."²² 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."²³ Other exceptions besides public morals and public order include the protection of human, animal or plant life or health, and the protection of exhaustible natural resources.²⁴ 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.²⁵

Personal Interest

I chose to explore, research and write on this issue because I was born and raised on the Caribbean island of Jamaica. Being from an island, I am always intrigued and fascinated by issues affecting other Caribbean islands. In many instances of conflict between the United States and Caribbean islands, it seems as if the United States has more bargaining power because of its size and wealth. Most recently, the United States extradited Christopher “Dudus” Coke from Jamaica after he was accused of racketeering and drug trafficking. After facing mounting pressure from the United States, visas of top officials being canceled, and a fear of bloodshed, Jamaica turned over the drug kingpin to the United States. Since this extradition and observing the United States exert its power and possible threats against smaller entities, I have always kept an eye on US-Caribbean interactions. This conflict between Antigua and the United States is also of keen interest, because it appears that for the first time, a smaller island has been given authority to act against the United States.

Background

Antigua and Barbuda are tropical Caribbean islands covering 443 square miles.²⁶ The two islands are organized as a single political entity and have a population of 89,018 people. The gross domestic product (GDP), adjusted for purchasing power parity (PPP), is \$1.535 billion, giving it a high GDP per capita by Caribbean standards (CIA 2012). Tourism continues to dominate Antigua and Barbuda’s economy, accounting for nearly 60 percent of GDP and 40 percent of investment (CIA 2012). The online gambling industry was once the second-largest employer in Antigua after tourism; in 2001 there were 93 licensed gambling organizations in Antigua, employing 1900 persons.²⁷ Antigua’s annual online gambling revenue peaked at \$90 million in 1999.²⁸ There are conflicting estimates of how much of this revenue came from gamblers in the United States, but Bear Stearns estimated that 60 percent of worldwide online gambling revenues came from U.S. customers in 2003.²⁹ Continuing to operate as a base for numerous online gaming companies, Antigua started to make serious revenue from their activities, and by the year 2000 this amounted to \$1.716 billion.³⁰ In early 2000, the United States started to clamp down heavily on Internet gambling; this had a profound impact on Antigua’s revenue and employment figures.³¹ From a maximum revenue of \$2.392 billion and 59 percent of global online gambling in 2001 while employing 3,000 people, the Antiguan online gambling industry shrank to an estimated \$948 million in 2007 and a miserly 7 percent of global online gambling, with just 333 people employed.³² In 2001, the unemployment rate of Antigua was roughly 8 percent.³³ The economy is primarily service-based. Tourism,

financial services and government services are now Antigua and Barbuda's major employers.³⁴ Tourism now accounts for more than half of the nation's GDP.³⁵ Most of the workers who lost employment in the gambling industry have transitioned to other service sectors.³⁶ However, with an unemployment rate of 12 percent as of 2012, there is still room for improvement.³⁷

U.S. policy makers have several concerns about online gambling. Some object to gambling in general, based on the need to protect the public from addictive behaviours that create negative externalities (such as bankruptcy).³⁸ These objections are heightened with respect to online gambling, which is believed to be dangerously available to children, as users often can place bets with only a credit card number.³⁹ There are also concerns specific to offshore online gambling, including the prospect of criminal organizations and terrorists using gambling web sites to launder money.⁴⁰ Many countries, including the United States, have laws to control or prohibit online gambling.⁴¹ However, the borderlessness and anonymity of online gambling make it inherently difficult to regulate. For example, Internet gambling sites can prevent banks from recognizing transactions as gambling by disguising credit card transactions or using online payment providers as intermediaries.⁴² Most online gambling companies are based in small countries (Antigua, Costa Rica, Malta, the Isle of Man, etc.) with limited ability or inclination to supervise the industry.⁴³

In recent years, online gambling in the form of sports betting, as well as traditional games of chance such as poker and black-jack, has increased exponentially.⁴⁴ With the availability of high-speed Internet connections in the homes of millions of Americans, it has become increasingly simple to recreate the casino experience in the comfort of one's own home.⁴⁵ As Internet gambling has become increasingly popular, the federal government has stepped up its efforts to curb the activity. Citing an adverse effect on the American population, and deeming the existing legislation inadequate, Congress passed the Unlawful Internet Gambling Act (UIGEA), which President George W. Bush signed into law on October 13, 2006.⁴⁶ The UIGEA is meant to prohibit the acceptance of payments relating to online gambling that are illegal under either federal or state laws.⁴⁷

Chronology of the Dispute

The United States started cracking down on foreign-based Internet betting parlours in 1998, when federal prosecutors charged 21 U.S. citizens connected to offshore Internet gambling with violations of the Wire Act of 1961.⁴⁸ Among them was Jay Cohen, an American citizen and former stock trader who had been operating the Antigua-based World Sports Exchange (which had 10,000 customers that year).⁴⁹

Twenty of the indicted persons either entered guilty pleas, had their cases dropped or remained outside of the United States as fugitives, but Cohen returned to the United States to contest his case in court.⁵⁰ He lost in 2000 and was sentenced to 21 months in prison and fined \$5,000, becoming the first person to be convicted in the United States for operating an offshore Internet gambling website.⁵¹

Cohen's case was brought to the attention of Mark Mendel, an attorney based in El Paso, Texas.⁵² After researching WTO⁵³ documents, Mendel came to believe that the United States had violated the General Agreement on Trade in Services.^{54 55} He outlined his case in a memo sent to the government of Antigua, and Antigua's prime minister hired Mendel to file suit against the United States at the WTO.⁵⁶

Antigua initiated the dispute in March 2003 against the United States. The complaint alleged that the United States' federal and state laws constituted a violation of the GATS agreement to "liberalize trade in services for the gambling and betting services sector."⁵⁷ As mentioned above, the GATS came into force in January of 1995 as a result of the Uruguay Round of trade negotiations. Article I envisions trade in services through four modes of supply, including

- (1) cross-border supply, from the territory of one member into that of another; (2) consumption abroad, in which the service is supplied in the territory of one member to the consumer of another; (3) supply through commercial presence, in which the service supplier is legally established in the export market; and (4) supply through the movement of natural persons, meaning the temporary presence of individuals without legal personality to supply services in a Member's market.⁵⁸

As part of their GATS requirements, each signatory member created a schedule of commitments describing the extent to which they were willing to participate in each individual sector.⁵⁹ The treaty contains several other requirements as well. For instance, each member is required to treat international services "no less favourably" than it treats itself.⁶⁰ When defining its commitments, the United States included "Other Recreational Services" and specifically excluded "sporting" from its schedule.⁶¹ It did not, however, mention online gambling activities.⁶² While Antigua argued that "Other Recreational Services" included Internet gambling, the United States replied that no such commitment had been made on its part.⁶³

A dispute panel formed in June 2003 determined that the United States had made a commitment to free trade in online gambling services in GATS Section 10.D, "Other Recreational Services, Excluding Sporting."⁶⁴ The panel found that three U.S. federal laws, including the Wire Act, contravened this commitment (the other two were the Travel Act, 18 U.S.C. § 1952⁶⁵ and the Illegal Gambling Business Act (IGBA), 18 U.S.C. § 1955⁶⁶).⁶⁷ State laws in several U.S. states were also found to obstruct free

trade in online gambling services.⁶⁸ The panel determined that the cumulative effect of these laws was inconsistent with the United States' commitments under the GATS, and made a confidential ruling in favour of Antigua in March 2004.⁶⁹ The panel's report was released publicly in November 2004, after unsuccessful negotiations between the parties.⁷⁰

The panel also addressed the United States' inconsistency in regulating Internet gambling, while according different treatment to non-online gambling.⁷¹ It acknowledged the inherent differences between the two forms of gambling that may have justified the differences in regulation, but ultimately determined that the United States did not satisfy the "necessity" test of GATS.⁷² It held that the United States "has not been able to provisionally justify, under Article XIV(a) of the GATS, that the Wire Act, the Travel Act, and the Illegal Gambling Act are necessary to protect public morals and/or public order within the meaning of Article XIV(a)."⁷³ As part of its recommendations, the panel suggested that the United States bring its various gambling legislation into conformity with its obligations under GATS.⁷⁴

In January 2005, the United States appealed the panel's ruling to the WTO's Appellate Body.⁷⁵ Antigua filed a cross-appeal shortly thereafter, and both countries made oral arguments before the Appellate Body.⁷⁶ In April 2005, the Appellate Body issued a report that upheld the panel's findings. The Appellate Body affirmed that the United States had committed to free trade in online gambling services and ruled that the three federal laws violated these commitments (although it did not refer to other state and federal laws that Antigua had sought to include).⁷⁷ It also ruled that the United States, which maintained that these trade restrictions were necessary to promote moral goals, had not met the criteria for the "moral defense" permitted by GATS Article XIV⁷⁸ under certain conditions. For example, this defense is invoked in certain countries with large Muslim populations to restrict trade in alcoholic beverages.⁷⁹ This is where the "morality clause" enters the scene. The WTO offers an escape clause for trade restrictions necessary to protect public morals or public order.⁸⁰ Citing concerns of money laundering, organized crime and unrestricted access for minors to Internet gambling, the United States explained that it is exactly for those reasons that it bans online wagering both domestically and from overseas.⁸¹ Nevertheless, the panel stopped short of excusing the U.S. ban, for two reasons. First, although the ban is related to public morals, the United States should have negotiated with Antigua to see whether less-trade restrictive alternatives (other than an outright ban) are available.⁸² On that ground, the panel did not find that the ban was truly necessary to protect public morals as required under the escape clause. Second, the panel found that U.S. enforcement efforts are skewed in favour of U.S.-based/in-state

suppliers of online gambling services.⁸³ Because the United States seemed to prosecute foreigners more frequently than U.S.-based suppliers, the panel was not convinced that the ban was applied in a non-discriminatory manner.⁸⁴ In sum, for the WTO panel, the U.S. ban on Internet gambling is a trade restriction and cannot be excused on grounds of public order or morality.⁸⁵ The Appellate Body found that the federal laws are helpful to protect public morals or maintain public order, but the United States had not met the main condition that regulations not discriminate between countries, noting that some U.S. companies are allowed to offer Internet gambling services by accepting online wagers for horseracing.⁸⁶

A WTO arbitrator⁸⁷ determined that a deadline of April 2006 would give the United States enough time to change its laws to comply with its commitments.⁸⁸ Despite this ruling, the United States government continued to maintain that its anti-Internet gambling legislation did not violate Article XIV of the GATS. The U.S. government insisted that the existence of the Wire Act, the Travel Act and the Illegal Gambling Business Act did not constitute an inconsistent stand on gambling.⁸⁹ The United States did not alter the laws in question by that deadline, but did issue a status report several days after the expiration of its deadline for compliance, stating that its current laws prohibit the interstate transmission of bets and wagers, and it was investigating possible violations of these laws by U.S. companies; and that it was in compliance with the WTO's rulings (i.e., it was able to successfully meet the chapeau condition of a moral defense).⁹⁰ Antigua held that the United States was not observing the Appellate Body's ruling and requested the establishment of a compliance panel.⁹¹ In March 2007 the compliance panel ruled in favour of Antigua.⁹²

In May 2007, rather than appealing the WTO ruling, the United States announced its intentions to withdraw from its Internet gambling commitments under the GATS.⁹³ The United States invoked procedures under GATS Article XXI to modify its schedules of commitments, specifically excluding online gambling from its recreational service commitments.⁹⁴ This was the first time a WTO member had withdrawn a commitment in response to a WTO ruling.⁹⁵ Pursuant to Article XXI(1) (a) and (2) (a), "a Member ... may modify or withdraw any commitment in its Schedule."⁹⁶ A modification or withdrawal warrants any party affected by such action to "enter into negotiations with a view of reaching an agreement on any necessary compensatory adjustment."⁹⁷ A condition of withdrawing from a GATS commitment is that the withdrawing country must compensate any affected WTO members, and after the United States' announcement, Australia, Canada, Costa Rica, the EU, India, Japan and Macao all filed claims for compensation, arguing that they would be negatively impacted by the modification to GATS Article XXI.⁹⁸ The United States

negotiated settlements with Australia, Canada, the EU and Japan, making commitments to maintain liberalized markets in the following U.S. industries: postal services, research and development services, technical testing services, and warehousing.⁹⁹ Negotiations with Costa Rica, India and Macao are ongoing.

In 2007, Antigua requested permission to retaliate against the United States by suspending some of its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).¹⁰⁰ TRIPS establishes protections for intellectual property rights, especially for holders of a copyright, patent, trademark or design.¹⁰¹ Signatories to the TRIPS Agreement assume obligations to create and enforce laws to protect rights holders. Domestic laws may vary among signatories, but they must comply with certain minimum standards of protection set forth in TRIPS.¹⁰²

Antigua asked for the right to suspend \$3.4 billion worth of U.S. Intellectual Property (IP) rights (which comprise copyrights, patents and trademarks) annually, arguing that this was the value of Antigua–United States online gambling services that would have taken place had the United States complied with the WTO ruling. The United States challenged Antigua’s estimate, claiming the true value would have been \$500,000.¹⁰³ The United States claimed that Antigua is not eligible for compensatory damages in light of the fact that “since no WTO member either bargained for or reasonably could have expected the United States to undertake a commitment on gambling, there would be very little, if any, basis for such claims.”¹⁰⁴

In December 2007, the WTO agreed to authorize the suspension and settled on a figure of \$21 million annually.¹⁰⁵ This means that Antigua has preliminary permission to sell movies, TV shows and films produced in the United States to the rest of the world. This figure was the counterfactual estimate of Antigua’s average 2001 – 2006 annual revenues from gambling service exports to the United States, adjusted for the impact of competing suppliers and for developments in U.S. demand.¹⁰⁶

Current Status of the Conflict: Cross-Retaliation and IP Rights

On January 28, 2013 the WTO granted the right to Antigua to sell media downloads without compensating their makers, after allowing a suspension of U.S. intellectual property rights in the Caribbean country. The ruling, made at a WTO meeting in Geneva, comes five years after the trade body gave Antigua preliminary permission for the suspension, which would allow the country to potentially sell U.S.-made music, TV shows and films to the rest of the world (up to a copyright value of \$21 million annually for five years, losses from 2001 – 2006).¹⁰⁷ As of the writing of this article, Antigua has not carried out this action. However, Antigua’s legal representative Mark Mendel has said that “we are definitely working on it and hopeful

that the United States will choose to negotiate fairly and honestly in the very near future, so that we do not ultimately have to implement the remedy.¹⁰⁸

There is very high tension between both parties and there has been a hostile exchange of words between the parties. The war of words has escalated with Antigua's Minister of Finance and Economy, Harold Lovell, blasting the U.S. trade agency for threatening retaliation in a trade dispute.¹⁰⁹ Antigua's perspective is that they are being threatened for simply following the rules and provisions provided for by the WTO – the same provisions that the United States supported almost 20 years ago.¹¹⁰ Antigua says the U.S. ban of online gambling costs the island a whopping \$3 billion a year.¹¹¹ Antigua now has final approval to retaliate against U.S. copyrights and trademarks worth \$21 million a year, far short of the \$3.4 billion the island had asked for annually.¹¹² This may have broad repercussions, however, because it allows Antigua to "cross-retaliate"¹¹³ against a different aspect of trade – creating a precedent for small countries to find ways to harm much larger trading partners.¹¹⁴ Deputy Assistant U.S. Trade Representative Nkengen Harmon has stated that "the United States will not tolerate theft of intellectual property and will take whatever steps are most efficient and effective to prevent this from happening."¹¹⁵ According to a reputable blog, prior to the WTO final approval in January, the United States made an offer of \$10 million annually, which was rejected by Antigua.¹¹⁶ Antiguan officials have made it clear that they are not willing to accept such a low figure and they are prepared to move forward with the judgment granted in the dispute.

Why Cross-Retaliation

The WTO provides three main justifications for allowing cross-retaliation as a remedy for an aggrieved party under the agreements.¹¹⁷ First, developing countries do not always import goods and services in sufficient quantities to justify suspension of obligations within the same sector as the sector in which the violation took place.¹¹⁸ In this case, Antigua may not import services within the sector to the same extent that they are claiming the United States has prohibited importation of their recreational services.¹¹⁹ As such, were Antigua to suspend obligations to the United States in the same sector, the country would probably not achieve a level of recourse equivalent to the level of harm done.¹²⁰

The second justification given by the WTO for allowing cross-retaliation is that some bilateral relationships may be asymmetrical, so that the good or service is relatively important to the complainant while remaining relatively unimportant for the violating party.¹²¹ Here again, online gambling is relatively important to the economy of Antigua.¹²² Online gambling was the second largest income-producing industry for the country behind tourism.¹²³ Antigua claims that ceasing all trade with the United

States would cost \$180 million annually and this would have no impact on the U.S. economy.¹²⁴ Additionally, U.S consumers make up a large part of the online gambling market, worth \$15.5 billion.¹²⁵ The relationship is obviously skewed such that the United States may easily absorb the blow sustained by GATS trade sanctions against it in Antigua, while Antigua suffered a major loss due to the alleged violation committed by the United States.¹²⁶ In order to put Antigua on a level playing field with more powerful countries like the United States, the idea is that the WTO must allow Antigua to suspend its obligations to the United States in a sector and agreement outside of that violated in order to inflict real sanctions on the United States in proportion to the harm done in Antigua.¹²⁷

The WTO generally grants aggrieved countries the right to suspend concessions and other obligations when partners violate their trade commitments, but these remedies are usually narrow, specific adjustments to bilateral trade, aimed at prohibiting an amount of offending-country exports equal in value to the damage caused by the offense (often through *ad valorem*¹²⁸ tariffs).¹²⁹ In Article 22.3 of its Dispute Settlement Understanding, the WTO states that suspensions should be confined to the same sector where the violation occurred if possible.¹³⁰ However, when no same-sector retaliation options would provide adequate compensation, the WTO has been willing to authorize cross-retaliation. Antigua successfully argued that raising duties on U.S. services imports would harm its economy without significantly affecting the United States.¹³¹ About 49 percent of Antigua's total goods and services imports come from the United States, but this amounts to less than 0.02 percent of total U.S. exports.¹³² Retaliation in this sector would have a detrimental effect on Antigua's economy, while merely disrupting that of the United States.

Finally, the WTO posits that it may be "economically unaffordable" for the developing country to impose trade barriers against imports under the GATS or GATT 1994 because of a significantly reduced supply of, and increase in the price of, the imports upon which Antiguan citizens rely.¹³³ Here again, the WTO allows cross-retaliation in order to level the playing field between developing and economically powerful countries.¹³⁴ While the trade sanctions against foreign countries may not have hurt the United States, if Antigua likewise were to erect trade barriers under the GATS, the economy of the small country might suffer severely.¹³⁵ The WTO allows cross-retaliation in order to offer an alternative to self-destructive trade sanctions in certain sectors for small and developing countries.¹³⁶ The idea for Antigua is that, while a restriction on services in the same sector as online gambling may not even get the attention of decision-makers in Washington, if the country is allowed to violate the United States' intellectual property rights, then Hollywood and software companies

may lobby politicians in Washington to make changes to some laws in the United States.¹³⁷

The WTO Has also Granted IP Suspensions in the Past for Others

TRIPS-based cross-retaliation had been authorized by the WTO once before.¹³⁸ In an Ecuador-EU dispute over bananas, the WTO gave Ecuador permission to suspend \$202 million annually in IP rights held by EU firms. Ecuador used this leverage to resolve the dispute in 2001, before enacting suspensions, on terms that incorporated many of its core demands.¹³⁹ Additionally, in 2005 the WTO Appellate Body ruled in favour of Brazil in a dispute with the United States over cotton, and Brazil had requested the right to suspend IP obligations in retaliation, arguing that increasing duties on U.S. goods imports would create inflation and harm industries in Brazil.¹⁴⁰ In August 2009, the World Trade Organization arbitration panel ruled that Brazil was entitled to \$295 million up front, and nearly \$150 million a year, for the U.S. failure to eliminate subsidies to the cotton industry.¹⁴¹ The WTO panel said Brazil could target other American goods for retaliation if U.S. cotton supports rise significantly beyond current levels for its 25,000 farmers.¹⁴² Brazil, which has a robust pharmaceuticals and generic-drug industry, has targeted patented U.S. drugs for potential retaliation.¹⁴³ That means the country could allow domestic drug makers to manufacture copies of U.S. pharmaceuticals that are still under patent protection.¹⁴⁴

Antigua could ignore U.S. copyrights on software, movies and music owned by U.S. companies, and sell up to \$21 million worth of these media annually in domestic markets.¹⁴⁵ Antigua could also grant compulsory licenses and produce U.S.-patented products such as pharmaceuticals.¹⁴⁶ However, while it is inexpensive to reproduce most copyrighted materials, many patented goods need to be manufactured, and Antigua's potential gains from patent suspension are limited by its lack of capacity to produce goods such as pharmaceuticals.¹⁴⁷ Getting rid of trademarks, which identify the producer of a product and inform consumers where to seek recourse if the product fails, could erode the quality and safety of consumer goods in Antigua.¹⁴⁸

It is doubtful that suspending U.S. copyrights could actually increase domestic retail sales of U.S.-copyrighted goods in Antigua by \$21 million annually, as this would require average new expenditures of \$300 per person in a country with a GDP PPP per capita of \$17,000.¹⁴⁹ Antigua might consider exporting to reach the permitted level of retaliation, but the WTO panel in the Ecuador-EU case noted that even when IP rights are suspended by one country, other WTO members are still obligated to follow TRIPS with respect to their imports.¹⁵⁰ It would be difficult to manage the suspension of IP rights to meet any specific monetary target.¹⁵¹ For many goods and

services, there is no robust method for estimating the value added purely by intellectual content, so the exact value of any act of IP suspension by Antigua could be subject to challenge.¹⁵² In different contexts, IP is valued on the cost of research and development inputs, the anticipated future revenue streams derived from ownership of the IP right, or market prices for similar IP in third-party transactions, but these numbers can be subjective and highly variable.¹⁵³ IP-producing companies measure their performance in part by how much profit and revenue they can generate from a given amount of IP.¹⁵⁴ One of the guiding principles of the WTO is that the negative effect of retaliation on countries must be equivalent to the harm caused by their non-compliance, so difficulties in quantifying the impact could make IP-based retaliation unworkable.¹⁵⁵

Current Conflict will Affect Other Agreements between Antigua and the United States

Another issue to consider is the fact that Antigua is obligated to respect U.S. IP rights under separate agreements.¹⁵⁶ The Caribbean Basin Economic Recovery (CBERA)¹⁵⁷ gives Antigua preferential access to U.S. markets, but grants the United States the right to alter the terms of the initiative unilaterally and without consequence if Antigua disregards U.S. IP rights.¹⁵⁸ In 2007 only 1.6 percent of Antigua's exports to the United States entered under CBERA preferences, but the potential loss of preferential access to U.S. markets is nevertheless a disincentive to retaliation.¹⁵⁹ The Berne Convention and the Paris Convention are other multilateral agreements that provide IP protections, and the issue of whether WTO rulings supersede those treaties is complicated.¹⁶⁰ Finally, the suspension of IP obligations may harm Antigua's reputation and discourage foreign investment if companies fear their intellectual assets will not be protected.¹⁶¹ Antigua had \$207 million in foreign direct investment inflows in 2006, which accounted for 46 percent of its gross fixed capital formation.¹⁶²

IP Suspension Is Not Always the Best Way to Retaliate

These considerations may persuade Antigua not to suspend IP rights. However, the WTO aims to give all member countries effective recourse in trade disputes, and IP suspension is one of the few methods by which small developing countries can inflict economic damage on large developed countries.¹⁶³ The WTO has faced criticism in the past for providing insufficient protections for developing countries in trade disputes in the face of asymmetric information and resources. One study of GATT/WTO disputes found that 50 percent of complaints brought by developing countries in the WTO resulted in the complainants gaining full concessions, while the figure for developed countries was 74 percent.¹⁶⁴ More powerful retaliatory measures

will not alter the fundamentals of enforcement, and suspending IP rights may be too costly or difficult for many countries, but the option of suspending IP rights can increase the leverage of developing countries in trade disputes and give IP-producing countries stronger incentives to change their policies if they are in violation of trade rules.¹⁶⁵

The WTO issued a type of remedy in the Antigua-U.S. gambling case that has widespread implications for the future of dispute settlement. Both the panel and the Appellate Body have passed down findings against the United States, and a compliance panel further found that the United States was out of compliance with the WTO rulings.¹⁶⁶ An arbitration report further found that Antigua properly followed the principles and procedures of the WTO's dispute settling bodies and may continue seeking authorization to cross-retaliate.¹⁶⁷ Thus, it would seem that some sanctions are due to the United States.

Enforcement

On the other hand, if the WTO had not allowed Antigua to suspend its obligations under the TRIPS Agreement, then Antigua may have ended up with a remedy that is more detrimental than helpful.¹⁶⁸ Further, if the United States continues to be unresponsive to the WTO rulings, then enforcement may become the biggest issue. In order for small countries to be able to negotiate terms of trade with larger countries and ensure that those terms are not broken, the WTO must force the United States to comply. However, since the WTO has granted Antigua the permission to retaliate, the outcome will lead to a violation of U.S. intellectual property rights in response to U.S. violations of the GATS agreement.¹⁶⁹ Antigua is now faced with the decision of deciding how to best act upon the WTO's decision. The best-case scenario may be that Antigua pursues settlement talks with the United States regardless of the "go ahead" from the WTO. However, if the United States remains recalcitrant, then Antigua will have to take some enforcement action, while trying not to hurt its own economy in the process.¹⁷⁰ As of the writing of this article, Antigua has not yet implemented the IP rights suspension.

In-state vs. Offshore Gambling

Some critics have argued that the WTO has ruled in an unfair way, as Antigua is allowed to steal intellectual rights from the United States. However, it is also important to consider some reasons the WTO ruled as it did. Based on my research, I found that the main reasons were (i) Three U.S. federal laws (the Wire Act, the Travel Act and the Illegal Gambling Business Act) on their face prohibit one, several or all means of delivery included under GATS, which is contrary to the United States'

specific market access commitments for gambling and betting services. Therefore, the United States failed to accord services and service suppliers of Antigua treatment as favourable as that mandated under the terms of GATS;¹⁷¹ and (ii) The WTO wanted to take a significant step towards the availability of fair retaliation by developing countries and a significant step away from the view of the WTO as a court that favours powerful, developed countries. For Antigua and similarly situated countries, suspension of obligations under the TRIPS Agreement should represent a remedy which carries heft and meaning.¹⁷²

The current gambling laws in the United States also beg for further clarification. Personally, I believe this may be another reason the WTO ruled for Antigua – in order to force the United States to clarify its current gambling laws. The U.S. Court of Appeals for the Fifth Circuit ruled, in November 2002, that the federal Wire Act prohibits electronic transmission of information for sports betting across telecommunications lines, but affirmed a lower court ruling that the Wire Act “in plain language” does not prohibit Internet gambling on a game of chance.¹⁷³ However, at that time, the federal Department of Justice publicly took the position that the Wire Act covers all forms of gambling. Several states within the United States have also enacted their own laws that are applicable to each territory.¹⁷⁴ For example, on November 22, 2010, the New Jersey State Senate became the third such U.S. body to pass a bill (S490) expressly legalizing certain forms of online gambling.¹⁷⁵ The bill was passed with a 29-5 majority. The bill allows bets to be taken by in-state companies on poker games, casino games and slots but excludes sports betting, although it allows for the latter to be proposed. However, a Fairleigh Dickinson University (FDU) *Public Mind* poll in April 2009 showed only 26 percent of New Jersey voters approved of online sports betting.¹⁷⁶ On a national level, two-thirds (67 percent) of voters polled in March 2010 opposed changing the law to allow online betting. Men were more likely than women (29 percent as compared to 14 percent) and liberals more likely than conservatives (27 percent as compared to 18 percent) to approve of changing the law to allow online betting.¹⁷⁷ In May 2012, FDU’s *Public Mind* conducted a follow-up study which asked voters if they favoured or opposed online gaming/gambling and “allowing New Jersey casinos to run betting games online, over the Internet.”¹⁷⁸ The results showed that just under a third (31 percent) of voters favoured the idea, while a sizable majority (58 percent) opposed it. Peter Woolley, director of *Public Mind* commented on the results: “Online gambling may be a good bet for new state revenue, but lots of voters don’t think it’s a good bet for New Jersey households.”¹⁷⁹

On April 15, 2011, in U.S. v. Scheinberg et al. (10 Cr. 336), three online poker companies were indicted for violating U.S. laws that prohibit the acceptance of any financial instrument in connection with unlawful Internet gambling, that is, Internet gambling that involves a “bet or wager” that is illegal under the laws of the state where the bet is made.¹⁸⁰ The indictment alleges that the companies used fraudulent methods to evade this law, for example, by disguising online gambling payments as purchases of merchandise and by investing money in a local bank in return for the bank’s willingness to process online poker transactions.¹⁸¹ The companies argue that poker is a game of skill rather than a game of chance, and therefore, online poker is not unlawful Internet gambling.¹⁸² There are other legal problems with the government’s case; and, interestingly, the indictments did not mention the Wire Act. On July 31, 2012, it was announced that two of the three companies indicted for money laundering and forfeiture settled with the Manhattan U.S. Attorney for \$731 million without legally admitting guilt.¹⁸³ In all fairness, it is undeniable that the United States must clarify its final stance on online gambling between its own states and the international community.¹⁸⁴

The fact that online gambling is legal in some states, while illegal in others, opens up the flood gates for forum shopping. Legislation in the House is likely to be introduced this spring to create uniformity in online gambling laws across the states.¹⁸⁵ Senate Majority Leader Harry Reid (D-Nevada), whose long-advocated federal legislation never got introduced last year, is working behind the scenes to form a coalition to support the measure.¹⁸⁶ Barton said, “Whether you’re for or against Internet gambling, you don’t want 50 sets of state laws. You want uniformity.”¹⁸⁷

Several states have taken the steps necessary to allow online gambling within their territory. Nevada, home to the international gambling Mecca, Las Vegas, became the first U.S. state to allow interstate online poker. Delaware was the second state to allow online gambling, followed by New Jersey (as mentioned above). Ironically, the bills in these states follow a 2011 declaration by the U.S. Department of Justice (DOJ) that only online betting on sporting contests broke federal law.¹⁸⁸ In December 2011, the DOJ reversed itself on a long-held position on Internet gambling.¹⁸⁹ In ruling that the Wire Act of 1961 applies only to sports betting, the DOJ signaled that states can legally proceed with plans to implement online gaming within their borders.¹⁹⁰ The federal government’s previous position that the Wire Act’s prohibitions extended far beyond sports wagering impacted not only state lotteries, but also offshore online gambling firms offering for-money online poker to U.S. players.¹⁹¹ The DOJ now says offshore online gambling entities can be investigated and prosecuted under the Unlawful Internet Gambling Enforcement Act¹⁹² and other sections of the criminal

code.¹⁹³ The decision could open the door for states to cooperate on lottery initiatives and other gambling offerings like Internet poker and other casino games.¹⁹⁴ The race to provide uniformity among state laws in the United States leads one to ponder the question, Is the United States showing preferential treatment to in-state gambling versus offshore gambling activities? It appears that there **is** preferential treatment. There is also a double standard now created, as it is legal for states to carry out online gambling, but it is illegal for offshore online gambling firms. This is very unfair and further bolsters Antigua's claim against the United States. The United States clearly wants to reap the benefits for its own economy but does not want offshore entities to also share in this profit. One may be led to believe that a monopoly is being created among the states within the United States to further exclude offshore online gambling activities. However, on the other hand, I believe that after uniformity has been established among the United States' territories, there will be an evaluation of its policy towards offshore gambling entities.

Solutions

When disputants meet face to face with a mediator, or appear in person before an arbitrator, they can each explain their own side of the story.¹⁹⁵ Antigua and the United States have both met before WTO arbitrators and explained their stories, and now a decision has been rendered. However, developing territories like Antigua, upon winning victories from WTO arbitrators, face the problem of enforcement. The WTO's response to Antigua's travail signals the trading system's readiness to consider the significant challenges faced by developing countries that attempt to enforce judgments against developed economies.¹⁹⁶ On the other hand, more developed countries have reason to be concerned about asymmetrical remedies.¹⁹⁷ The situation epitomizes the complexity of the WTO's task: balancing the desires of national economies and the best interests of the global economy.¹⁹⁸ Voluntary compliance with WTO rules and procedures is of the utmost importance to the international trading system.¹⁹⁹ Given the increasingly globalized market, the coming years will see an increase in the importance of the WTO as a cohesive force and arbiter of disputes that likely will become more frequent and injurious.²⁰⁰ In order to promote voluntary compliance, the WTO must maintain a high level of credibility.²⁰¹ Nations must perceive the WTO as the most reasonable option for dispute resolution or fear that the WTO wields enough influence to enforce sanctions. The arbitrators charged with performing the substantive work of the WTO by negotiating, compromising and issuing judgments must be keenly aware of the responsibility they have to uphold the organization's credibility. In addition to assessing the fairness of outcomes, an

individual judges the fairness of the procedures that determine the outcomes. Research evidence indicates that fair treatment and procedures are more pervasive concerns to most people than are fair outcomes.²⁰² WTO arbitrators must ensure that the proceedings are fair at all times in order to ensure that parties will comply with the outcome.

BATNA is the acronym for “Best Alternative to a Negotiated Agreement.” From a simple standpoint, BATNA is the choice made if one concludes that negotiating with a particular party is not likely to yield a favourable result. In the present scenario, it has been stated that the negotiations between Antigua and the United States have failed. Neither party has been able to leave the negotiation table with both interests represented. One may choose to walk away from a negotiation if the BATNA is better than the likely outcome of a negotiation. Suspending IP rights was the outcome after Antigua chose to no longer negotiate with the United States. However, this outcome is a thorny means of retaliation. If Antigua chooses to do so, it may set a precedent that provides small countries with useful leverage in trade disputes; but the difficulties of implementation and the harm done to Antigua’s reputation might overwhelm and outlast the economic benefits. Instead of suspending the IP rights of products made in the United States, Antigua is encouraged to look at other solutions listed below:

Withdrawal of the Judgment by the WTO

The WTO granted Antigua the final permission to suspend the IP rights of the United States. However, Antigua is yet to devise a plan on how to effectively carry out this remedy. Although the United States did not find favour in the eyes of the WTO, Antigua is very well aware of the possible retaliation and threats it faces from the United States. Several news sources have already labeled Antigua as “pirates” and have spoken condescendingly about the island’s planned recourse.²⁰³ If the WTO withdraws the judgment, both parties will be forced to continue to negotiate until a viable solution is reached.

The United States Should Aim to Strike a Balance

Antigua’s economy has suffered billions in loss, due to the United States’ violation under GATS. Until the United States has admitted and acknowledged this wrong, neither party will move on from this dispute. The United States’ defense for violating the agreement is that it was necessary to protect the moral values of its citizens. However, the United States has been a member of the WTO for over 20 years. The United States is well aware of its obligations under the agreement, as it was one of the main supporters of the agreement. It is the responsibility of the United States government to strike a balance between protecting its citizens and honouring its

obligations to members of the international community. One such way is to limit the amount of online bets a U.S. citizen may execute, as opposed to outright banning the practice. Furthermore, the enactment of several state laws within the United States that now make online gambling legal exhibits the United States' bias in its treatment of in-state vs. offshore online gambling entities.

A Level Playing Field Is Not Possible for All

The WTO's dispute settlement body must ensure that smaller countries are put on a level playing field with more powerful countries. This means that smaller countries should have the same amount of leverage and authority that is given to larger, more powerful countries. However, although this seems like a fair policy, it does not always have the best outcome. The United States is a larger country in comparison to Antigua. The U.S. economy is more than ten times the size of the Antiguan economy. Although U.S. laws were found to be in violation of GATS, the country still has greater leverage in this situation. I dare to argue that there cannot be a level playing field in this instance. Antigua contributes \$180 million annually to the U.S. economy. Although this seems like a large number, Antigua has admitted that if it were to cease trade with the United States, the loss of this \$180 million would not have a significant impact on the United States, whereas it would harm Antigua's economy, as many Antiguan citizens consume U.S. goods. In light of these facts, it is safe to say that Antigua should not be so quick to enforce the remedy. There is no level playing field in this conflict. The United States is the more powerful nation, and Antigua may have to accept this position and pursue another type of remedy that is less damaging to future relations with the United States.

WTO Supervision

The WTO must ensure that, should Antigua exercise the suspension of IP rights, it will not be threatened with retaliation. While the United States has not made specific threats to Antigua, it has made general statements such as, "If Antigua does proceed with the unprecedented plan for its government to authorize the theft of intellectual property, it would only serve to hurt Antigua's own interests"²⁰⁴ and, "Government-authorized piracy would undermine chances for a settlement."²⁰⁵ The United States may also present a major impediment to future foreign investment in the Antiguan economy. It is clear that the United States will not sit back idly while its IP rights are violated. This could mean retaliation against Antigua in the future, which may put the country in an even worse position. Because of this threat to the Antiguan economy, the WTO should enforce additional sanctions against the United States if there are any blatant or detrimental threats or actions by the United States against Antigua. It may

be difficult to hold the United States accountable, but if the WTO enforces sanctions, it may hinder the United States' thoughts of retaliation against Antigua.

Online Licensing Board

Another creative solution is the formation of a licensing board to supervise online gambling activities between Antigua and the United States. This board would have the authority to check the source of payments for bets and channel the various avenues of funding. This oversight would ensure that no terrorist activities are being funded and would decrease fraudulent activity. A tax or small portion of the proceeds from each transaction would go towards the payment of this board for its services. This solution is most effective, as it represents the interests of both parties and restores the multi-billion-dollar gambling industry to Antigua, while ensuring that criminal activities are not being funded. In order to protect the morality interests of the United States, the board may also seek to ensure that all wagers are placed by individuals who certify that they are at least 18 years or older, and put a cap on the amount of bets an individual may place on a daily basis, in order to prevent harmful addiction.

Conclusion

The decision in the Antigua-U.S. online gambling conflict has an impact analogous to a marketing campaign – promoting incentives for developing countries to join the WTO. If Antigua can successfully challenge the United States' refusal to comply with WTO arbitrators, and if there are mechanisms in place to enable Antigua to take actions that will have a meaningful economic effect on the United States, then the WTO truly is a forum where each member nation can expect a fair remedy.²⁰⁶ Despite the benefits of sending signals in support of developing countries, the decision is not ultimately beneficial to the stability of international trade if the specific remedy it authorizes is harmful. Both parties, along with the WTO, need to reopen negotiations until a beneficial remedy is reached for both parties. In the interim, the whole world waits to see how Antigua will execute this remedy.

Endnotes

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4. *Id.* at p. 2.
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
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12. *Id.* at p. 481.
13. *Id.*
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16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. World Trade Organization (2004, November 10). United States – Measure affecting the cross-border supply of gambling and betting services: Report of the Panel. WT/D285/R (no. 04-2687) Geneva, Switzerland: WTO.
24. See *supra* note 14.
25. See *supra* note 14.
26. Wohl, Isaac. *The Antigua-United States Dispute*. Journal of International Commerce and Economics. July 2009. Page 2.
27. *Id.* at page 2.
28. *Id.*
29. *Id.*
30. Gibbs, Mark. *Pirates of the Caribbean: Antigua and Barbuda Turn from Internet Gambling to Legalized Piracy*. January 29, 2013. *Forbes.com*.

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31. *Id.*
32. Hamann, Georgia. *Replacing Slingshots with Swords: Implications of the Antigua-Gambling 22.6 Panel Report for Developing Countries and the World Trading System*. Vanderbilt Journal of Transnational Law. Vol. 42. 2009.
33. Caricom Capacity Development Program. *National Census Report: Antigua & Barbuda*.
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34. *Id.*
35. *Id.*
36. Encyclopedia.com. *Antigua & Barbuda*.
[*http://www.encyclopedia.com/topic/Antigua_and_Barbuda.aspx*](http://www.encyclopedia.com/topic/Antigua_and_Barbuda.aspx).
37. See *supra* note 33.
38. Leach, Jim, and Carruthers, David. 2006. *Should online gambling be banned?* Wall Street Journal. April 4, 2006.
[*http://online.wsj.com/article/SB114375000762012631.html*](http://online.wsj.com/article/SB114375000762012631.html).
39. Wohl, Isaac. *The Antigua-United States Dispute*. Journal of International Commerce and Economics. July 2009.
40. See *supra* note 38.
41. See *supra* note 39.
42. See *supra* note 39 at p. 3.
43. *Id.*
44. *Id.*
45. *Id.*
46. 31 USC § 5361 (a). Congress finds the following: (1) Internet gambling is primarily funded through personal use of payment system instruments, credit cards, and wire transfers. (2) The National Gambling Impact Study Commission in 1999 recommended the passage of legislation to prohibit wire transfers to Internet gambling sites or the banks which represent such sites. (3) Internet gambling is a growing cause of debt collection problems for insured depository institutions and the consumer credit industry. (4) New mechanisms for enforcing gambling laws on the Internet are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders.
47. *Id.* at § 5362(10)(a). In general.— The term “unlawful Internet gambling” means to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made.
48. Wire Act of 1961, codified at 18 USC § 1084. (a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for

the transmission 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. (b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal. (c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State. (d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored. (e) As used in this section, the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.

49. See *supra* note 26 at p. 5.

50. *Id.*

51. See *supra* note 26 at p. 5.

52. See *supra* note 26 at p. 6.

53. The World Trade Organization deals with the global rules of trade between nations.

54. The General Agreement on Trade in Services came into force in 1995 and constitutes the legal framework through which World Trade Organization members progressively liberalize trade in services, including health-related services.

55. See *supra* note 26 at p. 6.

56. See *supra* note 26 at p. 6.

57. See *supra* note 26 at p. 6.

58. Roysen, Yevgeniya. *The United States' Policy on Internet Gambling and Its International Implications*. 26 Cardozo Arts & Ent. L.J. 873 2008- 2009.

59. See *supra* note 58 at p. 884.

60. *Id* at p. 884.

61. *Id.*

62. *Id.*

63. *Id.*

64. See *supra* note 39 at p. 6.

65. Travel Act codified as 18 U.S.C. § 1952 (a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to— (1) distribute the proceeds of any unlawful activity; or (2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform— (A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or (B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life. (b) As used in this section (i) “unlawful activity” means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States. (c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Attorney General. (d) If the offense under this section involves an act described in paragraph (1) or (3) of subsection (a) and also involves a pre-retail medical product (as defined in section 670), the punishment for the offense shall be the same as the punishment for an offense under section 670 unless the punishment under subsection (a) is greater.

66. Illegal Gambling Business Act codified as 18 U.S.C. § 1955. (a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both. (b) As used in this section— (1) “illegal gambling business” means a gambling business which— (i) is a violation of the law of a State or political subdivision in which it is conducted; (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day. (2) “gambling” includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein. (3) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. (c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling

business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of \$2,000 in any single day shall be deemed to have been established. (d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizures, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General. (e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1986, as amended, if no part of the gross receipts derived from such activity inures to the benefits of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

67. See *supra* note 39 at p. 6.

68. *Id.*

69. See *supra* note 39 at p. 6.

70. *Id.*

71. See *supra* note 58 at p. 885.

72. *Id.*

73. *Id.*

74. *Id.*

75. See *supra* note 26 at p. 6.

76. *Id.*

77. *Id.*

78. GATS Article XIV(a): Necessary to protect public morals or to maintain public order; 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.

79. See *supra* note 26 at p. 6.

80. Pauwelyn, Joost. WTO Condemnation of U.S. Ban on Internet Gambling Pits Free Trade against Moral Values. American Society of International Law. November 2004.

81. *Id.*

82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. See *supra* note 26 at p. 6.
87. Arbitrators, either as individuals or as groups, can be called to adjudicate certain questions at several stages of the dispute settlement process.
88. See *supra* note 26 at p. 7.
89. See *supra* note 58 at p. 887.
90. See *supra* note 26 at p. 7.
91. *Id.*
92. *Id.*
93. *Id.*
94. See *supra* note 26 at p. 7.
95. *Id.*
96. GATS at Art. XXI(1)(a). http://www.wto.org/english/docs_e/legal_e/26-gats.pdf.
97. *Id.* at Art. XXI(2)(a).
98. See *supra* note 26 at p. 7.
99. *Id.*
100. *Id.*
101. See *supra* note 32 at p. 19.
102. See *supra* note 32 at p. 19.
103. See *supra* note 26 at p. 7.
104. See *supra* note 58 at p. 888.
105. *Id.*
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108. Clark, Liat. *WTO grants Antigua right to launch ‘pirate’ site selling US media.* January 29, 2013. Wired Magazine.
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http://www.antiguawto.com/wto/b2013_01_30_shocked_and_sad.pdf.
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111. *Id.*
112. See *supra* note 109.
113. Cross-retaliation is defined as “Retaliation in which the response is in a different sector or under a different WTO agreement than the action that prompted it.” Deardoff’s Glossary of International Economics. <http://www-personal.umich.edu/~alandear/glossary/c.html>.

114. See *supra* note 109.
115. *Id.*
116. International Political Economy Zone.
<http://ipezone.blogspot.com/2013/01/antigua-online-gaming-fighting-us.html>.
117. Bodien, Clint. *Cross-Retaliation in the WTO: Antigua and Barbuda's Proposed Remedy Against the United States in an Online Gambling Dispute*. Law and Business Review of the Americas. Vol. 14. 2008.
118. *Id.* at p. 852.
119. See *supra* note 117 at p. 852.
120. *Id.*
121. *Id.* at p. 853.
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.*
126. *Id.*
127. *Id.*
128. A tax based on the assessed value of real estate or personal property. *Ad valorem* taxes can be property tax or even duty on imported items. Property *ad valorem* taxes are the major source of revenue for state and municipal governments.
<http://www.investopedia.com/terms/a/advaloremtax.asp>.
129. See *supra* note 26 at p. 11.
130. *Id.*
131. *Id.*
132. *Id.*
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135. See *supra* note 117 at p. 853.
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147. *Id.*
148. *Id.*
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150. See *supra* note 26 at p. 12.
151. See *supra* note 26 at p. 13.
152. *Id.*
153. *Id.*
154. *Id.*
155. *Id.*
156. *Id.*
157. The Caribbean Basin Economic Recovery Act (CBERA, or CBI), adopted in 1983, was the first U.S. trade program to contain intellectual property rights-related provisions; it contains both mandatory and discretionary criteria which must be met before countries could be designated as beneficiary countries. The CBERA provided unilateral duty-free access for most goods to the U.S. market to 24 beneficiary countries in Central America and the Caribbean. International Intellectual Property Alliance: http://www.iipa.com/cbera_cbtpra.html.
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