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US may reshuffle internet gaming laws after tiny Antigua calls its bluff

- *Antigua insists that America discriminates, reports Daniel Pimlott in New York*
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- April 02, 2007

THE US could be forced to rewrite laws on online gambling again after a World Trade Organisation ruling that it had failed to comply with an earlier decision.

In a case brought by the tiny Caribbean nation of Antigua and Barbuda, a WTO arbitration panel said at the weekend that the US was defying an organisation ruling made in 2005.

The panel said a new US law enacted in October last year did not resolve the problem that its legislation, implemented by selective prosecutions by the Department of Justice, unfairly discriminated against foreign online gambling companies.

The panel noted that the US had preserved an ambiguity that appeared to permit American companies to run horse-race gambling across state borders while prosecuting both Antigua-based gambling operators and US-based operators that employed the services of foreign gambling businesses.

"Since the original (WTO) proceeding, the United States had an opportunity to remove the ambiguity and thereby comply with the recommendations and rulings," the panel said. "Instead ... the United States enacted legislation that confirmed that the ambiguity at the heart of this dispute remains."

Antigua Finance Minister Errol Court said he was delighted by the ruling: "It vindicates all that we have been saying for years about the discriminatory trade practices of the United States in this area."

The US Trade Representative's office maintained that all online gambling across state borders was illegal.

"The USTR understands that all remote inter-state wagering is illegal under federal gambling laws," spokeswoman Gretchen Hamel said.

Stock prices of online gambling companies, including PartyGaming, headquartered in Gibraltar, jumped sharply after the decision.

The US could appeal against the ruling but Mark Mendel, Antigua's lead attorney in the case, said it would be highly unlikely to succeed. The WTO can authorise reciprocal trade sanctions against the US. While such action by Antigua and Barbuda would have almost no effect - it has 83,000 people and an economy 0.007 per cent the size of America's - the US has a relatively good record of compliance with WTO panel decisions.

The case has aroused passions in the US because of objections to gambling from some political conservatives. The WTO panel said the US was permitted to outlaw internet gambling to preserve "public morals", the first time that provision in the WTO agreement has been invoked, but had to apply such laws uniformly.

The panel also criticised the US for commenting publicly in January on an interim version of yesterday's report, which had been circulated under strict rules of confidentiality.

In a published version of findings in a complaint brought by Antigua and Barbuda, initially sent to the parties in January, the Geneva-based trade referee said the Caribbean island had provided additional evidence that strengthened its case.

"The panel concludes that the United States has failed to comply with the recommendations and rulings of the (WTO's) DSB (Dispute Settlement Body)," the WTO said in the ruling, which can be appealed.

At issue was an April 2005 WTO verdict against US prohibitions on online betting, notably on horse racing. Since then, the US Congress has passed additional legislation to ban betting over the internet.

Antigua has built up an online gambling industry to make up for declining revenues from tourism.

"This is a smashing success for Antigua in every possible way. The report will sweep away any lingering doubt that Antigua has obtained a clear and convincing win over the United States in this matter," Antigua's WTO ambassador John W. Ashe said. There was no immediate reaction from Washington.

In the ruling, the WTO panel of three trade judges said the US had not contested the Antiguan charge that it had done nothing to implement the 2005 ruling.

Washington had simply sought to reopen the case, but without giving any grounds.

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