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An unlikely trade dispute between the U.S. and Antigua over online gaming has turned into a David-and-Goliath battle, proving small nations can wield large digital sticks.



Karen Bleier / AFP-Getty Images

Taking Bets: A virtual gamer plays poker

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By Emily Flynn Vencat
Newsweek International

Sept. 24, 2007 issue - Antigua is better known for sandy beaches than international trade disputes. But next month this tiny Caribbean resort destination could compel the United States to legalize an industry that the Bush administration has been trying to eradicate since the beginning of the president's first term. Antigua—with a population of just 70,000 and a GDP of under \$1 billion—could force the United States to embrace online gambling.

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The ruling, which the WTO is expected to begin enforcing next month, could oblige America to overhaul its prohibitive stance on online casinos, not just in relation to Antigua but to a host of others—including the EU, Japan and Australia. That would double the size of the \$15 billion-a-year online gaming industry almost overnight, says the Safe and Secure Internet Gambling Initiative, a pro-gaming consultancy. And since the WTO might allow nations that have been hurt by U.S. gaming laws to flout American intellectual-property law in response, the dispute is already spreading to Hollywood, Silicon Valley and beyond.

The story dates back to 2003, when Antigua sued the United States at the WTO over America's prohibition of online casinos, which is the island's second largest industry, after tourism. The United States allows a number of domestic betting companies, like the horse-racing Web site YouBet.com, to offer online gambling to Americans (these are thrown into the odd basket of legal gaming operations that include Native American-run casinos and riverboat gambling). But foreign firms are prohibited from offering exactly the same type of service to U.S. citizens.

The American government requires foreign sites to block U.S. users by checking the Internet protocol addresses of their computers, a requirement that has been honored mainly in the breach, given that Americans represent some 60 percent of world online-gaming revenue. Last October, President George W. Bush upped the ante by signing a new bill preventing banks and credit-card companies from processing payments by American users of overseas sites. The result: top companies like Gibraltar-based PartyGaming

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(once worth \$8.4 billion) saw the value of their stock sliced in half, and their revenues plunge by 70 percent. The U.S. government has arrested a number of foreign online-gaming execs, charging them with gambling-related offenses. In March, the London-based Web site Sportingbet.com was forced to pay the state of Louisiana \$400,000 to settle charges levied against its chairman, Peter Dicks.



Defending Antigua: Lawyer Mark Mendel

But that same month, the WTO decided that the U.S. approach was an illegal form of trade protectionism. The ruling may be enforced as

early as next month. "I was laughed at when I first brought the case," says Mark Mendel, the long-haired, 51-year-old Texas lawyer who represented Antigua. "They totally underestimated me."

More important, the United States underestimated the remarkable power that even tiny countries wield in today's digitized global economy. Usually, when trade laws are broken, the WTO allows export sanctions to be imposed on the violating nation. But since Antigua hardly has the muscle to bring any meaningful sanctions against the United States, trade experts expect that the WTO will likely take another approach and allow Antigua to flout intellectual-property law.

If America doesn't fold on gaming, next year Antiguan could well be selling billions of dollars of legally pirated copies of everything from Microsoft software to Disney movies without paying the copyright owners a penny. "Intellectual property is the perfect sanction item," says Nao Matsukata, a former senior trade official for the United States. "It gives small countries like Antigua absolute leverage." The WTO has allowed the use of IP as a stick once before, in the famous EU-Ecuador banana squabble (the threat of it was enough to make the EU cut a deal). But experts expect it will become common policy in the future, and see online gaming as a test case for its effectiveness.

It's no surprise that lobbyists from Silicon Valley and Hollywood are now storming Capitol Hill, pushing for a deal. Last month the Motion Picture Association of America urged the U.S. trade representative to negotiate with Antigua in order to prevent bootlegging. But the Bush administration is staunchly refusing to bend on virtual gaming. The (surprisingly weak) legal line is that America never intended to include

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gambling under its WTO obligations, which were signed in the mid-1990s. "It is ludicrous [to assert that] our negotiators would have intentionally turned 40 years of criminal law against this type of gambling on its head," says U.S. Deputy Trade Representative John Veroneau.

No dice, says the WTO. "The United States has a legal commitment; they can't just say 'oops' and be done with it. What kind of precedent would that set?" asks one WTO insider, who spoke on condition of anonymity because he did not want to be quoted discussing an ongoing case.

Ultimately, this leaves the United States with a very weak hand to play. It could continue to deny that the WTO has legislation over its internal gambling laws. But that would undermine the overall credibility of the organization by showing it to be unable to enforce its rulings—and America needs a strong WTO to mediate prickly conflicts with, say, China, over things like Internet censorship and the mass manufacturing of fake designer goods.

Eight other WTO members, including the European Union, Australia and Japan, are now lining up to claim compensation from the United States over online gaming. "The EU is almost licking its chops," says Antigua's lawyer Mendel. "In total, this could come to \$100 billion in sanctions. " Giant American bricks-and-mortar casinos like Harrah's and MGM are making plans to move into the online sector as soon as the U.S. trade stance becomes clear.

They could get a sign as early as this week. Sept. 22 is the first WTO deadline for America to cut a deal with Antigua and the other nations. But one WTO insider predicts that the only announcement on that day will be that the deadline has been extended. "This won't happen fast; America is going to dig its heels in," says Sallie James, trade-policy analyst at Washington's Cato Institute. "But if I had to bet, I would say that by this time next year America will have changed its laws." And in this case, that means all bets will be on.

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