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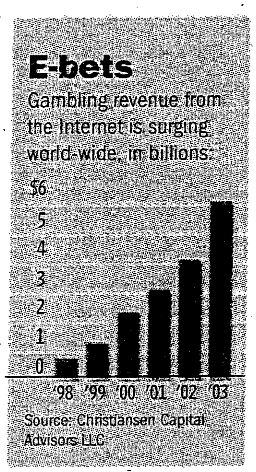
Does U.S. Ban On E-Gambling Violate WTO?

By Scott Miller

JAY COHEN, a self-described "nice Jewish boy," quit his job as an options trader in 1996 and headed for the Caribbean nation of Antigua and Barbuda to join the Internet gold rush. Intrigued by the experience of a colleague, who had collected office wagers on the outcome of the O.J. Simpson trial, he started an online sports-betting site.

The Long Island native knew the site would challenge U.S. laws against online gambling, but he was so confident his foreign-based operation was legal he agreed to turn himself over to U.S. authorities to prove his case in court.

Mr. Cohen lost, and he is now completing a 21-month prison sentence. But he is also hoping another court will provide him with a moral victory. This week the World Trade Organization is hearing arguments in a case brought by Antigua that charges that the U.S. is violating its global trade agreements by prohibiting Internet gambling. The WTO decision won't affect Mr. Cohen's sentence, but he says a ruling favoring Antigua "would highlight my incarceration for what it is: protectionism, the jailing of the competition."



The case, to be decided in about a month, is the first dispute in which a country has tried to apply global trade laws to the Internet—forcing the WTO's court to decide whether services provided on the Web are different from the traditional forms of those services. The European Union, Japan and Canada are supporting Antigua's complaint. The court may also weigh in on other issues, including whether the WTO can, as Antigua requests, compel the U.S. to change gambling laws that reflect its moral values.

A ruling that the U.S. is violating trade laws in the Internet case would have the same force as the WTO's decision that U.S. steel tariffs were illegal. That finding authorized Europe to impose retaliatory tariffs and prompted President Bush to withdraw the U.S. levies. In this case, allowing Antigua to slap tariffs on U.S. exports would have virtually no impact on America's global exports, so the WTO could authorize Antigua to violate U.S. intellectual property rights by, for example, legally pirating American music or computer software. Antigua, though, says it's only interested in opening the U.S. market for online gambling.

The dispute is shaping up as a classic David vs.

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Goliath trade battle. Tiny Antigua, with only 67,000 citizens, can't even afford to maintain an official presence at the WHO's headquarters in Geneva. "The U.S. was hoping that our industry would just wither and die or that we would run out of money or resources," says Antigua's chief foreign affairs representative, Sir Ronald Sanders. U.S. officials deny they're unduly delaying the proceedings.

At the heart of the case is whether WTO rules require the U.S. to allow foreign gambling companies access to its market. Antigua argues that the U.S. should allow access because of a 1991 United Nations list of service-sector industries deemed open to free trade, including recreation and entertainment. By keeping Antigua out, yet allowing a huge gambling industry of its own, the U.S. is guilty of discriminating against foreign companies, the Caribbean nation says.

But the U.S. argues that the WTO's landmark 1995 General Agreement on Trade in Services means the U.S. can keep foreign gambling establishments out. What's more, the U.S. argues, there are substantial differences between Web and casino gambling, including the ability to prevent betting by minors, so it's well within its rights to prohibit one form of gambling while allowing others.

In recent years, Web gambling has emerged as the fastest-growing sector of the gambling industry. According to Christiansen Capital Advisors LLC, total revenue at Internet gambling companies world-wide last year was about $6 billion, up from $651 million in 1998. By contrast, all other forms of betting have grown slowly to $68.69 billion from $55.06 billion over the same period. More than 1,000 sites now ply the Web looking for bettors, and countries including Costa Rica, Panama, Belize and Australia host Web addresses that target U.S. gamblers. Other countries in Asia and some in Europe, such as Britain, allow some forms of Internet betting aimed primarily at their own citizens.

In fact, Sir Ronald and others say it was advice from the World Bank in the mid-1990s to diversify Antigua's economy by building up Web-related industries that led the country to pursue Internet gambling in the first place.

Lawyers following the case say it's hard to tell which country has the upper hand, with much depending on the fine points of WTO agreements. Some experts believe Antigua may be able to demonstrate similarities between Web and casino gambling. "There is not that much difference between slots that you would play at a casino or at home," says David Schwartz, coordinator of the Gaming Studies Research Center at the University of Nevada, Las Vegas. But others expect the WTO's three-person panel to be sympathetic toward the U.S. position that it has a right to protect its citizens from what lawmakers have concluded is a social vice.

Meanwhile, in a federal prison in Nevada, Mr. Cohen counts down the days. After a short stint in a halfway house, he figures he'll be free by spring. If the U.S. wins in Geneva, he'll probably return to his old job as an options trader. But if Antigua wins, he wants to get back into online gambling.

"I am here for running a legal business in a foreign country," he writes in response to written questions. "If the U.S. were to change its laws, I would go back in a New York minute."