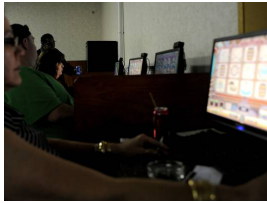


A fed up Antigua opens its doors to Megavideo: Column

Harold Lovell | 3:09p.m. EST February 1, 2013

The government of Antigua and Barbuda must protect and enforce its citizens' rights.



(Photo: Pat Jarrett for USA TODAY)

On January 28, 2013, the Dispute Settlement Body of the World Trade Organisation (WTO) authorized the small, Caribbean country of Antigua and Barbuda (Antigua) to suspend its obligations regarding American intellectual property rights. As a result, the Government of Antigua and Barbuda will be able to authorize the sale of products (<http://www.businessweek.com/ap/2013-01-28/antigua-gets-ok-to-become-copyright-haven>) of innocent holders of copyrights, trademarks and other important intellectual property rights, free of those legal protections. Unfortunately, the Office of the United States Trade Representative is already accusing us of being "pirates" and "thieves" of intellectual property and of acting contrary to International law.

This is not the case.

Antigua is a beautiful country, often referred to as the country with as many beaches as days in the year. Tourism is our key industry, and has been since the collapse of the sugar industry some 40 years ago. But successive hurricanes and concern over a one-dimensional economy led to a decision to invest in and develop a domestic online gaming industry. Just a few years later, almost 5% of our population was employed in the online gaming industry. Antiguan companies were generating hundreds of millions in annual revenue. Back then, not only did the U.S. government publicly say that American laws didn't cover online gaming services from foreign countries, but U.S. officials were actively engaging with Antiguan authorities on regulatory matters relating to on-line gaming and how best to protect consumers.

All that changed in 1997, when without notice the U.S. government switched 180 degrees, charging several online gaming operators, including Antiguan, with violating federal law for offering services to American consumers. These indictments were followed by aggressive efforts to prevent Antiguan operators from using financial tools such as credit cards.

With our companies being strangled by a lack of money, our businesspeople indicted by the United States government and our losing jobs, in 2003 we brought a complaint against the United States at the WTO. Over the course of a number of years, we prevailed in hearing after hearing at the WTO, which ruled that the U.S. laws used to prohibit Antiguan from providing online gaming services to American consumers violated WTO agreements.

Perhaps uniquely among global institutions, the WTO dispute resolution system is generally heralded as independent and successful. Its decisions are uniformly respected by member countries, and since the creation of the WTO in 1995, it has handled over 450 cases involving over 100 countries. The United States itself has brought some 104 cases at the WTO on behalf of a wide variety of domestic business interests. So, far from being a questionable, out-of-touch institution, the WTO has become the cornerstone of the global trading system. But being a voluntary institution, the WTO has no army, no enforcement branch and no direct ability to force a losing litigant to observe the terms of an adverse judgement.

For the rare cases where a member doesn't comply with a ruling, the WTO allows the victorious country to put domestic pressure on a non-compliant member by allowing the prevailing member to penalise an entirely "innocent" sector of the other member's economy.

In this instance the United States has never complied with the judgement in our favour. Further, years of patient negotiating has resulted in nothing but frustration. American officials have stepped up efforts to enforce the very laws ruled invalid by the WTO. The industry that once employed some 4,000 Antiguan people now employs just a couple of hundred.

Following a long legal process in which the United States participated, the WTO authorized Antigua to suspend its obligations in respect of certain US intellectual property rights to encourage the American government to either comply or negotiate a settlement. Even after obtaining the authorization, the government of Antigua and Barbuda continued to seek middle ground with the US, sending delegations on numerous occasions in hopes of reaching a settlement. These efforts have failed.

Just as in the United States, in Antigua the government owes a duty to its citizens to protect and enforce their rights. We have reluctantly decided to suspend intellectual property rights protections for American firms and products. Hopefully, the remedy will work as designed, and American business interests can convince the Obama administration to follow international law.

For why should, for example, the U.S. motion picture industry suffer just so the federal government can continue to protect the monopolies of the big American gambling interests?

Harold Lovell is the minister of finance, the economy and public administration for Antigua and Barbuda.