

Upping the Ante

What does the final WTO *U.S.-Gambling* decision mean for the democratic regulation of gambling in Maine?

Oral Presentation

to the

Maine Citizen Trade Policy Commission

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Intro:” Good evening. I have in my pocket.. a spearpoint--It was traded 10,000 years ago here in Maine. In my other pocket—I have a carrot that was traded yesterday here in Maine. This discussion is NOT about “trade. “Trade” between peoples has existed for centuries , it continues to exist today and it will continue to exist in the future. This discussion is about “whose rules?.”

Earlier this month, the top court of the World Trade Organization released a ruling that no ordinary person could be expected to notice.

The more I learn about this case, which is about gambling, the more concerned I become about the impact international trade treaties are having on our ability to govern ourselves free from outside, undemocratic interference.

That's why my more detailed written submission -- (which contains footnotes and references) -- is called "Upping the Ante."

The case involves a complaint by the tiny Caribbean island country of Antigua to the World Trade Organization about restrictions we maintain in the United States on internet gambling.

Antigua complained that its online gaming companies weren't able to access U.S. customers because their federal laws prohibit placing online bets across state lines.

You might ask what right any other WTO member (never mind the smallest one!) has to challenge American gambling laws, for heaven's sake.

They're our laws, not theirs!

Our laws help *prevent*: gambling by minors, gambling addiction, fraud, money laundering by organized crime, that sort of thing.

Our laws also regulate the flows of revenues. Gambling is an important source of revenue for cash-strapped governments, and governments use the money to pay for countless things citizens want and need.

In short, our gambling laws are pretty important!

So what about this case?

The WTO top court issued a ruling that Antigua calls (and I quote) a “landmark victory” that will “pave the way for new ... opportunities for Antiguan gaming operators.”

U.S. trade officials also claim victory, concluding that the ruling means Internet gambling laws are largely safe, through they acknowledged that one federal law would have to be altered to conform to the decision. And what about bricks-and-mortar gambling?

On the basis of technicalities, the Appellate Body was able to let the U.S. off lightly, thereby avoiding a political firestorm. The top court faulted Antigua for not proposing alternative ways the U.S. could have met its objectives – something the next complainant will be certain to rectify. And luckily for U.S. state governments, the Appellate Body found that Antigua had not identified particular state laws and argued why they violated the treaty.

But it can be concluded from the ruling that:

- the U.S. has committed the entire gambling sector;
- GATS Market Access rules apply in this sector; and that
- key state regulations appear vulnerable to GATS challenge.

The fallout from this case may not be felt right away.

But we citizens here in Maine have cause for concern.

To be blunt, it looks as if United States trade officials made mistakes in this case that governments at all levels in the U.S. will have to live with.

They inadvertently made treaty commitments that subject many of our gambling laws to strict WTO rules.

So far as I can make out from the experts, various state gambling restrictions appear to violate these commitments.

In Maine, it would appear that

- our laws that have prohibitions on certain forms of gambling,
- restrictions on the number of gambling operations,
- the granting of licenses for gambling via electronic video machines only to certain types of organizations, and then only if they've been in the state for two years

--- each of these measures appear to be violations of Market Access rules. And we've only just begun to examine this issue.

Perhaps "Upping the Ante" is the wrong title for this presentation. Given these WTO rules ... given the US trade negotiators' mistake ... and given the trouble this new WTO reality is going to cause us, perhaps it would have been more appropriate to name it "Turning up Craps".

How can we get out of this fix?

Maybe nothing will happen.

Maybe no foreign gambling company with deep pockets and a supportive government will start testing our laws.

The odds don't seem very good.

Maybe the federal government will itself recognize the need to rectify its mistake and withdraw the inadvertent commitment.

But, governments and officials often find it difficult to act decisively to fix their mistakes.

Maybe we'd better start working together with other states to make sure the federal government does indeed withdraw the commitment.

And maybe we'd better check to see if similar mistakes have occurred in other sectors.

And maybe we should start getting more active in this trade area to make sure other similar mistakes don't occur in the future.

And maybe we should take a broader approach.

Maybe we'd better start coming to grips with how these trade treaties are affecting our ability to govern ourselves democratically ... and what we have to do, together, to do something about it.

When we look around this room, we should recognize how resolute and determined we can be when we have to.

Knowing how much we can do when we work together gives us good reason to be optimistic.

Trade treaties are pitted against Democracy.
I'm betting on Democracy.