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Gambling Dispute with a Tiny Country Puts U.S. in a Bind
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With long blond hair reaching his shoulders and dozens of cloth bracelets peeking out from under his sleeves, Mark E. Mendel hardly conjures up the image of a typical lawyer.

But then there is nothing run-of-the-mill about the case that Mr. Mendel, a Texan who was born and raised in Southern California, has been waging against his own government before the World Trade Organization, the body in Geneva that sets the ground rules for global trade. It is a clash that at once challenges Washington's effort to prohibit online gambling while simultaneously testing the ability of the W.T.O. to enforce its own standards.

The dispute stretches back to 2003, when Mr. Mendel first persuaded officials in Antigua and Barbuda, a tiny nation in the Caribbean with a population of around 70,000, to instigate a trade complaint against the United States, claiming its ban against Americans gambling over the Internet violated Antigua and Barbuda's rights as a member of the W.T.O.

Antigua is best known to Americans for its pristine beaches and tourist attractions like historic English Harbor. But the dozens of online casinos based there are vital to the island's economy, serving as its second-largest employer.

More than a few people in Washington initially dismissed as absurd the idea that the trade organization could claim jurisdiction over something as basic as a country's own policies toward gambling. Various states and the federal government, after all, have been deeply engaged for decades in where and when to allow the operation of casinos, Indian gambling halls, racetracks, lotteries and the like.

But a W.T.O. panel ruled against the United States in 2004, and its appellate body upheld that decision one year later. In March, the organization upheld that ruling for a second time and declared Washington out of compliance with its rules.

That has placed the United States in a quandary, said John H. Jackson, a professor at Georgetown University Law Center who specializes in international trade law.

Complying with the W.T.O. ruling, Professor Jackson said, would require Congress and the Bush administration either to reverse course and permit Americans to place bets online legally with offshore casinos or, equally unlikely, impose an across-the-board ban on all forms of Internet gambling -- including the online purchase of lottery tickets, participation in Web-based pro sports fantasy leagues and off-track wagering on horse racing.

But not complying with the decision presents big problems of its own for Washington. That's because Mr. Mendel, who is claiming $3.4 billion in damages on behalf of Antigua, has asked the trade organization to grant a rare form of compensation if the American government refuses to accept the ruling: permission for Antiguans to violate intellectual property laws by allowing them to distribute copies of American music, movie and software products, among others.

For the W.T.O. itself, the decision is equally fraught with peril. It cannot back down because that would undermine its credibility with the rest of the world. But if it actually carries out the penalties, it risks a political backlash in the United States, the most powerful force for free-flowing global trade and the W.T.O.'s biggest backer.

"Think of this from the W.T.O.'s point of view," said Charles R. Nesson, a professor at Harvard Law School. "They're this fledgling organization dominated by a huge monster in the United States. People there must be scared out of their wits at the prospects of enforcing a ruling that would instantly galvanize public opinion in the United States against the W.T.O."

In April 2005, the trade body gave the United States one year to comply with its ruling, but that deadline passed with little more than a statement from Washington that it had reviewed its laws and decided it has been in compliance all along. The case is now before an arbitration body charged with assessing damages.

"The stakes here are enormous," Professor Nesson said.

If anything, the Bush administration raised those stakes in May when it announced it was removing gambling services from existing trade agreements. John K. Veroneau, a deputy trade representative, said that the federal government was only "clarifying our view" that it had never meant to include online gambling in any free trade agreements.

"It is truly untenable to think that we would knowingly bargain away something that has been illegal for decade upon decade in this country," Mr. Veroneau said, adding that Washington is not defying the W.T.O. but simply pursuing its case through all legal channels.

The W.T.O. allowed that Washington probably had not intended to include online gambling when it agreed to the inclusion of "recreational services" and other similar language in agreements reached during the early 1990s, when the W.T.O. was first established. But the organization says it has no choice but to enforce the plain language of the pacts.

"Geneva is certainly buzzing about this case," said Lode Van Den Hende, an international trade lawyer with the firm of Herbert Smith in Brussels.

One reason for all the interest is the David-and-Goliath aspect of the case. Another is that the dispute, as the trade organization's first to deal with the Internet, is likely to serve as a major precedent in establishing rules of commerce in an online age and dealing with such prickly issues as China's attempts to block online content it finds offensive.

Yet another reason the fraternity of trade lawyers and experts are so closely watching the case, Mr. Van Den Hende said, is "that the U.S. is not behaving as one would expect."

"One day they're out there saying how scandalous it is that China doesn't respect W.T.O. decisions," he said. "But then the next day there's a dispute that doesn't go their way and their attitude is: The decision is completely wrong, these judges don't know what they're doing, why should we comply?"

It's not clear that Mr. Mendel knew just how much of a hornet's nest he would stir up with this case. But he certainly seems to be enjoying the attention.

In 2002, Mr. Mendel -- who does not gamble and knew little about international trade -- was little more than a corporate lawyer in El Paso specializing in securities law. His law partner, though, was friends with Jay Cohen, an operator of an offshore sports betting operation in Antigua who had been sentenced to 21 months in prison for taking bets over the Internet from Americans. Mr. Cohen asked his friend to see if there was anything his firm could do.

"I had not done any trade law whatsoever, but for whatever reason this issue really struck my curiosity," Mr. Mendel said. Beyond the intellectual challenge, the case also offered the prospect of a set of deep-pocketed clients -- the online casinos doing business out of Antigua.

So Mr. Mendel, 51, who recently moved his family and his practice to Ireland to be closer to Geneva, jumped in enthusiastically.

Washington responded to Antigua's complaint by claiming it was within its rights to seek to block online gambling on moral grounds, just as any Muslim country would be within its rights under international trade agreements to ban the import of alcoholic beverages. The W.T.O. rejected this argument as inconsistent with American policy.

The general rule in the world of international trade agreements is that a country must treat foreign goods and services in the same manner as it treats domestic ones. The United States, the trade body found, permits online wagering through sites like Youbet.com, a publicly traded company that allows visitors to place bets at horse racing tracks around the globe.

And, of course, some form of casino gambling is legal in more than 30 states, and even local governments advertise gambling services when states encourage people to buy a lottery ticket.

"This isn't a case of forcing gambling on a population that has decided they don't like it," Mr. Mendel said. "This is the world's biggest consumer and exporter of gambling services trying to prohibit a small country from developing its economy by offering these same services. And we find that deeply hypocritical."

Indeed, despite all the obstacles Washington has imposed, including making it a crime for banks and credit card companies to handle Internet gambling payments, millions of Americans still manage to play poker and place sports bets online. Many more would certainly do so if the obstacles were removed.

The United States has exhausted its appeals, so Mr. Mendel and lawyers for the United States are arguing over the extent of damages that Antigua has suffered.

Antigua presents a particularly thorny challenge. To balance the scales, a country that wins a W.T.O. case typically demands trade penalties equal to its losses as compensation. But Antigua is so small that any ordinary trade sanctions would barely register in the United States.

"Compensation is not a check in the mail," Professor Jackson of Georgetown said. "It's the right to raise trade barriers against the country in violation." Whatever trade barriers Antigua imposed, he said, "would feel like a pin prick."

To get around that limitation, Antigua is seeking the right under international law to violate American intellectual property laws.

Only once has the trade organization done so, with Ecuador, though Ecuador never actually took advantage of that power. It was used instead as a cudgel to force Ecuador's opponents to back down.

"This is all new territory," said Simon Lester, who worked in the appeals unit of the W.T.O. before helping to found WorldTradeLaw.net, which provides legal analysis of trade law disputes.

Mr. Lester expects Hollywood, the music industry and software makers like Microsoft to press Washington to work things out with Antigua.

"But the question," he said, "is whether that would be enough to make Congress do something."