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SAVE OUR SERVICES

S.O.S. Series No. 8 - Lessons of WTO Ruling Against U.S. Internet Gambling Ban *Implications of the ruling for the right to regulate services beyond gambling*

A global commercial agreement of unprecedented scope and power is currently being renegotiated behind closed doors. The agreement, the World Trade Organization's General Agreement on Trade in Services (GATS), could result in the privatization and deregulation of essential services. You can collect Public Citizen's whole S.O.S. Series at www.citizen.org/trade/wto/gats. For more info: gtwfield@citizen.org or 202-546-4996.

Bottom Line: The 2005 World Trade Organization (WTO) Appellate Body decision on Antigua's challenge to the U.S. Internet gaming ban constitutes a frontal attack on the right of nations to regulate in the public interest with serious ramifications extending far beyond the gambling sector. Every service sector covered by the terms of the GATS is implicated. As Duke Law School Professor Joost Pauwelyn said: "This may well mean that, with the stroke of a pen, the validity of scores of domestic services regulations, including those that are non-discriminatory, are threatened." (Joost Pauwelyn, Duke University School Of Law, "Rien Ne Va Plus?" *World Trade Review*, July 2005.)

Key Findings of the WTO Appellate Body ruling against the U.S. Internet gambling ban include:

- **Bans Constitute a "Quota of Zero":** The WTO Appellate Body ruled that a total ban on a pernicious activity is considered a GATS-forbidden "quota of zero" if that sector is covered by GATS. Thus, nondiscriminatory policies criminalizing certain acts, or banning certain behaviors, are presumptively WTO-illegal if a government made full GATS commitments in a related service sector. This implicates not only Utah and Hawaii's absolute gambling bans, but bans on certain forms of gambling in numerous states and localities. This logic also applies to regulatory bans in other service sectors the United States has signed up, or is intending to sign up to GATS, including health care, hospitals, financial services, energy, media, advertising, higher education and more.
- **The WTO, not Signatory Countries, Will Determine which Domestic Service Sectors are Committed to GATS:** The WTO Appellate Body declared that whether it had intended to or not, the entire U.S. gambling sector was signed up (or committed) to comply with GATS rules. Although the United States explicitly noted in its GATS commitments that it was *not* using a UN services classification system that many WTO nations used, the WTO Panel decided that because the United States made commitments under a category it called "recreational services," and the UN classifications list gambling as a subsector of that category, the United States was bound. As a result, all U.S. federal, state and local laws governing gambling must comply with GATS rules, which forbid limits on the number of service suppliers (e.g. on the number of casinos), prohibit monopolies (e.g. monopolistic state lotteries) and prohibit exclusive service provider arrangements (e.g. Indian gaming compacts).
- **Public Morals Exception of Very Limited Use:** The WTO Appellate Body said the United States can maintain its Internet gambling ban (if it changes certain related laws) because Internet gambling posed a unique hazard to public morals that triggered a GATS public morals exception. (Youth, for instance, could gamble over the Internet, but not in person.) However, this "public morals" exception is unlikely to protect the wide array of policies states used to regulate services, especially policies that are permitted in some states, but not others.