

Aspirations expected from the Gambling Industry: The Final Decision of the WTO was reached on the 7th of April 2005

On the 7th of April 2005, the WTO reached the final decision in the online gambling dispute between the USA and the island state of Antigua and Barbuda, regarding whether the USA must liberalise its restrictive legislation in the gambling area and make its market accessible to foreign firms as well. (Decision of the 7th of April 2005)

Both parties see themselves as winners. Why?

Following this decision, the USA must also allow foreign providers who offer their services online and, for example, are resident in Antigua, access to the legal area of gambling. So, for example, up to now, horse races could only be betted on online if the company was established in the USA. In favour of the island state, the WTO decided that the US prohibitive regulation was discriminatory under the global trade regulations and was therefore impermissible.

Nevertheless – this is why the USA regards itself as the winner – the WTO recognised that the retention of the existing laws can be justified on the basis of „public morals“ even where the contents must be more detailed and must satisfy the requirement for equal treatment of US and foreign citizens. The WTO has now followed the trend set by the ECJ of disallowing the 25 Member States of the EU from discriminating against private gambling providers.

What does this decision mean for the US gambling market now?

It is without doubt that the USA is under immense decision pressure – as one of the booming gambling markets. The USA should – based on this decision – now define regulations which no longer discriminate against foreign providers (in comparison with those from the USA). On the one hand, they must redefine their „moral boundaries“, on the other hand must leave the inland gambling branch with enough room to breath in the new rules.

How quickly the USA will create the modified regulation is therefore questionable.

The USA are bound by the WTO Decision to amend the impugned regulations within an appropriate period of time (normally up to 15 months) and to bring them into conformity with the „General Agreement in Trade and Services“ GATS.

Subsequently, should the WTO Decision not be implemented, the winning party may make an application for a decision on trade sanctions (see WTO „Understanding on rules and procedures governing the settlement of disputes“; Annex 2 of the WTO Agreement, Art. 22).

How realistic such an application for the imposition of sanctions against the USA is, is highly questionable. In any case, it is certain that the USA will be given clear instructions to draft regulations and not to sit out the case.

At the same time, foreign online gambling providers are also expected to ensure the that US guidelines in relation to consumer protection are adhered to; to prevent the use of their services from being used for money laundering, fraud etc. and to prevent use of their services by under-age players.

It would be worth wishing that the USA would base their new regulations on British standards. From the „Betting Nation“, there is a new development to report on...