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**Testimony of Lori Wallach
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On U.S. Membership in the World Trade Organization
For the House Ways and Means Committee
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On behalf of Public Citizen's 200,000 members, I thank the Committee for the opportunity to share my organization's views on the record of the World Trade Organization (WTO). Public Citizen is a nonprofit citizen research, lobbying and litigation group based in Washington, D.C. with offices in Austin, TX and Oakland, CA. Public Citizen, founded in 1971, accepts neither government nor corporate funds. Global Trade Watch is the division of Public Citizen founded in 1995 that focuses on government and corporate accountability in the globalization and trade arena.

On the basis of the ten-year record of the WTO in operation, Public Citizen urges Congress to demand a transformation of the current global 'trade' rules which have not only failed to achieved the economic gains we were promised when Congress debated the establishment of the WTO in 1994, but have resulted in unacceptable reversals in an array of non-trade, non-economic policies and goals which promote the public interest in the United States and abroad. While this hearing is focused on the WTO's record, I urge the committee to hold a future hearing about ideas for transforming the current system to one that is more economically and environmentally sustainable and democratically accountable. Unfortunately the Bush Administration's March annual trade report to Congress, which was also to be understood as fulfilling its statutorily required five-year report on the WTO, did not satisfy the statutory language by answering the specific questions set forth there which were designed to measure both the positive and negative results of the WTO on the United States. Rather, the March 1 report only touted the Administration's view of the WTO's benefits for the United States.¹

We have spent the last ten years closely monitoring and documenting the outcomes of numerous trade agreements. Beginning in 2001, we compiled these findings for a book released in 2003, entitled *Whose Trade Organization? A Comprehensive Guide to the WTO*. This book is unique in its examination of the effect of WTO rules on economic well-being and development, agriculture and food safety, the environment, public health, and democratic policy-making. This testimony summarizes and updates the major findings of the book, but I encourage any interested member of this committee to read the entire book, and we will gladly furnish a complementary copy to your office

During the Uruguay Round negotiations of the General Agreement on Tariffs and Trade (GATT) which established the WTO and over a dozen new substantive agreements it would enforce, Public Citizen raised concerns about the implications of establishing such broad global rules on non-trade matters in the context of an international regime whose goal was expanding trade. While expanded trade has the ability to bring benefits to consumers, workers, and farmers, setting broad non-trade rules in a body whose aim was trade expansion, threatened to undermine an array of consumer, environmental and human rights goals, the implementation of which, sometimes limits trade, such as in food containing banned pesticides. Effectively our concern was that the WTO did not mainly cover 'trade,' but rather served to implement a much more expansive corporate globalization agenda that required countries to change their domestic policies worldwide to meet the needs and goals of the world's largest multinational business interests.

We also raised deep concerns about the WTO's threat to citizen-accountable, democratic policy-making processes – in which the people who would live with the results participate in making decisions and are able to

alter policies that do not meet their needs. While some problems require a global approach – such as transboundary environmental problems or weapons proliferation - others, such as setting domestic food or product safety standards or developing policies to ensure a countries' inhabitants have access to affordable medicine or basic services such as healthcare, education, transportation, water or other utilities do not require global redress and moreover, setting global rules on these matters can undermine democratic policy making that reflects the needs and desires of different countries' inhabitants at different times.

We sought to alert Congress as to what a dramatic shift WTO would affect in how and where non-trade policy would be set. Yet even in this hearing, much of the focus remains on the important, but not singular implications of the WTO on trade flows. While the GATT covered only traditional trade matters, such as tariffs and quotas, with respect only to trade in goods, the WTO included agreements setting terms on the service sector; food, environmental and product safety standards; patents and copyrights; investment policy; and even the terms by which countries could make procurement decisions regarding their domestic tax dollars. The operative term of the WTO requires that “all countries shall ensure conformity of their domestic laws, regulations and administrative procedures” to all of these broad WTO requirements. As well, the WTO's Dispute Settlement Understanding (DSU) provided for a stringent enforcement mechanism, subjecting countries who fail to conform their domestic policies to the WTO dictates to trade sanctions after a tribunal process that does not guarantee the basic due process protections afforded by U.S. law, such as open hearings, access to documents, conflict of interest rules for tribunalists, or outside appeals.

In 1990 when Public Citizen began working on the Uruguay Round, we were not particularly focused on the potential implications for poor country development or on U.S. wages, income inequality or jobs. However, over 15 years of working on the GATT and then WTO, our relationships with developing country economists and policy experts, as well as our tracking of economic trends, has expanded the scope of our focus.

Now, after a decade of tracking the WTO's actual outcomes, Public Citizen's concerns about the WTO have grown dramatically. We have worked internationally with civil society and governments to promote a transformation of the existing global “trade” rules contained in the WTO and oppose the expansion of the scope of the WTO. Yet, even as the negative consequences of the current rules and the model they represent increase, the current Doha Round WTO negotiations fail to address the existing problems and instead are designed to expand the WTO's jurisdiction into yet greater non-trade matters.

The WTO's Controversial Dispute Settlement Procedure

Unlike the GATT, which required consensus to bind any country to an obligation, the WTO is unique among international agreements in that its panel rulings are automatically binding and only the unanimous consent of all WTO nations can halt their implementation. These rulings are backed up by trade sanctions which remain in place until a WTO-illegal domestic policy is changed. Among our analysis of WTO decisions between 1995 and 2003 are the following findings:

- **U.S. Domestic policies from gambling regulations to tax policies have been repeatedly ruled against by run-away WTO panels.** The recent WTO gambling case is the most recent demonstration that when expansive ‘trade’ rules come up against public interest laws before WTO tribunals, nondiscriminatory, democratically-created domestic policies can be undercut. Among the WTO panel's outlandish decisions in that case, where the Caribbean nation of Antigua challenged various U.S. state and federal anti-gambling laws, were the following: The *entire* U.S. gambling sector is covered by provisions within the WTO's General Agreement on Trade in Services (GATS) irrespective of the intention of U.S. trade negotiators. As such, the ability of the U.S. government to regulate not only Internet but ALL forms of gambling at the federal, state and local level is limited by the rules of GATS. The panel also announced that GATS rules forbidding numerical restrictions on covered services means that a *ban* on an activity in a GATS-covered sector, even if applied to domestic and foreign service providers alike, is a “zero quota” and thus a violation of GATS rules – with broad implications for bans on an expansive range of pernicious activity. These two elements of the ruling mean that the U.S. is exposed to future WTO challenges in light of limits on gambling common in many states, as well as assorted exclusive supplier arrangements, such as with Indian tribes, and

state monopoly gaming, such as the 43 U.S. states and territories which use lotteries to raise revenues.² Thus, the WTO panel, in this case, interpreted that a GATS exception for “laws necessary to protect public morals,” could be applied if the U.S. eliminates discrepancies between the way in which it regulates domestic and foreign providers, including through the U.S. Interstate Horseracing Act, which waives the three laws challenged by Antigua for certain domestic firms. A week later, a WTO tribunal issued a ruling on the same necessity text within the GATS exceptions clause in a case having to do with the Dominican Republic’s alcohol distribution system which explicitly contradicted the inclusive reading in the gambling case. At a minimum this conflict in rulings shows that the lenient decision in the gambling case with regards to the necessity test is not a settled WTO standard. Some WTO observers wonder if the sudden switch back to the past, narrow ruling on the necessary test points to the political nature of the WTO dispute process and an attempt to avoid an explosive WTO ruling just before the U.S. Congress takes up the WTO ten year review.

- **With only two exceptions, every health, food safety or environmental law challenged at the WTO has been declared a barrier to trade.** The exceptions have been the highly-politicized challenge to France’s ban on asbestos and a WTO compliance panel’s determination that after losing a WTO case on the Endangered Species Act turtle protection regulations, the U.S. had weakened the law to sufficiently comply with the WTO’s orders.
- **In most WTO cases, the country that launches the challenge wins.** As a result, mere threats of WTO action now cause many nations to change their policies. The challenging country at least partially prevailed in an astonishing 102 out of 118 completed WTO cases—a success rate of 86.4 percent.³
- **Important U.S laws ruled illegal at the WTO.** In 42 out of 48 cases brought against the United States in which a WTO panel has made a ruling, or 85.7 percent of the time, the WTO has labeled as illegal policies ranging from sea turtle protections and clean air regulations to tax and antidumping policies.⁴ The United States also lost two high-profile cases that it brought against EU computer tariff classifications and Japan’s film policies.
- **U.S. trade safeguard laws have been successfully challenged numerous times in the WTO.** One of the most politically sensitive aspects of Congress’ 1994 consideration of the WTO was the degree to which U.S. trade safeguard law would have to be changed to conform to the related WTO agreements. Congress was promised that our laws would remain effective, yet, a decade later, the United States has not been able to successfully defend any of our safeguard laws in 14 out of 14 completed cases brought by other countries against our safeguards on products ranging from steel to lamb to wool shirts.⁵ Furthermore, the United States has lost 11 out of 15 anti-dumping or countervailing duties cases.⁶ Additionally, Doha Round “Rules” negotiations are poised to translate these WTO cases against the U.S. into new, more expansive limits on U.S. domestic trade safeguard laws. Meanwhile despite promises that other U.S. trade laws, such as Section 301, would remain operational under a WTO regime, the U.S. withdrew a case against Japan regarding anticompetitive practices in film trade after it became clear that use of Section 301 sanctions would be prohibited under WTO rules.
- **The process is closed, narrow and unbalanced.** Our concerns about the WTO dispute resolution process have born out. Complaints are typically filed at the request of business interests with no opportunity for input from other interested parties. The WTO Secretariat selects panel members from a roster formed using qualifications that ensure a bias towards the WTO’s primacy. Panelists’ identities are not disclosed and there is no requirement that they disclose conflicts of interest they might have in deciding cases.⁷ Tribunals meet in closed sessions and proceedings are confidential unless a government voluntarily makes its submissions public. Far from being a neutral arbiter, the singular and explicit goal of the dispute settlement process is to expand trade in goods and services. Increasingly, WTO panels have rewritten WTO provisions with their broad interpretations, a situation that can find no remedy as there is no outside appeal.

The WTO Decade and the U.S. Economy: Exploding U.S. Trade Deficits, Increased Income Inequality, Stagnant Real Wages, and the Loss of 1 in 6 U.S. Manufacturing Jobs

In the early 1990s, many economists argued that the opening of foreign markets for U.S. exports under WTO (and NAFTA) would create U.S. jobs and increase income for U.S. workers and farmers. When Congress was preparing to vote on WTO in 1994, the President’s Council of Economic Advisers informed Congress that

approval of the package would increase annual U.S. GDP by \$100-200 billion over the next decade.⁸ Others claimed that the WTO's adoption would lead to a decline in the U.S. trade deficit. President Clinton even went so far as to promise that the average American family would gain \$1,700 in income annually from the WTO's adoption, which would have meant that the U.S. real median family income would have been upwards of \$65,000 in 2005, or a nearly 35 percent increase since 1995. These growth projections have been shown to be wildly off the mark.

- **U.S. Median Income Growth Meager:** U.S. median income grew only 8 percent to \$52,680 in 2003 – the latest numbers available.⁹ There is little reason to think that this has improved in 2004-05, since median real wages have not grown since that time.¹⁰ In fact, the U.S. real median wage has scarcely risen above its 1970 level (only 9 percent), while productivity has soared 82 percent over the same period, resulting in declining or stagnant standards of living for the nearly 70 percent of the U.S. population that does not have a college degree.¹¹
- **Trade Deficit Soars as Imports Boom:** During the WTO era, the U.S. trade deficit has risen to historic levels, and approaches six percent of national income – a figure widely agreed to be unsustainable, putting the U.S. economy at risk of lowered income growth in the future.¹² Soaring imports during the WTO decade have contributed to the loss of nearly one in six U.S. manufacturing jobs.¹³
- **U.S. Has Suffered a Good- Job Export Crisis:** Another factor contributing to this job loss is the shift in investment trends, with China overtaking the United States in 2003 as the leading target for FDI.¹⁴ WTO Trade Related Investment Rules, (TRIMs), limit the ability of countries to set conditions on how foreign investors operate in other countries, making it more appealing for manufacturers to seek lower wages by relocating. Meanwhile, WTO terms guaranteed low tariff access for products made in low wage countries back into wealthy markets while forbidding rich countries from setting labor or other standards such products must meet. The type and quality of jobs available for workers in the U.S. economy has dramatically shifted during the WTO decade, with workers losing to imports or offshoring their higher wage manufacturing jobs (which often also provided health care and other benefits) and finding reemployment in lower wage jobs. Labor Department data shows that such workers lose up to 27 percent of their earnings in such shifts.¹⁵
- **U.S. Income and Wage Inequality Have Jumped:** During the WTO decade these trends have resulted in U.S. income and wage inequality increasing markedly. In 1995, the top five percent of U.S. households by income made 6.5 times what the poorest 20 percent of households made, while this gap grew by nearly 10 percent by 2003. In wages, the situation was comparable. In 1995, a male worker that ranked at the 95th percentile in wages earned 2.68 times what a worker at the 20th percentile earned. By 2003, that gap had widened nearly 8 percent.¹⁶ Nearly all economists agree that increased trade has partially driven this widening inequality. One study by the non-partisan Center for Economic and Policy Research found that trade liberalization has cost U.S. workers without college degrees an amount equal to 12.2% of their current wages. For a worker earning \$25,000 a year, this loss would be slightly more than \$3,000 per year.¹⁷ William Cline, at the pro-WTO Institute for International Economics, estimates that about 39 percent of the actually observed increase in wage inequality is attributable to trade trends.¹⁸
- **Job Export Crisis Is Expanding from Manufacturing to High Tech and Services:** While some commentators, such as Nike CEO Phil Knight, have famously argued that this decline in assembly-line U.S. manufacturing is a result of “Americans simply not wanting to make shoes for a living,”¹⁹ job loss and wage stagnation is increasingly affecting workers in those sectors where the United States is understood to have a comparative advantage, such as professional services and high technology. Studies commissioned by the U.S. government have shown that as many as 48,417 U.S. jobs – including many in high-tech sectors – were offshored to other countries in the first three months of 2004 alone.²⁰ This trend does not appear to be slowing down, as 3.3 million high-end service sector jobs—including physicians, computer programmers, engineers, accountants and architects—are all forecast to be outsourced overseas in the next decade.²¹ Another study by the Progressive Policy Institute, a think-tank associated with the pro-WTO faction of the Democratic Party, found that 12 million information-based U.S. jobs – 54 percent paying better than the median wage – are highly susceptible to such offshoring.²²

This manufacturing and high-tech job loss has had direct impact on workers' ability to bargain for higher real wages. Studies commissioned by the U.S. government show that as many as 62 percent of U.S. union drives face employer threats to relocate abroad, with the factory shut-down rate following successful union certifications tripling in the years after WTO relative to the years before.²³

In short, few of the claims made about the U.S. economic benefits that would flow from greater trade liberalization can be shown to have been close to accurate. This, however, has not stopped another round of WTO expansion from being launched, accompanied by a new set of promises.

The WTO and the Developing World: Do As We Say, Not As We Did

The WTO's failure to deliver the promised economic gains in the United States has also been mirrored abroad. Despite a paucity of evidence, think tanks, public opinion-makers and newspapers editorials have continued to relentlessly promote the notion that developing countries are the primary beneficiaries of WTO globalization. After a decade of the WTO, few if any of the promised economic benefits have materialized for developing countries. For many, poverty and inequality have worsened, while nearly all countries have experienced a sharp slowdown in their rates of economic growth.

- **Poverty on the Rise.** The number and percentage of people living on less than \$1 a day (the World Bank's definition of extreme poverty) in the regions with some of the worst forms of poverty – Sub-Saharan Africa and the Middle East – have increased since the WTO went into effect, while the number and percentage of people living on less than \$2 a day has gone up in the same time for these regions, as well as for Latin America and the Caribbean. The number of people living in poverty has gone up for South Asia, while the rate of reduction in poverty has slowed nearly worldwide – especially when one excludes China, where huge reductions in poverty have been accomplished, but not by following WTO-approved policies given China only became a WTO member in 2001.²⁴
- **Slowdown in global growth rates under WTO model.** The per-capita income growth rates of developing regions before the period of structural adjustment and WTO liberalization are higher than the growth rates after the countries implemented the WTO- International Monetary Fund (IMF) model, many aspects of which are locked in through the WTO's services, investment, intellectual property and other agreements. For low and middle-income countries, per capita growth between 1980 and 2000 fell to half of that experienced between 1960 and 1980. Latin America's per-capita GDP grew by 75% between 1960-1980; however, between 1980-2000 – the period during which these countries adopted the package of economic policies required by the WTO and IMF -- it grew by only six percent. Even when one takes into account the longer 1980-2005 period, there is no single 25-year window in the history of the continent that was worse in terms of rate of income gains. Sub-Saharan Africa's per-capita GDP grew by 36% between 1960-1980 but declined by 15% between 1980 –2000. Arab states' per-capita GDP declined between 1980-2000, after it grew 175% between 1960-1980. South Asia, South East Asia and the Pacific all had lower per-capita GDP growth, subsequent to 1980 than in the previous 20 years. (Only in East Asia was this trend not sustained, but only because China's per-capita GDP quadrupled during this period prior to China joining the WTO).
- **Developing countries that did not adopt the package fared better:** In sharp contrast, nations like China, India, Malaysia and Vietnam, that chose their own economic mechanisms and policies through which to integrate into the world economy had more economic success. These countries had among the highest growth rates in the developing world over the past two decades—despite ignoring the directives of the WTO, IMF or World Bank.²⁵
- **Gap between rich and poor widens.** Instead of generating income convergence between rich and poor countries, as WTO proponents predicted, the corporate globalization era of the 1990s exacerbated the income inequality between industrial and developing countries, as well as between rich and poor within many countries. According to one United Nations study, “in almost all developing countries that have undertaken rapid trade liberalization, wage inequality has increased, most often in the context of declining industrial employment of unskilled workers and large absolute falls in their real wages, on the order of 20-30% in Latin American countries.”²⁶ According to another, the richest 5 percent of the world's people receive 114 times the income of the poorest 5 percent, and the richest one percent receives as much as the

poorest 57 percent.²⁷ This trend is widening over time, not closing, with the 20 richest countries earning per-capita incomes 16 times greater than non-oil producing, less developed countries in 1960, and by 1999 the richest countries earning incomes 35 times higher, signifying a doubling of the income inequality.²⁸

The track record of the IMF and WTO- condoned policies – which have failed to reduce poverty and inequality or increase growth – are falling into greater ignominy. A recent study by the Inter-American Development Bank found that, of a total of 66 presidential and 81 legislative elections in 17 Latin American countries during the 1985-2002 period, incumbent parties that pursued trade liberalization and privatizations while in office lost between 25 to 50 percent of their previous votes when pursuing reelection.²⁹ If anything, voter discontent in Latin America, a region widely seen as having most fully implemented the standard “neo-liberal” policies, has increased since 2002.

Even policy-makers who once pursued such liberalization policies, such as former Venezuelan economic minister Ricardo Hausmann and SAIS economist Riordan Roett, have now advocated a move away from the Washington Consensus policies, due to their utter failure to generate growth and rising living standards.³⁰ Such a reversal is not surprising, given that no developed country, including the United States, England, or even Korea developed on the basis of “free trade,” without managing foreign investment or without government intervention in providing basic services and infrastructure. Indeed, many commentators have observed that developed country’s advocacy of WTO liberalization policies is akin to “kicking away the ladder” to development for the poor countries, once the rich countries have already climbed up.³¹

U.S. Becomes Net Food Importer Under WTO, While Poor Countries Face Increased Food Insecurity

The WTO’s approach to agriculture is to treat food as if it were any other commodity, like steel or rubber, not something on which every person’s life depends. WTO rules on agriculture, both under the Agreement on Agriculture (AoA) and the Trade Related Aspects of Intellectual Property (TRIPS), have led to devastating outcomes for developing countries, while farm income in the wealthy countries has declined as food trade volumes have risen. These WTO rules have forced the elimination of domestic policies aimed at ensuring food sovereignty and security in developing countries, and of policies aimed at balancing power between producers and grain traders and food processors in rich countries. These changes have greatly benefited multinational commodity trading and food processing companies who, in the absence of government price and supply management programs, have been able to manipulate the markets to keep prices paid to farmers low, while at the same time keeping the prices paid by consumers steady or rising. Farmers in rich and poor countries have only seen their incomes decline, with many losing farms and livelihoods under the decade of the WTO regime. In the developing world, the combination of sharply lower prices and the effects of WTO rules regarding the patenting of seeds and plants under TRIPS have led to increased hunger.

- **United States to become net food importer.** According to a U.S. Department of Agriculture (USDA) write-up of the topic, 2005 may be the first time since 1959 that the United States will be a net food importer, thanks to a flood of imports and declining export growth. That the report blames the increased appetite of U.S. consumers for foreign products for this projected deficit³² is nonsensical given that much of the flood of imports is in the products in which the United States was once considered the leading exporter, such as beef and poultry, while U.S. exports of cotton, soy, red meat have declined dramatically in recent years.³³
- **Under the AoA, export prices for key U.S. crops have fallen to levels substantially below the cost of production, while consumer prices increased.** Since 1996, U.S. crop prices have generally declined about 40 percent,³⁴ while the cost of running a farm has risen by as much.³⁵ The overall tilt of U.S. government farm policy, in line with the WTO’s AoA, has been to remove the last vestiges of production management and price support, while topping off the dips in gross farm income through government payments.³⁶ According to government data, however, real prices for food eaten at home in the U.S. rose by 30% during the WTO era (1994 and 2004),³⁷ even as prices paid to farmers plummeted.
- **A similar long-term trend holds in the developing world,** where falling real prices for the agricultural commodity exports on which poor countries depend have fallen 50 percent relative to the

1960s, while wild price swings of up to 25 percent off of price trends make planning and subsistence difficult. At the same time, many of the very poorest countries are increasingly reliant on grain imports to meet their food needs, with the share of food imports in national income tripling since the 1960s.³⁸ This trend has been particularly felt in Mexico, where the consumer price of the staple food corn tortillas has only risen since NAFTA, despite a flood of cheap corn imports into Mexico that have collapsed much of Mexico's domestic small-scale corn production.³⁹

- **A dramatic loss of U.S. family farms accompanies sharp falls in income for the poorest farmers under the WTO.** The United States lost 226,695 small and family farms between 1994 and 2003,⁴⁰ while average net cash farm income for the very poorest farmers dropped to an astounding -\$5,228.90 in 2003 – a colossal 200 percent drop since the WTO went into effect.⁴¹
- **Displacement and hunger the norm in developing countries.** Following the decade of the WTO and NAFTA, over 1.5 million Mexican *campesino* farmers were thrown from their land.⁴² The agricultural sector, traditionally a major source of employment in Mexico, was devastated by the dumping of U.S. and foreign agricultural products into their markets. Likewise, the Chinese government projects that as many as 500 million of China's peasants will be made surplus, as the country continues the rapid acceleration of industrial development of its agriculture sector under WTO rules.⁴³ In country after country, displaced farmers have had little choice but to join swelling urban workforces where the oversupply of labor suppresses wages and exacerbates the politically and socially destabilizing crisis of chronic under- and unemployment in the cities of the developing world.
- **By dramatically expanding legal definitions of what can be patented under the TRIPS Agreement, the WTO has endangered food sovereignty and security in poor countries.** In most developing countries, the majority of the population lives on the land and feeds itself by replanting saved seeds. Yet over 150 cases have already been documented of research institutions or businesses applying for patents on naturally-occurring plants, some of which have been farmed for generations.⁴⁴ After the WTO TRIPS Agreement becomes fully binding for developing countries in 2006, governments that fail to enforce patents on seeds—by pulling up crops or by forcing subsistence farmers who can not afford to do so to pay royalties—will face trade sanctions.

These trends and the policies underpinning them are not expected to be improved upon in the current WTO Doha Round negotiations. Increasingly, even pro-trade academics such as Jagdish Bhagwati are arguing that the proposed agricultural reforms will not benefit most poor countries, characterizing claims to the contrary as “dangerous nonsense” and a “pernicious fallacy.”⁴⁵ The liberalization-led fall in prices has had a negative effect on producers in rich and poor countries alike, as a recent National Bureau of Economic Research study concluded when it found that middle income corn farmers in Mexico saw their incomes fall by more than 50 percent after NAFTA / WTO implementation.⁴⁶ After a decade of failed policies, it is clear that the WTO's “one size fits all” approach to agriculture and food security issues has failed at delivering its promised results.

The WTO's Coming to Dinner and Food Safety is Not on the Menu

The WTO's relentless drive toward the “harmonization” of food, animal and plant regulations based on low, industry-preferred international standards, endangers human health and sharply curtails the ability of elected governments to protect the health of their citizens in this critically important area. WTO-approved standards are generally set in private-sector bodies which do not permit consumer or health interests to participate and which make decisions without complying with domestic regulatory procedures for openness, participation or balance. Even if a country's domestic food safety laws treat domestic and foreign products identically, if the policy provides greater consumer protection than the WTO-named international standard, it is presumed to be a WTO violation and must pass a series of WTO test established in the Sanitary and Phytosanitary Agreement that have proved impossible to meet. Some of our key findings include:

- **As required under WTO “equivalency determination” rules, the U.S. declared that dozens of countries ensure their meat inspection systems are “equivalent” to that of the U.S. even though the countries' standards and performance violated U.S. law and regulation.** Many nations maintain their equivalency status and this right to ship meat to the U.S. despite documented violations of U.S. policy. For instance, Argentina's meat inspection system maintains its U.S. equivalency status despite well-documented

problems that include contamination of meat with oil, hair and feces.⁴⁷ Similarly, the Brazilian system, which allowed companies to pay meat inspectors in violation of U.S. law requiring independent government inspection, was declared “equivalent.”⁴⁸ USDA labeling of imported products makes them indistinguishable to the consumer.

- **Time and time again, WTO tribunals have refused to permit any regulatory action based on the “Precautionary Principle.”** Governments have long relied on this principle to shield their populations from uncertain risks from new or emerging products. Previous “precautionary” actions by the U.S. government to ban the morning sickness drug Thalidomide in the 1960s⁴⁹ and to prevent the outbreak of Mad Cow disease in the 1980s and 90s helped avert the substantial human and agricultural devastation that occurred in other countries due to these and other policies. Yet the U.S. has used the WTO to systematically attack other countries’ precautionary regulations such as those dealing with beef hormones, genetically modified organisms (GMOs), invasive species and agricultural pests.
- **Any domestic standard that provides more health protection than a WTO-approved standard, is presumed to be a trade barrier,** unless the higher standard is supported by extensive scientific data and analysis that clearly shows a specific and significant risk associated with the lower standard. No nation has yet been able to demonstrate the need for higher standards, much to the WTO’s satisfaction, despite several lengthy and costly attempts by developed countries to perform WTO-required risk assessments on the dangers posed by artificial hormones in beef, invasive species, pest contamination of native salmon populations, and more.

The WTO’s Environmental Impact: First, Gattzilla Ate Flipper

Public Citizen has documented a systematic pattern of WTO attacks on member nations’ vital environmental concerns and policy priorities, as well as a series of biases built into WTO rules that promote unsustainable uses of natural resources. Over its over ten years of operation, the WTO’s anti-environmental rhetoric has been replaced by more political pronouncements, even as WTO tribunals have systematically ruled against every domestic environmental policy challenge that has come before it, and eviscerated whatever GATT Article XX exceptions that might have been used to safeguard such laws. Instead of seeking to resolve conflicts between commercial and environmental goals, the WTO’s largely ineffectual Committee on Trade and the Environment has become a venue mainly for identifying green policies that violate WTO rules. Key findings include:

- **To date, all GATT/ WTO dispute panel decisions on environmental laws have required that the challenged domestic laws and measures be weakened**—even when the challenged policy treats domestic and foreign goods the same, or when it implements a country’s obligations under a Multilateral Environmental Agreement (e.g. the U.S. Endangered Species Act regulations implementing the Convention on International Trade in Endangered Species (CITES)). When the WTO ruled against U.S. Endangered Species Act rules protecting CITES-listed sea turtles from shrimpers’ nets,⁵⁰ the U.S. complied with the WTO order by replacing the requirement that all countries seeking to sell shrimp in the United States had to ensure that their shrimpers used turtle exclusion devices.⁵¹ The new U.S. regulations were approved several years later,⁵² but Thailand and other shrimp exporting countries continue to put pressure on the United States to weaken the rule’s enforceability.⁵³
- **WTO rules have consistently been interpreted to mean that products cannot be treated differently according to how they were produced or harvested.** This interpretation, for which there is no legal basis in the actual rules, requires, for example, that clear-cut tropical timber cannot be treated differently from sustainably-harvested timber, that fish caught with damaging drift nets cannot be distinguished from sustainably-caught fish, and that products made using child labor or extreme cruelty toward animals must be given the same trade treatment as products made under more humane and ethical conditions.
- **Because WTO panels have systematically ruled against challenged environmental policies, now mere threats of challenges often suffice.** For example, after years of sustained trade law challenges, the Bush administration decided to quietly implement a change to a “dolphin safe” labeling policy which Mexico had demanded as necessary for implementation of a GATT ruling. (Mexico had threatened a new WTO case if their demands were not met). On New Years Eve 2002, when few U.S. citizens were focused on policy matters, the Bush administration announced that it would change the “Flipper-friendly” tuna policy and

allow the “dolphin-safe” label to be used on tuna caught using deadly purse seine nets and dolphin encirclement.⁵⁴ While this policy was eventually overturned in a challenge brought by environmentalists to federal court,⁵⁵ Mexico and other countries continue to make noises about a possible WTO challenge.⁵⁶ Another case involved Hong Kong’s WTO complaint about U.S. anti-invasive species laws.⁵⁷ In this case, U.S. regulatory efforts to fight the costly infestation of the Asian Longhorned Beetle (which is devastating maple and other trees throughout the United States) are being classified as violating WTO rules. The mere threat of a challenge in this regard has provoked the USDA to considering watering down regulations requiring treatment of raw wood packing material to comply with a weaker, WTO-sanctioned “international” standard.⁵⁸

Warning: The WTO Can be Hazardous to Public Health

The WTO’s wide-ranging rules have consistently troubled public health advocates, who have found that many policies which have little to do with trade, are being threatened by WTO mandates. The following are some examples:

- **Access to and safety of medicines.** The creation of a worldwide pharmaceutical patenting system under the WTO’s TRIPS agreement has raised pharmaceutical costs in the U.S. and further restricted the availability of lifesaving drugs in developing countries. A 1995 study on the overall impact of the TRIPS agreement on U.S. consumers “conservatively estimated” \$6 billion in higher U.S. drug prices due to windfall patent extensions under the WTO.⁵⁹ Why a business protection scheme guaranteeing monopoly markets would be inserted into a trade ‘liberalization’ agreement has outraged consumer groups worldwide. Poor country governments and health officials note with fury that even though the current patent and licensing regime has only recently been accepted in developed countries (Switzerland for example, did not recognize drug patents until the 1960s),⁶⁰ under WTO rules developing nations around the world are required to adopt monopoly patents on medicines.⁶¹ Concern about public health has grown around the world, with many Members of Congress taking a lead in opposing trade agreements that restrict access to essential medicines. Unfortunately, the U.S. government has often been on the wrong side of this issue, WTO- challenging Brazilian and threatening Thai and South African laws on compulsory licensing of pharmaceutical products⁶² and pushing to undermine in its new Free Trade Agreements a 2001 WTO Declaration reiterating countries’ ability to issue compulsory licenses for medicines. Yet the U.S. itself used the power it seeks to deny other nations in WTO when it threatened a compulsory license after the 2001 anthrax scare.⁶³
- **Downward harmonization for drug testing.** In order to fulfill its harmonization obligations under the WTO, the Food and Drug Administration (FDA) in 1996 proposed changes to its guidelines for testing the potential carcinogenicity of medicines being approved for U.S. use.⁶⁴ The FDA had previously required companies to test drugs on two species (typically mice and rats) because tests on rats alone often failed to produce evidence of carcinogenicity where it was subsequently found in mice. The new WTO- “harmonized” testing standard approved by the FDA, however, allows drug companies to drop long-term mice tests and substitute them with less reliable short-term second species tests.⁶⁵
- **Threatening developing countries with WTO challenges to pressure them into reducing public health protections.** American Gerber Products Company refused to comply with Guatemalan infant formula labeling laws that implemented the WHO/UNICEF “Nestlé’s Code” on the grounds that the laws violated trademark protections provided in the WTO’s TRIPS agreement.⁶⁶ The Guatemalan law forbid pictorial depictions of healthy babies aimed at inducing illiterate people to replace breast feeding with formula which, when mixed with unsanitary water, was causing an epidemic of avoidable infant deaths.⁶⁷ Gerber refused to remove its trademark “Gerber Baby” from its labels. The law might have withstood the threatened WTO challenge. However, to avoid the prohibitive cost of mounting an uncertain defense, Guatemalan authorities instead exempted imported formula from this important public health law,⁶⁸ whose success in saving babies’ lives had led to Guatemala previously being held up as an example by UNICEF.⁶⁹

Conclusion: The WTO Must Shrink or Sink in Order for the Public Interest to be Served

The WTO, far from being a win-win proposition, has been a lose-lose affair for most people in the United States and abroad, threatening people's livelihoods, the environment, public health, and the right of people around the world to enjoy democratic policy-making processes that allow them to decide what is best for themselves.

The recent WTO gambling ruling and other controversial rulings are widening the coalition of groups questioning U.S. trade policy. Groups such as the Association of State Supreme Court Justices, U.S. League of Cities, National Conference of State Legislatures, National Association of Counties, and National Association of Towns and Townships all have expressed concerns that current and proposed trade rules may undermine our nation's system of federalism and the integrity of our domestic courts.⁷⁰ Groups typically considered bedrocks of the "pro-trade" alliance, such as the National Association of State Departments of Agriculture and other agricultural groups, are expressing concerns about depressed commodity prices, lowered farm income, and the United States' "net food importer" status.⁷¹ Associations of immigrant-descended groups such as the League of United Latin American Citizens are expressing concerns that Hispanics and people of color are not sharing in the gains from trade.⁷² And high-tech workers and inventors are arguing that the drive to make ever-more protectionist trade law favoring the largest high-tech corporations like Pfizer and Microsoft is cheating workers whose jobs are being offshored, inventors who are seeing few gains for their innovations, and consumers in rich and poor countries alike, who face lessened access to essential medicine and restrictions on legitimate uses of copyrighted items.⁷³

Opposition to the WTO's rules is increasingly coming from governments themselves, as the organization's ever-growing crisis of legitimacy bursts into public view again with the collapse of the WTO's Cancun Ministerial. In particular, these countries – led by Brazil, India, South Africa and other nations – demanded that the WTO should not establish one-size-fits all, anti-democratic rules over investment, government procurement, and competition policy, proposed rules that were subsequently dropped from WTO discussion.⁷⁴ It is extremely ironic that while the Bush Administration argues that one of its top priorities is promoting democracy worldwide, the status quo WTO and U.S. positions regarding the WTO's future course push in the opposite direction.

We no longer have to guess what might happen under the WTO: we now know. A decade of WTO policy has led to stagnant real national and family incomes around the world, increased poverty in the poorest regions, and undemocratic WTO attacks on national sovereignty and public policy. Based on this evidence, Public Citizen finds it highly unlikely that continuation or expansion of this model will reverse these failures.

Thus, Public Citizen works with a global movement calling for transformation of the current WTO system. While we believe that a system of global trade rules is vital, the current rules are not serving us well. We propose that certain non-trade aspects be eliminated from the WTO. We also propose that the trade rules that would remain be altered so as to better meet the goals of providing sustainable livelihoods to people in rich and poor countries alike, fighting for the elimination of poverty, ensuring sustainable use of natural resources and providing food sovereignty, the essential tool in fighting hunger. For details on these proposals, we you to review their summary at "WTO - Shrink or Sink! The Turnaround Agenda International Civil Society Sign-On Letter,"⁷⁵ or for a more thorough review, please allow us to provide you with a complimentary copy of *Alternatives to Economic Globalization: A Better World is Possible*, an edited anthology with contributions from Public Citizen.

To maintain, much less expand, a global 'trade' regime that to date has worsened the economic situation in rich and poor countries alike, threatened food sovereignty and access to essential medicines, and that undermined democratic governance is a recipe for growing economic, social and political instability. At a minimum, the real life outcomes of a continuation of the expansive status quo corporate globalization agenda as implemented by the WTO poses an enormous risk to the legitimacy of trade itself.

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