#7 *"WHOSE TRADE ORGANIZATION?* The Comprehensive Guide To The WTO"

Excerpts from the *new* book by Lori Wallach and Patrick Woodall of Public Citizen

Warning: The WTO can be Hazardous to Public Health

Corporate-driven globalization under the WTO has sharply increased income disparity, which the WHO has identified as one of the key correlates of a country's health status. Trade liberalization is producing greater income inequality between and within nations, which in turn, has led to greater disparities in public health conditions and outcomes. In the area of public health, we again find that WTO challenges—or even threatened challenges—have already been used to undermine important public health policies on the grounds that they constrain or interfere with trade. Because many public health officials and advocates have not focused on the WTO's implications, in this chapter we analyze WTO cases regarding public health but also describe how specific WTO rules set new constraints on a panoply of key public health goals and policies:

- Tobacco and alcohol control. The Technical Barriers to Trade (TBT) Agreement sets constraints on national and state policies regarding labeling of products and product standards such as cigarette "plain packaging" rules and warning labels on alcohol and tobacco products. The General Agreement on Trade in Services (GATS) covers distribution, marketing and advertising services for tobacco and alcohol and the EU has led WTO calls for the elimination of the alcohol distribution monopolies that 18 U.S. states use to control access to that product.
- Bans or controls on toxic substances. The U.S. has threatened WTO action under the TBT agreement against various countries for domestic bans or limits on phthalates, lead and polyvinyl chloride (PVC). In addition, harmonization negotiations currently underway regarding chemical classification could implicate thousands of state and local right-to-know rules.
- Government procurement policies promoting health. The WTO Agreement on Government Procurement requires government purchasing decisions to be based only on commercial factors, meaning that governments cannot give preference to companies that provide workers healthcare benefits or whose products are made using less-toxic processes.
- Toxic waste. Under the TBT requirement that government policies be "least trade restrictive," the U.S. is claiming that a European-wide directive requiring producers to safely dispose of computer, cell phone and other toxic products is more burdensome than necessary to U.S. companies.
- Access to and safety of medicines. The creation of a worldwide pharmaceutical patenting system under the WTO's Agreement on Trade-Related Aspects of Intellectual Property (TRIPs) has raised pharmaceutical costs in the U.S. and further restricted the availability of lifesaving drugs in WTO developing countries. 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), developing nations around the world are required to adopt monopoly patents on medicines.
- Access to healthcare. The definition of services covered under GATS rules includes many public health issues such as access to and regulation of health care, health insurance, hospitals, nursing and homecare and the qualifications of medical professionals.

- Water and sewage infrastructure. GATS rules also promote the privatization and deregulation of services which raise serious public health issues regarding access to and quality of such basic services as safe drinking water, solid waste collection and sewage systems.

The impact of these constraints is further demonstrated through in-depth analysis of the following cases:

- **The refusal of the American Gerber Products Company to comply with Guatemalan infant formula labeling laws that implemented the WHO/UNICEF "Nestle's Code" on the grounds that the laws violated trademark protections provided in the WTO's TRIPs agreement.** 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. 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, whose success in saving babies' lives had led to Guatemala previously being held up as an example by UNICEF.
- **Canada's outrageous WTO challenge of France's asbestos ban.** While a strict reading of WTO rules would have resulted in the panel overturning the ban, the enormous political pressure surrounding the case pushed the WTO tribunal hearing the dispute to apply various legal contortions that resulted in a ruling that the law did not violate WTO terms. Unfortunately the jurisprudence established with this political escape route also could limit use of WTO exceptions that can apply to health policies in future cases.
- **The long-running U.S. trade campaign to protect big Pharma's drug monopoly profits.** The U.S. initiated a formal WTO challenge of a Brazilian law on compulsory licensing of medicines and threatened Thai and South African affordable drug access laws with WTO challenges. In 2002, the U.S. also scuppered efforts to reach a WTO deal on permissible imports of compulsory-licensed drugs and then in August 2003, finally accepted an agreement that imposes an array of new requirements on nations seeking to import compulsory licensed drugs. Compulsory licensing is permitted under WTO rules, but many countries have been convinced not to use compulsory licenses because of WTO threats and the related fear of having to spend precious time and resources fighting the U.S. and other developed nations in the WTO. Yet when the U.S. faced the 2001 anthrax crisis, it considered issuing a compulsory license for the antibiotic CIPRO even as it was seeking to stop developing countries from using compulsory licenses.
- **U.S. trade threats against tobacco regulations around the world.** The U.S. successfully fought to exclude language from the recent World Health Organization agreement on tobacco regulation that would have specifically given the agreement's health rules priority over international trade laws. U.S. cigarette manufacturers have also threatened action under the trademark protection rights of the TRIPs agreement and other trade claims to overcome cigarette labeling and tobacco import control laws in foreign markets. For example, U.S. cigarette companies argued that a plain-paper packaging law would violate Canada's NAFTA and WTO intellectual property obligations and would have required the Canadian government to pay millions of dollars in NAFTA expropriation claims. The same companies have also fought off regulatory bans on their "mild" and "light" products (which have been shown to mislead consumers into believing that these cigarettes are less harmful than other varieties) on the grounds that these trademarked brand names are protected under WTO rules. In the 1980s,

tobacco companies worked closely with the Office of the U.S. Trade Representative (USTR) to force open cigarette markets in Japan, South Korea and Taiwan, and filed a formal GATT complaint in the early 1990s that ultimately overturned Thailand's cigarette import ban. According to World Bank estimates, the opening of these markets has helped push Asian smoking rates ten percent above what they would otherwise have been.

- **Downward harmonization on testing of drugs for carcinogenicity.** In order to fulfill its harmonization obligations under the WTO, the FDA in 1996 proposed changes to its guidelines for testing the potential carcinogenicity of medicines being approved for U.S. use. 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.
- **Downward harmonization of drug testing ethics.** The U.S. has played a key role in lowering other nation's standards through WTO-promoted international harmonization by pushing the international industry-dominated standard-setting body to adopt the U.S. practice of using placebos in clinical trials. The use of placebos in drug trials is uninformative and unethical compared to active-controlled trials where all patients receive treatment and doctors can better judge whether a new drug is better than the existing version. In placebo trials, however, a control group goes untreated and the results can only indicate whether the new drug is better than no treatment at all.