

# Introduction to *Whose Trade Organization*

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## It's Not About Trade

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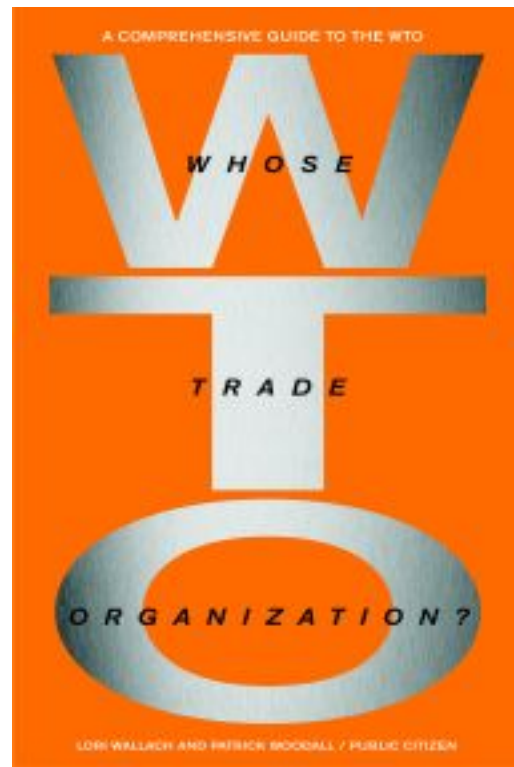
Many people are surprised when they first learn that trade is only a small element of the WTO.

But the World Trade Organization—and the sprawling rules that it enforces—actually covers a huge array of subjects not included in past trade agreements that extend far beyond trade matters. The new agreements that were established with the WTO nine years ago included 800-plus pages of one-size-fits-all rules. Those new agreements set constraints on signatory countries' *domestic* food safety standards, environmental and product safety rules, service-sector regulation, investment and development policy, intellectual property standards, government procurement rules, and more.

The establishment of the WTO transformed the nature of global “trade” agreements. The General Agreement on Tariffs and Trade (GATT), a 1947 pact that had governed tariffs and quotas on trade in goods, had included some simple—and objective—principles, like requiring countries to apply the same regulations to foreign and domestic goods. But the new WTO rules are subjective—constraining the *level* of food safety or environmental protection a country can provide or the priorities a country can choose—even if these policies treat domestic and foreign goods equally. Some of the new WTO agreements also force countries to implement specific policies in their domestic laws. For instance, all countries are required to implement certain intellectual property rules, including giving patent owners decades of monopoly control over a vast array of items including plant varieties, seeds, and other things we do not ordinarily think of as private property. Instead of setting terms for *international* trade—exchange between different nations—these rules are aimed at eliminating the diversity of national policies, priorities, and cultures to create the uniform world market sought by large multinational corporations.

A key WTO provision specifically requires each signatory to ensure the conformity of its laws, regulations and administrative procedures<sup>1</sup> to the WTO agreements' terms. WTO member nations can challenge as an “illegal trade barrier” any national or local policy of another WTO country, bringing charges before a WTO tribunal comprised of three trade officials who meet behind closed doors. Nations whose policies are judged not to conform with WTO rules are ordered to eliminate them or face permanent trade sanctions.

Taken as a whole, the WTO and its agreements are a powerful mechanism for spreading and locking in corporate-led globalization. The WTO is a mechanism to bring every country in the world—ready or not—into an existing global market designed by corporations, and to take the practices those corporations invented willy-nilly—which, of course, suit their needs—and set them in stone as “WTO rules.”



Because its terms are so broad, the WTO has managed to intervene in domestic policies all over the planet. India, like many countries, once had a ban on the patenting of seeds and medicines, to make them broadly accessible. A WTO challenge claiming India had failed to implement the required twenty-year patenting system resulted in India reversing its ban—threatening to deprive millions of people of life-giving resources. In Guatemala, implementation of the UNICEF–World Health Organization Code on the labeling of infant formula was gutted after a WTO threat. Consumers and producers in Europe face costly trade sanctions because the European Union (EU) has not implemented a WTO order to import beef containing artificial hormones—the WTO ruled that Europe’s standards provided too much consumer protection after a U.S. WTO attack. Meanwhile, a U.S. WTO case forced the EU to eliminate a program that had set aside a small market share for bananas from former Caribbean colonies, leading to the ruin of thousands of small family farms in several island nations. Policies aimed at ensuring the continued existence of some Canadian news magazines in the face of massive U.S. magazine imports were abolished after a successful U.S. WTO case. On the other hand, the U.S. saw its gasoline cleanliness standards weakened after a WTO assault on Clean Air Act regulations by several countries. Even though the U.S. signed a global environmental treaty called the Convention on International Trade in Endangered Species, American rules requiring shrimp fishers not to kill sea turtles were diluted after a WTO challenge to U.S. Endangered Species Act regulations enforcing the treaty. Meanwhile, the U.S. State Department, lobbying about how a state law might violate WTO, pressured Maryland legislators to drop a procurement policy aimed at promoting human rights in Nigeria. These are only a few of the negative results of nine years of WTO implementation.

Proponents of this system have called it “free trade” and attack all who criticize it as “protectionist” or “isolationist”—a great irony given the international nature of the opposition. Yet, the WTO’s rules have little to do with trade and even less to do with the nineteenth-century free trade philosophies of Adam Smith or David Ricardo.

Indeed, some of the topics covered by the WTO have so little to do with trade that naming these agreements required explanation. Thus, WTO includes an Agreement on Trade Related Intellectual Property and an Agreement on Trade Related Investment. One longtime WTO observer often quips that you can identify which WTO agreements have the least connection to trade by which have the “Trade Related” label slapped on them.

If such an autocratic, antidemocratic system had been imposed on elected governments around the world by force, human rights monitors and UN inspectors would have been dispatched. Instead, the WTO’s silent coup d’état will only be reversed by citizen activism and campaigning. A first step for many people is realizing that “trade” is the least of what is covered by the WTO’s rules, and then realizing what that means for their daily lives.

## **THE SECRET HISTORY OF THE WTO**

Before November 30, 1999—the day massive anti-WTO protests began in Seattle, Washington—few Americans knew much—if anything—about the mysterious global bureaucracy called the World Trade Organization. But though Seattle was the first time many Americans realized corporate globalization’s broad implications for their lives, Public Citizen had made the discovery a decade earlier.

I was working as a lobbyist for Public Citizen’s Congress Watch in 1990 on issues such as pesticide regulation and food labeling. During debates over pending legislation, I noticed two very odd things. One, the industry was not fighting us hard enough over things that should have been really disturbing to them. And second, in unguarded moments industry representatives would say things like, “If you strengthen that pesticide law, the U.S. will have problems with the Codex Alimentarius under the new GATT,” or, “What do you mean, you want more meat inspection?—that could be a trade barrier.”

From school, I understood that GATT was just about cutting tariffs and quotas. But having also done stints on Capitol Hill and in political campaigns, I had developed some radar for incoming sneak attacks. So, I began to get a bad feeling that we were missing something—something really big.

Indeed we were, and so was virtually everyone else in the public-interest community. The more we dug into what was being called a “trade” agreement, the more we realized that the public-interest agenda was facing a massive attack from previously unknown quarters. At stake was the agenda of economic justice and equality, environmental and consumer protection, food safety, and more. As the public-interest movement and labor unions had been making headway on these struggles through federal legislation, our opponents shifted to a different realm—one where decisions would be made in distant, secretive, unaccountable venues insulated from popular democracy. The same neoliberal forces behind the Reagan and Thatcher “revolutions” opened a new front in their campaign to create a world in which government would be shrunk and human rights and needs would be left to markets and corporations. The plan was to turn the obscure and largely uncontroversial GATT into a Trojan Horse holding an expansive nontrade agenda. So, in 1986, without fanfare, at a GATT summit in Uruguay, new “trade” negotiations had been launched.

Proponents of the Uruguay Round GATT negotiations and the WTO that emerged from them promised that the new system would pose no threat to domestic sovereignty, public-interest policies, or democracy. They also promised enormous economic gains worldwide if the Uruguay Round was implemented: The U.S. trade deficit would decrease by \$60 billion in ten years. Latin American countries would boom, and Asian growth would keep pace. Then—U.S. Treasury Secretary Lloyd Bentsen even predicted that passage of the Uruguay Round would result in an additional \$1,700 in annual income per U.S. family.

But the more we dug into the negotiations, the more alarmed we got. Public Citizen was not getting into a new issue called “trade,” rather the good name of trade was being hijacked to launch an offensive on democratic, accountable governance and decades of public-interest gains won by consumer, environmental, labor, and other citizens’ movements worldwide.

In 1991, when we were leaked a copy of the secret draft text, the fight began in earnest. The new rules were being written surreptitiously, and under the influence of the world’s largest multinational corporations, with five hundred U.S. corporations officially designated as formal U.S. government advisers. Agreements were written in “GATTese,” a language understood mainly by trade lawyers. Secrecy of all WTO documents, sessions, and enforcement tribunals is one of few procedural rules mandated in the WTO text.

There are few people in the world who have actually read the whole text, which establishes the WTO and the 18 major agreements setting rules to which every signatory nation must conform their domestic policies—which WTO enforces. A useful way to understand what the WTO’s terms are really about is to focus on the themes that run through all of the WTO’s agreements. These include:

- *privatize and commodify* all elements of the economy and society by pushing countries to treat everything from bulk water and public services to genetic materials and food as commodities to be made accessible as new for-profit tradeable units;
- *deregulate* by constraining the role of all levels of government and designating some domestic environmental, food safety and other regulations as trade barriers that must be eliminated;
- *harmonize* by pressuring countries to replace national and local policies with uniform global standards that are presumed to be WTO compliant while national standards providing a greater level of consumer protection in pesticide and meat inspection standards, environmental policies, accounting rules and more are exposed to WTO challenge;

- *“liberalize” investment* by requiring governments to eliminate policies regulating who can own what, including essential services, and to eliminate conditions on investors, such as requiring certain labor standards or environmental protections;
- *“liberalize” finance* by requiring countries to eliminate policies regulating banks, currency trading, derivatives, and stock markets;
- *manage trade* according to WTO rules. In contrast to “free trade,” this is a “corporate- managed trade” system because of the special protections it provides for certain interests. For instance the WTO protects subsidies given to agribusiness to export commodities (thus allowing them to be dumped on markets at prices below the cost of production) while certain domestic subsidies to support small farms are characterized as illegal trade distortions;
- *create new property protections*, for instance requiring nations to adopt twenty-year monopoly patents on a wide array of items and giving foreign investors special rights not enjoyed by local businesses or citizens; and
- *homogenize culture and consumer demands* by treating culture as another commodity and eliminating government policies aimed at maintaining diverse media content.

As awareness grew in the U.S. and around the world about what the Uruguay Round “trade” talks were really about, environmental, labor, consumer, and other public-interest groups started raising an alarm. In many nations, especially in the developing world, the establishment of this powerful global commerce agency was incredibly controversial and caused massive protests. In several countries, opposition was so strong that the WTO was only “approved” after extraordinarily antidemocratic maneuvers—including the failure to translate the text so elected officials in many nations literally had no idea what they were approving, and short-notice late-night parliamentary votes in several nations. But in the U.S., most people—including many people in Congress—had no idea what was really at stake. In late 1994, Congress approved the agreement and passed the Uruguay Round Implementing Act. This legislation included hundreds of pages of changes to U.S. law to make existing policy conform to the WTO’s rules. The WTO then went into effect worldwide on January 1, 1995.

## SEATTLE

In December 1999, what had been a long-growing struggle against corporate globalization and the WTO suddenly burst onto center stage. It took this relatively superficial fight on the streets of Seattle to lure the world’s major media to pay attention to the WTO and the existential struggle being fought worldwide against it. Only the threat of broken windows in Seattle prompted the media to begin to expose the WTO’s global threat to democracy and the worldwide damage it had already caused.

During those battle-of-Seattle days, 3,000 delegates to the WTO’s fourth Ministerial level summit were gathered inside the Seattle Convention Center. In closed-door “green room” sessions, top-level trade officials from the U.S., Europe, Japan, and a few other nations were huddled with the WTO Secretariat’s staff, struggling desperately to hammer out an agreement to launch a new “Millennium” Round of trade talks—designed to expand the WTO’s power and scope.

Often vital WTO sessions and decisions are conducted in “green room” sessions where even the majority of WTO country representatives are excluded. The WTO Secretariat, which is supposed to act as a neutral facilitator for all WTO member nations, often works in conjunction with a shortlist of the wealthiest nations and their handpicked allies. No tactic is too shameful. The WTO Secretariat consults with the U.S. and the European Union and then often appoints representatives of the few developing countries known to support their agenda to chair negotiating groups. This gives the appearance of diversity while ensuring the outcomes will not represent the interests of the majority of WTO member countries—which are mostly developing countries.

The tension outside—where phalanxes of police and the National Guard had blocked avenues and intersections and tear gas choked throngs of protesters—was almost equaled in the suites, as pro-WTO-expansion trade officials verbally pummeled ambassadors from the growing number of countries skeptical about WTO expansion. The real-life record of the WTO—and decades of wreckage resulting from similar policies promulgated by the International Monetary Fund (IMF) and World Bank—also meant that in countries around the world, popular movements opposing the WTO had been growing. Indeed, the movement against corporate-led globalization and the WTO began in the developing world where people had already been suffering the results of this model.

Suddenly, the developing world came to learn that plenty of folks in the U.S. were united with them against the WTO and against the sort of world that its rules promote. U.S. officials triumphantly demanded the rest of the world organize itself like privatized, deregulated, Enronified America and berated other nations' officials for being "backwards" if they opposed WTO expansion. But then the whole world got to see for itself that right in the belly of the beast, tens of thousands of U.S. residents were moved to take to the streets against the very model that the U.S. government was trying to impose worldwide.

The protests in Seattle were the icing on a cake that had taken years to stir together and bake. Since the WTO expansion proposal had first been unveiled nearly two years earlier, citizen activists in scores of nations had been campaigning under the slogan "WTO: No New Round, Turnaround!" Campaign strategy had been shaped month by month by the Our World Is Not For Sale Network, a network of social movements and civil-society campaign groups from around the world that had emerged from the successful grassroots battle against a proposed Multilateral Agreement on Investment (MAI).

Thriving grassroots, country-based campaigns forced delegations at the Seattle Ministerial to consider the implications of their actions at home. India and other developing-nation governments faced massive domestic pressure to oppose WTO expansion. The usual WTO ploy of forcing "agreement" on a Ministerial Declaration before the actual ministerial negotiations had failed.

And, in Seattle, when word leaked out that the European Union's trade minister, Pascal Lamy, was poised to give in to U.S. wishes regarding genetically modified organisms, European activists foiled his move by contacting prime ministers, environmental ministers and legislators from nations he was supposed to be representing. Lamy was "reminded" to withhold "European" consent for this key U.S. demand.

The unexpectedly large protests played an enzymatic role in creating a full-blown WTO deadlock, and the summit had to be extended by a day. The major players holed up in closed-door sessions to develop a "take-it-or-leave-it" proposal to present to the rest of the WTO member countries—who were excluded from those sessions.

Anger increased hourly as the many excluded trade ministers met amongst themselves—with CNN's live coverage of the protests buzzing in the background. Midday on December 3, 1999, blocs of African, Latin American, and Caribbean countries issued public statements, aligning themselves with longtime opponents of WTO expansion like India and Malaysia.

Public Citizen activists and the staff of Public Citizen's Global Trade Watch were scattered across the city that day, linked by walkie-talkies and cell phones. A year earlier, despite our tiny staff and pinched budget, we had sent a senior organizer to Seattle and opened a WTO campaign office. Some folks thought we'd lost our minds, but we had sensed what Public Citizen's founder, Ralph Nader, calls a "trimtab" moment. The trimtab is the small rudder that turns the massive rudder on ocean liners.

The news seemed almost unbelievable when an official from a developing country passed the word. My voice was trembling over the crackling static of the walkie-talkies: “The WTO expansion is stopped! The people have won—there will be no new WTO round!”

A Global Trade Watch staffer who had spent most of the past year in Seattle stood on the corner of Pine Street amid a sea of 30,000 people. He grabbed a megaphone and shouted out the spine-tingling news. The crowd—youth and environmental activists, members of the Steelworkers and Teamsters unions whose early commitment to the WTO fight showed in their numbers that day, and newly activated Seattle residents—roared back. Inside the convention center, I held up my walkie-talkie so the jubilant activists inside could hear the celebration in the street. Friends and allies from India, Canada, Malaysia, the Philippines, Ghana, Chile, and other nations piled into a tearful and smiling global hug in the Convention Center lobby. The Global Trade Watch staffer who had helped coordinate the international WTO campaigning linked arms with her counterparts from Africa, Europe, Latin America, and Asia in a spontaneous jig as a bemused press corps began to gather.

The allegedly unstoppable force of corporate-led globalization had hit the truly immovable mass of grassroots democracy.

The notion that WTO talks could be subjected to democratic accountability was so unimaginable to the U.S., European, and WTO officials pushing expansion that they had not even developed a fallback plan. The Seattle WTO Ministerial staggered to a close with an ad hoc news conference announcing that discussions would continue at the WTO’s Geneva headquarters. But back in Geneva in the coming weeks, the topic of discussion was not how to revive WTO expansion, but how to repair the severe damage to the WTO’s public legitimacy. A PR campaign—not policy change—was the approach and thus, predictably, four more years of the WTO’s damage led to “Seattle-on-the-Sand”—the implosion of the WTO’s 2003 Ministerial— as the WTO’s growing crisis of legitimacy burst into public view again.

## **THE WTO’S RECORD: RESULTS ARE IN**

Now, nearly nine years since the founding of the WTO, it is clear that the promised economic gains have not materialized. Worse, the WTO fails to meet the most conservative of tests: do no further harm. This book seeks to demystify the WTO and make its track record of diverse damage accessible to those of us living with the results.

We have called on some of the leading WTO experts around the world to help with this book, to enable us to provide comprehensive information on the full array of issues that the WTO implicates. This book examines the WTO’s impacts on environmental protection and conservation; food and product safety; access to essential public services; food security and agriculture; public health, worker safety, and access to medicines; jobs, livelihoods, economic development, and standards of living in both rich and poor countries; human and labor rights; and how the WTO and its powerful dispute-resolution enforcement system operate. It also includes a chapter co-authored with allies from Latin America about how the revived push to expand the WTO is linked to a regional push to expand the North American Free Trade Agreement (NAFTA) to thirty-one additional countries through the proposed Free Trade Area of the Americas (FTAA).

This book contains many specific examples and footnotes because it aims to arm people with the strongest case against the WTO: the facts about the WTO’s outcomes. Animating many facets of our work is the concept of the “public citizen”—a person who, once empowered with information and tools to effect change, makes being a participant in civic life part of his or her daily routine. Thus, a key goal of Global Trade Watch is to clarify for people that the current globalization model is neither inevitable nor representative of “free trade,” a concept that people generally support. All of our work seeks to make the

measurable outcomes of this model accessible, while reiterating that if the results are not acceptable, then the model can and must be changed. We work to demonstrate that one *can* be pro-trade and internationalist and still demand transformative change to the current terms of globalization.

Fundamentally, what is really at stake is democratic, accountable governance. Taken as a whole, the review of the WTO's operations documents an insidious shift in decision making on an array of domestic issues away from accountable, inclusive, and democratic for a to distant, secretive, and unaccountable WTO venues. Much of the information presented here about the disputes adjudicated by the WTO and about corporate and government threats of WTO action has not been publicized previously and was obtained only after extensive investigation. The trend that emerges is of the WTO silently eroding the hard-won balance between public interests in economic equity, environmental protection, health, and safety on one hand, and short-term corporate interests in market control and profitability on the other.

### **SOME OF THE FINDINGS OF OUR REVIEW OF THE WTO'S EIGHT YEARS IN OPERATION INCLUDE:**

#### *Promised Economic Gains Fail to Materialize*

We must await full implementation of the Uruguay Round Agreements before we can fully assess their long-term economic impacts. But the economic trends that have emerged so far indicate serious problems. These trends would have to abruptly reverse course to merely return the developing world to better, pre-Uruguay Round conditions, much less to fulfill many of the outlandish predictions of broad benefits served up by Uruguay Round boosters. Unbelievably, WTO boosters still argue that the answer to this grinding poverty is more of the same, faster—including a new proposed WTO expansion—and that poverty is being caused by governments not adhering quickly or completely enough to the WTO formula.

Thankfully, the ironclad consensus among economists and policy elites around the world in favor of the model promoted by the WTO rules has loosened dramatically. For some, theory and ideology have been overcome by the facts: the number of people living on less than \$1 a day (the World Bank's definition of extreme poverty) has risen since the WTO went into effect and, in many parts of the world, the percentage of people living is such that extreme poverty also has risen. What we also know today and what has contributed greatly to the shift among elites is that the world has been buffeted by unprecedented financial instability as more countries have adopted the package of policies in the WTO. Economic growth in the developing world has slowed. Income inequality is rising rapidly between and within countries. A report by the United Nations Conference on Trade and Development (UNCTAD) found that, "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."

Despite productivity gains, wages in many countries have failed to rise. Commodity prices are at all-time lows, causing the standard of living for many people to slide, particularly in Asia, Latin America, and Africa. Indeed, in most countries the period under the Uruguay Round has brought dramatic reversals in fortune— and not for the better.

Latin America is foundering, mired in its deepest economic slump since the debt crisis of the 1980s. The corporate economic globalization model with its hallmark of "free" trade, export-oriented development, privatization, and investment liberalization was imposed on Argentina by multilateral institutions such as the IMF, the World Bank, and the WTO. Argentina reorganized its entire political and economic structure to comply with this model, and it was highlighted as a "poster child" for the new global economy—until it imploded with desperate and violent consequences.

East Asia lost decades of economic progress in a crisis caused in part by the very investment and financial service-sector deregulation that WTO rules intensify and spread to other nations. When the U.S. media announced that the crisis was over in 1999, people living in Asia knew better. For instance, in Korea the crisis had quadrupled unemployment and precipitated a 200% increase in absolute poverty.

Global economic indicators generally paint a tragic picture: The median income of the tenth of the world's people living in the richest countries was 77 times greater than the tenth in the poorest in 1980, but by 1999, the richest earned 122 times the poorest countries. Entire regions of the developing world are falling alarmingly behind the wealthiest countries that compose the Organization for Economic Cooperation and Development (OECD). Sub-Saharan Africa's per capita income was one sixth of OECD countries in 1975, but fell to one fourteenth of OECD per capita income in 2000. Over the same period, Latin America and the Caribbean per capita income fell from less than half that of OECD countries to less than a third, and Arab countries' per capita income fell from one quarter of that of OECD countries to one fifth.

In the U.S., the trade deficit is at an all-time high, \$435 billion in 2002 and climbing, having ballooned—not declined as promised—from \$98 billion before WTO in 1994. The median family income has not risen by \$1,700 per year during *any* of the past nine years as promised, despite the fact that the U.S. had a period of unprecedented economic growth. Since the WTO went into effect, the U.S. has seen its industrial base hollowed out with the loss of 2 million manufacturing jobs. Now the service sector and high-tech jobs that we were told by the WTO's supporters would be our employment future are beginning to follow the manufacturing jobs to low-wage countries, with more than 3 million U.S. jobs expected to be shifted to China and other nations by 2015, according to Forrester Research. Meanwhile, analysis of promised future gains of greater trade liberalization shows that net losses—not gains—would result for most people from further liberalization.

While the economic data demonstrate the absolute failure of the WTO model, they are but one part of the story. Of equal importance, but less well known, is the WTO's consistent record of eroding public-interest policies designed to safeguard the environment, our families' health and safety, human rights, and democracy.

### *WTO Challenges and Threats Undermine the Public Interest*

Since it was created in 1995, the WTO has ruled that every environmental, health or safety policy it has reviewed but one is an illegal trade barrier that must be eliminated or changed. With few exceptions, nations whose laws were declared trade barriers by the WTO—or that were merely threatened with prospective WTO action—have eliminated or watered down their policies to meet WTO requirements. In addition to undermining existing public-interest safeguards, this trend has a chilling effect on countries' inclinations to pass new environmental, human rights, or safety laws.

The WTO's tribunals systematically rule against domestic laws challenged as violating WTO rules. As of January 2003, defending countries have won just 13 out of 88 completed WTO cases—or only 14.8%. (The United States lost two of those three anomalous cases.) Developing countries are among the biggest losers in this system. They generally do not have the money and expertise to either bring cases to the WTO or defend themselves before the WTO. Many simply amend their laws as soon as a WTO threat is issued. As a result, the WTO's full damage to domestic policy is much greater than the WTO's official case record shows. With few exceptions, no one knows about those instances when domestic policies are changed before formal WTO cases are initiated.

Because the WTO is still young, the cases described in this book are merely the beginning, offering a frightening glimpse of what is still to come unless significant changes are made.



Consider what happened to the United States' attempt to reduce emissions from automobiles. The U.S. relaxed its standards designed to limit gasoline contaminants after Venezuela won a WTO challenge against Clean Air Act regulations that it claimed unfairly affected its gasoline industry. In a classic example of WTO double-talk, the panel in this case ruled that a country was free to choose any environmental policy it desired, but could only implement policies that were consistent with WTO rules. The Clinton administration implemented new regulations that it had previously rejected as being effectively unenforceable in order to comply with the WTO order.

Further, WTO rules prohibit countries from treating physically similar products differently based on how they are made or harvested, putting in limbo many laws, like those banning drift-net fishing or requiring less polluting manufacturing processes; as well as laws banning goods made with child labor. For instance, in the eyes of the WTO, tuna caught in dolphin-safe nets should be treated no differently than tuna caught in nets that ensnare dolphins. After Mexico threatened to go to the WTO to enforce a GATT ruling against a U.S. law designed to prevent dolphins from being killed in tuna nets, the Clinton administration worked with some of Congress's leading anti-environmental members to water down the popular U.S. policy. Now, after renewed threats of WTO action, the Bush administration is trying to change the definition of "dolphin safe" on tuna can labels to allow its use on tuna caught with deadly encirclement nets. Only an emergency injunction issued in an ongoing court case has temporarily halted the new policy.

WTO rules launch a race to the bottom by setting a ceiling but no floor on environmental protection and public health and safety. Domestic standards on health, the environment and public safety that are higher than international ones must pass a set of stringent tests in order not to be considered trade barriers. There is no requirement that international standards be met, only that they cannot be exceeded.

A WTO ruling against Europe's ban on beef grown using artificial hormones is a vivid and alarming illustration of the WTO's unacceptable approach to human health and safety. The WTO declared that Europe's ban on meat tainted with artificial growth hormones had to go because the WTO-recognized food standards—from a corporate-influenced body called the Codex Alimentarius—considered such artificial hormones safe. The WTO also said that the ban was WTO-illegal because the Europeans had not scientifically demonstrated that the artificial hormone residues in meat pose an explicit threat to human health, although it is known that the hormones themselves do. The EU refused to cave in to U.S. pressure to accept the beef its consumers do not want. As a result it was hit with \$116.8 million per year in WTO-authorized trade sanctions which remain in place.

The WTO system effectively turns the very premise by which most progressive governments have handled food safety and other human health-related policies on its head. Generally, manufacturers are required to prove that a product is safe before it can be sold, and countries ban the product until the company has submitted the proof. Under WTO rules, governments must prove that a product is unsafe before they can ban it.

Another alarming aspect of the WTO system is how nations are effectively used by corporations to challenge policies in other countries. The U.S. was going to bat for Chiquita, the banana giant, when it successfully attacked Europe's preferential treatment of bananas from former EU colonies in the WTO case mentioned above. The U.S. does not produce bananas for export, and most of Chiquita's employees are underpaid farm workers laboring on its vast Central American plantations. The EU rescinded its preferential treatment, devastating many small, independent Caribbean banana farmers. The ultimate result could be destabilization of the very economic foundations of the Caribbean's numerous small democratic nations, meaning U.S. national interest in the region—in drug interdiction, political stability, trade and tourism—could be undermined by the WTO action taken on behalf of Chiquita.

But a country need not always actually challenge another country's laws to change them. Often, the mere threat of a challenge suffices. Most of these cases remain undocumented. However, one known example is the U.S. threat against Guatemala's implementation of the so-called Nestle's Code. Decades of promotion by infant formula corporations resulted in a plague of needless infant deaths that occurred when mothers in developing countries mixed formula with unsanitary water. Reacting to this public health crisis and a global campaign, UNICEF and the World Health Organization created a global code on infant formula marketing which one hundred-plus countries implemented. Sometimes known as the "Nestle's Code," it banned infant formula packaging that depicted healthy, fat babies to ensure that women, particularly illiterate ones, wouldn't associate baby formula with healthy infants and be discouraged from breast-feeding. Gerber Foods, the company whose trademarked logo includes a pudgy, happy infant, took exception to Guatemala's implementation of the Code.

When Guatemala insisted that Gerber remove the baby image from the packaging of products distributed in Guatemala, the company refused, arguing that under the WTO's intellectual property rules, its trademark baby face trumped the health treaty. The U.S. State Department sent a letter to the president of Guatemala threatening a trade case. Defending a case at the WTO can cost hundreds of thousands of dollars. In Guatemala's case, it was a choice between using that money for other public health initiatives, or gambling it on an uncertain outcome before a WTO tribunal. The government decided to weaken the law—by exempting imported breast-milk substitutes—rather than risk the expense for what might be a losing defense. Prior to this, Guatemala had been promoted by UNICEF as a country whose successful implementation of the Code had cut infant mortality.

And while many Americans saw news coverage of Vice President Al Gore's campaign events being protested by AIDS activists, few realized that a WTO threat was underlying this brouhaha. South Africa's efforts to make AIDS treatment more accessible to its population was attacked by international pharmaceutical companies and the Clinton administration as violating patent rights required by the WTO. Global campaigning and pressure ultimately forced a declaration to be issued at the 2001 WTO Doha Ministerial recognizing that the WTO rules in fact do not bar practices such as compulsory licensing for generic production of medicine. However, prior to that, the U.S. filed a formal WTO challenge against Brazilian pharmaceutical policy. Brazil is recognized worldwide as having the most effective public health approach to HIV/AIDS, and its policy of making antiretroviral drugs available to every infected citizen has saved the lives of millions.

The U.S. ultimately withdrew its WTO challenge against Brazil as public pressure on the issue grew. However, in recent WTO talks, the Bush administration singlehandedly blocked a WTO agreement which would have clarified that WTO rules allow poor nations to import affordable drugs that have been produced in other countries under compulsory licenses—a practice necessary for the many nations without manufacturing capacity.

#### *WTO Trend: Commerce Always Takes Precedence*

Beyond these cases, which are sufficiently disturbing in and of themselves, lies an unnerving theme: In the WTO forum, global commerce takes precedence over everything—democracy, public health, equity, access to essential services, the environment, food safety and more.

Indeed, under WTO rules, global commerce takes precedence over even small business. The Uruguay Round Agreements provide foreign corporations new rights and much greater ease in establishing themselves in every WTO member country. Obviously, small enterprises cannot take advantage of new rights to acquire the telecommunication system of a country, set up a branch abroad or relocate production to another country to avoid the U.S. minimum wage or the costs of environmental or

workplace safety requirements. What is worse, however, is that WTO rules forbid some small business promotion policies that could have the effect of discriminating against large foreign businesses—the only businesses likely to enter another country’s market.

In recent years, foreign direct investment has shifted dramatically away from the establishment of new enterprises and toward global consolidation through mergers and acquisitions between existing entities. As documented in the following pages, this trend has been most intense in the economic sectors in which WTO agreements have been completed—financial services and telecommunications. This global merger mania is leading to problems with market concentration and, absent some countering force, will increasingly affect consumer prices and access to services. Not only has this trend led to the absorption of small enterprises into global giants, but under WTO rules developing countries have lost many of the safeguards for their infant industries that, for instance, the U.S. enjoyed in its economic development.

In addition, WTO rules seek to commodify everything—to turn everything into a form of property—so that it can be traded. Food is a prime example. Despite enormous growth in food trade, only 15% of the world food supply is traded. A large share of the world’s population relies on subsistence farming for its food supply. Subsistence farmers are able to grow crops each year by saving seeds from the previous year. However, under the WTO’s new intellectual property guarantees, a company can obtain ownership rights—literally a patent—over the knowledge and effort of the local farmers who bred the perfectly adapted seed over generations. Once a company holds the patent for a particular seed variety, it can force cashless farmers either to pay an annual royalty to use the seed variety, buy new seeds each year or no longer use the variety, which may be the only one available or effective in that region. The expropriation of seed varieties that had been commonly shared resources into private property effectively gives companies license to rob subsistence farmers of their ability to feed themselves and their families.

Regarding services (for example, health care, education, utilities and transportation), the rules encourage privatization and deregulation—essentially promoting the transformation of these public needs into commodities to be sold for profit to those who can afford them. And the WTO constrains government regulation of such private-sector services, meaning globalization of the process that Americans saw unfold in California under the Enron energy deregulation scandal.

Another overarching WTO characteristic is the push for “harmonization.” Harmonization is the word industry has given to the replacement of the varied domestic standards of many nations with uniform global standards to allow companies to produce goods and services for a single global market. Harmonization gained a significant boost with the establishment of the WTO, which requires or encourages national governments to harmonize standards on issues such as food and worker safety, pharmaceutical patents, environmental rules and informational labeling of products or to accept different, often less stringent standards as “equivalent” to their own. The U.S. Department of Agriculture (USDA) has declared the meat inspection systems of 32 countries to be equivalent to the U.S. system. Meat from some of these countries comes into the U.S., where it is given a USDA grading label, such as “USDA Choice.” USDA has battled against the attempts of consumer groups to obtain the documents under which these equivalence determinations were made. However, we know that in some of the countries declared equivalent, meat inspectors are paid by companies rather than by the government as required under U.S. law.

The premise underlying harmonization is that the world is one huge market. Differences in standards, even if they express differences in cultures and values, are deemed inherently undesirable because they fragment the global market. But this core premise is false. When a single standard is forced on the world, it is impossible to respect the various choices that people in societies throughout the world make about the standards by which they want to live. Consumer groups are skeptical about harmonization because it

creates an inherent conflict between industry's goal of unified global markets, and consumer power and democratic government.

### *Accountable, Democratic Governance Undermined*

The very mechanics of the WTO, which are designed to insulate against democratic accountability, preordain this negative outcome. As one WTO staffer admitted to the *Financial Times* in a moment of unguarded candor, the WTO "is the place where governments collude in private against their domestic pressure groups."

Legislators and the public in every country have heard the same refrain, often stated by government officials claiming to hear our pain amidst alligator tears: this country's government would *never* implement such an environment/ development/food safety/livelihood–destroying policy... but the WTO makes us do it.

The WTO's secretive, unbalanced operations provide the perfect venue for such maneuvers. WTO business is conducted by committees and panels that meet behind closed doors in Geneva, Switzerland. Major decisions are supposed to be taken by consensus, but in reality a handful of major countries often develop take-it-or-leave-it proposals they try to foist on the rest of the countries. Even in the powerful countries calling the shots at the WTO, the environmental, health, education, and other affected ministries are cut out of the process, often learning in the press post-facto that some new WTO decision will require changes in their area of domestic jurisdiction. State and local elected officials are totally cut out—the WTO only recognizes national government signatories, meaning that when state or local laws are challenged at the WTO, state and local officials are excluded unless invited by federal government officials to participate.

Meanwhile, public-interest organizations, the public and the press are put through the WTO hokey-pokey. Speak to the WTO staff about an issue and you're told that the WTO is merely a forum to facilitate intergovernmental cooperation, so go see your country's WTO representative. WTO representatives in Geneva tell you to talk to officials in your national capital, but those officials dolefully claim that there is nothing they can do: the WTO makes them do X, Y or Z unacceptable thing, but, they suggest, maybe it would be worth a visit to the WTO staff.

In sharp contrast to domestic courts and even other international agreements, at the WTO there is a startling lack of transparency, public disclosure or accountability. This leads to overwhelming industry influence, especially by the largest multinational corporations based in the most powerful countries. Even the dispute resolution tribunals meet in secret. The panels rely on documents never made public and on anonymous "experts" to make decisions and issue reports that cannot be accessed by the public until the hearings are over and a binding judgment is issued. WTO panelists are selected for their trade credentials, not their knowledge of an issue in dispute, such as public health, environmental protection or development policy. Most disturbing is the fact that many of these decision makers have a philosophical or commercial stake in the WTO's preeminence— they are not unbiased judges. Basic due process guarantees, such as strict conflict of- interest rules for judges, the right for meaningful appeals, and openness to the press and public are all missing at the WTO.

In a rich irony, WTO boosters have charged that it is the WTO critics, not the WTO, that are undemocratic. Whom do those civil-society organizations represent, anyway, they scoff, instead of trying to address the systemic secrecy and imbalances in the WTO. The crux of their argument is that the WTO and its rules were agreed upon by the signatory countries and that the WTO is comprised of government representatives who are appointed by elected officials in democratic countries. First, in many countries WTO "approval" was itself a travesty of democracy. At a minimum, few parliamentarians were informed

by trade officials about the nature of what they were approving. In many countries, if votes on WTO membership were to be held now, on a more informed basis, it is likely passage would fail. Second, the WTO boosters are seeking to distract from the main point: the WTO is intentionally designed to insulate against democratic pressure for change. If you do not like a domestic policy, you lobby and organize pressure to change it or you change the elected officials making policy. This is the crux of democracy: the people who will live with the result decide. By removing policy making to a distant venue and in secret and by officials appointed by officials who are appointed by a president or prime minister who was elected and does not stand election again for years, even the worst policies are insulated from change. Third, the fact that countries initially approved the Uruguay Round Agreements does not excuse the secretive, exclusive, unbalanced manner in which the WTO's operations are conducted day to day. The fact that countries agreed to a WTO does not mean that WTO policies forbidding press or public oversight are democratic.

### **THE CHOICE IS OURS: THE CANCÚN WTO MINISTERIAL MEETING AND BEYOND**

The full magnitude of this new global governance system has yet to be seen because some WTO rules have not taken full effect. But it is now time to ask: Whose trade organization is it? It does not appear to belong to or benefit the majority of the world's citizens.

This still-emerging system is not a foregone conclusion. Despite the public relations efforts of those who benefit from this arrangement to convince us otherwise, the WTO setup is merely one design; it is not inevitable. Putting into place the WTO and the corporate-led globalization it implements required its proponents to undertake an enormous amount of planning, public relations, and political work. If we do not like the outcomes of this design, then we must undertake similar efforts to change it.

Indeed, the fragility of the current system increases with each year its operation brings damaging results. This growing crisis of legitimacy was thrust onto the public stage at the 1999 Seattle WTO Ministerial. Corporate and government defenders of the WTO sought to dismiss the Seattle meltdown as a fluke and exploited the shaky global political atmosphere post-9/11 to force an agreement at the 2001 Doha Ministerial, which temporarily papered over enormous divisions.

The September 2003 Cancún WTO Ministerial brought the reality of the WTO's vulnerable state back to center stage. Most corporate interests viewed the Cancún Ministerial as a venue to launch a major expansion of WTO rules.

The full scope of this proposed expansion, which was opposed by the majority of the WTO's signatories that are developing nations, is described in Chapter 6 and in the conclusion of this book. Among the most threatening proposals was a plan to launch new negotiations to establish an additional WTO investment agreement that would cover issues excluded from existing WTO investment rules, such as governments' rights to refuse certain foreign investments, and to determine who can purchase or control natural resources and how currency can be regulated.

The goal is to revive the outrageous Multilateral Agreement on Investment, which was killed by global citizen campaigning, by expanding greatly what sorts of investments WTO rules cover, and then to create new rights for foreign investors to operate without government involvement or regulation. European, Korean, and a few other nations' intransigent demands that the expansion be agreed to was the proximate cause of the Cancún Ministerial's implosion. The agriculture trade issues focused on by the press took a back seat at Cancún because the EU and others refused to deal with them unless the poor countries agreed to WTO expansion.

In a broader sense, the decision on the table at the Cancún WTO Ministerial was whether the WTO launched a massive expansion of its current model or was forced to reassess and transform its current rules. The Cancún Ministerial was an important crossroads. The WTO's corporate and government backers were desperate for a decision at Cancún to expand the WTO's scope—if only to show that WTO's momentum is restored. However, the many deep contradictions between countries and interests that were papered over at the Doha WTO Ministerial had meant a virtual standstill in many key WTO negotiations since Doha. Most simply, the divide was between Europe, the U.S., Canada and a few other developed nations who passionately defend the status quo WTO system of corporate globalization and seek to expand the model to cover more issues and the majority of the WTO member nations. These developing countries—joined by civil society groups— increasingly question the underlying model, strenuously oppose adding new subject matter to WTO governance and demand focus on changing the actual *trade* rules, which have failed most people during nine years of operation. The rejection of the “business-as-usual” agenda at Cancún provides an opportunity for civil society to win back ground and push its alternative agenda forward.

For instance, one global network of citizens' groups and social movements—the Our World Is Not For Sale Network—has a different WTO agenda. The “WTO— Shrink or Sink” plan calls for 11 transformational changes to the existing international commercial rules. This plan would scale back the WTO's scope to undo its inappropriate invasion of domestic policy making and remove some issues from WTO jurisdiction altogether. This proposal and more information on alternatives to the status quo system are included in the concluding chapter of this book. To learn more about what happened at the Cancún Ministerial, please visit our website at [www.tradewatch.org](http://www.tradewatch.org).

We hope that after reading this book, you will be motivated to join others in a movement to halt the spread of the corporate globalization “trade” agenda and its totalitarian tendencies in favor of democratic and accountable governance and the more equitable, sustainable future it promises.