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## “WHOSE TRADE ORGANIZATION? The Comprehensive Guide To The WTO”

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

### The WTO’s Controversial Dispute Settlement Procedure

With the exception of the North American Free Trade Agreement, the WTO contains the most powerful enforcement procedures of any international agreement now in force. The remarkably broad reach of WTO rules and their implications for a wide array of domestic policies, many with only a passing connection to trade, makes the WTO’s system a particular threat because it ensures strong enforcement of inappropriately expansive and biased rules. 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, which are backed up by trade sanctions which remain in place until a WTO-illegal domestic policy is changed.

The key developments and findings presented in this chapter include:

- **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 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 prevailed in an astonishing 75 out of 88 completed WTO cases—a success rate of 85.2%.
- **Developed countries are five times as successful in defending their laws against WTO challenges.** The majority of WTO challenges have been brought by developed nations. Of the 21 rulings brought by developed countries against developing countries, 20 of them (94%) ruled against the developing country laws. Developed countries also enjoyed more success in defending their laws at the WTO. In cases where developed country laws were challenged by other developed countries, domestic laws were upheld 25.6% of the time.
- **Important U.S laws ruled illegal at the WTO.** In 25 out of 30 cases brought against the U.S., the WTO has labeled as illegal policies ranging from sea turtle protections and clean air regulations to tax and antidumping policies. The U.S. also lost two high-profile cases that it brought against EU computer tariff classifications and Japan’s film policies (the infamous Kodak case which showed how the U.S.’ Section 301 procedure was effectively gutted by the WTO).
- **U.S. trade safeguard laws have been successfully challenged numerous times in the WTO.** Of the 11 completed cases against U.S. trade safeguard laws, the U.S. has won only two. Among the WTO trade law defeats analyzed in this chapter are steel, softwood lumber, the “Byrd” law, and the 1916 Anti-Dumping Act.

- **This record of U.S. trade safeguard law losses is fueling a push to expand WTO disciplines on anti-dumping, countervailing duty and Section 201 safeguard policies even as developing countries are increasingly invoking their own safeguard laws in response to volatile surges in imported goods.** During 2000, developing countries initiated roughly half of all domestic antidumping investigations reported to the WTO: Argentina launched 45, India 41, South Africa 21 and Brazil 11. At the 2001 WTO Doha Ministerial, USTR Robert Zoellick dismissed Congressional instructions not to permit the launch of new negotiations on these issues. This chapter describes the state of these talks.
- **The process is closed, narrow and unbalanced.** 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. 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. Interested non-governmental parties and even state and local governments may only submit amicus briefs if a country involved in the case agrees to include the materials in their submissions.
- **What's good for the goose, is good for the gander...** When environmentalists screamed that "GATTzilla Ate Flipper" after the tuna-dolphin decision, the WTO's corporate boosters dismissed their complaints as protectionist and misinformed. But when the WTO ruled against the U.S. Foreign Sales Corporation (FSC) tax break, American business interests had a mid-life conversion on the WTO and criticized the process in strikingly similar terms to those previously used by civil society groups:

  - "This dispute cuts to the very heart of domestic policy choices made by governments."—Stuart Eizenstat, Deputy Secretary of the U.S. Treasury Department, September 8, 2000.
  - "Once tax policy is on the table, there's no end to what the WTO might meddle in."—Wall Street Journal editorial, January 17, 2002.
  - "For the WTO to start commenting whether U.S. tax policy is acceptable is a huge expansion of its authority. You have to ask, where does it stop?"—Daniel Mitchell, senior fellow, Heritage Foundation, September 1, 2002.