

#6

“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 Environmental Impact: First, Gattzilla Ate Flipper

In this chapter, we document a systematic pattern of WTO attacks on member nations’ vital environmental concerns and policy priorities, and the biases built into WTO rules that promote unsustainable uses of natural resources. Over its almost nine years of operation, the WTO’s anti-environmental rhetoric has been replaced by more politic pronouncements even as it has systematically ruled against every domestic environmental policy that has been challenged and eviscerated exceptions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 and developments covered in this chapter 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 Endangered Species Act regulations implementing the Convention on International Trade in Endangered Species (CITES), as described below). The only partial exception to this trend is that a WTO compliance panel decided the U.S. had weakened its sea turtle protections enough to meet WTO rules after losing a challenge and thus did not have to further weaken them.
- **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 “curtain of death” drift nets cannot be distinguished from sustainably-caught fish, and that products made using slave labor or involving extreme cruelty toward animals must be given the same trade treatment as products made under more humane and ethical conditions.
- **Across-the-board WTO reductions in tariffs on natural resources and biased WTO “tariff escalation” have increased unsustainable “rip and ship” policies.** WTO cuts in tariffs for a variety of natural resource products have resulted in growing pressure on these resources. The value of global mining exports, for example, rose by 55% between 1995 and 2001, even though most mining commodity prices declined. U.S. imports of fish and fish products grew by 23% across the same period. Imports of fresh or chilled fish fillets rose to 281% of their 1995 level by 2002. The escalation built into WTO tariff schedules pushes developing countries to concentrate on trade in raw materials. For example, rough tropical timber comes into the U.S. duty-free but plywood veneered with tropical wood has a tariff of eight percent and almost all furniture above a limiting quota receives a 40% tariff. U.S. imports of raw logs more than doubled between 1995 and 2002. Tariff escalation also diverts developing countries from developing more sustainable value-added industries.

Because WTO panels have systematically ruled against challenged environmental policies, now mere threats of challenges often suffice. The exceptions to WTO rules (contained in GATT's "Article XX"), which might have allowed some domestic policies which otherwise violate WTO rules, also have been repeatedly ruled to be inapplicable in a series of WTO rulings:

- **Case 1: U.S. weakens the Clean Air Act to comply with WTO ruling.** The U.S. implemented the WTO ruling by replacing U.S. gasoline cleanliness regulations with a policy that the U.S. government previously had estimated would produce a five percent to seven percent increase in annual emissions of nitrous oxide from imported gasoline.
- **Case 2: U.S. dolphin protection laws undermined.** 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 to implement a GATT ruling. (Mexico had threatened a new WTO case if their demands were not met). On New Years Eve 2002, when few Americans were focused on policy matters, the Bush administration announced that it would change the "Flipper-friendly" tuna policy to allow the "dolphin-safe" label to be used on tuna caught using deadly purse seine nets and dolphin encirclement. This regulation is now being challenged in federal court.
- **Case 3: U.S. weakens sea turtle protections in the U.S. Endangered Species Act.** When the WTO ruled against U.S. Endangered Species Act rules protecting sea turtles from getting killed in shrimpers' nets, the U.S. complied with the WTO order by replacing the requirement that all countries seeking to sell shrimp in the U.S. had to ensure that their shrimpers used turtle exclusion devices. The new policy is based on an unenforceable rule that allows into the U.S. all shrimp carried by any ship with turtle protection technology, regardless of whether the ship had actually caught the shrimp.
- **Threat 1: Hong Kong's WTO complaint against U.S. anti-invasive species rules.** U.S. regulatory efforts to fight the costly infestation of the Asian Longhorned Beetle (which is devastating maple and other trees throughout the U.S.) were threatened as violating WTO rules—to the extent that the USDA is now considering watering down regulations requiring treatment of raw wood packing material to comply with a weaker, WTO-sanctioned "international" standard.
- **Threat 2: WTO threats undermine EU ban on cruelly trapped fur.** The threat of a WTO challenge by the U.S. and Canada convinced the EU to effectively abandon a policy passed by the European Parliament to ban the sale of furs—including imported fur—caught with steel jaw leg traps. The policy would have only permitted certain animal furs from countries with a ban on steel jaw leg traps to enter the European market. The threat of a WTO challenge eventually convinced the EU to effectively abandon the law.
- **Threat 3: WTO threats against Japan's fulfillment of its obligations under the Kyoto Protocol.** Japan's new automobile engine efficiency and emissions policies aimed at meeting its obligations under the Kyoto Protocol have faced a WTO threat by the U.S. and EU.
- **New threats: The U.S. is currently considering a challenge to a proposed EU chemicals policy called REACH (Registration Evaluation and Authorization of Chemicals).** At the U.S. chemical industry's behest, in April of 2003, the U.S. State Department sent a *demarche* characterizing this EU proposal as an "obstacle to trade" which will "distort global markets." REACH would place responsibility on chemicals manufacturers (both domestic and foreign) for testing thousands of older chemical products for toxicity. Globally, there are over 85,000 chemicals in the international stream of commerce, however, less than ten percent of these chemicals actually have toxicity data describing the health and environmental consequences of their usage. Since a *demarche* often proceeds an official U.S. trade challenge, many commentators have characterized this issue as the next big transatlantic trade battle.