

The World Trade Organization: A Citizen's Guide **By Steven Shrybman**

In this book Steven Shrybman, the Executive Director of the West Coast Environmental Law Association analyzes the scope and influence of the WTO. He shows how its using its extraordinary powers to force governments--including Canada's--to change their policies to cater to corporate interests. Canada has already felt the impact of WTO rulings, most recently when our policy on split-run magazines was challenged. Shrybman explains how the key trade, investment and intellectual property agreements enforced by the WTO threaten our culture, our environmental and labour standards, and our sovereignty itself. lity," at the crucial issue of social and ethical investments--and it also explains the success of progressive labour-sponsored investment funds.

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Chapter I: The Big Picture

The WTO and International Trade

Rules of trade are embodied in several international agreements. By far the most important of these, historically, was the General Agreement on Tariffs and Trade (GATT), which for decades covered roughly 90% of world trade among nearly 100 countries. The GATT was initially drafted in 1947 as part of the post-war Bretton Woods Agreements that also established the World Bank and the International Monetary Fund. Since that time the GATT has been periodically amended by complex negotiations that would often span several years. The most recent of these negotiations, known as the Uruguay Round, got underway in 1986 and concluded with the establishment of the World Trade Organization (the WTO) on Jan.1, 1995. In many ways, the WTO should be seen as the realization of an ambition that took almost five decades to achieve: the establishment of a global trade institution with real authority. During that time other international trade agreements have been negotiated which have often set a benchmark for multilateral agreements such as the WTO. For Canada, the most important of these is the North American Free Trade Agreement (NAFTA), which should be seen as an integral element of a larger trade agenda that is intended ultimately to be incorporated within the WTO.

The Institution

The WTO is located in Geneva, where it is run by a secretariat of approximately 500 trade bureaucrats and officials. However, for reasons we describe below, the influence of this international trade institution far exceeds the relatively modest resources at its disposal.

The WTO is responsible for administering dozens of international trade agreements and declarations which are specific to certain areas of commerce, from agriculture to copyright protection. In addition, the WTO operates as a forum for trade negotiations, monitors national trade policies and handles trade disputes.

As of March 1998, 135 countries had joined the WTO, and others have applications pending. However, not all countries belong to the WTO, China being the most important among them. Several developing countries in Eastern Europe and South-East Asia and Africa have also yet to gain admission. Membership in the WTO brings with it access to the markets of other WTO members, the option of invoking dispute resolution to enforce that right, and the opportunity to influence the course of future trade negotiations. But these obligations are reciprocal, so countries now seeking membership must negotiate admission by demonstrating a willingness to open their markets to all WTO members and to be bound by WTO disciplines. Thus China's inability to persuade such influential WTO members as the U.S. of its readiness to embrace the principles of free trade has so far kept it out of the WTO club.

The WTO is ostensibly run by its member governments - "Parties" in the nomenclature of the WTO. Ministerial Conferences which represent the penultimate decision-making body of the WTO, occur every two years as government Ministers gather to discuss current issues and future directions. Ongoing business is managed by the WTO secretariat and by officials from the diplomatic missions many countries maintain in Geneva. The actual day-to-day work of the WTO is carried out by various committees and working groups-in the parlance of the WTO these are General Councils which deal with such broad issues as trade in goods, services or intellectual property, and sub-councils which deal with such specific issues as textiles, agriculture and import licensing.

In theory, WTO decisions are "normally taken by consensus." Voting is also possible by two-thirds or three-quarters majorities with respect to such issues as new members, amendments to WTO rules, waivers and interpretations of WTO Agreements. In reality however, real decision-making authority at the WTO resides with those countries with the greatest economic and political clout. This reality has actually been formalized in the regular meetings of its most powerful members, the "Quad," which is comprised of the EU, the U.S., Japan and Canada. While some developing countries, notably India and Brazil, have played an active role in dealing with certain trade issues, the overwhelming majority of WTO members are simply without the resources needed to even assess the implications of numerous and complex economic and trade policy issues that proliferate in the WTO context.

Thus, notwithstanding a theoretical commitment to democratic process, most developing countries consider the WTO agenda to be the exclusive domain of its wealthiest members. As described by Walden Bello, one of the most informed observers of the WTO: "The problem with transparency and democracy here (in the WTO) is that even within the official process they do not exist... The Quad countries basically determine which issues are important and come to the floor, and which issues do not come to the floor."³ According to Bello, current WTO priorities-labour standards, investment and competition policy, government procurement and information technology-have very little, if anything, to do with the issues of greatest concern to 98% of its members.

The WTO and the Global Economy

While the WTO grew out of the GATT, it should be understood as more revolutionary than evolutionary in its relationship with the trade agreement that preceded it--for several reasons.

First, the world has changed since GATT was first conceived; we now live in a fully integrated global economy. Transnational corporations control more than one-third of world's productive assets, and their production and distribution systems give little regard to national or regional boundaries. Decisions about locating factories, sourcing materials, processing information, or raising capital are made on a global basis; and a single product may include components from several countries.⁴

This explains why nearly 40% of all international trade takes place within corporate families. The growing dimension of global economic integration is also apparent in the rapid growth of international trade itself. To reflect this new reality and consolidate this process of globalization, the WTO codifies the rules upon which these global systems of production and trade depend.

Second, the WTO has extended the reach of trade rules into every sphere of economic, social and cultural activity. Historically, trade agreements were concerned with the international trade of goods such as manufactured products and commodities. The WTO, however, has extended the ambit of international trade agreements to include investment measures, intellectual property rights, domestic regulations of all kinds, and services--areas of government policy and law that have very little, if anything, to do with trade, per se. It is now difficult to identify an issue of social, cultural, economic or environmental significance that would not be covered by these new rules of "trade."

But the most important source of WTO authority and influence stems from its powerful enforcement tools that ensure that all governments respect the new limits it places on their authority. Any government found in violation is vulnerable to sanctions too severe for even the wealthiest nation to ignore. For example, in the first trade complaint to be resolved under the WTO, U.S. Clean Air Act regulations were deemed to violate WTO rules. The U.S. was given two options: either remove the offending provisions of its environmental statute or face retaliatory trade sanctions in the order of \$150 million a year.⁵

While previous trade agreements allowed for similar sanctions, they could only be imposed with the consent of all GATT members, including the offending country. WTO rulings, however, are automatically implemented unless blocked by a consensus of WTO members. Moreover, through cross-retaliation, sanctions can be applied to any aspect of the offending country's international trade--in other words, where it will hurt the most.

In the convergence of these factors, the WTO is likely to become the most important international institution ever created.

A Bill of Rights for Transnational Corporations?

Many have described WTO rules as nothing less than an international bill of rights for transnational corporations. Consider, for example, the negotiation process that created it.

Because international trade has been considered an arcane subject relevant only to commercial interests, trade negotiations have traditionally been conducted by trade ministers, with no consideration of other societal values.

For example, when the Conservative government of Brian Mulroney was asked what, if any, environmental assessment had been carried out on the impending free trade agreement with the United States, it responded that the trade deal was a commercial agreement and

that the subject of the environment had not come up once--an astonishing assessment of an agreement that dealt explicitly with energy, agriculture, environmental standards, forests and fisheries. Moreover, even as trade negotiations encompassed many more spheres of economic activity, such as services or investment, no meaningful effort was made to include other interested parties in the negotiation process.

Thus, when government consulted on trade matters, it looked exclusively to the business community--i.e., large corporations with a substantial stake in international trade. Trade advisory committees, with very few exceptions, were exclusive clubs for multinational corporations.

Another important norm of trade negotiations is secrecy. Because of their strategic nature, trade negotiations have always been conducted behind closed doors, with little of substance being revealed until negotiations are concluded. Not only is there no public input or accountability, but even many governments--particularly those of developing countries--are left guessing about negotiations that take place almost exclusively among a few key players.

When trade agreements finally emerge, they are presented as an intricate and complex set of strategic compromises that will unravel should amendments be proposed. Thus the normal processes of parliamentary or congressional debate are superseded. Rather, law-makers are presented with a virtual ultimatum: accept the entire package or suffer the consequences of being isolated outside of the global economy. It would be difficult to conceive of a less democratic model for establishing any public policy initiative.

Because of the way trade agreements are negotiated, it is not surprising that the results reflect a myopic preoccupation with the interests of large corporations and a virtual indifference to societal goals such as the environmental protection, democratic processes, workers' rights, or cultural diversity. The WTO can be considered an economic constitution for the planet, yet it was written by--and almost entirely for--the world's largest corporations.

The Agenda: Freeing Corporations from Government Regulation

The essential goal of the WTO is to deregulate international trade. To accomplish this (with one important exception⁷), WTO rules limit the capacity of governments to regulate international trade, or otherwise "interfere" with the activities of large corporations. In fact, WTO agreements are little more than extensive lists of policies, laws and regulations that governments can no longer establish or maintain.

Some of these agreements prohibit trade measures such as controls on endangered species trade or bans on tropical timber imports. Others prohibit regulations that might only indirectly influence trade, such as recycling requirements, magazine content rules, energy-efficiency standards, and food-safety regulations. Still other rules proscribe government

measures that have nothing at all to do with trade, such as prohibitions against government regulation of the activities of foreign investors.

The Challenges Ahead

Because the primary goal of free trade is to limit government law-making and regulatory authority, serious problems arise for a host of other policy initiatives that depend on such public controls. The establishment of free trade agreements has already created substantial new obstacles to environmental protection, food safety regulation, cultural support programs, and resource conservation initiatives.

If we are to achieve critical environmental and social goals, the WTO must be transformed into an institution that will foster, rather than undermine, these goals. This will clearly be a difficult challenge, but not unlike the struggle to inform governments and courts about the rights of women and minorities, the entitlements of First Nations, or the importance of environmental protection. The resistance of these institutions to much needed reforms was overcome by informing and then mobilizing public opinion, by fostering social and scientific research, and by a persistent determination that our governments and courts respond with progressive initiatives. In the process, policy development and law-making were made more open, democratic, and accountable.

The emergence of the WTO will require many of these battles to be fought again, for globalization and free trade are already eroding the hard-won battles of the past three decades. There are, however, two important reasons to be optimistic.

First, the corporate campaign for free trade provides the opportunity to examine a host of environmental, economic and social issues in their proper context -- i.e., as symptoms of profound and systemic problems: unsustainable economic, resource, and trade policies. To use an environmental example: while pesticides, or even a particular pesticide, can become the target of a national environmental campaign, little attention is paid to the agricultural policies that make the continued use of pesticides inevitable. Of course, dealing with the symptoms is important, but we need now to move beyond them to tackle the root causes of these problems. While environmentalists have been shifting the focus of their work and campaigns from symptoms to causes, by promoting systemic approaches such as pollution prevention, eco-forestry and organic agriculture, many have yet to seriously consider the economic and resource policies that will be needed to make these goals both realizable and durable. Confronting globalization and deregulated trade will force the development of more sophisticated and structural alternatives to the free trade/free market paradigm.

The second opportunity lies with the need for binding international agreements to confront the the most pressing issues of our times: ecological decline, economic disparities and instability, and human rights. The WTO actually offers a model for such agreements, since it proves that when governments are motivated to do so, they will sign on to international agreements that are effective because they can be enforced by meaningful sanctions. The

challenge, of course, is to persuade these same governments to take present economic, social and environmental imperatives as seriously as they do the interests of their largest trading corporations and foreign investors.