

# The World Trade Organization

## An Environmental Introduction

The World Trade Organization (WTO) represents the most important element of an international corporate strategy to codify the rules upon which a global system of investment, production and trade depend. While this agenda is fundamentally the project of the world's largest corporations, it also enjoys broad policy support from many governments. Their enthusiasm for this agenda seems founded on the faith that sustained market-driven growth will bring wealth and economic stability to their nations. In order to achieve this prosperity, governments need only allow market forces to operate unfettered by regulation or other government "interference."

If this sounds familiar, that's because this global economic model is simply an amplification of the policies — deregulation, privatization and free trade — that have guided domestic policy for the past decade. Absent, as always, is any notion of ecological limits, or of the need to address how the proceeds of growth will be distributed. Also missing is any real evidence to support the grand claims of those promoting liberalized trade and investment rules. In fact, our experience with this grow-now, pay-later paradigm shows that it has been a disaster for the environment and most of the world's population. Whether measured in terms of wealth distribution, environmental impacts, or economic stability — globalization of the world's economy has accelerated our course along a path that appears to be headed towards an ecological dead-end.

While multinational corporations have existed for many years, the advent of truly global and integrated production and distribution systems — *globalization* — is a relatively recent phenomenon. When the world is viewed from this global corporate perspective the notion of national regulation is extremely problematic. In a world of fickle capital investment and volatile stock markets, any degree of government regulation can interfere with the imperative to maximize growth and profits. But even more important is the fact that laws and

regulations that differ from place to place are entirely incompatible with free capital flows or the integrated production of commodities and products for global markets.

That is why the essential thrust of modern trade and investment agreements is to reduce, and even eliminate, the capacity of national and local governments to regulate the corporate sector. It matters not whether the purpose of that regulation is to protect the environment and public health, preserve biodiversity, conserve natural resources, promote sustainable economic development or accomplish other societal goals.

However, we believe that in confronting the enormous challenges the WTO represents, we have an important opportunity to develop alternative models for economic and social development that are just and ecologically viable. If, as environmentalists, we are to respond to these challenges, we will have to move beyond the symptoms of destructive and unsustainable development policies and confront the underlying economic and trade policies that drive them.

For Canadian environmentalists who were engaged in the debates about free trade with the United States and subsequently NAFTA, much of this analysis will be familiar. Indeed, in many ways, NAFTA represents the model for the WTO. There are, however, significant differences between the two regimes, and of course the WTO has global application. While this introduction focuses primarily upon the WTO, it does highlight some of the key distinctions between these trade agreements and also describes how the two often work together.

The following assessment touches on the most important areas where the trade and environment agendas intersect. We begin with an overview of the WTO, and describe how in a general way its agenda impacts environmental law and policy. With this introduction, we continue with the exploration of how trade rules will affect the specific environmental and conservation goals that we are working to achieve.

## THE BIG PICTURE

The World Trade Organization was established on January 1<sup>st</sup>, 1995, and represents the culmination of an eight-year process of trade negotiations, known as the Uruguay Round.<sup>1</sup> 135 countries now belong to the WTO, and more continue to join.<sup>2</sup> The WTO is located in Geneva, and is administered by a secretariat that also facilitates ongoing trade negotiations and oversees trade dispute resolution.

# The WTO and the Global Economy

The WTO represents a watershed in the process of establishing a truly global economic order. Because it sets out a comprehensive set of rules intended to guide all aspects of global economic activity, the WTO will undoubtedly exert a profound influence over the future course of human affairs. Indeed, it is not unrealistic to regard the WTO as representing effective world government for the first time in human history. There are several reasons that justify this bold characterization.

To begin with, we really do now live in an integrated global economy. Transnational corporations control more than one-third of world's productive assets, and the organization of their production and distribution systems has little to do with national or even regional boundaries. Decisions about locating factories, sourcing materials, processing information or raising capital are made on a global basis, and any particular product may include components from several countries.<sup>3</sup> This explains why nearly 40% of all international trade takes place within the same corporate family. The growing dimensions of globally economic integration are also apparent in the rapid growth in international trade itself that routinely exceeds that of even the world's most robust economies. To consolidate these processes of globalization, the rules upon which it depends needed to be codified in binding international agreements — hence the WTO.

Another factor that explains the importance of the WTO concerns the way in which it has extended the reach of trade rules into every sphere of economic activity. Historically trade agreements were concerned with the trade of goods, for example, manufactured goods and natural resource products, across international borders. But under the WTO, the purview of international trade agreements has been dramatically expanded to include investment measures, intellectual property rights,

domestic regulations of all kinds, and services. In other words, a great many areas of government policy and law that have very little, if anything to do with trade *per se*. This explains why it would now be difficult to identify an issue of social, cultural, economic or environmental significance that would not fall within the ambit of these new and very expansive rules of “trade.”

But arguably, the most important source of WTO authority and influence stems from the powerful enforcement tools it has available to ensure that all governments respect the limits on their authority imposed by its trade rules. Any government found in breach is vulnerable to sanctions that are too severe for even the wealthiest nation to ignore. For example, in the first trade complaint to be resolved under the WTO, US *Clean Air Act Regulations* were deemed to violate WTO rules. In consequence the US was given two options – remove the offending provisions of its environmental statute or face retaliatory trade sanctions in the order of \$150 million a year.

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

## AN ECONOMIC CONSTITUTION FOR THE PLANET

When the Canada-US Free Trade Agreement was concluded, President Reagan described it as the “economic constitution of North America.” Recently the Director General of the WTO, Renato Ruggiero, used similar language to describe the WTO. Like constitutions, trade agreements set out the fundamental rights of their constituents. But these “economic constitutions” have been negotiated behind closed doors with little if any input from any sector other than business. It isn't surprising, then, that under the WTO only corporations are the beneficiaries of the rights it creates, and the interests of others in society are nowhere to be found.

The convergence of these factors explains why the WTO is likely to emerge as the most important international institution to have ever been created.

## A Bill of Rights for Transnational Corporations

Many have described WTO rules as representing little more than an international bill of rights for transnational corporations. To appreciate why the WTO might be described in this way, consider the negotiation process that created it.

Because international trade has historically been considered an arcane subject relevant only to commercial interests, trade negotiations are traditionally been conducted by trade ministers with no apparent awareness that other societal values might be at stake. For example, recall when the Conservative Government of Brian Mulroney was asked what, if any, environmental assessment had been carried out of the impending free trade agreement with the United States. The government responded, somewhat incredulously, that its trade deal was entirely a commercial agreement and that the environment had not even come up once<sup>4</sup> — a truly astonishing assessment about an agreement that dealt explicitly with energy, agriculture, environmental standards, forests and fisheries. Moreover, even as the ambit of trade negotiations grew to encompass many more spheres of economic activity, such as services or investment, no meaningful effort was made to include those affected 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. When trade advisory committees were struck, with very few exceptions, membership represented an exclusive clubs for multinational corporations. Of course, corporations hardly needed an invitation to make their interests clear to trade bureaucrats.

Another important norm of trade negotiations is secrecy. Because of the strategic nature of the interests at stake, trade negotiations have always been conducted behind closed doors with little being revealed until negotiations are virtually concluded. Not only is there no public input or accountability, but many governments — particularly those from developing countries — are also left guessing about negotiations which take place exclusively among a few key players.

When trade agreements finally do emerge, they are presented as an intricate and complex set of strategic compromises that will unravel should amendments be proposed. In this way the normal processes of parliamentary or congressional debate are superseded. Rather, lawmakers are presented with a virtual ultimatum — accept the entire package of trade proposals or suffer the consequences of being isolated in a global economy. It would be difficult to conceive of a less democratic model for negotiating trade agreements.

Because trade agreements are negotiated in this way, it isn't surprising that they reflect a myopic preoccupation with the interests of large corporations and reveal virtual indifference to the impacts of these commercial interests on other societal goals, such as environmental protection, democratic processes, worker's rights, or cultural integrity. If the WTO regime can accurately be considered an economic constitution for the planet, it is most certainly one that has been written by, and almost entirely for, the worlds largest corporations.

## The Agenda: Freeing Corporations from Government Regulation

In essential terms, the goal of the WTO is to deregulate international trade. To accomplish this (and with one important exception), WTO rules seek to limit the capacity of governments to regulate international trade — or otherwise “interfere” with the activities of large corporations. In fact, WTO Agreements represent little more than extensive lists of policies, laws and regulations that *governments cannot establish*.

Some of these agreements prohibit measures intended to regulate international commerce such as controls on endangered species trade or bans on tropical timber imports. But many others prohibit regulations that might only indirectly influence trade such as recycling requirements, energy efficiency standards or food safety regulations. Yet other rules go even further by prescribing government measures that have nothing to do with trade at all — see, for example, prohibitions against government efforts to regulate the activities of foreign investors.

## The Challenges Ahead

Because the primary goal of trade law is to limit government law making and regulatory authority, serious problems will arise for progressive environmental law and policy — which of course depend on such public controls. In fact the establishment of free trade agreements has already created substantial new obstacles to progress in areas of environmental protection, food safety regulation, species protection and resource conservation.

While the subject of international trade may be daunting, if we are to achieve critical environmental objectives, we must find a way to convert the WTO into an institution that will foster, rather than undermine, environmental goals. This will clearly be a difficult challenge, but one not unlike the struggle waged several decades ago to inform governments and courts unconcerned with, and uninformed about, environmental protection and conservation goals. That resistance was overcome by informing and then mobilizing public opinion, by fostering 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 also made more open, democratic and accountable.

The emergence of the WTO will require many of these battles to be fought again — if we are to stem the tide of globalization and free trade that is already eroding the hard fought gains we have achieved over the past three decades. There are, however, two important reasons to be optimistic.

The first has to do with developing a deeper understanding of the underlying causes of the environmental crisis. The corporate campaign for free trade provides the opportunity to examine a host of environmental issues in their proper context, that is, as symptoms of a more profound and systemic problem — unsustainable economic, resource and trade policies. Thus 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 regulating pesticides, protecting species, creating parks and controlling pollution are important goals — but we need now to move beyond the symptoms to tackle the root causes of these problems.

We have been making some progress shifting the focus of our campaigns from symptoms to causes by promoting more systemic approaches such as pollution prevention, eco-forestry and organic agriculture. But we have yet to seriously consider the economic and resource policies that will be needed to make these goals both realizable and durable. Developing strategies to confront the impacts of globalization and deregulated trade will force us to do so.

The other lesson to be learned in this context has to do with the need for binding international agreements to confront global ecological problems, such as climate change and biodiversity loss. In this regard, the WTO should be seen as offering a model for such international environmental agreements. The WTO reveals that when governments are motivated, they will sign on to forceful, proactive and effective international agreements. The challenge, of course, will be to force these same governments to adopt similarly enforceable international agreements for the purposes of achieving the goals of global ecological security rather than to guarantee the narrow interests of large corporations and foreign investors.

— Steven Shrybman

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<sup>1</sup> See the WTO, *The Results of the Uruguay Round of the Multilateral Trade Negotiations: the Legal Texts*.

<sup>2</sup> Among the various trade agreements for which the WTO has responsibility is the original General Agreement on Tariffs and Trade (GATT) as that agreement has been amended, and a number of other agreements that are specific to various aspects of international trade such as agriculture, technical regulation, investment, services and intellectual property.

<sup>3</sup> See, for example, Robert Reich, *The Work of Nations: Preparing Ourselves for the 21st Century Capitalism* 113 (1992).

<sup>4</sup> The Federal Minister for International Trade in response to a question posed on the House of Commons Order Paper, see Frank Tester, "Free Trading the Environment," in Duncan Cameron, ed., *The Free Trade Deal* (Toronto: Lorimer and Company, 1988).

For more information, contact:



West Coast Environmental Law  
1001 — 207 West Hastings Street  
Vancouver, BC V6B 1H7  
phone: (604) 684-7378  
fax: (604) 684-1312  
call toll free in BC: 1 800 330-WCEL  
[www.wcel.org](http://www.wcel.org)

West Coast Environmental Law is a non profit organization which provides public interest environmental law in British Columbia. Here is an overview of what we do:

- Our staff lawyers give out free legal advice to citizens and community groups who are concerned about environmental legal issues. Our responsibility is to the environment, and we think it is important that people who could not otherwise afford legal advice have equal access to legal advice.
- Where an environmental legal issue cannot easily be solved through our initial advice, we often provide funding to community groups to get more detailed advice. Through our Environmental Dispute Resolution Fund, we provide funds to hire lawyers and other experts (eg, biologists, foresters) to help community groups solve local problems.
- We operate a public reference library of environmental and legal materials. Our library is the largest collection of such materials in the province. We provide online access to a number of publications and links to a number of other sources of environmental legal materials through our website at [www.wcel.org](http://www.wcel.org).
- We are dedicated to law reform, and we work continuously to identify gaps in the legal framework and develop solutions to better protect our environment. In recent years, we developed the provincial pulp effluent regulations that keeps dioxin out of our water, and we also developed contaminated sites regulations, which assign clean up responsibility to industrial polluters.
- We are committed to public legal education, and we have written and produced a number of Citizen's Guides to various environmental issues. For example, we have a pocket guide to protecting wetlands. We conduct workshops on various issues, and we will be offering community workshops on forest land use throughout BC in the coming year.
- Finally, we do a lot of primary environmental legal research. For example, one of our lawyers is very involved in researching ways to make Canada's commitments to reducing greenhouse gases, and begin to address climate change issues, a reality. Recent research topics we have worked on include trade and the environment, fish protection, and water quality. Most of this research is available on our website.

If you would like to know more, or you would like to help, visit our website at [www.wcel.org](http://www.wcel.org), or call us.