

Rachel's Environment & Health News

#675 - The WTO Turns Back the Clock

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The World Trade Organization (WTO) has effectively canceled the three mainstays of modern environmental protection: (1) pollution prevention using bans, (2) the precautionary principle, and (3) the right-to-know through labeling. In effect the WTO has erased 30 years of work by environmental activists and thinkers, forcing us back to an earlier era of "end of pipe" pollution regulations based on risk assessment.

Starting in the mid-1960s, the U.S. Congress created a pollution control system based on risk assessments and "end of pipe" regulations. As evidence of harm accumulated (a process sometimes called "lining up the dead bodies"), the government conducted risk assessments to decide how much toxic pollution was acceptable. Corporations then added filters and scrubbers to reduce their harmful discharges to "acceptable" levels.

Large corporations learned to live with this system; they even turned it into a competitive advantage. As the number of regulations multiplied, large polluters hired staffs of lawyers and engineers who did nothing but worry about the regulations. Small corporations could not afford to hire specialists to formally participate in rule-making procedures, compliance disputes and lawsuits. For small firms, compliance became a paperwork nightmare and a burdensome expense. Big firms learned to thrive under the rules.

Under the end-of-pipe, risk-based regulatory system, regulations were always a compromise between what the scientific data indicated and what the corporate polluters were willing to accept. Regulatory officials would propose a numerical standard based on risk assessments, the corporate experts would challenge the proposal, and ultimately a regulation would emerge that was a compromise between the two positions. On the face of it, such a system could never fully protect public health or the environment.

Large corporations had one additional advantage in these regulatory negotiations: they were sitting across the table from a government bureaucrat who was underpaid and often overworked. After the regulatory negotiations were finished, the corporation might offer the government official a well-paid position as "Vice-President for Environmental Compliance." Knowing that the future might bring such a job offer, regulatory officials were inclined to play ball with the polluters. In fact, government officials went to work for the polluters so frequently that the practice earned a special name: the revolving door.

In sum, large corporations learned how to make the regulatory system work for them. But the system never worked well to protect the environment. In fact, during three decades of environmental protection based on risk assessments and end-of-pipe regulations, the entire planet became contaminated with low levels of industrial poisons. Persistent organic pollutants like DDT, PCBs, and synthetic compounds of lead and mercury found their way to the deepest parts of the oceans, to the highest mountaintops and to the most inaccessible reaches of the poles. No place on Earth remained pristine. As these exotic poisons entered food chains, they collected in the bodies of the largest predators, chief among them humans. As a result, even today if human breast milk were bottled and offered for sale it would be subject to ban by the U.S. Food and Drug Administration as unfit for human consumption. (Breast milk is still by far the best nourishment for an infant; despite the presence of low levels of industrial poisons, breast milk is still far healthier for a baby than any alternative.) (See REHW #193.)

During this period, the incidence of childhood cancers increased at the rate of about 1% per year. Immune system disorders in children, such as asthma, increased even more rapidly. Many observers of the regulatory dance began to believe that bathing our children in industrial poisons was not such a good idea, so new principles of environmental protection were invented:

1) In the early 1960s, true pollution prevention was born. The U.S. banned above-ground nuclear weapons tests to eliminate radioactive

fallout. By the mid-1970s, the atomic fallout precedent was being applied to banning DDT, PCBs, leaded gasoline and several other dangerous toxicants. Bans are the essence of pollution prevention. But bans leave no wiggle room for the polluters.

2) The precautionary principle. In 1976, the U.S. Congress voted against a proposal to create a supersonic transport airplane (the SST). Based on evidence suggesting that the SST might harm the upper atmosphere and might lay down a swath of "sonic booms" everywhere it flew, Congress took precautionary action and voted down the SST proposal.

The precautionary principle moves the burden of proof of safety onto the proponents of a new project, a new technology or a new chemical. The public does not have to "line up the dead bodies." Instead the polluters have to convince the public and the government that the number of dead bodies in future will be acceptably small. In simplest terms, the precautionary principle says, "Better safe than sorry," the complete opposite of risk-based regulations.

Corporate polluters resent this innovative approach because now they must bear the burden of proof of safety. Their hands are tied unless they can convince the public and the government that their next innovation will be acceptably safe.

3) Eco-labeling. Labels on cans of tuna fish now say "dolphin-safe." Many products in the grocery store now say "organically grown." Paper says "recycled." Labels that say "Made in Burma" signal that this product may have been made with slave labor. Such labels represent a market-based approach --empowering people with information so they can vote with their dollars to protect the things they value. In essence, eco-labeling says people have a right to know the effects of their purchases on the natural environment, on their health, and on society. However, an informed citizenry can threaten corporate dominance.

Thus all 3 of these modern principles are unsatisfactory from the viewpoint of large corporations because they shift the advantage to the public in protecting health and environment. They impose societal values on the economy.

To get rid of these troublesome new principles of environmental protection and to force the world back to end-of-pipe regulatory controls based on risk assessments, corporations have now created the WTO. In only five years of operation the WTO has gone a long way toward declaring each of these three principles illegal. Now, according to current WTO rules, the only legal system for pollution control is the old end-of-pipe system based on risk assessment.

WTO principles that undermine modern environmental protection include these:

1) WTO rules say that the method of production cannot be used as a basis for discriminating against a product. The WTO has formally established this principle in several decisions. When the U.S. refused to allow the importation of tuna fish caught in nets that needlessly killed millions of dolphins, Mexico took it to the GATT (the predecessor of the WTO) and won. The ruling said it was not legal to discriminate against canned tuna based on the methods by which the tuna was produced. Since then, the WTO has reaffirmed this principle several times.

As Ralph Nader's Public Citizen has written, "The ability to distinguish among production methods is essential to environmental protection and environmentally sensitive economic policies... Trade rules that forbid the differentiation between products based on production methods make it impossible for governments to design effective environmental policies." [1,pg.23] The WTO has effectively tied governments' hands -- a corporate polluter's dream.

2) Restrictions on goods must be the least-trade-restrictive possible and the restrictions must be "necessary." To prove that a regulation

is "necessary," a country must prove that there is a world-wide scientific consensus on the danger, and a WTO tribunal of corporate lawyers must agree that the proposed regulation is a reasonable response to the danger. Furthermore, any regulation must be the "least trade restrictive" regulation possible. Obviously, this puts an almost-insurmountable burden of proof on any government that wants to protect its citizens and its environment from harm. Thus the WTO has shifted the burden of proof back onto the public. The dead bodies must be lined up once again.

The effect of these rules is that a product cannot be banned. It can be regulated using risk assessment but it cannot be banned. This was first established when the European Union (EU) tried to ban the import of U.S. meat which has been treated with hormones, some of which are carcinogenic. The Europeans said there was evidence that certain hormones can cause cancer (which is true) and they said they wanted to set a "zero risk" standard for their citizens for this hazard.

The Clinton/Gore administration challenged the European ban before a WTO tribunal. The WTO ruled that the Europeans did not have a scientific risk assessment that showed convincingly that a zero risk standard was warranted. That opened the door to ending all bans.

Now France wants to ban asbestos, but is being challenged by Canada on several grounds; one is that there is no worldwide scientific consensus that a ban is warranted. Denmark has announced its intention to ban 200 lead compounds, but the Clinton/Gore administration is challenging this as illegal because there are less trade-restrictive ways to achieve the same public health objective, Mr. Gore says. The European Union has said it wants to ban lead, mercury and cadmium in electronic devices, but the Clinton/Gore administration is challenging this before the WTO. Mr. Gore's position is that bans are illegal restraints on trade and that regulations based on risk assessment are the only legal way to control environmental hazards. There is ample precedent for this position in WTO decisions.

3) Labeling -- even voluntary labeling -- is on the way out. The European Union has now passed a law requiring food containing genetically modified organisms to be labeled as such. The Clinton/Gore administration has said formally that this is an illegal restraint of trade because there is no difference between normal food and genetically modified food. (But if there were no significant differences, the U.S. Patent Office could not legally issue patents for genetically modified foods -- and such patents are now routinely issued.)

When the EU refused to allow hormone-treated meat from the U.S. to be sold in Europe, their fallback position was that they might allow the sale of hormone-treated meat if it were clearly labeled. The Clinton/Gore administration says this would illegally discriminate against U.S. meat by labeling it according to its method of production.

The Clinton/Gore administration officially argues that even "country of origin" labels are WTO-illegal because they allow consumers to discriminate against certain countries (like Burma with its propensity for slave labor). The WTO has not yet ruled that "eco-labels" are illegal, but the hand-writing on the wall is very clear. It appears to be only a matter of time before the modern era of environmental protection is fully rolled back.

It also appears that the only way to protect the environment in future will be to dismantle the WTO.

--Peter Montague (National Writers Union, UAW Local 1981/AFL-CIO)

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[1] Lori Wallach and Michelle Sforza, WHOSE TRADE ORGANIZATION?: CORPORATE GLOBALIZATION AND THE EROSION OF DEMOCRACY (Washington, D.C.: Public Citizen, Inc., 1999). ISBN 1582310017; telephone (202) 588-1000.

[2] Jim Puckett, WHEN TRADE IS TOXIC: THE WTO THREAT TO PUBLIC AND PLANETARY HEALTH (Seattle, WA: Asia Pacific Environmental Exchange and Basel Action Network, 1999). Available after Nov. 4 from www.ban.org. For a printed version contact jpuckett@ban.org; it will be mailed to you if you send a donation to Basel Action Network (online donation) or by mailing a check donation to: Basel Action Network, c/o Asia Pacific Environmental Exchange, 1827 39th Ave. E., Seattle, WA. 98112.

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