

Rachel's Environment & Health News

#694 - Steps Toward A Corporate State

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Governments in the U.S. -- federal, state, and local -- together spend more than a trillion dollars of taxpayers' money per year. That's a thousand billion dollars each year, representing roughly 1/6 of total U.S. Gross National Product. By any measure, it is a huge sum of money.[1]

Many people concerned about the decline of their communities have begun to realize that government purchasing (often called procurement) has great potential for promoting environmental and social sustainability -- a potential that has barely been tapped.

By spending money strategically, governments can

- ** reduce environmental damage by (for example) purchasing recycled materials; 48 out of the 50 states in the U.S. have laws directing state agencies to purchase recycled materials.[2]

- ** create jobs in local communities and strengthen regional economies by purchasing from local firms;

- ** assist women-owned businesses, minority-owned businesses, or businesses that avoid the use of environmentally-destructive products such as tropical hardwoods, plastics, chlorinated solvents, or unnecessary pesticides;

- ** promote fair labor practices. Dozens of cities and counties, including Pittsburgh, Pa., Cleveland, Oh., and San Francisco, Ca. have local ordinances banning purchase of products made in sweatshops. Similarly, two dozen U.S. cities now require companies doing business with the city to pay their workers a "living wage." [3]

- ** reward firms that adopt innovative technologies, such as chlorine-free chemistry, solar power, or non-toxic cleaning compounds.

In sum, government purchasing policy offers citizens an opportunity to make both governments and corporations accountable to taxpayers. Citizens can use government purchasing policy to guide their regional economy onto the path most likely to improve their quality of life. To put it another way, government purchasing offers citizens an opportunity to impose human values on their local and regional economy.

Now, however, some of these U.S. laws have been declared illegal by the World Trade Organization (WTO), headquartered in Switzerland, and many similar laws are now under attack by corporations. It is crystal clear that the combined corporate power of Japan, Europe and the U.S. is now aiming to make government purchasing policy off-limits to democratic decision-making.

Despite the anti-WTO protests in Seattle last fall, the WTO has not changed in any fundamental way. It is a powerful new system of world governance, designed and run by corporate lawyers who are not elected, who do not answer to the people they govern, and who make decisions behind closed doors. Their decisions are binding and can only be appealed once, to a three-member tribunal composed of other WTO bureaucrats, who are themselves usually corporate lawyers.

To a historian, it seems reasonable to conclude that the WTO and the "free trade" policies it was set up to enforce are the most direct threat to democracy and popular sovereignty since the rise of the corporate state under National Socialism in Germany in the late 1930s.

The corporate media in the U.S. describe the purpose of the WTO as "globalization" -- a term so vague that it is meaningless. The media never say so in plain language but the overarching goal of the WTO (and of "free trade" policies in general) is to diminish the power of governments, and thus to reduce governments' capacity to influence the behavior of transnational corporations. The WTO was set up as a forum in which transnational corporations can challenge and

effectively repeal restrictions imposed upon them by nations (or by sub-governments within nations). In other words, rather than "globalization," the real purpose of the WTO is "global corporatization" -- increased corporate control over all the nations and economies of the world.

Created by international treaty in 1995, and now boasting 134 nations as members (nations that are not members can be iced out of international trade), the WTO has written 700 pages of rules which add up to an enforceable commercial code governing markets and trade world-wide -- a code enforceable not by nation-states but by the WTO itself. One of those rules is called the Government Procurement Agreement (GPA).[4]

The GPA basically says that governments can set standards for the PERFORMANCE of purchased materials but cannot set standards based on METHODS OF PRODUCTION. Therefore, government purchasing policies cannot discriminate against materials produced by child labor or slave labor, for example. Likewise, requiring that items be manufactured from recycled materials would be prohibited under the GPA.

Thus the GPA provides one more way for corporations to strike down laws that curtail their freedoms. Corporations in the European Union, Canada, and Japan have been complaining for at least a decade that many U.S. laws are "illegal barriers to trade" meaning barriers to corporate freedom.[5] If such laws can be struck down in the U.S., they can be struck down anywhere because the U.S. is the 900 pound gorilla within the WTO. To avoid enraging the gorilla, foreign corporations have been moving cautiously, looking for a strategic opportunity to strike. Now the GPA has provided an opportunity for the first step.

The immediate issue is the country called Myanmar, formerly known as Burma. It is widely acknowledged that the military dictatorship in Burma suppresses political opposition, tortures and murders its opponents, harnesses the populace into slave labor battalions (sometimes to work for U.S. corporations that have invested heavily in Burma, such as Unocal) and generally violates universally-recognized human rights.[6,7]

Borrowing a technique that was used by 23 U.S. states in the fight to end apartheid in South Africa, a dozen U.S. cities passed local ordinances in 1995-1996 preventing local government from doing business with companies doing business in Burma. (Other U.S. cities have similar laws aimed at punishing dictators in Nigeria, Tibet, Indonesia and Cuba.[8]) In 1996, the state of Massachusetts passed a "Burma law," and this got the attention of corporations world-wide. (Although the GPA explicitly binds states and does not explicitly bind municipalities, there is widespread understanding that municipal laws will be challenged under WTO rules. For example, when Maryland tried to pass a law preventing state government from signing any contracts with the government of Nigeria or with any firms doing business in Nigeria, the Clinton administration opposed the legislation in testimony before the Maryland legislature, saying, "All state AND LOCAL sanctions are perceived to violate the rules, they can cause counterproductive disagreements.... [W]e would like to work with you to ensure that we don't expose ourselves to a potential WTO challenge." [9])

In 1998, Japan and the European Community (EC) each filed a formal complaint with the WTO, seeking to overturn the Massachusetts Burma law, basing their objection on Section XIII.4(b) of the GPA. However, a group of 550 U.S. corporations calling themselves the National Foreign Trade Council beat them to the punch and sued Massachusetts in a state court, arguing that the Constitution reserves foreign policy decisions to the Executive Branch of the federal government. Predictably the Clinton/Gore administration sided with the corporations against Massachusetts. The state court and a federal appeals court both ruled against Massachusetts.

"If such a ruling had come out a decade ago," said Massachusetts representative Byron Rushing, who sponsored the Massachusetts law, "Nelson Mandela might still be in prison today." [10] Now the U.S. Supreme Court will decide the issue. However, the European Community and Japan have announced that, if the Supreme Court rules incorrectly, they will ask the WTO to overrule the U.S. Supreme Court. The corporate rulers of Europe, Japan and the U.S. agree on this: the public has no right to impose moral standards on economic activity. The economy is not subject to democratic control. The Government Purchasing Agreement is where they are making their stand, campaigning to diminish the vestiges of democracy wherever they remain.

The good news is that this corporate assault on democracy offers unprecedented opportunities for getting the public involved. Nearly everyone can see that taxpayers have a basic right to spend their money as they see fit. With a modest amount of information, people can see the good that can come from well-crafted government purchasing policies. Such policies allow people to improve their local and regional economies, while rebuilding peoples' confidence that government can serve their needs. Lastly, the WTO assault on government purchasing makes it possible for people to understand what "free trade" and the WTO are really about -- they are really about removing the last remnants of popular sovereignty and substituting, in their place, the elements of a corporate state.

Thus this brazen corporate campaign offers us all many opportunities to take the offensive, to re-assert control over our regional economies.

For legal technical assistance on government purchasing policies, contact Robert Sturmberg, Harrison Institute for Public Law, Georgetown University Law Center, Washington, D.C.; phone 202-662-9600. See <http://www.law.georgetown.edu/clinics/-hi/> (omit the hyphen). For further information about best practices in government purchasing policies, get in touch with Sustainable America, 42 Broadway, Suite 1740, New York, NY 10004-1617; phone: 212-269-9550; see www.sustainableamerica.org.

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

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[1] Ralph Nader, Eleanor J. Lewis and Eric Weltman, "Shopping for Innovation," AMERICAN PROSPECT No. 11 (Fall 1992), pages unknown. Available at www.prospect.org/archives/11/11lewi.html.

[2] Only Alabama and Wyoming have no such laws. See: Alaska Stat. 36.30.337 (Michie 1998); Cal. Pub. Cont. Code 12310 (West 1998); Del. Exec. Order 82 (1990); Fla. Stat. Ann. 287.045 (West 1998); Haw. Rev. Stat. 103D-1005 (1997); 415 Ill. Comp. Stat. 20/3 (West 1998); Ind. Code 5-22-15-16 (Michie 1998); Iowa Code Ann. 216B.3 (West 1997); Kan. Stat. Ann. 75-3740b (1997); Ky. Rev. Stat. Ann. 45A.520 (Banks-Baldwin 1998); La. Rev. Stat. Ann. 30:2415 (West 1998); Me. Rev. Stat. Ann. tit. 5, 1812 (West 1997) (recycled materials other than paper); Md. Code Ann., State Fin. & Proc. 14-402 (1998); Minn. Stat. Ann. 16B.121 (West 1998); Miss. Code Ann., 49-31-7 (1998); Mo. Ann. Stat. 34.031 (West 1997) (recycled solid waste materials); Mont. Code Ann. 75-10-806 (1997); Neb. Rev. St. 81-15,159 (Michie 1998); Nev. Rev. Stat. 386.417 (1997); N.H. Rev. Stat. Ann. 21-I:11 (1997); N.M. Stat. Ann. 13-1-135.1 (Michie 1998); N.Y. Pub. Auth. Law 2878-a (McKinney 1998); N.C. Gen. Stat. 130A-309.14 (1997); Ohio Rev. Code. Ann. 125.082 (West 1998); Okla. Stat. Ann. tit. 74, 85.53 (West 1998); Or. Rev. Stat. 279.570 (1997); R.I. Gen. Laws 37-2-76 (1997); S.C. Code Ann. 44-96-140 (1997) (recycled and recyclable materials); S.D. Codified Laws 5-23-41 (Michie 1998); Tex. Health & Safety Code 361.426 (West 1998); Vt. Stat. Ann. tit. 3, App. Ch. 7, Exec. Order 24-86 (recycled

materials and nonwasteful packaging); Wash. Rev. Code Ann. 43.19.A.005 (West 1998) W. Va. Code 20-11-7 (1998); Wis. Stat. Ann. 16.72 (1998).

[3] See www.consumerscouncil.org/ccc/policy/amic2599.htm.

[4] The text of the Agreement on Government Procurement is available at www.wto.org/wto/govt/agreem.htm.

[5] The latest (63-page) version of the EU's complaint can be found in PDF format at <http://europa.eu.int/comm/trade/pdf/-usrbt99.pdf> (omit the hyphen).

[6] U.S. Department of Labor, Bureau of International Labor Affairs, REPORT ON LABOR PRACTICES IN BURMA (Washington, D.C.: U.S. Department of Labor, September 1998). Available at www.dol.gov/dol/ilab/public/media/reports/ofr/burma/main.htm.

[7] David E. Sanger, "Unocal Signs Burmese Gas Deal; U.S. May Ban Such Accords," NEW YORK TIMES February 1, 1997, pg. A4.

[8] Quoted in Lori Wallach and Michelle Sforza, WHOSE TRADE ORGANIZATION? CORPORATE GLOBALIZATION AND THE EROSION OF DEMOCRACY (Washington, D.C.: Public Citizen, 1999), pg. 188.

[9] Linda Greenhouse, "Justices Weigh Issue of States' Making Foreign Policy," NEW YORK TIMES March 23, 2000, pg. A20.

[10] Carey Goldberg, "Limiting a States's Sphere of Influence," NEW YORK TIMES November 15, 1998, pg. A22.