

WHY AND HOW THE WORLD TRADE ORGANIZATION MUST PROMOTE ENVIRONMENTAL PROTECTION

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I. INTRODUCTION TO THE WTO AND ENVIRONMENTAL PROTECTION

Recently, the World Trade Organization (WTO), World Bank, International Monetary Fund (IMF), and Group of Eight (G8)¹ have become targets for major protests in cities around the world because they promote globalization of trade and, therefore, problems resulting from such trade. Environmentalists blame the WTO for the negative environmental effects of international trade. In response, businesspeople and the WTO's leaders assert that the mission of the WTO is to promote trade; they say that it is not the WTO's duty to protect the environment. Thus, the WTO and its member nations face at least two core questions. Should the WTO be held responsible for environmental protection? If so, what should the WTO do?

These questions cannot be ignored, because citizens around the world are articulating serious concerns about the negative effects of trade globalization, including, but not limited to, its effects on the environment, workers, and consumers. Environmental activists, labor representatives, consumer advocates, and citizens of underdeveloped countries are frustrated because the WTO's leaders are not chosen through democratic processes and its decision-making processes are closed to most citizens. Additionally, activists

* Copyright ©2002 by Paulette L. Stenzel, Professor of International Business Law, The Eli Broad College of Business, Michigan State University. I am grateful to my undergraduate assistants, Kelly Averbek, Misty Kooienga, and Sandra Vasher, for help with research and proofreading.

¹ . GROUP OF EIGHT (G8). This is a group of the world's top industrialized nations whose periodic meetings deal with global trade, investment, and other financial and economic topics. The current members are Canada, France, Germany, Italy, Japan, United Kingdom, United States and Russia. *The Group of Seven and the Group of Eight*, U.S. Department of State International Information Programs, at <http://usinfo.state.gov/topical/econ/group8/g8what.htm> (last visited Oct. 11, 2002).

believe that their concerns are being ignored by the WTO. Therefore, feeling unheard and ignored, activists have taken their complaints into the streets, gaining the world's attention through the news media. In 1999, protests at the third Ministerial of the WTO in Seattle, Washington brought the meeting to a halt.² In mid-April 2000, protests in Washington, D.C. disrupted the annual meeting of the IMF and the International Bank for Reconstruction and Development (IBRD or World Bank).

Following the Seattle and Washington, D.C. protests, Brent Blackwelder, president of Friends of the Earth, said,

The huge demonstrations in Seattle and Washington provided a clear signal to the international globalization institutions that if they keep trying to do business as usual, they're going to encounter an ever-growing storm of protest. . . . People are not going to stand by and see their communities and their quality of life degraded by distant corporate powers.³

Yet, the protests continue.⁴ On July 20, 2001 as many as 100,000 people marched in Genoa, Italy at the G8 Summit. Confrontations between police and protesters resulted in one person dead and nearly 500 injured.⁵ In reaction, protests against the brutality of the Italian police were held the next day in the United Kingdom, Italy, Canada, France, Germany, Greece, Mexico, Spain, and several other nations.⁶

² . Elizabeth Olson, *With Seattle a Vivid Memory, W.T.O. Seeks a New Host City*, N.Y. TIMES, Jan. 23, 2001, at W1.

³ . As quoted in, *Anti-Globalization Movement Unites Students and Unions*, CQ RESEARCHER, JUNE 9, 2000, at 509.

⁴ . Protests have been staged in the streets where other recent meetings have been held. For example, there were protests in September 2000 in Prague at the annual conference of the IMF and the World Bank, and at the summit of the European Union in Göteborg, Sweden in June of 2001. See Michael Elliott, *Death in Genoa*, TIME, July 30, 2001, at 22. A string of protests have also been staged in Washington, D. C., Melbourne, Prague, Seoul, Nice, Barcelona, and Quebec City. James Harding, *Globalisation's Children Strike Back*, FIN. TIMES, Sept. 11, 2001, at 4.

⁵ . E.g., Aaron Bernstein, *Time to Regroup*, BUS. WK., Aug. 6, 2001, at 26; Alessandra Stanley, *World Briefing/Europe/Italy: G-8 Protester Mourned*, N.Y. TIMES, July 26, 2001, at A6. See also Elliott, *supra* note 4, at 22; Laura King, *Battered and Bitter, Genoa Picks up Pieces*, LANSING ST. J., July 23, 2001, at 3A; Alessandra Stanley & David Sanger, *Italian Protester is Killed by Police at Genoa Meeting*, N.Y. TIMES, July 21, 2001, at A1.

⁶ . E.g., Melinda Henneberger, *Outcry Grows Over Police Use of Force in Genoa*, N.Y. TIMES, Aug. 8, 2001, at A1.

It is important to note that those who engaged in violence constituted a minority among the marchers in Genoa. Moreover, some groups, such as the environmental organization Friends of the Earth, stayed away from Genoa because of the prospect of violence. Other protests have been notably peaceable. For example, in 1998 at a G8 meeting in Birmingham, England, protesters sang hymns and made speeches calling for debt reduction for poor nations.⁷ In November 2001, a meeting of IMF and World Bank delegates was held in Ottawa, Canada.⁸ At the meeting, about 2,000-4,000 protesters voiced their concerns in a “largely peaceful” manner, and those who engaged in vandalism were quietly arrested without violent confrontations with the police.⁹

Protests were also planned for fourth Ministerial of the WTO that was to be held in Doha, Qatar in November of 2001.¹⁰ But, in the wake of the terrorism of September 11, security for the event was extremely tight.¹¹ Qatari authorities told about 300 nongovernmental organizations (NGOs) that they could only send one representative each.¹² Ultimately fewer than 200 representatives of environmental, labor, and other groups were granted visas by the Qatar government.¹³ Further, in the wake of

⁷ . Elliott, *supra* note 4, at 23.

⁸ . The meeting had been scheduled for New Delhi, India, but was relocated after the Indian government withdrew its offer to provide a meeting location, citing post-September 11 security concerns.

⁹ . *Well Done, Ottawa: We Show Others How Meetings and Protests Can Co-Exist*. OTTAWA CITIZEN, Nov. 19, 2001, at A16. THE OTTAWA CITIZEN estimated that there were about 2,000 protesters, while THE WASHINGTON POST estimated that there were 3,000-4000 people involved. Paul Blustein, *Protest Group Softens Tone at WTO Talks*, WASH. POST, Nov. 12, 2001, at A1.

¹⁰ . Opponents of globalization of trade asserted that the WTO's choice of a remote location was deliberate. One news reporter notes, “The world's most powerful politicians are in retreat, withdrawing to remote spots such as Kananaskis in the Canadian Rockies for the next Group of Eight summit.” Harding, *supra* note 4.

¹¹ . “Thousands of Qatari police and military police and military personnel maintain[ed] rigid security at the meeting site and hotels to prevent any terrorist assault during the meetings.” Blustein, *supra* note 9, at A22.

¹² . Qatar cited a lack of housing as a reason for the restriction. Peter Ford, *Antitrade Activists Face Tough Sell*, CHRISTIAN SCI. MONITOR, Nov. 13, 2001, at 6. Greenpeace dealt with the “one person” limitation by bringing its own housing. It sent its ship, the Rainbow Warrior, with a crew of thirty environmental activists to be docked at Doha. *Sailing by Avenue of the Americas*, FIN. TIMES, Nov. 5, 2001, at 15.

¹³ . Blustein, *supra* note 9, at A22.

September 11, patriotism among U.S. citizens was running high, and being critical of the U.S. government was a “touchy” matter.¹⁴ Even those protests planned for cities in Europe during the Qatar meetings resulted in turnouts of only a few thousand people each,¹⁵ and attempted protests in Qatar were subdued quickly and quietly.¹⁶

A new climate seemed to emerge at the fourth Ministerial of the WTO, and a major outcome of the Ministerial was an agenda for a new round of trade talks. In an effort to gain the support of poor nations regarding terrorism, the United States paid more attention to the needs of developing nations than had been expected.¹⁷ In the environmental area, European Union (EU) Trade Commissioner Pascal Lamy complied with the pleas of Europe’s Green parties and advocated changes in WTO rules that could lead to a more environmentally friendly WTO. For example, the WTO’s new agenda calls for it to bring its rules in line with environmental treaties and to explore giving tariff preferences to environmentally sound products.¹⁸ But, support for environmental protection was not widespread. Japan was the only country that clearly supported the EU’s demand that environmental issues be addressed. Moreover, the debate is extremely complicated, and the EU and environmentalists do not always speak on behalf of developing countries.¹⁹ In fact, most developing countries oppose new environmental rules for the WTO because they have the potential to facilitate “green protectionism.”²⁰ In Qatar, the EU favored changing

¹⁴ . *Id.*

¹⁵ . Ford, *supra* note 12.

¹⁶ . On Saturday, November 10, 2001, a group of activists chanted and waved signs outside the building in which the U.S. delegation was giving a press briefing. The activists briefly considered trying to confront the U.S. officials inside, but they dispersed when Qatari security guards rushed to the scene. Blustein, *supra* note 9, at A22.

¹⁷ . Helene Cooper & Geoff Winestock, *Tough Talkers: Poor Nations Win Gains in Global Trade Deal, As U.S. Compromises-In New Climate, Concessions on tariffs, Drug Patents; India Hold Out to End-Delegates Sleep in the Hall*, WALL ST. J., Nov. 15, 2001, at A1.

¹⁸ . *Id.*

¹⁹ . For additional discussion, see *infra* text accompanying notes 125 and 190-192 (discussing divisions between anti-globalization groups and governments of developing nations).

²⁰ . Charlotte Denny, *For richer – and for poorer: The latest round of World Trade Organization talks in Qatar proves that western trade blocs need developing countries on-side to get a deal*, GUARDIAN, Nov. 23, 2001; Paul Hannon & Matthew Newman, *WTO Members Move Toward Clearing Trade Round Obstacles*, DOW JONES NEWSWIRES, Nov. 12, 2001.

WTO rules to allow restrictions on imports of meat, grain, fruits and vegetables that have been genetically modified or treated with hormones, but officials from developing nations criticized those proposals vehemently.²¹

The WTO faces difficult decisions regarding the environment, and the meeting at Qatar showed that there are multiple, complex viewpoints to be considered. Moreover, world events have led to a heightened awareness of social problems including, but not limited to, environmental degradation, violation of workers' rights, and violations of human rights. The terrorism of September 11, 2001 did not stop globalization of trade,²² but it has led more people to reflect upon economic and environmental inequities in this world. Therefore, trade-related organizations such as the WTO, IMF, and World Bank are being compelled to think more about how their activities affect poor countries.²³ "As the war on terrorism has unfolded, Americans have been reminded once more that we live in a world of unprecedented opulence and remarkable deprivation, a world so interconnected that poverty and despair in a remote region can harbor a network of terrorism dedicated to our destruction."²⁴ We must alleviate the unequal distribution of wealth in this world. As a part of this process, we must recognize that globalization of trade forces developing countries to deplete their natural resources and accept environmental contamination. These consequences of industrialization must be halted.

Public protests provide warnings about important concerns for the world. The WTO should recognize that there is a new sense of urgency regarding disparities between developed countries and

²¹ . Blustein, *supra* note 9, at A22.

²² . In November of 2001, a PricewaterhouseCoopers survey of 171 business executives at major U.S.-based multinational companies revealed that 27% planned geographic expansion during the year ahead. This was up from 19% planned before the terrorists' attacks. *The Outlook: Globalization Persists in Precarious New Age*, WALL ST. J., Dec. 31, 2001, at A1. See also Ed Crooks, *Globalization's Demise Exaggerated*, FIN. TIMES, Oct. 16, 2001, at 4.

²³ . The IMF and the World Monetary Bank responded to public concerns when they opened their November 2001 meeting in Ottawa with a pledge to be "proactive" with aid to developing countries whose economies have been damaged as a result of the September 11 terrorist attacks. Blustein, *supra* note 9, at A22.

²⁴ . Laura D'Andrea Tyson, *It's Time to Step Up the Global War on Poverty*, BUS. WK., Dec. 3, 2001, at 26.

developing countries, and it must recognize its duty to deal with the negative effects of increased trade.

Part II of this article explores the reasons for public protests against the WTO and the history of the WTO's involvement with environmental problems. Part III provides examples of environmental concerns facing the WTO today, and Part IV explains why the WTO should be held responsible for the environmental effects of global trade. Just as corporations accept responsibility for their actions pursuant to Corporate Social Responsibility (CSR), the WTO should be required to accept responsibility for environmental effects of trade. Those who advocate CSR say that businesses should combine their profit motives with good corporate citizenship including, but not limited to, environmental protection efforts. Similarly, as the WTO works to facilitate global trade, it must deal with the environmental consequences of that trade. Part V provides specific examples of how the WTO must change. As the WTO pursues its trade objectives, it must listen to those who are underrepresented or unrepresented in its decision-making processes. To do so, the WTO must employ processes used by democratic institutions to gather and listen to concerns of citizens. After listening, the WTO must take action to address environmental problems; suggestions for such action are included in Part V. This article concludes that the WTO must invite environmentalists and citizens of developing countries to speak, facilitate their speech, and act on what it learns from them. In short, it must assume responsibility for the environmental effects of global trade.

II. REASONS FOR PROTESTS IN SEATTLE, WASHINGTON, D.C., AND GENOA

Protests in Seattle, Washington, D.C., and Genoa were against a variety of consequences of globalization of trade including environmental contamination, destruction of habitats, failure to protect biodiversity, hardships imposed on workers, and violations of human rights. This section provides background on globalization and discusses why the WTO must concern itself with environmental protection.

A. *What is Globalization?*

The term “globalization” is often used without a clear definition. As Ramesh Diwan, Professor of Economics at Renssalaer Polytechnic Institute has stated “Globalization has become a buzz word Like other similar buzz words, such as sustainable development, it is rarely defined but used to promote arguments favoring business interests.”²⁵ Authors attempting to define globalization often do so from competing perspectives; some view globalization favorably while others view it as unfavorable. These views are further complicated by the multiple facets that characterize globalization.

Cultural globalization involves the spread of language, products, and customs as people intermingle. This is accomplished through various mechanisms including trade, travel, and communications. For example, the Internet provides an inexpensive means of disseminating large amounts of information throughout the world. In some cases, cultural intermingling occurs in its most literal sense as people from around the world intermarry, contributing their varied heritage and genes to their offspring.

A second facet of globalization is biological. Individual organisms as well as ecosystems are changing.²⁶ The major effects of such globalization include, but are not limited to, global warming, ozone depletion, the extinction of species, and the use of biotechnology.

A third facet of globalization is political. It involves at least three distinct sets of actors: NGOs, governments, and international organizations. First, the number of NGOs operating around the world has expanded tremendously in recent decades. In 1910 there were about 200 international NGOs and by the 1980s there were over 5,000.²⁷ By 1987 there were 54,000 NGOs in France alone.²⁸ Worldwide, there were at least 985 NGOs devoted to humanitarian

²⁵ . Ramesh Diwan, *Globalization: Myth vs. Reality*, Bharatiya Jahata Party, India, at <http://www.bjp.org/major/myth-global.html> (last visited Sept. 28, 2002).

²⁶ . WALTER TRUETT ANDERSON, *ALL CONNECTED NOW: LIFE IN THE FIRST GLOBAL CIVILIZATION 9* (2001).

²⁷ . *Id.* at 8.

²⁸ . *Id.*

or environmental causes.²⁹ By 1996, there were more than 20,000.³⁰ These organizations have had a significant effect on law-and policy-making. Governments have also facilitated changes contributing to globalization; individual nations have altered their laws and policies in response to the changing needs of citizens and businesses due to globalization. Nation states have also joined forces to create supranational organizations such as the EU and the WTO. Such organizations, in turn, administer international laws through administrative bodies.

Yet, most people think of globalization in another context: economics.³¹ For example, the Turin European Council³² defines globalization as a process of worldwide economic integration based on three forces: 1) The liberalization of international trade and capital movements; 2) Accelerating technological process and the advent of the information society; and 3) Deregulation through withdrawal of the state from specified areas of economic activity.³³

One commentator defines globalization as “the inexorable integration of markets, nation-states and technologies to a degree never witnessed before – in a way that is enabling individuals, corporations and nation-states to reach around the world farther, faster, deeper and cheaper than ever before....”³⁴ Another author describes globalization as, “the international integration of markets for goods, services and capital.”³⁵ Because this article focuses on the WTO and the environmental effects of trade, the term globalization is used here to refer to economic globalization.

²⁹ . EDWARD O. WILSON, *THE FUTURE OF LIFE* 165 (2002).

³⁰ . *Id.* at 165-66.

³¹ . Business managers want to know what it means for a company to globalize, and they ask questions related to their own affairs. First, is there something fundamentally different about doing business globally as compared to their established business practices? Second, will globalization require different practices in the future as compared to today? Third, what products and services will firms need as they globalize? Paulette L. Stenzel, *Globalization*, 1 *ENCYCLOPEDIA OF BUS.* 246 (2d ed. 1999).

³² . See *The European Council*, The Council of the European Union, at <http://ue.eu.int/en/Info/eurocouncil/index.htm> (providing a basic summary of the Turin European Council)(last visited Sept. 28, 2002).

³³ . *Glossary: Globalisation of the Economy*, Europa, at <http://europa.eu.int/scadplus/leg/en/cig/g4000g.htm> (last visited Sept. 28, 2002).

³⁴ . THOMAS FRIEDMAN, *THE LEXUS AND THE OLIVE TREE* 9 (2000).

³⁵ . DANI RODRIK, *HAS GLOBALIZATION GONE TOO FAR?* 1(1997).

B. *Environmental Effects of Global Trade*

Increased industrialization often accompanies economic globalization. Industrialization, in turn, leads to environmental contamination. For example, industrialization facilitated by the North American Free Trade Agreement (NAFTA)³⁶ has exacerbated the massive environmental problems along the U.S./Mexican border.³⁷ In Juarez, Mexico, open canals carry sewage and industrial sludge from the city's 350 *maquiladoras* (assembly plants).³⁸ Such problems are found throughout the world, especially in developing nations with large percentages of their people living in poverty.

Environmental damage is also inextricably linked to two widening gaps that go hand-in-hand: the gap between rich and poor and the gap between developed and developing countries. Despite increasing wealth on a global scale, about half of the world's people live on \$2 a day or less, and at least 1.2 million people live on less than \$1 a day.³⁹ In Afghanistan, per capita income is less than \$1 a day, and 80% of the people (including 90% of the women) are illiterate.⁴⁰ The gap between rich and poor is especially pronounced

³⁶ . North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 296.

³⁷ . See generally PIERRE MARC JOHNSON & ANDRÉ BEAULIEU, *THE ENVIRONMENT AND NAFTA: UNDERSTANDING AND IMPLEMENTING THE NEW CONTINENTAL LAW* (1996)(discussing NAFTA's environmental provisions). For specific examples of environmental problems related to NAFTA, see Diane Lindquist, *Greenpeace Protests Baja Power Plants*, SAN DIEGO UNION-TRIB., July 21, 2001, at A5 (noting that Mexican power plants, built for the purpose of exporting energy to the U.S. market, would also increase regional pollution); John Minan, *Pollution Violations at the Border*, SAN DIEGO UNION-TRIB., Sept. 4, 2001, at B9 (noting that sewage discharges from an outdated plant in Tijuana affect water quality in the San Diego area and that the San Diego Regional Water Quality Control Board filed suit to require the plant to update to at least secondary standards for water treatment); *NAFTA Clause a Threat to Environment: NDP*, GAZETTE (MONTREAL), May 5, 2001, at A10 (noting that the Mexican government was required to pay a \$16.9 million arbitration award for shutting down a toxic waste dump run by a U.S. corporation on Mexican soil). For additional discussion of the border problems, see Patricia Romano, *Sustainable Development: A Strategy That Reflects the Effects of Globalization on the International Power Structure*, 23 HOUS. J. INT'L L. 91, 100-08 (2002); see also Andres Rueda, *Tuna, Dolphins, Shrimp, & Turtles: What About Environmental Embargoes Under NAFTA?* 12 GEO. INT'L ENVTL. L. REV. 647, 669 (2000).

³⁸ . Rueda, *supra* note 37, at 679-80 (noting that lax enforcement of generally well-drafted environmental laws regulating foreign-owned factories results in over seven million tons of toxic waste being dumped into drains and other waters each year).

³⁹ . *Id.* at 28.

⁴⁰ . Tyson, *supra* note 24, at 26.

in South America. Argentina is in its fifth year of the worst economic crisis of its history,⁴¹ a crisis that led to the resignations of four presidents within two weeks at the end of 2001 and the beginning of 2002.⁴² Concurrently, the country is suffering from a severe food shortage,⁴³ causing many citizens to rely on the government for food supplies. In Brazil, Argentina's neighbor and trade partner, 78% of the population survives on less than \$100 U.S. per month per family.⁴⁴

The link between environmental degradation and trade globalization has become increasingly clear. Developing countries invite new industries into their borders and encourage existing industries to expand because their citizens desperately need jobs. The leaders of those countries have resigned themselves to accepting (or even ignoring) the environmental effects of industrialization. "The desire to integrate into the global economy or to offset losses in financial crises has motivated many developing countries to increase their exploitation of natural resources."⁴⁵ In order to survive, poor people are forced to allow development that destroys natural resources.⁴⁶ "Increasing pressure on the environment is the result of, on one hand, increasing affluence - that is, more consumption, pollution and waste, and on the other hand persistent poverty - that is, lack of resources and the technology to use them and lack of the power to change these circumstances."⁴⁷

In the wake of the terrorism of September 11, 2001, the need to reduce the gap between rich and poor is being increasingly

⁴¹ . Larry Rohter, *Argentina Tries Again to Fill Presidential Void*, N.Y. TIMES, Jan. 2, 2002, at A8.

⁴² . *Id.*; see also Larry Rohter, *Populist Argentine Senator Steps In to Fill the Void, Becoming 5th President in Two Weeks*, N.Y. TIMES, Jan. 2, 2002, at A6; Patrice M. Jones, *Argentina Faces Radical Change*, CHI. TRIB. Jan 3, 2002, §1, at 1 (noting the relationship between Argentina's economic problems and its turbulent political situation).

⁴³ . Gustavo Gonzalez, *Food-Latam: Nutrition Has Improved, but Many Still Go Hungry*, Inter Press Serv., Sept. 6, 2001, available at 2001 WL 4805191.

⁴⁴ . Hazel M. Johnson, *Dispelling the Myth of Globalization: The Case for Regionalization*, in GLOBALIZATION AND THE EVOLVING WORLD SOCIETY 2 (Proshanta K. Nandi & M. Shahidullah Shahid eds., 1998).

⁴⁵ . UNITED NATIONS FUND FOR POPULATION ACTIVITIES, THE STATE OF WORLD POPULATION 33 (2001).

⁴⁶ . *Id.* at 29-30.

⁴⁷ . *Id.* at 27.

recognized by the developed world.⁴⁸ “Few would dispute that terrorism and violent religious fundamentalism, however complicated the causes, grow best in the soil of poverty. The September 11 attacks raise this issue to a new level of importance. More than any other single event, the attacks show how interconnected the world is. High on the new agenda has to be attention to the world’s poor.”⁴⁹

Large corporations wield a disproportionate share of the world’s wealth. The 200 richest corporations of the world, for example, have resources equal to the cumulative wealth of the poorest 80 % of the world’s population.⁵⁰ Therefore, such corporations and the organizations that support them should be among the first to pay attention to the world’s poor. However, international trade agreements and organizations currently focus on helping corporations expand their markets, increase their sales, and generate more profits.⁵¹ These trade agreements and enforcing organizations vary in scope. Some are bilateral, such as the U.S.-Canada Free Trade Agreement⁵² and the U.S.-Israel Free Trade Agreement.⁵³ Other trade agreements are multilateral and regional

⁴⁸ . This division was in the forefront in public discussions as plans for the meeting were finalized. See Joseph Kahn, *The Rich-Poor Division Is in Stark Relief in Talks for Trade Agenda*, N.Y. TIMES, Nov. 1, 2001, at C1 (noting that the United States was able to negotiate price concessions from German drug giant Bayer in purchasing the anti-biotic drug Cipro, while many poorer nations face difficulties in exacting similar concessions for drugs to combat malaria and HIV).

⁴⁹ . Jeff Madrick, Editorial, *Rich Nations Have Been Too Insensitive to Poverty*, N.Y. TIMES, Nov. 1, 2001, at C2.

⁵⁰ . WILSON, *supra* note 29, at 166.

⁵¹ . Economic globalization does not seem to have suffered a reversal in the wake of September 11, 2001. After the attacks, some economists worried that the trend toward such globalization would be reversed in the way that World War I reversed such a trend. For example, a major period of globalization ended in 1914 when the assassination of Archduke Ferdinand triggered World War I. In contrast, a recent survey by PricewaterhouseCoopers of 171 executives at U.S. multinational companies reveals that 27% are planning geographic expansion during 2002 as compared to 19% in the year preceding September 11. Starbucks Corp. plans to open 375 new stores overseas in the year ending September 20, 2002. Jon E. Hilsenrath, *The Outlook: Globalization Persists in Precarious New Age*, WALL ST. J., Dec. 31, 2001, at A3.

⁵² . See *generally* Canada-United States Free Trade Agreement, Jan. 1988, U.S.-Can., 27 I.L.M. 281-316, available at http://www.agr.gc.ca/itpd-dpci/english/trade_agr/fta.htm.

⁵³ . See *generally* U.S.-Isr. Free Trade Area Implementation Act of 1985, 19 U.S.C. § 2112 (1988); see *generally* U.S.-Isr. Free Trade Agreement, April 22, 1985, *reprinted in* 24

such as NAFTA, MERCOSUR⁵⁴ (including Argentina, Brazil, Paraguay, and Uruguay as full members and Chile as an associate member), and the twenty-one-member Asia-Pacific Economic Cooperation Group (APEC).⁵⁵ The largest and most powerful organization of all is the WTO. With the addition of China and Taiwan in November 2002, it includes one hundred forty-six members.⁵⁶ Thus, it is not surprising that the WTO is often attacked and blamed for the environmental effects of globalization.⁵⁷

C. *The WTO's Evolving Entanglements with Environmental Problems*

The WTO, the World Bank, and the IMF have common origins. In 1944, at the close of World War II, a conference was held in Bretton Woods, New Jersey.⁵⁸ At the conference, leaders of the Allied nations agreed to establish the World Bank and the IMF. The mission of the World Bank was to finance reconstruction and development following World War II. The IMF's mission was to stabilize exchange rates and oversee payment balances.⁵⁹

In 1945, as part of this process the United States proposed an organization termed the International Trade Organization (ITO) that would promote international trade. The ITO was further discussed

I.L.M. 653 (1985) [hereinafter FTA], summary available at <http://www.jewishvirtuallibrary.org/jsource/US-Israel/FTA.html>.

⁵⁴ . MERCOSUR includes Argentina, Brazil, Paraguay and Uruguay as full members with Chile and Bolivia as associate members. See generally *MERCOSUR*, at <http://www.mercosul.org.uy/pagina1esp.htm> (last visited Sept. 30, 2002) (Only available in Spanish).

⁵⁵ . There are twenty-one members of APEC, including the United States and Canada. See generally *Asia-Pacific Economic Cooperation*, at <http://www.apecsec.org.sg> (last visited Nov. 1, 2002).

⁵⁶ . See *infra* note 131 (discussing the admission of China and Taiwan).

⁵⁷ . "[T]he activists see the WTO as the corporate world's tool to turn more high streets into homogenous shopping malls, to engineer the privatization of more public services, to annul environmental protection laws in the name of free trade, and to open more countries to the whimsical forces of Wall Street." Harding, *supra* note 4.

⁵⁸ . GEORGE SCHILD, *BRETTON WOODS & DUMBARTON OAKS: AMERICAN ECONOMIC AND POLITICAL POSTWAR PLANNING IN THE SUMMER OF 1944*, at xiii (1995).

⁵⁹ . DANIEL C. ESTY, *GREENING THE GATT: TRADE, ENVIRONMENT, AND THE FUTURE*, 244 (1994).

at a conference in Havana, Cuba in 1947,⁶⁰ where the General Agreement on Tariffs and Trade (GATT) was drafted. The United States approved the GATT through an executive order and, with the approval of 22 other nations, the GATT took effect on January 1, 1948. The ITO agreement, however, required approval by Congress. Due to post-World War II protectionism and opposition in Congress, President Truman never presented the document for ratification, and the ITO agreement was quietly set aside.⁶¹ The GATT continued in effect for nearly half a century without the organization that had been designed to support it.⁶²

The nations, termed contracting parties, creating the GATT did not intend for the agreement itself to be an organization. It was meant to be a temporary agreement, yet the GATT functioned as the world's primary framework for setting rules for international trade until 1994.⁶³ As a result, it had minimal administrative structure to guide its operations and was in a state of "constant improvisation."⁶⁴ Its rules were brief and not clearly codified.⁶⁵ Between 1947 and 1994, the GATT was revised numerous times through a series of multilateral trade talks called "rounds". Finally, as a result of one of these rounds (the 1986-1993 Uruguay Round of Negotiations) the WTO was created.⁶⁶

The WTO provides an umbrella for administration of the GATT and other agreements designed to promote, coordinate, and

⁶⁰ . See RICHARD GARDNER, *STERLING DOLLAR DIPLOMACY IN CURRENT PERSPECTIVE: THE ORIGINS AND THE PROSPECTS OF OUR INTERNATIONAL ECONOMIC ORDER* 101-03 (1980) (presenting an historical account of the ITO)

⁶¹ . ESTY, *supra* note 59, at 244 (stating "Lawmakers in the United States, in particular, seemed reluctant to cede sovereignty to an international organization.")

⁶² . See Mary M. Cooper, *World Trade*, CQ RESEARCHER, JUNE 9, 2000, at 499, 506-8 (discussing the post World War II trade system).

⁶³ . Benjamin L. Brimeyer, *Bananas, Beef, and Compliance in the World Trade Organization: The Inability of the WTO Dispute Settlement Process to Achieve Compliance from Superpower Nations*, 10 MINN. J. GLOBAL TRADE 133, 135 (2001).

⁶⁴ . William E. Scanlan, *A Test Case for the New World Trade Organization's Dispute Settlement Understanding: The Japan-United States Auto Parts Dispute*, 45 U. KAN. L. REV. 591, 593 (1996).

⁶⁵ . See Brimeyer, *supra* note 63, at 135-36 (describing the dispute settlement procedures).

⁶⁶ . Cooper, *supra* note 62, at 508.

oversee international trading.⁶⁷ The WTO's operations are coordinated pursuant to decisions made at a ministerial conference held at least once every two years.⁶⁸ The third Ministerial was held in 1999 in Seattle,⁶⁹ Washington and the fourth was held in 2001 in Doha, Qatar.⁷⁰

Creation of the WTO was long overdue. Formal disputes were brought less frequently under the GATT than they are under the WTO, at least in part because the GATT's processes were cumbersome. Under the GATT, three-person panels of trade experts convened to hear disputes. The panel then submitted a recommendation to the GATT Council. If ratified by the Council, the recommendation became a GATT ruling. This process was streamlined as a result of the Uruguay Round of Negotiations. Now, a WTO panel's recommendation becomes final without further action by the Council unless they act by consensus to block the decision.⁷¹

In addition, since 1994, GATT panels have become more professional in the way they examine environmental disputes. Here are four examples of improvements. First, independent panelists from diverse backgrounds are now appointed to hearing panels. The 1994 agreement calls for panelists from diverse backgrounds and "a wide spectrum of experience" such as senior trade experts, former panelists, professors, and authors on international trade law and policy. Prior to 1994, the panels were criticized for their lack of

⁶⁷ . Those agreements include, for example, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS agreement) and the General Agreement on Trade in Services (GATS). General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 33 I.L.M. 1167 (1994); Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 33 I.L.M. 1197 (1994).

⁶⁸ . ESTY, *supra* note 59, at 247.

⁶⁹ . *Third WTO Ministerial Conference*, Trade Observatory, at www.tradeobservatory.org/calendar/index.cfm?Id=140 (last visited Nov. 20, 2002).

⁷⁰ . *4th WTO Ministerial Conference*, Trade Observatory, at www.tradeobservatory.org/calendar/index.cfm?Id=1141 (last visited Nov. 20, 2002). Located in the Middle East, Qatar is the peninsula bordering the Persian Gulf and Saudi Arabia. See Qatar, *The World Factbook 2002*, at <http://www.cia.gov/cia/publications/factbook/geos/qa.html> (last updated Jan. 1, 2002).

⁷¹ . Under the GATT regime, a council ratification could be blocked by a single member. ESTY, *supra* note 59, at 247.

legal training and lack of experience.⁷² Second, panelists are no longer selected from the disputing nations, as they were allowed to be prior to 1994.⁷³ Third, since 1994, the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU or Dispute Settlement Understanding) has provided a set of procedures and practices that fill thirty pages.⁷⁴ Panels convened prior to 1994, but the panels had only minimal guidance from a document consisting of a few paragraphs. Fourth, the new rules call for panels to adhere to the *Vienna Convention on the Law of Treaties*⁷⁵ by interpreting treaty provisions according to their “ordinary meaning.”⁷⁶ Overall, WTO procedures for resolution of environmental disputes are not perfect, but they have improved.⁷⁷

In spite of these procedural improvements, environmentalists are still seriously concerned about the GATT’s limited substantive provisions for environmental protection.⁷⁸ Specifically, it is not clear whether a member of the GATT has a right to enforce its domestic environmental laws if those laws conflict with GATT rules promoting trade?

Environmental protection was not a major world concern when the GATT was drafted just after World War II, but it was coming to the forefront of discussions related to world trade in the 1990’s when the WTO was created. Today, trade and environmental policies regularly intersect and collide, giving rise to heated debate in public

⁷² . Carrie Wofford, *A Greener Future at the WTO: The Refinement of WTO Jurisprudence on Environmental Exceptions to GATT*, 24 HARV. ENVTL. L. REV. 563, 570 (2002).

⁷³ . “[D]isputing nations are no longer able to ‘shop’ for sympathetic panelists, as they were under the GATT dispute settlement system prior to 1994.” *Id.*

⁷⁴ . “The new system adopts a single source of procedure for resolving disputes...bringing more certainty and clarity than the earlier system under which procedures and codes changed by panel.” *Id.* at 569; see Understanding on Rules and Procedures Governing the Settlement of Disputes, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 33 I.L.M. 1226 (1994).

⁷⁵ . Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, available at <http://www.un.org/law/ilc/texts/treaties.htm>.

⁷⁶ . Wofford, *supra* note 72, at 564.

⁷⁷ . See Brimeyer, *supra* note 63, at 143-46 (describing dispute settlement procedures of the WTO).

⁷⁸ . See *generally id.* (discussing improvements in WTO environmental decision-making processes since 1994 and explaining why the improvements aid environmental objectives).

discussions related to the GATT and other international trade agreements.⁷⁹

Although it does not mention the word “environment,” GATT Article XX offers a basis for deviating from GATT principles in support of environmental policies.⁸⁰ Under Article XX, countries may pursue their own environmental programs, even when those programs affect trade. But, those parties face numerous hurdles before their claim of exception to GATT’s other trade provisions will be accepted. Article XX allows exemptions to GATT trade obligations under two provisions; they are sometimes called the “environmental exceptions.”⁸¹ The introduction to the article (the “chapeau requirement”)⁸² and article XX (b) and (g) provide:

Subject to the requirement that such measures are not applied in a manner which could constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or as a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: . . .

(b) necessary to protect human, animal or plant life or health; . . .

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption[.]⁸³

These exemptions are granted only if certain hurdles are met. They include the chapeau requirements found in the opening lines of the article, a prohibition on extra-jurisdictional or extraterritorial measures,⁸⁴ and a limitation on unilateral actions.⁸⁵ This section

⁷⁹ . ESTY, *supra* note 59, at 9 (describing the origins of the present conflict between trade and environmental policymaking).

⁸⁰ . *Id.* at 46-51 (offering an explanation and interpretation of GATT Article XX).

⁸¹ . Rueda, *supra* note 37, at 654.

⁸² . Chapeau requirements allow an exception under GATT Article XX, but “Article XX does not excuse arbitrary or unjustifiable discrimination. Nor may Article XX be used to justify disguised restrictions on international trade.” Measures falling under the exception should not be “applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade.” ESTY, *supra* note 59, at 47-48.

⁸³ . See General Agreement on Tariffs and Trade, Oct. 30, 1947, art. 20, §I(b)(g). 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 187, 262 [hereinafter GATT].

⁸⁴ . See ESTY, *supra* note 59, at 105-6 (defining prevailing interpretation of GATT bar to extraterritorial trade measures and providing an example of the difference between extraterritoriality and extrajurisdictionality).

discusses several trade disputes involving those hurdles. In each case, national laws designed to protect the environment, endangered species, or human health have been challenged under the GATT.⁸⁶

The *Tuna/Dolphin*⁸⁷ case came to the public's attention four years before the WTO was created.⁸⁸ It is one of several cases involving "environmental embargoes," or "environmental trade measures" (ETMs), imposed by the United States. In *Tuna/Dolphin I*, a GATT panel ruled against the United States because it applied environmental protection rules extraterritorially.⁸⁹ The United States had imposed an embargo against Mexican tuna after determining that Mexican fishermen were catching tuna using "purse-seine," a fishing method that uses a large net to encircle a catch of tuna.⁹⁰ In the process, they were catching and killing significant numbers of dolphins.⁹¹ This violated the U.S. Marine Mammal Protection Act,⁹² which prohibits the importation of tuna caught using methods that harm numbers of dolphins that exceed limits set by of U.S. standards.⁹³ The GATT panel ruled against the United States saying that the Marine Mammal Protection Act was being applied

⁸⁵ . *Id.* at 49 (restating the suggestion that "unilateral environmental actions with trade impacts generally may not be excused under Article XX" made in *Tuna/Dolphin I* case and criticizing this narrow reading of Article XX because it "renders the GATT insufficiently sensitive to legitimate efforts to address global environmental needs").

⁸⁶ . See *id.* at 257-81 (summarizing a series of environmental cases brought pursuant to GATT rules from 1951 to 1994); *cf. id.* at 48-49 (describing tests involved in cases discussed by Esty, including the limited scope test, the "necessary" test, and the "relating to conservation" test. These tests are not discussed further in this paper due to space limitations, but such discussion will be included in an article based on this paper).

⁸⁷ . United States – Restrictions on Imports of Tuna, GATT Doc. DS21/R (Sept. 3, 1991), reprinted in 30 I.L.M. 1594 (1991) [hereinafter *Tuna/Dolphin I*].

⁸⁸ . See generally Susan Sakmar, *Free Trade and Sea Turtles: The International and Domestic Implications of Shrimp-Turtles Case*, 10 COLO. J. INT'L ENVTL L. & POL'Y 345 (1999) (documenting the plight of the sea turtle, efforts of the United States to protect the sea turtle, and the WTO's response to these efforts in the *Shrimp/Turtle* case).

⁸⁹ . United States - Restrictions on Imports of Tuna, Aug. 16, 1991, GATT B.I.S.D. (39th Supp.) at 155 (1991-92).

⁹⁰ . *Tuna/Dolphin I*, 30 I.L.M. at 1600.

⁹¹ . *Id.*; see Richard W. Parker, *Trade and the Environment: Implications for Global Governance: The Case for Environmental Trade Sanctions*, 7 WIDENER L. SYMP. J. 21, (2001) (explaining the process).

⁹² . Marine Mammal Protection Act of 1972, 16 U.S.C. §1361 (1994).

⁹³ . *Tuna/Dolphin I*, 30 I.L.M. at 1599.

extraterritorially to regulate the process used to gather a product rather than the product itself.⁹⁴ Environmentalists were enraged by the decision, and due at least in part to public outcry, Mexico took steps to reduce dolphin deaths. Additionally, U.S. government officials and a coalition of environmental groups met with representatives of Latin American nations in October of 1995. They reached an agreement setting guidelines for environmentally sound tuna fishing.⁹⁵

The U.S. Marine Mammal Protection Act was challenged again in 1994, this time by the European Community (now European Union), in the follow-up case called *Tuna/Dolphin II*.⁹⁶ The European Community was dissatisfied because Mexico did not push the GATT Council to ratify the 1991 decision against the United States.⁹⁷ Again, a GATT panel held against the United States,⁹⁸ focusing on the unilateral nature of the U.S. application of the law rather than on its extraterritorial application.⁹⁹ (In this case, “unilateral” refers to the fact that the U.S. action was directed toward only one nation.) Although the ruling of the panel went against the United States, the panel did give some hope to environmentalists by stating that the text of Article XX(g) did not prevent a country from protecting resources outside its jurisdictional limits.¹⁰⁰

Another environmental dispute brought shortly after the creation of the WTO involved a challenge by Venezuela and Brazil against

⁹⁴ . *Id.*; see Hilary French, *Challenging the WTO*, WORLD WATCH, Nov.-Dec. 1999, at 22, 24; Katie A. Lane, *Protectionism or Environmental Activism? The WTO as a Means of Reconciling the Conflict Between Global Free Trade and the Environment*, 32 U. MIAMI INTER-AM L. REV. 103, 19-20 (2001).

⁹⁵ . Eugene Linden, *Chicken of the Sea*, TIME, Mar. 4, 1996, at 57.

⁹⁶ . United States – Restrictions on Imports of Tuna, June 16, 1994, 33 I.L.M. 839, 842 [hereinafter *Tuna/Dolphin II*]; see Howard Chang, *An Economic Analysis of Trade Measures to Protect the Global Environment*, 83 GEO. L.J. 2131, 2133 (1995).

⁹⁷ . Mexico did not press the GATT Council to adopt the panel's decision. Many commentators believe this was due to Mexico's desire to avoid conflict with the U.S. at a time when the U.S. Congress was considering adoption of the North American Free Trade Agreement (NAFTA). Rueda, *supra* note 37, at 653.

⁹⁸ . Sakmar, *supra* note 88, at 369.

⁹⁹ . *Tuna/Dolphin II*, 33 I.L.M., at 866-67; “Extraterritorial application” refers to efforts by the U.S. to apply its statute to activities taking place outside of its jurisdictional limits. ESTY, *supra* note 59, at 269; see Linden, *supra* note 95 (discussing the reactions of members of Congress and other U.S. citizens to *Tuna Dolphin II*).

¹⁰⁰ . *Tuna/Dolphin II*, 33 I.L.M., at 890-95.

the U.S. Clean Air Act.¹⁰¹ In 1990, the U.S. Environmental Protection Agency (EPA) had issued regulations requiring refiners to construct a baseline that reflected the composition of their products.¹⁰² The requirement was part of a program to reduce smog-producing contaminants in gasoline.¹⁰³ In 1994, Venezuela challenged the regulations saying that they violated GATT because they were discriminatory, favoring U.S. refiners over Venezuelan refiners.¹⁰⁴ The United States argued that its policies were justified under Article XX(b) and (g) of GATT.¹⁰⁵ The Appellate Body (AB) of the WTO eventually found that Article XX did not protect the United States in this case.¹⁰⁶ In response, the EPA reopened its rule-making process and modified (and weakened) the rules. As a result, Venezuela dropped its GATT challenge.¹⁰⁷

In 1998, the WTO issued another ruling against the United States in response to an ETM. This time it was in response to a challenge to the provisions of the U.S. Endangered Species Act. The case brought by India, Malaysia, Pakistan, and Thailand is commonly called the *Shrimp/Turtle* case.¹⁰⁸ Since 1998, the U.S. Endangered Species Act has required U.S. shrimpers to use turtle exclusion devices (TEDs) to protect endangered sea turtles.¹⁰⁹ The

¹⁰¹ . WTO Report of the Panel on United States – Standards for Reformulated and Conventional Gasoline, WT/DS2/R (Jan. 19, 1996), *reprinted in* 35 I.L.M. 274 (March 1996) [hereinafter *Conventional Gasoline*].

¹⁰² . *Conventional Gasoline*, 35 I.L.M. at 278.

¹⁰³ . *Id.*

¹⁰⁴ . *Id.* at 280.

¹⁰⁵ . *Id.* at 284.

¹⁰⁶ . WTO Appellate Body Report on United States – Standards for Reformulated and Conventional Gasoline, WT/DS2/8 (Apr. 29, 1996), *reprinted in* 35 I.L.M. 603 (May 20, 1996).

¹⁰⁷ . ESTY, *supra* note 59, at 270.

¹⁰⁸ . WTO Dispute Panel Report on United States — Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/R (May 15, 1998), *reprinted in* 37 I.L.M. 834 [hereinafter *Shrimp/Turtle*]; WTO Report Appellate Body Report on United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (Oct. 12, 1998), *available at* http://docsonline.wto.org/gen_search.asp, doc# 98-3899, file wt/ds/58abr.doc [hereinafter *Shrimp & Turtle Appellate Body Report*]; for discussion of the *Shrimp/Turtle* case, see generally, Eric L. Richards and Martin A. McCrory, *The Sea Turtle Dispute: Implications for Sovereignty, The Environment, and International Trade Law*, 71 *Colo. L. Rev.* 295 (2000); Rueda, *supra* note 37, at 658-60; see French, *supra* note 94, at 24 (stating that India, Malaysia, Pakistan, and Thailand chose to pursue a WTO challenge rather than adhere to the U.S. fishing requirement).

¹⁰⁹ . Sakmar, *supra* note 88, at 362.

United States was enforcing provisions of the act by closing its markets to shrimpers who were not using TEDs.¹¹⁰ In the *Shrimp/Turtle* case, the WTO ruled against the United States and found that the United States was violating the GATT because it was regulating the process used to gather a product rather than the product itself.¹¹¹ The United States was unsuccessful in arguing that its conservation measures were consistent with the introductory provisions (known as “chapeau” provisions) of GATT Article XX such that the measures should be ruled an exception to Article XX.¹¹²

Another notable dispute is the ongoing debate between the EU and the United States over hormone-treated beef.¹¹³ The EU banned six types of growth hormones because they are linked to genotoxicity, carcinogenicity, negative endocrine and reproductive effects, and other harm to human beings.¹¹⁴ The ban raised the ire of U.S. beef producers. After the United States threatened to challenge this ban under the GATT, a compromise was reached in which the EU and the United States agreed to temporarily abide by the ban pending a ruling from the WTO.¹¹⁵ In 1997, a WTO panel held for the United States, ruling that the EU’s ban violated GATT provisions prohibiting discriminatory trade. It said the EU’s evidence of the harmful effects of hormones did not meet the standard of scientific probability necessary to support such a ban.¹¹⁶ The EU viewed this ruling as an infringement on its right to adopt legislation

¹¹⁰ . *Id.* at 363.

¹¹¹ . See Lane, *supra* note 94, at 127-133; see also Peter Beinart, *Greens Flip over Turtles*, TIME, Apr. 27, 1998, at 34 (discussing the reactions of environmental NGO’s to the *Shrimp/Turtle* case. See generally Sakmar, *supra* note 88 (discussing this case and its relationship to *Tuna/Dolphin I* and *Tuna/Dolphin II*); Howard F. Chang, *Toward a Greener GATT: Environmental Trade Measures and the Shrimp-Turtle Case*, 74 S. CAL. L. REV. 31 (2000) (discussing the WTO Appellate Body ruling in the *Shrimp/Turtle* case and its impact on environmental trade measures under the GATT); Corinne Sam, *World Trade Organization Caught in the Middle: Are TEDs the Only Way Out?*, 29 ENVTL. L. 185 (1999) (discussing the WTO’s duty to encourage conservation of resources and protection of the environment and why it failed to fulfill this duty in the *Shrimp/Turtle* case).

¹¹² . Sakmar, *supra* note 88, at 369.

¹¹³ . See James Cox, *U.S.-EU Lock Horns Over Beef*, USA TODAY, March 31, 1999, at 1A (discussing this dispute); Edmund L. Andrews, *Europe Refuses to Drop Ban on Hormone-Fed Beef*, N.Y. TIMES, May 25, 2000, at C4.

¹¹⁴ . The hormones are progesterone, testosterone, zeranol, trenbolone acetate, oestradiol, and melengestrol acetate.

¹¹⁵ . ESTY, *supra* note 59, at 270-71.

¹¹⁶ . Cooper, *supra* note 62, at 505; French, *supra* note 94, at 26.

and implement policies designed to protect its citizens. The EU was not alone; the WTO's decision was opposed by NGOs from many countries including the United States.¹¹⁷ On appeal, the AB issued a final report reversing two of three conclusions drawn by the Dispute Settlement Panel and modifying several of its findings. The AB found that the EU may, on a scientific basis, set a level of consumer protection that is higher than international health standards.¹¹⁸ Nevertheless, it determined that the EU prohibition on use of hormones in beef could not be upheld because the EU's risk assessments did not focus on residues in meat from hormone-treated cattle.¹¹⁹ In response, the EU set out to conduct a risk assessment designed to comply with the AB's opinion and announced that it would continue to ban the import of hormone-treated beef in the interim.¹²⁰ In turn, the U.S. Trade Representative objected to the EU conducting a second risk assessment.¹²¹ The dispute is ongoing.¹²²

Some commentators view the hormone-treated beef case as a prelude to an even more significant dispute related to genetically modified organisms (GMOs). In 1998, the EU passed legislation requiring that all food products containing genetically modified corn or soybeans be labeled as such.¹²³ This requirement applies to any product containing any genetically altered ingredient at a content of 1% or greater.¹²⁴ The EU has argued that countries should be

¹¹⁷ . See Press Release, Center for Science in the Public Interest (CSPI), Groups Urge White House to Call for Moratorium on WTO Challenges to Consumer and Environmental Protections (April 13, 2000), <http://www.cspinet.org/new/wto.html>.

¹¹⁸ . WTO Appellate Body Report on EC Measures Concerning Meat and Meat Products (Hormones), WT/DS26/AB/R, WT/DS48/AB/R (Feb. 13, 1998).

¹¹⁹ . *Id.*

¹²⁰ . *Id.*

¹²¹ . John R. Schmertz, Jr. & Mike Meier, *WTO Appellate Body Issues Decision in EU-U.S. Dispute Concerning Hormone-Treated Beef*, 4 INT'L L. UPDATE 20, 21 (1998).

¹²² . See George H. Rountree, *Raging Hormones: A Discussion of the World Trade Organization's Decision in the European Union-United States Beef Dispute*, 3 GA. J. INT'L & COMP. L. 607 (1991).

¹²³ . French, *supra* note 94, at 26; Press Release, U.S. Department of Health and Human Services, *FDA to Strengthen Pre-Market Review of Bioengineered Foods* (May 3, 2000), at <http://www.fda.gov/bbs/topics/NEWS/NEW00726.html>.

¹²⁴ . See the European Commission's discussion on food safety with respect to genetically modified organisms at http://europa.eu.int/comm/food/fs/gmo/gmo_index_en.html (last visited January 6, 2003).

allowed to ban genetically modified products to protect citizens from the uncertainties attendant to their use.¹²⁵ “A fundamental concern of GMO opponents is the unknown as such – fears of wholly unanticipated effects, large and small, on humans, the environment, or human society.”¹²⁶ In contrast, the United States and its allies in this matter (Canada, Australia, Argentina, Chile, and Uruguay) have argued that a ban on such products constitutes a trade restraint in violation of the GATT.¹²⁷ Talks held by the United Nations (UN) in Montreal, Canada in January 2000 led to a consensus regarding rules for genetically modified foods.¹²⁸ The set of rules (referred to as a protocol) requires exporters to label any shipment containing genetically modified plants or their products. The UN’s rules are designed to co-exist with rules made by the WTO, but many questions remain regarding whether the two sets of rules are compatible.¹²⁹

Since 1999, the WTO has been faced with environmental concerns raised in a less formal venue. In Seattle in 1999 at its third Ministerial, instead of acting as decision-maker in a specific dispute between nations, the WTO was subjected to vehement public attacks from citizens who raised a variety of issues including, but not limited to, environmental concerns.

¹²⁵ . See *infra* text accompanying notes 217-18 (This approach is called the “precautionary principle”).

¹²⁶ . John S. Applegate, *The Prometheus Principle: Using the Precautionary Principle to Harmonize the Regulation of Genetically Modified Organisms*, 9 IND. J. GLOBAL LEGAL STUD. 207, 215 (2001).

¹²⁷ . Brandon Mitchener, *Increasingly, Rules of Global Economy Are Set in Brussels*, WALL ST. J., Apr. 23, 2002, at A1 (discussing the requirements of the European Union are leading many multinational food producers to avoid buying foods such as corn that might cause marketing problems in Europe).

¹²⁸ . Matt Crenson, *Rules Cover the Trade of Genetically Altered Food*, LANSING ST. J., Jan. 30, 2000, at 1A.

¹²⁹ . Deborah B. Whitman, *Genetically Modified Foods: Harmful or Helpful*, Cambridge Scientific Abstracts, Apr. 2000, at <http://www.csa.com/hottopics/gmfood/overview.html>; *Genetically Modified Food*, Social Issues Research Center, at http://www.sirc.org/gate/gm_food.html (last visited Nov. 1, 2002); Press Release, United Nations, Commission on Sustainable Development Holds First of Four Dialogues on Sustainable Agriculture (Apr. 24, 2000) at <http://www.un.org/News/Press/docs/2000/20000424.envdev538.doc.html> envdev538.doc.html.

III. SPECIFIC ENVIRONMENTAL CONCERNS RAISED IN SEATTLE AND BEYOND

This section of the article identifies several broad issues that were raised in connection with the protests mounted against the WTO in recent years. Specific examples of the particular disputes within each broad issue are also outlined. These examples illustrate why the WTO should adopt new policies and practices that promote not only global trade, but also environmental protection.

One prominent set of concerns related to deforestation through logging. A controversial proposal considered at the third Ministerial in Seattle was an agreement which, if adopted, would have allowed developed countries to eliminate tariffs on forest products (wood and paper) by the year 2000, and required developing to do so by the year 2003. Although the measure did not pass, environmentalists fear that the WTO may adopt such a policy in the future. They fear that the resultant increase in forest harvesting would accelerate destruction of forests since most of the timber industry does not use sustainable practices.¹³⁰ Environmentalists also object to the policy because plant and animal species are destroyed in the process of deforestation.¹³¹

A second set of concerns included objections to use of biotechnology in foods, such as the use of growth hormone in cattle or the genetic modification of trees and plants. Many unanswered questions continue to loom regarding the United States/EU beef dispute. This uncertainty fuels an ever-increasing number of disputes related to the production and consumption of GMOs.¹³²

A third complaint related to fishing, agricultural, and energy subsidies that have been demonstrated to distort trade and contribute to overuse of scarce resources.¹³³ For example,

¹³⁰ . French, *supra* note 94, at 26.

¹³¹ . See WILSON, *supra* note 29, at 19-20 (discussing biodiversity in rainforests); *id.* at 161 (discussing old growth forests).

¹³² . See *supra* text accompanying notes 113-29 (discussing disputes over the WTO, hormone treated beef and GMOs).

¹³³ . French, *supra* note 94, at 27. See also Lizette Alvarez, *Bush's Energy Bill is Passed in House in a G.O.P. Triumph*, N.Y. TIMES, Aug. 2, 2001, at A1; Philip Lee, *Killing the Land with Farm Subsidies: Critics say Canada's Farm Aid Destroys the Communities it is Designed to Save*, OTTAWA CITIZEN, Apr. 3, 2001, at A1; Dale McNeil, *Agricultural Trade*

governmental subsidies for grazing and mining on public lands result in overgrazing and degradation of soils. “. . . [G]overnment policies and subsidy incentives that reward intensive production encourage farmers to use processes that destroy land, deplete water resources and ultimately threaten rural communities.”¹³⁴ In addition to causing environmental harms, these subsidies and their unfortunate consequences are costly to taxpayers. It is estimated that government subsidies for energy, roads, water consumption, and commercial fishing cost taxpayers about \$1 trillion (U.S. dollars) per year.¹³⁵ The world dockside fishing catch has a value of \$100 billion but is sold for \$80 billion; government subsidies pay the additional \$20 billion.¹³⁶ Additionally, members of the WTO can achieve unfair trade advantages by subsidizing, encouraging, or failing to stop enterprises that are destructive to the environment.¹³⁷

A fourth point of contention was the lack of environmental protection standards in agreements that admitted new members to the WTO. For example, China sought admission to the WTO for about 15 years prior to being admitted by a vote at the WTO's November 2001 meeting in Qatar.¹³⁸ China's admission is expected to lead to declining economic and social conditions for many Chinese people.¹³⁹ As a result, protesters mounted great opposition to China's admission to the WTO.

Symposium: Furthering the Reforms of Agricultural Policies in the Millennium Round, 9 MINN. J. GLOBAL TRADE 41, 86 (2000).

¹³⁴ . Lee, *supra* note 133, at A1.

¹³⁵ . ERIC A. DAVIDSON, YOU CAN'T EAT GNP: ECONOMICS AS IF ECOLOGY MATTERED 199 (2000). The U.S. is not the only country that provides extensive subsidies. In Canada, according to the Urban Renaissance Institution, from 1990 to 1999, the provincial and federal governments provided \$3.55 in subsidies for every \$1 earned by Canadian farmers. Lee, *supra* note 133, at A1.

¹³⁶ . WILSON, *supra* note 29, at 183.

¹³⁷ . DAVIDSON, *supra* note 135, at 199.

¹³⁸ . See Irene Tham, *WTO or Not: China is "Risky" Business*, ZDNET ASIA, Sept. 25, 2001 (on file with author).

¹³⁹ . Preparations for admission to the WTO led China to make economic reforms that are painful for many citizens, and farmers, who are struggling, will be hurt as farm-related trade becomes more "free" under WTO rules. For additional discussion, see *Celebration, and Concern*, THE ECONOMIST, Nov. 10, 2001, at 69. An economic slow down started in China even before its admission to the WTO, and the national economy was bracing itself for a flood of imports and competition as it joined the WTO. See Dexter Roberts & Mark L. Clifford, *China's Engine is Misfiring*, BUS. WK., Oct. 1, 2001, at 80.

Environmentalists are among the concerned groups since China's environmental problems will escalate as its role in global trade expands. For example, in late 1998, the United States imposed a ban on the import of wood packing crates from China. The United States claims that the ban is necessary because Chinese packing crates have been identified as the source through which the Asian long-horned beetle was introduced to the United States. The beetle devours trees and poses a major threat to hardwood forests.¹⁴⁰ China objects to the ban, calling it an unfair trade barrier.

Nevertheless, at the Qatar meeting of the WTO, the WTO voted to admit China and Taiwan, bringing the total number of members to 144 countries.¹⁴¹ As China joins the WTO and trade expands, environmental problems will worsen for the Chinese people, their neighbors, and their trade partners unless some action is taken by China, its trade partners, and the WTO.¹⁴²

¹⁴⁰ . French, *supra* note 94, at 27; Ellen Licking, *They're Here, and They're Taking Over*, BUS. WK., May 24, 1999, at 69.

¹⁴¹ . The WTO approved admission of China and Taiwan at the Qatar meeting on November 10, 2002. The next day, China conducted a formal signing ceremony that paved the way for it to become the WTO's 143d member and fifth largest trading economy on December 11, 2001. Frances Williams, *China and Taiwan Join World Trade Body*, FIN. TIMES, NOV. 12, 2001, at 10. Taiwan, with the world's fourteenth largest trading economy, formally joined the WTO on January 1, 2002 after a decade of efforts to gain admission. Alice Hung, *Taiwan Joins WTO With Eye on China Ties*, SAN DIEGO UNION-TRIB., Jan. 1, 2002, at C-1. It is interesting to note that Taiwan was only permitted to negotiate WTO entry upon an informal agreement, reached in 1992, that China would enter first. Taiwan joins under the name, "Separate Customs Territory of Taiwan, Kinmen and Matsu," using the name "Chinese Taipei" for short. See Mark Lander, *Change Ahead as Taiwan Enters W.T.O.*, N.Y. TIMES, Nov. 10, 2001, at C1; see also, Williams, *supra*.

¹⁴² . See generally David Masci, *China Today*, CQ RESEARCHER, Aug. 4, 2000, at 627 (discussing the potential ramifications of WTO membership for China).

¹⁴³ . China's environmental problems are serious, and they will be exacerbated as trade increases as a result of membership in the WTO. For example, the Three Gorges Dam project is a controversial project with multiple harmful environmental effects; environmentalists argue that this project shows why China is not ready for admission to the WTO. Billions of dollars are being spent to build a dam on the Yangtze River, the world's third longest river. It is scheduled for completion by 2009. Indira A.R. Lakshamanan, *China's Pride and Pain: Three Gorges Dam is a Monument to Some, an Endless Fountain of Controversy to Others*, BOSTON GLOBE, Nov. 6, 2000 at A1; John Pomfret, *China's Giant Dam Faces Huge Problems; Construction Flaws, Corruption Alleged*, WASH. POST, Jan. 7, 2001 at A1. The dam will bring benefits to China, of course. It will be capable of producing electricity from 26 generators, each equal to a medium-size nuclear reactor. It will enable big ships to navigate the Yangtze

IV. WHY THE WTO MUST ADDRESS ENVIRONMENTAL CONCERNS

At the August 2001 annual meeting of the Academy of Legal Studies in Business, members of a panel discussed the WTO's obligations with respect to environment, labor, and consumer protection. In response to the proposition that the WTO should act to protect the environment, one professor wondered whether the WTO can be held responsible for these concerns, or if environmental protection should be left to individual countries. Another professor suggested that if the WTO were given power over matters such as environmental protection and worker's rights, the WTO would acquire the powers of a quasi-world government.

This section responds to those concerns. First, the WTO must be held responsible for environmental damage, because such damage is inextricably linked to increased trade. Even if the WTO's powers do not appear to be far-reaching, the environmental effects of its work are far-reaching. Second, there is precedent for such responsibility through application of the tenets of Corporate Social Responsibility (CSR), a movement that advocates holding businesses responsible for alleviating social ills. The WTO has a responsibility to discourage and clean up environmental damage because it facilitates that damage.

A. *The WTO Should Be Held Responsible for Consequences of its Trade-Related Actions*

The WTO's operations are relatively small in terms of personnel and budget. As of 2001, it had 550 employees and an annual

all the way to the city of Chongqing, thus increasing international shipping. It will also control flooding on the Yangtze River.

However, the dam is bringing environmental damage. It will consume about 69,000 acres of the best farmland in the Yangtze River valley as well as more than a dozen cities, 100 towns, and thousands of villages, factories, and mines. More than a million people are being forced from their homes. 1,200 shrines, archeological excavations, and cultural sites will be lost. Streams of raw sewage that already flow directly into the Yangtze will become even worse in Chongqing and cities upstream from it when the river is dammed and pollutants cannot be flushed to the sea. The dam project provides a significant, immediate example of the harmful effects of increased trade. Ching-Ching Ni, *Holdouts Before the Deluge; Some Chinese Being Displaced by the Three Gorges Dam Project Feel They're Not Getting a Fair Shake. Unwilling to Give Up Ancestral Homes, They Even Hide from Cadres*, L. A. TIMES, Aug. 13, 2001, at A1.

budget of \$90 million.¹⁴⁴ Additionally, its legal powers are limited. Enforcement of the decisions of the WTO's dispute resolution bodies depends primarily on the willingness of its members to abide by those decisions. For example, two dispute panels ruled that U.S. embargoes on tuna violated GATT, yet the United States failed to adopt the reports and did not follow the panels' recommendations.¹⁴⁵ In a dispute related to the importation of bananas, the WTO found EU practices to be discriminatory, yet the EU refused to comply with the ruling.¹⁴⁶ Similarly, when the WTO found the EU's ban on hormone-treated beef to be invalid, the EU failed to lift its ban and the United States imposed sanctions.¹⁴⁷ ". . . [T]he non-compliance of the losing party in each instance many seriously undermine the effectiveness of the WTO's dispute resolution process."¹⁴⁸

On the other hand, from the viewpoint of many members of the public, the WTO wields tremendous powers. For example, reports described the mood at recent protests: "God is dead. The WTO replaced it," read one banner, underlining a widespread view that the Geneva-based trade body is invisible but all-powerful."¹⁴⁹

To call the WTO "all powerful" is an exaggeration, but the WTO does exercise significant powers as it promotes and controls trade, and that trade has led to major environmental problems. Global trade and the environmental effects of that trade are inextricably linked.¹⁵⁰ [transition?][T]he rebuttal to unfettered free trade policies argues that trade cannot be isolated from the social and environmental milieu in which it occurs."¹⁵¹ Because our governments have given the WTO significant powers over trade,

¹⁴⁴ . *Global Juggler*, LATIN TRADE, Oct. 2001, at 24 (interview with Paul-Henri Ravier, Deputy Director-General of the WTO).

¹⁴⁵ . Parker, *supra* note 91, at 24; *see also, supra* notes 87-95 (discussing *Tuna/Dolphin I* and *Tuna Dolphin II* cases).

¹⁴⁶ . *See* Michael Smith, *EU Warns of Delay in Reforming Banana Import Regime*, FIN. TIMES, Sept. 9, 1999, at 7; *see also* Brimeyer, *supra* note 63, at 147-54 (discussing the case).

¹⁴⁷ . Brimeyer, *supra* note 63, at 133-34.

¹⁴⁸ . *Id.* at 134.

¹⁴⁹ . *Protesters Clash with Police*, MERCURY (HOBART, Austl.) Nov. 12, 2001 at 12.

¹⁵⁰ . Eric Davidson, a senior scientist at the Woods Hole Research Center says, "[T]he human economic system and the biophysical ecological system of the earth are inextricably linked." DAVIDSON, *supra* note 135, at 8.

¹⁵¹ . *Id.* at 199.

they must also hold the WTO responsible for the environmental effects of its actions.

The WTO has some powers to protect the environment through Article XX of the GATT and agreements adding to the GATT. Under the Uruguay Round Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)¹⁵² and the Agreement on Technical Barriers to Trade (TBT),¹⁵³ it is possible for a WTO member to maintain regulations necessary to protect life and health and protect exhaustible natural resources, but it must overcome numerous hurdles before it may do so.¹⁵⁴

Beyond the provisions of the GATT, the WTO has taken a few steps to show its concern for the environment. For example, in 1995, it established a Committee on Trade and the Environment (CTE).¹⁵⁵ The CTE serves as a forum for discussion on trade and the environment, however it does not set forth environmental standards.¹⁵⁶ In addition, at the fourth Ministerial, plans were made for a new round of negotiations that set the stage for the discussion of sustainable development and the pursuit of trade and environmental objectives. The agenda will be addressed over three years of negotiations that are scheduled to end by 2005. Negotiators have been directed to focus on environmentally related topics including the following:

- Reduction or elimination of harmful subsidies in fisheries;
- Reduction of export subsidies in agriculture; and

¹⁵² . Agreement on the Application of Sanitary and Phytosanitary Measures, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 5, 33 I.L.M. 1 (1994).

¹⁵³ . Agreement on Technical Barriers to Trade, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 33 I.L.M. 1 (1994).

¹⁵⁴ . See *supra* text accompanying notes 84-85 (discussing those hurdles).

¹⁵⁵ . *Report (1996) of the Committee on Trade and Environment*, World Trade Organization (Nov. 18, 1996), available at http://docsonline.wto.org/gen_search.asp?language=1. For discussion of that report, see Steven Charnovitz, *A Critical Guide to the WTO's Report on Trade and Environment*, 14 ARIZ. J. INT'L & COMP. L. 341 (1997).

¹⁵⁶ . James Mercury & Bryan Schartz, 1 ASPER REV. INT'L BUS. & TRADE L. 37, 52 (2002).

- Improved market access for environmental goods and services.¹⁵⁷

Additionally, the role of the Committee on Trade and Environment was strengthened. WTO members agreed to enhance cooperation between the WTO and the secretariats of multilateral environmental agreements (MEAs) and to explore relationships between such agreements.¹⁵⁸ However, this is not necessarily a “step forward.” The new provision exempts any country not a signatory to an MEA. For example, the United States has not ratified the Kyoto Protocol (global warming).¹⁵⁹ Therefore, it would not be bound by the WTO’s recognition of trade provisions in the agreement.¹⁶⁰ [are we talking about a committee or a provision in this section? It is a little confusing but I don’t know enough to change it.]

Ultimately, the GATT does not have a mandate to protect the environment. As one author states: “The silence of the WTO and GATT treaty is deafening on the matter of environmental standards.”¹⁶¹ But this void is not necessarily a “defect” in the eyes of corporations, WTO officials, and WTO members (or their leaders, at any rate). As one law professor observes: “The WTO is not a global government with the power to order new environmental or labor laws We cannot make the WTO into the organization that will deal with all the problems that elected, national governments struggle with every day.”¹⁶²

Nevertheless, the WTO does have *de facto* power over the environment, as the extensive negative effects of trade on the environment reveal. The fact that the WTO’s economic policies have major environmental effects provides a compelling reason for

¹⁵⁷ . USTR Fact Sheet Summarizing Results from WTO Doha Meeting, United States Embassy, Tokyo, Japan, at <http://usembassy.state.gov/tokyo/wwwhec0318.html> (last visited Nov. 1, 2002).

¹⁵⁸ . *Id.*

¹⁵⁹ . On July 22, 2002, with the exception of the United States, members of the G-8 agreed to support the Kyoto global warming pact. Aaron Bernstein et al., *Time to Regroup*, BUS. WK, Aug. 6, 2001, at 26.

¹⁶⁰ . See generally Maude Barlow, *The Environmental Implications of the Doha Text*, WTOWATCH.org, at <http://www.wtowatch.org/news/index.cfm?ID=3162> (last modified Nov. 26, 2001) (discussing the concerns raised by environmentalists).

¹⁶¹ . Rueda, *supra* note 37, at 669.

¹⁶² . James Salzman, *Seattle’s Legal Legacy and Environmental Reviews of Trade Agreements*, 31 ENVTL L. 501, 516 (2001).

the WTO to take responsibility for environmental problems. In the long term, the WTO and the corporations affected by its operations will benefit if they take this responsibility. As one author states: “[T]he economic system will fail if the ecological system is not well managed.”¹⁶³

B. *Analogy to Corporate Social Responsibility*

There is precedent for holding a non-governmental organization responsible for the social consequences of its actions. It comes from the public movement to promote Corporate Social Responsibility (CSR). CSR recognizes the power of corporations in the global economy and suggests that corporations should be held accountable for the effects of their activities in non-financial areas, such as environmental protection. Corporations are asked to be more transparent in communicating their business practices and activities and to accept social responsibility for the effects of their activities.

Writings on CSR were published as early as the 1950s and 1960s. The early writings emphasized the collapse of *laissez-faire* and described a movement toward a system in which businesses would recognize their obligation to do more than merely obey the law while producing goods and services at a profit.¹⁶⁴ It was not without opponents, of course. The most well known was the economist Milton Friedman, who published a book¹⁶⁵ and a widely cited NEW YORK TIMES article¹⁶⁶ in defense of *laissez-faire*. Nevertheless, by the 1970s and 1980s, with the support of many respected scholars, CSR was becoming an accepted rule of operation for many corporations. Scholars Lee Preston and James Post articulated two key themes to be examined as a business tries to determine its responsibilities to society: (1) the scope of the social duties of the business, and (2) the criteria for assessing a business’

¹⁶³ . DAVIDSON, *supra* note 135, at 8.

¹⁶⁴ . William C. Frederick, *The Growing Concern Over Business Responsibility*, CAL. MGMT. REV., Summer 1960, AT 54. See also Archie B. Carroll, *Corporate Social Responsibility: Evolution of a Definitional Construct*, 38 BUS. & SOC’Y 268 (1999) (reviews attempts to define CSR).

¹⁶⁵ . MILTON FRIEDMAN, CAPITALISM AND FREEDOM (1962).

¹⁶⁶ . Milton Friedman, *The Social Responsibility of Business is to Increase Its Profits*, N.Y. TIMES MAGAZINE, Sept. 13, 1970 at 32.

involvement with society.¹⁶⁷ A corporation's social duties should be directly or indirectly related to the function of the corporation. Thus, an automobile manufacturer should be responsible for the effects of air pollution and the safety of those who ride in its automobiles.¹⁶⁸ But it should not be held responsible for general societal concerns such as the need for low-income housing.¹⁶⁹ With respect to the criteria for assessment, Preston and Post asserted that the scope of social duties is based on public policy. Public policy includes the "spirit" of the law as well as societal values and commitments that are a part of that "spirit."¹⁷⁰ This concept of public policy and social responsibility means that CSR provides "a guide for managerial behavior more objective than individual moral or ethical insights and more general than the literal texts of statutes and regulations."¹⁷¹

Today, many corporations engage in behavior guided by concepts of CSR, especially in the area of environmental law. For example, Interface Americas, Inc., a carpet manufacturer, has recently introduced biodegradable carpet products derived from corn and recycled soda bottles.¹⁷² Patagonia uses recycled soda bottles in its production of an innovative fleece material used to produce outerwear for cold climates.¹⁷³ The 3M Corporation is one of the world's most renowned socially responsible corporations. It removed tobacco advertisements from company-owned billboards to show its support for health programs.¹⁷⁴ It also pulled Scotchgard, one of its most popular products, from its product line when tests showed that trace amounts of chlorofluorocarbons from the product could be found in the bodies of some employees and customers. Although the chemicals had not been banned by a government regulatory agency, the company pulled the product from the market and searched for a safer, water-based version of the product. Thus,

¹⁶⁷ . LEE E. PRESTON & JAMES E. POST, *PRIVATE MANAGEMENT AND PUBLIC POLICY* 4 (1975).

¹⁶⁸ . *Id.* at 9-10.

¹⁶⁹ . Donna J. Wood, *Corporate Social Performance Revisited*, 16 *ACAD. MGMT. REV.* 691, 698 (1991).

¹⁷⁰ . PRESTON & POST, *supra* note 167, at 100.

¹⁷¹ . *Id.*

¹⁷² . Anne Moore Odell, *Environment*, *Corporate Social Responsibility*, at <http://www.csrwire.com/page.cgi/environment.htm> (last visited Dec. 5, 2002).

¹⁷³ . *Id.*

¹⁷⁴ . *Id.*

its actions took a cautious approach to a hazard, opting for a proactive rather than a reactive approach to possible harm.¹⁷⁵

Various organizations promote CSR principles. For example the Coalition for Environmentally Responsible Economies (CERES) asserts that corporations have a responsibility to protect the environment. This responsibility is described in a list of ten principles: Protection of the Biosphere, Sustainable Use of Natural Resources, Reduction and Disposal of Wastes, Energy Conservation, Risk Reduction, Safe Products and Services, Environmental Restoration, Informing the Public, Management Commitment, and Audits and Reports.¹⁷⁶ The CERES principles establish “an environmental ethic with criteria by which investors and others can assess the environmental performance of companies.”¹⁷⁷ Adoption of the CERES principles is on a purely voluntary basis and, between 1989 and 1997, only about fifty companies chose to adopt them.¹⁷⁸ There are several reasons why so few companies adopted the principles. Business leaders fear that ambiguous language in the principles might lead to litigation. They also object to the mandatory self-disclosure systems of CERES. Nevertheless, CERES paved the way for other sets of voluntary standards.

For example, the International Organization for Standardization (ISO) is an influential, non-governmental, worldwide federation involved in standardization of industrial practices. In 1996, the ISO issued the ISO 14000 Series Environmental Management Standards. The series has been adopted by thousands of companies around the world.¹⁷⁹ A company can be certified under

¹⁷⁵ . See *infra* text accompanying notes 217-18 (advocating support by the WTO for the “precautionary approach” to regulation of products and substances that appear to have hazardous properties, even before clear scientific proof of harmful effects has been gathered).

¹⁷⁶ . *Our Work: The CERES Principles*, CERES, at http://www.ceres.org/our_work/principles.htm (last visited Nov. 23, 2002).

¹⁷⁷ . *Id.* See generally Paulette L. Stenzel, *Can the ISO 14000 Series Environmental Management Standards Provide a Viable Alternative to Government Regulation?*, 37 AM. BUS. L. J. 237, 25-252 (2000) (discussing the CERES principles).

¹⁷⁸ . See JOHN VOORHEES & ROBERT A. WOELLNER, INTERNATIONAL ENVIRONMENTAL RISK MANAGEMENT: ISO 14000 AND THE SYSTEMS APPROACH 13-18 (1998).

¹⁷⁹ . See, e.g., Paula Murray, *Inching Toward Regulatory Reform—ISO 14000: Much Ado About Nothing or a Reinvention Tool?*, 37 AM. BUS. L. J. 35 (1991); (discussing the standards required to achieve ISO certification). THE ISO 14000 SERIES ENVIRONMENTAL MANAGEMENT STANDARDS are available from the American National Standards Institute (ANSI), 11 West 42nd St., N.Y., N.Y., 10035; Phone 212-642-49000; or at <http://www.ansi.org>.

one of the Series' standards labeled "ISO 14001". To be certified under ISO 14001, a company must:

1. Create an Environmental Management System (EMS);
2. Demonstrate that it is in compliance with the environmental statutes and regulations of countries in which it does business; and
3. Demonstrate its commitment to continuous improvement in environmental protection and pollution prevention.¹⁸⁰

Implementation of an EMS under ISO 14001 encourages managers and employees to go beyond the dictates of law and consider environmental issues throughout the company's operations. The ISO 14000 Series standards are receiving significant amounts of attention from business managers and their legal and economic advisors, and it is said that the standards may be a "watershed in the annals of environmental regulation."¹⁸¹ Thousands of companies are certified under ISO 14001, and thousands more are seeking certification. Those companies come from both developed and developing countries. Business managers view the ISO 14000 series as a market-driven approach to environmental protection that provides an alternative to "command and control" regulation by government. Therefore, the standards are of significant interest to business organizations and their legal representatives; environmental groups and their members; and governments, their agencies, and their officials.

By gaining certification pursuant to ISO 14001 and similar voluntary programs, corporations are accepting their responsibility to protect the environment. Similarly, the WTO must accept responsibility for environmental protection. It should do so for several interrelated reasons. First, environmental problems are created when industrialization increases. The WTO's trade rules and policies promote increased industrialization. Second, the WTO exercises a great deal of power as it promotes and regulates trade throughout the world. It should exercise that power in a socially responsible manner. Just as CSR does not purport to require

¹⁸⁰ . AMY ZUCKERMAN, INTERNATIONAL STANDARDS DESK REFERENCE: YOUR PASSPORT TO WORLD MARKETS 275 (1997).

¹⁸¹ . David J. Freeman, *ISO 14000 Standards Make Official Debut: May be a Watershed in Environmental Regulation*, N.Y.L.J. October 15, 1996, at S3 col. 1.

businesses to address all social ills, neither is the WTO being asked to address all social ills. Environmental NGOs and others are asking the WTO to address those social ills directly or indirectly resulting from its own activities. This is what is asked of corporations under CSR principles. Third, the WTO promotes the interests of corporations. Many of those corporations have adopted CSR by choosing to accept social responsibility for environmental problems related to their business operations. Therefore, by accepting responsibility for the environmental harm resulting from its policies, the WTO would be following the lead of environmentally responsible companies such as 3M Corporation, Patagonia, and others. Fourth, the WTO's members are governments. Governments traditionally have accepted responsibility for the social welfare of their citizens. Governments should not be allowed to hide behind the façade of a trade organization to escape from responsibility toward their citizens.

CSR demands that corporations be more transparent in communicating their business practices and activities. It also demands that they accept social responsibility for the effects of their activities. Similarly, the WTO should be more transparent in its activities and accept social responsibility for the effects of its rules and policies. If the WTO accepts that responsibility, it will not be converted into a quasi-world government. Rather, it will be acknowledging that it has a responsibility to protect the public from the harms that result from the major trade-related powers it already exercises.

V. HOW THE WTO MUST CHANGE

Although the WTO is not a democracy, it must use democratic practices in order to be able to respond to various groups of citizens affected by its actions. The WTO must seek, facilitate, and listen to many voices. This section of the article outlines ways to obtain input from environmental NGOs and from individuals who suffer as a result of environmental degradation. As the WTO adopts democratic-style policies in working with the public, it must choose and implement specific practices designed to promote

environmental protection. This section concludes with examples of such specific practices.¹⁸²

A. *The WTO Must Change its View of its Mission and Powers*

To begin, it is important to acknowledge that the WTO's current stance is not anti-environmental. Rather, the WTO simply does not view environmental protection as part of its mission. On its web page, the WTO states, "[I]t's not the WTO's job to set the international rules for environmental protection. That's the task of the environmental agencies and conventions."¹⁸³

If it wishes to function efficiently and avoid massive protests such as those in Seattle and Genoa, the WTO must adopt new policies and implement practices designed to protect the environment. This fact is evidenced by the difficulties other international organizations have faced in their efforts to conduct business in the face of substantial opposition. For example, in the late 1990s, the Organization for Economic Cooperation and Development (OECD) had been working on a multilateral agreement on investment (MAI) for over three years when negotiations were brought to a halt by a storm of protest.¹⁸⁴ Those opposing the MAI included a coalition of 600 organizations including the Sierra Club, Amnesty International, the United Steelworkers of America, the Ontario Public Interest Research Group, and the Third World Network (based in Malaysia). The organizations protested due to their fear that environmental degradation and human rights violations would occur as a result of the treaty. In the end, the treaty was put on hold.¹⁸⁵ Similarly, the WTO's 1999 meeting in Seattle was halted due to protests.

¹⁸² . Books have been written about the GATT, the WTO, and protecting the environment from the harmful effects of globalization of trade. For an example, see HILARY FRENCH, *VANISHING BORDERS: PROTECTING THE PLANET IN AN AGE OF GLOBALIZATION* (2000).

¹⁸³ . *10 Common Misunderstandings about the WTO*, World Trade Organization, http://www.wto.org/english/thewto_e/whatis_e/10mis_e/10m00_e.htm (last visited Nov. 24, 2002) (detailing and delimiting the ways in which the WTO does take environmental concerns into account).

¹⁸⁴ . ANDERSON, *supra* note 26, at 14.

¹⁸⁵ . Stephen J. Kobrin, *The MAI and the Clash of Globalization*, *FOREIGN POLICY*, Fall 1998, at 97-109.

B. *The WTO Must Implement More Democratic Practices*

Following protests against the MAI, one commentator said, “The lesson for the economic elites is that the days of negotiating behind closed doors are over and gone; future international institutions must be created with a wider base of participation.”¹⁸⁶ Similarly, the WTO must abandon its history of secrecy and lack of transparency and open its operations and decision-making process to the public. But it must also go beyond simply releasing information. The WTO’s leaders must seek out information about the potential environmental effects of increased trade, and they must consider a variety of perspectives, including those of developing countries, poor communities, and environmental groups. A commentator from the group Public Citizen states,

At the Ministerial in Seattle, the dominant countries in the WTO (United States, EU, Japan, and Canada), once again tried to make the decisions, without including developing countries. In typical, undemocratic WTO—manner -- through closed sessions with only selected countries invited -- they tried to force through their “consensus”. This blatant arrogance, as well as the unprecedented opposition from civil society, were key reasons for the collapse of the negotiations.¹⁸⁷

The WTO currently focuses on promoting and facilitating trade and pays little attention to the environment. Yet, trade and the environment are inextricably linked. Therefore, the WTO must alter its view of its mission by recognizing the realities of the twenty-first century and dealing with environmental problems.

NAFTA provides an example of how environmental needs in the late twentieth century were considered during negotiations for an international trade agreement. While NAFTA was under consideration, environmentalists lobbied members of the U.S. Congress heavily and successfully. Before NAFTA could be passed, President Bill Clinton was forced to negotiate an

¹⁸⁶ . ANDERSON, *supra* note 26, at 14.

¹⁸⁷ . Margrete Strand-Rangnes, *Update from Public Citizen on Seattle*, Institute for Agriculture and Trade Policy, at [http://www.sustain.org/bulletins/getcurrentbulletin.cfm?bulletin_id=67&sid=#Update%20from%20Public%20Citizen%20on%](http://www.sustain.org/bulletins/getcurrentbulletin.cfm?bulletin_id=67&sid=#Update%20from%20Public%20Citizen%20on%20) (last visited Oct. 7, 2002).

environmental side agreement.¹⁸⁸ When its provisions were finalized in 1993, NAFTA represented a turning point in international law because it explicitly recognized that trade and environmental policy were inextricably linked.¹⁸⁹ The process through which the agreement was approved shows that environmentalists can have a major influence on trade negotiations.

By contrast, when the GATT took effect on January 1, 1948, there was little public concern about environmental protection. Over fifty-four years later, environmentalists now face a behemoth task - reforming an old institutional arrangement to accommodate twenty-first century knowledge, awareness, and values.

Reform will be difficult because the WTO has not shown a willingness to assume responsibility for environmental protection. In an interview preceding the fourth Ministerial, Paul-Henri Ravier, one of four deputy directors-general of the WTO, was asked, "Is the WTO becoming more open to non-governmental organizations like Greenpeace?" His response was, "I don't think the time is right. Like in poker, showing your cards early is a sign of weakness. We are not companies or institutions but governments."¹⁹⁰ This response confirms that a basic friction exists between environmental NGOs and the WTO. Environmentalists assert that the WTO needs to incorporate democratic processes; the WTO does not believe it needs to do so.

If the WTO is going to protect the environment, it must consider the needs of nations and citizens around the world, not just the interests of industrialized countries or the big businesses that dominate governmental decision-making in those countries. The WTO must implement processes and projects that will enable a wide cross-section of citizens, organizations, and governments to voice

¹⁸⁸ . Paulette L. Stenzel, *Can NAFTA's Environmental Provisions Promote Sustainable Development?*, 59 ALB. L. REV. 423, 429 (1995) . Major environmental groups were divided with respect to NAFTA. For example, the National Wildlife Fund supported it, and the Sierra Club vehemently opposed it. Rueda, *supra* note 37, at 670. In addition to the Environmental Side Agreement, two other side agreements were added: a labor agreement and an agreement on income surges.

¹⁸⁹ . Stenzel, *supra* note 188, at 478.

¹⁹⁰ . *Global Juggler*, *supra* note 144, at 24.

their needs and concerns.¹⁹¹ As it does so, it must also recognize that leaders of developing countries do not necessarily represent the needs of their citizens who suffer when the natural resources of their country are depleted and their environment is polluted. For example, in Qatar at the WTO's fourth Ministerial, leaders of developing countries opposed initiatives supported by U.S.-based labor and environmental NGOs. The NGOs argued that trade sanctions should be imposed on countries that fail to recognize standards for workers' rights and environmental protection. Yet, India and other developing nations objected to demands for environmental provisions.¹⁹² Despite the acute environmental and labor problems that afflict the citizens of these countries, their leaders oppose sanction-enforced standards, fearing that environmental and labor rules will provide a pretext for blocking imports from their countries.¹⁹³ For example, EU representatives want to be able to restrict imports of meat, fruit, vegetables, and grain that are treated with growth hormones or have been genetically modified.¹⁹⁴ WTO representatives from developing countries fear that EU countries will use health concerns to shelter EU farmers from competition in the global market.¹⁹⁵

Another example, also from the Qatar meeting, illustrates further diverging viewpoints between WTO countries and NGOs. NGOs opposing economic globalization and the governments of developing nations were united against WTO countries in their pleas for an easing of international drug patent rules.¹⁹⁶ Developing nations wanted to sell life-saving or life-prolonging drugs to their citizens at reduced prices. This power is crucial in nations facing huge numbers of AIDS cases. Thailand, South Africa, India, Brazil, and other nations have tried to combat the problem by using generic drugs available at reasonable prices to fight public health

¹⁹¹ . See *infra* text accompanying notes 231-242 for examples of such processes (in particular with respect to the adoption of policies in accordance with the "precautionary principle").

¹⁹² . *Trade: Smiles Now, Struggles to Come*, NEWSWEEK, Nov. 26, 2001, § Periscope, at 2; Ford, *supra* note 12, § World, at 12.

¹⁹³ . Blustein, *supra* note 9.

¹⁹⁴ . See *supra* text accompanying notes 113 - 26 (discussing the EU's concerns with regard to hormone-treated beef and genetically modified plant products).

¹⁹⁵ . Blustein, *supra* note 9.

¹⁹⁶ . Blustein, *supra* note 9.

emergencies.¹⁹⁷ However, the major pharmaceutical companies of developed countries vehemently oppose this action. Prior to the fourth Ministerial, the United States also opposed attempts by developing countries to bypass patents. Yet, in the fall of 2001 the United States realigned its position to one similar to the stance of developing countries.¹⁹⁸ To deal with both realized and potential anthrax cases caused by terrorist attacks, U.S. government leaders threatened to override Bayer's patent on the antibiotic Cipro by buying generics, and Bayer eventually agreed to cut its prices on the drug for the United States.¹⁹⁹

It may seem patronizing to suggest that NGOs can better represent the needs of citizens in developing countries than do leaders of these countries. Yet, the position simply recognizes economic and political realities. Due to economic pressures, especially from businesses, governments may choose to overlook the environmental and health consequences of their policies. Therefore, it is important for the WTO to hear and consider the contributions of environmentalists and other NGOs.

Moreover, processes modeled after those used by democratic governments require more than just opening the WTO to multiple voices. The WTO needs actively to seek information about environmental problems, and it must listen to the concerns of citizens from a variety of backgrounds. As of 1994, only three people in a GATT staff of more than 200 were assigned to environmental matters.²⁰⁰ This is a grossly inadequate commitment of resources for an organization that should be listening actively to discussions related to climate change, ozone layer protection, biodiversity, forest management, and other environmental effects caused by trade. As a result, WTO officials lack the expertise and information needed to identify and address environmental problems created by trade globalization. To remedy this situation, the WTO needs to allocate significant funds for in-house expertise on the environment. It needs a substantial number of staff members whose

¹⁹⁷ . Adam Piore et al., *From Seattle to Doha*, NEWSWEEK, Nov. 12, 2001, at 28.

¹⁹⁸ . Paul Magnusson & Manjeet Kripalani, *The WTO: This Time, Poor Nations Will be Setting Agenda*, BUS. WK. INT. ED., Nov. 12, 2001, at 32.

¹⁹⁹ . *Id.*

²⁰⁰ . ESTY, *supra* note 59, at 213. More recent information on such staffing was not available.

job is to learn about environmental protection, listen to environmental concerns presented by a variety of groups, and work to protect the environment. There are precedents for this proposal. “Even the World Bank, formerly the bastion of neoclassical economists looking for ways to increase global GNP, has a growing number of ecologists and ecological economists on its staff, and it now formally recognizes environmental effects as a consideration in its project review process.”²⁰¹

The WTO must also open its decision-making in various forums: within dispute resolution bodies, committees, and the Council. Those forums should be opened to a variety of participants including, but not limited to, environmental NGOs and representatives of developing countries. Under the dispute resolution provisions of the 1994 GATT, members (governments) have the sole right to file complaints and intervene in proceedings.²⁰² Yet, NGOs can make significant contributions in cases such as the *Tuna/Dolphin* and *Shrimp/Turtle* disputes. In the *Shrimp/Turtle* case, three environmental NGOs submitted two briefs to the appointed panel and to the parties involved.²⁰³ The United States urged the panel to consider the documents, but the opposing states asked that it disregard them.²⁰⁴ The panel held that it could not accept the briefs, but it did permit the parties to incorporate the briefs (or portions of them) in their own submissions.²⁰⁵ Significant progress was made when the WTO’s Appellate Body (AB) decided that it had to accept and consider the NGOs’ *amicus* briefs that were attached to the U.S. submission.²⁰⁶ In response to that appellate opinion, the United States said it would not fully adopt the NGO briefs.²⁰⁷ Therefore, the AB limited its analysis to the legal

²⁰¹ . DAVIDSON, *supra* note 135, at 216.

²⁰² . See Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 33 I.L.M. 112 (1994).

²⁰³ . Jacqueline Peel, *Giving the Public a Voice in the Protection of the Global Environment: Avenues for NGOs in Dispute Resolution at the European Court of Justice and World Trade Organization*, 12 COLO. J. INT’L ENVTL. L. & POL’Y 47, 64 (2001).

²⁰⁴ . *Id.*

²⁰⁵ . Lane, *supra* note 94, at 130.

²⁰⁶ . See *Shrimp & Turtle Appellate Body Report*, *supra* note 108, ¶ 110.

²⁰⁷ . See *generally* *Shrimp & Turtle Appellate Body Report*, *supra* note 108.

arguments in the NGO briefs that supported arguments made in the U.S. submission.²⁰⁸

This process should be changed. NGOs should be allowed to submit *amicus* briefs directly to WTO panels and the AB. Dispute settlement procedures need to be amended to create a procedure for submissions by non-state actors.²⁰⁹ Environmental NGOs have experience, resources (albeit limited), and a willingness to make submissions. There is no other significant source that stands ready and qualified to contribute information on behalf of the environment. Historically, NGOs have played an influential role in the development of environmental law in the United States and internationally. Their extensive experience wholly qualifies them to promote environmental causes within WTO processes.

Environmental NGOs work with elected officials, bureaucrats, and employees of corporations; raise money and sponsor various environmental projects; campaign and organize public protests; promote media coverage of environmental issues; litigate and promote the implementation of environmental law; exchange and disseminate information; undertake original research; acquire and manage wildlife habitats; and generate local community involvement in environmental protection. At the international level, environmental NGOs act as information brokers and as whistleblowers; promote democracy by ensuring that the views of their members are heard during treaty deliberations; highlight and challenge failed domestic policies; provide models for government programs; and build international coalitions.²¹⁰

The extensive activities and experience of environmental NGOs should render them eligible to make important contributions to WTO discussions regarding environmental issues. In the absence of a global governmental authority empowered to protect the environment, and in view of the WTO's lack of expertise, the input of environmental NGOs is sorely needed.²¹¹

The EU and the U.S. favor changes in the dispute settlement process to increase transparency and require that panels review

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. *Id.*

²⁰⁹ . See Peel, *supra* note 203, at 70 (suggesting further reforms of the Dispute Settlement Understanding (DSU)).

²¹⁰ . Rueda, *supra* note 37, at 667-668.

²¹¹ . See WILSON, *supra* note 29, at 149-189 (discussing the crucial role of NGOs in solving our world's environmental problems).

amicus briefs.²¹² The future of such proposals was not clear in 1999, however, because most WTO members opposed them.²¹³ At the ministerial in Seattle, WTO members agreed to make WTO decisions and other documents available to the public, but the WTO did not agree to environmentalists' requests that dispute resolution deliberations be opened to the public and that NGOs be allowed to participate in the processes.²¹⁴ In light of events in Seattle, Washington, D.C., and Genoa, the WTO should act quickly to demonstrate that it will welcome, accept, and act upon the input of environmental NGOs.²¹⁵ The WTO should move toward this goal by adopting rules that specify that WTO panels and the AB must accept *amicus* briefs. In other words, they should be compelled to review and consider non-requested materials submitted by environmental NGOs.

Furthermore, the WTO should encourage input from citizens and NGOs when forming study groups and other non-contentious forums. For example, at the 1999 ministerial, the WTO set up a group to study issues related to trade in genetically modified foods.²¹⁶ The voices of representatives from developing countries and environmental NGOs are needed in that study group and others dealing with environmental issues.

In addition to the above steps, the WTO should also actively facilitate environmental education for citizens around the world. Education is at the heart of democracy. As Thomas Jefferson said, "[I]f we think [the people are] not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it

²¹² . Kim Van der Borght, *The Review of the WTO Understanding on Dispute Settlement: Some Reflections on the Current Debate*, 14 AM. U. INT'L L. REV. 1223, 1228 (1999).

²¹³ . "[T]he majority of WTO members firmly oppose even discussing the issue, not wanting to make transparency a potential bargaining chip in forthcoming negotiations." *DSU Review in Tatters*, ICTSD BRIDGES WEEKLY TRADE NEWS DIGEST (Sept. 27, 1999) at <http://www.ictsd.org/html/story5.27-09-99.htm>.

²¹⁴ . Cooper, *supra* note 62, at 511.

²¹⁵ . Criteria must be established for determining which NGOs can participate. Such criteria might be based on factors such as size (number of members) as well as origin (to ensure representation of small groups from developing countries in which it is difficult to obtain major funding and large numbers of members).

²¹⁶ . Cooper, *supra* note 62, at 511.

from them, but to inform their discretion.”²¹⁷ In the United States, this philosophy is reflected in numerous statutes and regulations. For example, the need for information and education is at the heart of laws like the Community Right to Know Act, the Worker Right to Know Act, and the Right to Act.²¹⁸ The WTO can help people gain access to important environmental information by promoting eco-labeling programs and laws, such as the EU law that requires labeling of products that contain genetically modified soybeans or corn.²¹⁹ The WTO took an initial step through its CTE report, which concluded that eco-labels “can be effective instruments of environmental policy to encourage the development of an environmentally-conscious consumer public.”²²⁰ However, the WTO must do more than simply announce that eco-labeling can be an effective instrument. It needs actively to promote labeling programs and help educate people so they can understand the information conveyed on such labels. “People are empowered by information, and provided that at least some semblance of democratic institutions exist [sic], informed people will demand responsiveness from their government.”²²¹ With information, citizens will be in a better position to provide informed recommendations to their own governments and to the WTO.

²¹⁷ . Letter from Thomas Jefferson to William Charles Jarvis (Sept. 28, 1820), in WRITINGS OF THOMAS JEFFERSON 179 (Henry Augustine Washington ed., 1855), *quoted in* Natural Res. Def. Council v. United States Nuclear Regulatory Comm’n, 547 F.2d 633, 655 (D.C. Cir. 1976).

²¹⁸ . Many states have adopted Right to Know (RTK) and Right to Act (RTA) laws to give workers and members of the community the ability to prevent or avoid exposure to workplace hazards. See generally Paulette L. Stenzel, *Right to Act: Advancing the Common Interests of Labor and Environmentalists*, 57 ALB. L. REV. 1 (1993) (discussing various RTK and RTA laws designed to increase public access to information about industry-related environmental and health hazards).

²¹⁹ . “Community legislation has made labeling of GM food mandatory for: products that consist of GMO or contain GMO [and] products derived from GMO but no longer containing GMO if there is still DNA or protein resulting from genetic modification present.” *Food Safety: from the Farm to the Fork: Labeling*, Europa, at http://europa.eu.int/comm/food/fs/gmo/gmo_legi_label_en.html (last visited 10/10/02).

²²⁰ . World Trade Organization, *supra* note 155.

²²¹ . DAVIDSON, *supra* note 135, at 209.

C. *The WTO Must Fund New Environmental Protection Programs*

One of the most basic steps the WTO must take, should it choose to combat environmental degradation stemming from global trade, is to fund a staff that would deal exclusively with these issues. In addition, the WTO should provide direct funding for specific projects. These programs should include educational curriculums, environmental impact studies with respect to WTO policies and rules, and research into environmentally sustainable business.

WTO members might free up money to contribute to such programming by ending their subsidies in agriculture and fishing which assist individual industries but lead to environmental harms.²²² Another possible funding source is the “Tobin” tax.²²³ This tax would be imposed on foreign currency transactions. Funds raised from this tax would be used to provide funds for sustainable development projects in poor countries.²²⁴ Simultaneously, it would reduce the volume of short-term cross-border financial flows that can be destabilizing for poor countries.²²⁵ Support for the Tobin tax, which was first proposed about thirty years ago, is growing around the world. Attac, a group that supports the tax, has over 30,000 paid members across Europe.²²⁶ French Prime Minister Lionel Jospin supported it during his 2001-2002 campaign for the French

²²² . For discussion of the harmful effects of agricultural subsidies and the huge amounts of money involved, see *infra* text accompanying notes 270-80.

²²³ . The “Tobin” Tax was coined after a theory by Yale economist James Tobin. He suggested a 0.1-0.5% tax on currency exchanges to limit speculation. Nevertheless, Tobin was generally in favor of globalization as well as institutions like the IMF and World Bank. Godfrey Hodgson, *James Tobin: Embarrassed Proponent of an International Tax*, Guardian (London), March 13, 2002, available at <http://cowles.econ.yale.edu/archive/people/tobin/03-13-02-guardian.htm> (last visited Nov. 24, 2002); see also, Stefan Stern, *The Odd Lure of the Tobin Tax*, *Euromoney* (London), Oct. 2001

²²⁴ . In 1987, the World Commission on the Environment and Development defined sustainable development as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs.” WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* 9 (1987).

²²⁵ . Michael Albert, Q&A: *WTO, IMF, World Bank, and Activism*, Z MAG, Jan. 2000, at <http://www.zmag.org/zmag/articles/jan2000albert.htm> See also, Vito Tanzi, *The Nature and Effects of Globalization on International Tax Policy* *Principal Papers Globalization, Technological Developments, and the Work of Fiscal Termites*, 26 *BROOK J. OF INT. LAW* 1261, 1277 (2001).

²²⁶ . Harding, *supra* note 4.

presidency,²²⁷ and Germany's chancellor, Gerhard Schröder, has indicated an interest in the tax.²²⁸

D. *The WTO Must Adopt and Implement New Policies and Rules*

In addition to adopting democratic processes and funding for environmental protection programs, the WTO must develop new policies recognizing the legitimacy and importance of environmental protection. It must also create new rules implementing those policies. The WTO must use these rules in ways that prevent downward harmonization of environmental laws and a "race to the bottom" in enforcement of those laws.²²⁹ Several examples of potential WTO actions are outlined in the following discussion.²³⁰

At the outset, the WTO should recognize the value of the "precautionary principle" and adopt new rules allowing it to be implemented by WTO members in situations involving scientific uncertainty and environmental protection.²³¹ For example, the

²²⁷ . *Id.* M. Jospin lost the first round of elections on April 21, 2002 to Mr. Jacques Chirac. John Tagliabue, *Next a New Prime Minister, Probably Leaning Right*, N.Y. TIMES, May 6, 2002, at A8. Mr. Jospin had served for five years as Prime Minister of France. See Suzanne Daley, *Extreme Rightist Eclipses Socialist to Qualify for Runoff in France*, N.Y. TIMES, Apr. 22, 2002, at A1.

²²⁸ . Schröder, a Social Democrat, was elected as Chancellor of Germany in the fall of 1998. His election was considered the opening of a new era in Europe because it meant that the continent was now, for the first time in decades, dominated by center-left governments. Roger Cohen, *Schröder Outs Kohl in German Election*, N.Y. TIMES, Oct. 4, 1998, § 4, at 2.

²²⁹ . The "race to the bottom" refers to the trend to attract businesses by offering lower costs due to lower requirements for environmental protection. The race is in pursuit of short-term economic gain, even though it results in long term environmental degradation. Romano, *supra* note 37, at 112 n.154; Daniel Esty & Damien Geradin, *Market Access, Competitiveness, and Harmonization: Environmental Protection in Regional Trade Agreements*, 21 HARV. ENVTL L. REV. 265, 273-274 (1997).

²³⁰ . For further discussion of potential reforms to WTO rules and policies, see ESTY, *supra* note 58.

²³¹ . It is interesting to note that use of the precautionary principle is not limited to environmental protection. For example, authors John Phillimore and Aidan Davison explain how the fears that at the start of Y2K (year 2000) there would be a world-wide set of catastrophes due to a "Millennium" computer bug were met through focused and comprehensive attention based on the precautionary principle. John Phillimore & Aidan Davison, *A Precautionary Tale: Y2K and the Politics of Foresight*, 34 FUTURES 147 (2002). The Y2K threat could not be evaluated in conventional cost-benefit (risk analysis) terms. Yet, billions of dollars were spent, and governments, companies, and individuals worked to meet the challenge of insuring that computers would not "crash" on January 1, 2000. Phillimore and Davison discuss the Y2K remediation efforts in light of the precautionary principle. They

precautionary principle is used by the European Union in response to genetic modification; EU nations can exclude genetically modified organisms (GMOs) from their markets, citing the precautionary principle. By contrast, in cases involving growth hormones and GMOs, WTO rules have forced countries to prove that hormones or GMOs are harmful to human beings before the country may restrict the import of products containing them.²³² The EU continues to defend its stance on GMOs in spite of WTO rulings against it.²³³ At the fourth Ministerial of the WTO, the EU argued that WTO rules should be altered to allow countries to restrict entry of GMOs without breaking WTO trade rules.²³⁴

To understand the potential impact of adopting the EU's proposal, further explanation and examination of the precautionary principle is needed. The principle is not a straightforward concept or tool that can be adopted and implemented through a simple declaration or the adoption of a single rule.²³⁵ Rather, the precautionary principle is one intended to guide decision makers in a variety of contexts²³⁶ by encouraging, or perhaps even obligating them "to consider the likely harmful effects of their activities on the environment before they pursue those activities."²³⁷

The precautionary principle originated in Germany in the late 1970's.²³⁸ Amidst a sudden and rapid decline in the health of German forests and uncertain scientific evidence citing acid rain as the cause, the German government enacted severe restrictions on power plant emissions. Aggressive environmental protection such

assert that precautionary principle can be used to "foresee, avoid and ameliorate global environmental problems." *Id.* at 148.

²³² . See *supra* text accompanying note 116. .

²³³ . For discussion of the U.S.-EU disputes related to GMO-modified food, see *supra* text accompanying notes 123-29.

²³⁴ . *WTO Ministers Inch Toward Deal, But Tough Talks Lie Ahead*, DOW JONES NEWSWIRES, Nov. 11, 2001.

²³⁵ James E. Hickey, Jr. & Vern R. Walker, *Refining the Precautionary Principle in International Environmental Law*, 14 VA. ENVTL. L. J. 423, 431-32 (1995).

²³⁶ . See *id.* at 431-38 (chronologically examining instances where the precautionary principle has been used in environmental law).

²³⁷ . James Cameron & Juli Abouchar, *The Precautionary Principle: A Fundamental Principle of Law and Policy for the Protection of the Global Environment*, B.C. INT'L & COMP. L. REV. 1, 2 (1991).

²³⁸ Michal Pollan, *Precautionary Principle*, N.Y. TIMES MAGAZINE, Dec. 9, 2001, at 92.

as this quickly became a German axiom now known as Vorsorgeprinzip, or the precautionary principle.²³⁹ Use of the principle quickly spread to other European countries. For example, the principle was introduced at the 1987 Second International Conference on the Protection of the North Sea. The Second North Sea Conference Ministerial Declaration (London Declaration) refers three times to the adoption of a “precautionary approach” when considering dangerous substances.²⁴⁰ Since the late 1980’s, discussion of the term spread around the world. References to the precautionary principle can be found in the national legal materials of Germany, France, Belgium, the United Kingdom, Sweden, the Netherlands, Denmark, and Canada.²⁴¹ The 1992 Rio Declaration on Environment and Development offers a widely cited description of the precautionary principle. It states that, “[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”²⁴²

A similar stance has been adopted by the EU in its regulation of GMOs. However, as Professor John Applegate of Indian University explains, the United States has not followed the EU in applying the precautionary principle to the regulation of GMOs. The United States “regards genetic technology as having enormous potential benefits and relatively minor, or at most manageable, risks.”²⁴³ Accordingly,, it takes a product-specific approach to regulating GMOs, considering guidelines for each product individually.²⁴⁴ Thus, the United States places the burden of proof on a party that wishes to ban GMOs.²⁴⁵ The EU, on the other hand, focuses on the dangers of GMO technology from a more general perspective. “It is

²³⁹ *Id.*

²⁴⁰ . Cameron & Abouchar, *supra* note 237, at 4.

²⁴¹ . See *generally id.* at 4-12 (discussing early references to the precautionary principle in international legal materials).

²⁴² . United Nations Conference on Environment and Development: Rio Declaration on Environment and Development, June 14, 1992, 31 I.L.M. 874 (1992); see French, *supra* note 94, at 26 (discussing the Rio Declaration’s description of the precautionary principle).

²⁴³ . Applegate, *supra* note 126, at 208.

²⁴⁴ . *Id.* at 232-37 (describing the product-specific regulatory scheme used by the United States).

²⁴⁵ . *Id.* at 231.

the process, not the final product that matters.”²⁴⁶ This view counsels regulation that forbids GMOs or at least applies strict screening tests and other controls to all GM products.²⁴⁷

The United States has traditionally required that a party using dangerous substances or conducting hazardous activities pay for any harms caused by those activities or their products.²⁴⁸ The approach is reactive rather than proactive. With few exceptions, United States policy places the burden of proving the existence of an environmental risk and the magnitude of the risk on the party proposing regulation.²⁴⁹

The WTO currently takes a similar approach. In general, the GATT is interpreted to require WTO members to regulate individual products instead of concentrating on the processes used to produce the products.²⁵⁰ In cases involving new technology, significant questions about potential harm are often raised, but these questions are not addressed if evidence is insufficient to evaluate the risk of harm. In such cases, the WTO should allow members to rely on the precautionary principle when imposing temporary bans on technologies or products. If the WTO employed the precautionary principle, the burden of proof would be shifted to manufacturers and they, rather than the EU, would have to demonstrate the product’s safety. The EU should not have to prove the risks attendant to use of GMOs with “scientific certainty” when such information is much more accessible to the manufacturers of GMOs. In view of the complex studies that will be needed to gain greater knowledge and certainty regarding the harms that could result from GMOs, the WTO should allow members to proceed cautiously.

This proposal for an interim shift in the burden of proof, of course, requires a fundamental change in the way the WTO and individual countries approach new technologies and the related

²⁴⁶ . *Id.* at 230.

²⁴⁷ . *Id.*

²⁴⁸ . John S. Applegate, *The Precautionary Preference: An American Perspective on the Precautionary Principle*, 6 HUM. & EC. RISK REV. 413 (2000).

²⁴⁹ . The one notable exception is FIFRA. For in-depth discussion and multiple examples, see *id.* (discussing several examples of the United States’ traditional approach to regulating potentially hazardous substances and also discussing an exception to this approach).

²⁵⁰ . Applegate, *supra* note 126, at 237.

scientific uncertainty. The United States and the WTO deal with new innovations using a traditional risk analysis process: that which cannot be quantified is not included in the analysis. The traditional risk assessment model attempts to calculate the mathematical likelihood that new technology will harm the public. Therefore, even if it appears that a new technology may present significant risks to the public's health or safety, it can be approved for the market because the party wishing to ban it has not had time to gather the data necessary to demonstrate its harmful effects. At the present, we insist on proof of harm before we act. "The problem very often is that long before the science does come in, the harm has come in, the harm has already been done."²⁵¹

By contrast, under the precautionary principle, a shift in the burden of proof would allow precautionary action to be taken to prevent harm to the environment and public health before it occurs. This approach does not mean that the EU and other countries should be allowed to ban GMOs (or other potentially harmful substances) indefinitely, without further examination.²⁵² However, the EU should not be required to accept imports of GM food and wait for decades to see if it causes cancer, immune system deficiencies, or other serious health effects. In return for the right to exercise precaution, the EU should be required to conduct continuing studies in a good faith effort to determine any potential harms and the causal links between consumption of GM food and alleged effects. Results of continuing studies by the EU (and by its opponents such as the United States) should be reviewed at several year intervals to evaluate the current state of knowledge about technology's risks. At some point, sufficient information may be gathered to justify a permanent ban on GMOs. Alternatively, new information may be sufficient to determine what degree of safety would need to be established to lift a ban instated under the precautionary principle.²⁵³

²⁵¹ . Pollan, *supra* note 238, at 92.

²⁵² . Applegate, *supra* note 126, at 258.

²⁵³ . See Dr. Hans-Joachim Priess & Dr. Christian Tischas, *Protection of Public Health and the Role of the Precautionary Principle Under WTO Law: A Trojan Horse Before Geneva's Walls?*, 24 *FORDHAM INT'L L.J.* 519 (2000) (discussing the EC's support of the precautionary principle in public health-related areas and examining whether the EC's position can be reconciled with GATT policies).

In addition to allowing for use of the precautionary principle, WTO rules should be amended to permit process-related measures designed in good faith to protect the environment. (It should be noted that a process-related approach is supported through application of some form of the precautionary principle.) The WTO currently bars member states from “considering social, environmental, and justice issues when deciding what and from whom to buy.”²⁵⁴ This mandate is a direct prohibition on process-related measures and should be changed. In disputes such as *Tuna/Dolphin I*, *Tuna/Dolphin II*, and *Shrimp/Turtle*, the WTO has exercised its power to promote trade in ways that thwarted members’ attempts to protect the environment. Instead, WTO dispute resolution panels should find ways to uphold members’ laws designed to protect the environment. Ultimately, this approach will benefit businesses, too. “Although environmental protection measures could, in the short run, inhibit trade to some extent, conservation of the environment may be the best way to ensure the continued existence of the resources upon which trade depends.”²⁵⁵

The fact that ETMs by individual countries can be an effective means for protecting endangered species is illustrated in events related to the *Tuna/Dolphin* dispute.²⁵⁶ Both before and after the WTO issued rulings in the case, the United States and other countries took significant steps to protect dolphins. With the help of the United States, the Inter-American Tropical Tuna Commission (IATTC) developed a dolphin protection program.²⁵⁷ It included research on dolphin release methods and workshops to disseminate the information. It required an international observer on every tuna-fishing vessel and established an international review panel of government, industry, and environmental representatives. The program was highly successful; every country and every vessel in the region participated, realizing 100% compliance, while fishers’

²⁵⁴ . Section II(c): *Responsible Consumption and the WTO*, THE CENTER FOR A NEW AMERICAN DREAM (Nov. 1999), at <http://www.newdream.org/monthly/nov99.html>.

²⁵⁵ . Sam, *supra* note 111, at 212.

²⁵⁶ . Parker, *supra* note 91, at 22-26 (discussing the role of ETMs in the Tuna-Dolphin controversy).

²⁵⁷ . *Id.* at 23–26.

catch and profits remained high.²⁵⁸ As a result of the program, dolphin mortality fell dramatically from 1986 to 1994.²⁵⁹

During this period, U.S. canneries and distributors imposed their own “embargo.” that remains in effect as of 2002.²⁶⁰ The canneries and distributors require that absolutely no “dolphin-encirclement” with nets occur in order to earn a “dolphin-safe” label on the tuna produced; the requirement holds even if dolphins were encircled but released unharmed.²⁶¹ U.S. consumers are very aware of the “dolphin-safe” label and it appears on virtually all packaged tuna. The sad irony is that the alternative methods to dolphin-encirclement kill young tuna and other species, including endangered sea turtles.²⁶²

Meanwhile, through the IATTC program, methods were developed to use the purse-seine nets and release dolphins, thus reducing dolphin deaths below limits permitted by the U.S. Marine Mammal Protection Act.²⁶³ In other words, when skippers are educated about release practices and proper gear is used, the purse-seine nets can be used in ways that protect dolphins within limits required by the U.S. law. The outcome in this example leads to a clear conclusion: ETMs can be both necessary and effective. The GATT needs to be interpreted (or amended) to ensure the use of ETMs in efforts to protect endangered species and the environment.

As a further measure to promote environmental protection through its policies, the WTO should support the fair trade movement. This movement encourages companies to import and sell products that are produced in ways that protect workers’ rights and the environment.²⁶⁴ The movement is a global effort that seeks

²⁵⁸ . *Id.* at 24.

²⁵⁹ . *Id.*

²⁶⁰ . *Id.* at 24-25.

²⁶¹ . *Id.* at 25.

²⁶² . *Id.*

²⁶³ . *Id.* at 23.

²⁶⁴ . This program is supported by major businesses. For example, the Starbucks Coffee Company launched a line of fair trade certified coffee beans in April of 2000. Margo Hornblower, *Wake Up and Smell the Protest*, TIME, Apr. 17, 2000, at 58. Starbucks advertises that its coffee is certified under the fair trade system. “Fair Trade certification is a system that seeks to improve the lives of coffee growers in origin countries by ensuring that the owners of small family farms receive a guaranteed minimum price for their harvest.” *Commitment to Origins*, Starbucks Coffee Company, at http://www.starbucks.com/aboutus/cto_coffees.asp

“to help small producer groups and farmers in the developing world to fight exploitation and to trade on more advantageous terms.”²⁶⁵ Fair trade organizations help farmers and other producers to sell their products directly to retailers, thus bypassing the “middlemen” and returning more profits to the producers. The most commonly cited criteria for fair trade are derived from the Fair Trade Federation (FTF). Among other conditions, membership in the FTF requires the use of environmentally sustainable practices and the provision of safe and healthy workplace conditions.²⁶⁶ Additionally, farmers who adhere to environmentally friendly practices are often paid a premium by their customers for their efforts.²⁶⁷

Unfortunately, WTO rules state that “goods [are not] subject to statutory labeling requirements or differentiated on the basis of how they are produced.”²⁶⁸ This policy conflicts directly with the goals and mechanisms of the fair trade movement. Moreover, the WTO has recently considered adopting trade regulations that would find fair trade initiatives violative of its non-discrimination rules.²⁶⁹ To the

(last visited Nov. 1, 2002). Recently, members of the U.S. Congress have pushed for fair trade coffee to be served in the Capitol’s cafeterias. *One Small Sale for ‘Fair Trade’ Coffee*, N.Y. TIMES, Aug. 22, 2001, at 17. Fair trade efforts with respect to coffee in the United States, however, still lag behind European markets, which offer fair trade-certified bananas, oranges, tea, honey, cocoa, and coffee. See, e.g., Karne Uhlenhuth, *Shopping with Conscience: The Fair-Trade Movement is Gaining Ground with Help from Consumers*, KANSAS CITY STAR, Sept. 5, 2000, at E1; *Fair Trade Movement Targets ‘Unfair’ Labor Practices*, CQ RESEARCHER, June 9, 2002, at 510.

²⁶⁵ . Al Senter, *Ethical Business: Fair Trade Group Aims to Bring Bigger Firms on Board*, OBSERVER (Manchester), Jan. 11, 1998, at 7.

²⁶⁶ . *Membership Criteria*, Fair Trade Federation, at <http://www.fairtradefederation.com/memcrit.html> (last visited Nov. 1, 2002). Other criteria include the following: paying a fair wage; offering employees opportunities for advancement; providing equal employment opportunities for all people; open accountability; commitment to building long-term trade relationships; and providing financial and technical assistance.

²⁶⁷ . Jim Carlton, *A Global Effort for Poor Coffee Farmers – Fair Trade Movement’s Strategy is to Bypass Middlemen*, WALL ST. J., Nov. 23, 1999, at A2.

²⁶⁸ . Alicia Morris Groos, *International Trade and Development: Exploring the Impact of Fair Trade Organizations in the Global Economy and the Law*, 34 TEX. INT’L L. J. 379, 408 (1999).

²⁶⁹ . *Fair Trade Movement Targets “Unfair” Labor Practices*, CQ RESEARCHER, June 9, 2000, at 510; Aaron Bernstein & Paul Magnusson, *Free Trade Needs A Nod from Labor*, BUS. WK, Nov. 22, 1999, at 150; Charles Taylor, *NAFTA, GATT, and the Current Free Trade System: A Dangerous Double Standard for Workers’ Rights*, 28 DENV. J. INT’L L. & POL’Y 407 (2000).

contrary, the WTO should adopt rules specifying that such initiatives are exempt from WTO non-discrimination rules.

In additional efforts to promote environmental protection, the WTO must discourage subsidies that lead to environmental degradation. For example, the United States and other nations have suggested that fishing subsidies be eliminated. Such subsidies add up to as much as \$14-20 billion annually and have led to an overcapacity in the world's fishing fleet and depleted resources in the world's fisheries.²⁷⁰ "The subsidies are one reason that all of the key ocean fisheries are now below sustainable levels. Some of their most valuable species, such as cod and haddock in the North Atlantic, have been driven to near commercial extinction—that is to such scarcity that industries based on them have either collapsed or turned to other species."²⁷¹ Ranching and coal mining are additional examples of subsidized industries that harm the environment.²⁷²

Subsidies for agriculture must also be examined. Some of the divisive issues brought before the Third and Fourth Ministerials of the WTO were related to agricultural protection. Since 1948, GATT (now administered by the WTO) has cut industrial tariffs to an average of less than 5 percent, but agricultural tariffs were still averaging 50% as of late 2001.²⁷³ According to a Toronto-based environmental organization, in Canada "the federal and provincial governments contributed \$3.55 in subsidies for every \$1 earned by Canadian farmers."²⁷⁴ Europeans are the strongest opponents of lowered tariffs, particularly the French, who fear their small farms will suffer from competition brought by U.S. agribusinesses.²⁷⁵ Other countries providing substantial support for agriculture include Japan, Korea, Switzerland, Norway, and some developing countries.²⁷⁶

Farmers are both producers of food and stewards of the land, the front-line protectors of our ecology. But government policies and

²⁷⁰ . French, *supra* note 94 at 27.

²⁷¹ . WILSON, *supra* note 29, at 184-185. See *infra* text accompanying notes 264-266 discussing fishing subsidies.

²⁷² . *Id.* at 184.

²⁷³ . Adam Piore et al., *supra* note 197, at 28.

²⁷⁴ . Lee, *supra* note 133, at A1.

²⁷⁵ . Piore et al, *supra* note 197, at 28.

²⁷⁶ . Dale E. McNeil, *Furthering the Reforms of Agricultural Policies in the Millennium Round*, 9 MINN. J. GLOBAL TRADE 41, 86 (2000).

subsidy incentives that reward intensive production encourage farmers to use processes that destroy land, deplete water resources and ultimately threaten rural communities. Ironically, then, farm subsidies have been dismantling the very systems they were designed to preserve.²⁷⁷

One rationale often cited in favor of subsidies is that they will protect small farmers. However, that is not true in many cases. “In the United States, a third of government agriculture payments go to the wealthiest five percent of farms”²⁷⁸

The amount of money involved in subsidies is overwhelming. A 1998 study from Oxford University calculated that annual worldwide government subsidies reached a total of over \$2 trillion (U.S.) including, for example, \$390 to \$520 billion for agriculture, \$110 billion for fossil fuels and nuclear energy, and \$220 billion for water.²⁷⁹ During the upcoming round of talks scheduled as a result of the fourth Ministerial, the WTO must consider the effects of subsidies as it reviews the Agreement on Agriculture adopted as a part of the 1994 version of the GATT.²⁸⁰

Finally, in working to promote environmental protection the WTO must exercise caution before adopting rules that only facially appear to be environmentally friendly. For example, at the fourth Ministerial, the WTO adopted Article 31(iii) calling for “the reduction, or as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.”²⁸¹ Environmentalists argue that this proposal poses a threat to the world’s freshwater resources if water is considered a “service” or a “good.” Water is not currently listed under the General Agreement on Trade in Services (GATS) as an environmental service. However, the United States, Canada, and other countries have pushed for its inclusion.²⁸² This is, of course, a serious concern to environmentalists. Moreover, it

²⁷⁷ . Lee, *supra* note 133, at A1.

²⁷⁸ . *Id.*

²⁷⁹ . WILSON, *supra* note 29, at 184.

²⁸⁰ . Agreement on Agriculture, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 33 I.L.M. 1 (1994). [hereinafter Agreement on Agriculture]. See *generally* McNeil, *supra* note 276, at 41-86 (discussing the issues to be addressed).

²⁸¹ . Agreement on Agriculture, *supra* note 280, Article 31, iii.

²⁸² . Maude Barlow, *The Environmental Implications of the Doha Text*, WTOWATCH.org, at <http://www.wtowatch.org/news/index.cfm?ID=3162> (Nov. 28, 2001).

appears that under the GATT water is a “good”. Therefore, the new language would make it illegal to restrict the export of bulk water for commercial purposes. This outcome frustrates environmentalists and human rights activists who argue that water should not be “privatized” and sold to transnational water companies that, in turn, profit from the sale of water and wastewater treatment. In other words, the WTO provisions could actually prevent a country from protecting its water as a public service and human right because such protection could be held by the WTO to be a “non-tariff” trade barrier in violation of the GATT.²⁸³ Fears that water may be sold to multinationals who can afford it, to the detriment of the poor in developing countries, are based on experience. For example, the World Development Movement states, “[W]ater privatization in Puerto Rico has meant that poor communities have gone without water while US military bases and tourist resorts enjoy an unlimited supply.”²⁸⁴ An important cautionary tool to guard against such results is the incorporation of information and perspectives contributed by many parties.²⁸⁵

In summary, the WTO must enlarge its vision to include environmental protection within its mission. In order to do so, the WTO must institute democratic-style processes that facilitate input from many viewpoints. Then, it must listen to the viewpoints offered and act in ways that ensure trade globalization will not continue at the expense of environmental protection. The WTO must take specific actions to protect the environment. This article has examined several options, but many others can and should be considered.²⁸⁶

²⁸³ . *Id.*

²⁸⁴ . *The Tricks of the Trade: How Trade Rules Are Loaded Against the Poor*, Sept. 2001, available at <http://www.wdm.org.uk/cambriefs/Wto/tricks.pdf>.

²⁸⁵ . See *supra* text accompanying notes 196-201 discussing the need to incorporate the viewpoints of parties including environmental NGOs, developing countries, and citizens of developing countries.

²⁸⁶ . For example, it has been suggested that the WTO conduct environmental reviews. Such suggestions have not been discussed widely and have not been embraced by WTO officials. Yet, they merit further thought, discussion, and development. For example, the United States proposed to the Committee on Trade and Environment that national governments review trade agreements if they are likely to have significant environmental effects. For discussion, see Salzman, *supra* note 162, at 544-545.

VI. CONCLUSION

Our environment is damaged more each day as a result of international trade. Meanwhile, the WTO actively promotes globalization of trade by admitting new members and by compelling its members to adhere to WTO trade rules. Environmentalists are enraged when trade rules are used to force WTO members to set aside laws designed to protect the environment, endangered species, and human life and health.

Public protests in recent years show that the WTO cannot proceed without considering the views of environmentalists and the needs of those who suffer from the effects of environmental contamination. Environmentalists and other protesters brought a halt to the WTO's meeting in Seattle in 1999. "The once-sleepy world body had become a symbol of private corporate arrogance, a perceived practitioner of closed-door meetings that shut out labor, environmentalists and ordinary people."²⁸⁷ The body can sleep no longer. Protesters caused significant disruption at the G8 Summit in Genoa, Italy in July of 2001. As a result of protests in Seattle, Genoa, and other cities around the world, environmentalists have grabbed the attention of the public and of the WTO, the World Bank, the IMF, and other trade-related organizations. The WTO cannot afford, and should not be allowed, to proceed without taking significant actions to protect our environment from the detrimental effects of globalization of trade. Some potential steps are outlined in this article, but others will need to be examined and pursued. The WTO must invite and facilitate input from many perspectives. It must listen to citizens' environmental concerns, and it must take action to address those concerns. Whether protests are violent or peaceful, the WTO will continue to face criticism and protests until it alters its mission and changes its practices, policies, and rules that affect the environment.

²⁸⁷ . *Global Juggler*, *supra* note 144, at 24.

GLOSSARY

AB	Appellate Body (of the World Trade Organization)
APEC	Asia Pacific Economic Cooperation Group
CERES	Coalition for Environmentally Responsible Economies
CSR	Corporate Social Responsibility
CTE	Committee on Trade and Environment (of the World Trade Organization)
EPA	Environmental Protection Agency
EMS	Environmental Management System
ETM	Environmental Trade Measure
EU	European Union
FTF	Fair Trade Federation
G8	Group of Eight
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GM	Genetic Modification
GMO	Genetically Modified Organism
GNP	Gross National Product
IBRD	International Bank for Reconstruction and Development or World Bank
IMF	International Monetary Fund
IATTC	International Organization for Standardization
ISO	Inter-American Tropical Tuna Commission
ITO	International Trade Organization
MAI	Multilateral Agreement on Investment
MEAs	Multilateral Environmental Agreements
MERCOSUR	<i>Mercado Común del Cono Sur</i> (Southern Cone Common Market)
MFN	Most Favored Nation
NAFTA	North American Free Trade Agreement
NGO	Non-Governmental Organization
OECD	Organization for Economic Cooperation and Development
TED	Turtle Excluder Device
SPS	Uruguay Round Agreement on the Application of Sanitary and Phytosanitary Measures
TBT	Uruguay Round Agreement on Technical Barriers to Trade (TBT)

TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
WTO	World Trade Organization