

A large, thick green circular graphic with a white center, resembling a stylized ring or a hole in a page. It is positioned in the upper right quadrant of the page.

# Sale of the Century?

**Proposals for a positive  
sustainable trade agenda**



**Friends of  
the Earth  
International**

*“Trade should be gender-fair, equitable, environmentally sustainable, and just. There should be a redistribution of resources and power from the rich to the poor.”*

- FOEI groups in Asia, Pacific, Oceania

## **Introduction**

Friends of the Earth International (FoEI) is a worldwide federation of 68 independent national environmental groups, uniting close to 1 million activists worldwide. FoE member groups campaign internationally, nationally and locally on the most urgent environmental and social issues of today.

The present trading system promotes the free movement of goods, services and capital as a goal in itself, rather than ensuring that international trade promotes sustainable and equitable development. As a result, current trade rules as administered by the WTO encourage unsustainable resource use and an inequitable distribution of resources; and can conflict directly with local, national and international environmental laws. In particular, trade rules and trade flows have an impact on a broad range of issues of concern to FOEI's member groups.

The time has come to acknowledge the defects of the current trading system. A new and sustainable trading framework for the twenty-first century needs to be based on the principles of democracy, equity, reduced consumption in industrialized countries, cooperation and caution. In order to achieve such a framework, broad reform of the global economy is a prerequisite.

Hence, FOEI is calling for an evaluation of the impact of existing trade rules on poor local communities and ecological sustainability; a fundamental reorientation and reformulation of the rules and regulations governing world trade in order to promote social justice, equitable development, and ecological sustainability; the cessation of any proposals to expand the scope and power of WTO rules; and the removal of some subjects from the coverage of WTO rules.

Specifically, FOEI is calling on governments meeting at the World Trade Organization's Fourth Ministerial Meeting to consider and take action on the following concerns:

### **A. No New Round in Qatar; Assessment of Uruguay Round**

The implementation of the Uruguay Round agreements has had negative impacts on the lives of peoples and communities all over the world, most especially in developing and least-developed countries. The Uruguay Round agreements, and the consequent undertaking of trade liberalization by countries as a result of their WTO treaty obligations, have not improved the lives of the poor worldwide, and have only resulted in increased economic and political marginalization of the poor. In light of this, WTO Members must:

1. Refrain from embarking on another round of comprehensive trade negotiations with respect to new issues and strategies, potentially including investment, transparency in government procurement, competition policy, trade facilitation, biotechnology, electronic commerce and accelerated tariff liberalization, since these go beyond the current built-in agenda and would expand the scope of corporate access and privileges under the WTO regime.
2. Undertake a comprehensive series of assessments on the impact of the implementation of all the Uruguay Round agreements. Such assessment should focus on impacts relating to: (a) the equitable distribution of economic wealth globally and nationally; (b) the ability of governments to ensure a fair and livable economic means for their people; (c) the fostering of more democratic, participatory and inclusive forms of national and international governance and policy-making; (d) environmental sustainability; (e) health; (f) human rights; (g) labor rights; and (h) impacts on the lives of women and children. The assessment should also adopt the precautionary principle referred to in the 1992 Rio Declaration on Environment and Declaration, and exemplified in the UN Framework Convention on Climate Change and the Biodiversity Convention, as one of the fundamental principles for determining the necessity of international trade regulations.
3. Use the results of the assessment referred to above to change and create international trade rules that lead to the development of a system of local, national, and global commerce that: (a) benefits and empowers people, local communities, their livelihoods and the resources upon which they ultimately rely; (b) promotes fairer trade among countries, with that trade being conducted in a more sustainable manner and benefits being shared equitably; and (c) narrows and ultimately eliminates the economic gap between rich and poor in terms of ensuring that the basic needs for life of all people are met.

## **B. Built-In Agenda**

The on-going negotiations under the WTO Agreement on Agriculture and the General Agreement on Trade in Services, as well as the review of the TRIPS and TRIMS Agreements have been directed away from assessing and repairing the flaws in the obligations and implementation of these agreements. This will prevent the adoption of measures designed to decrease the adverse impacts of the implementation of these agreements on peoples, communities, and their environment. Therefore we demand that WTO Members must:

1. **AGRICULTURE**: Ensure that peoples' food sovereignty, food security, food safety, and access to agriculture-related genetic resources, and agricultural production for domestic consumption, are safeguarded from the coverage of WTO rules. This would involve the following chronological steps:

- (a) independent of the WTO Agreement on Agriculture or any agriculture negotiations within the WTO, developed country WTO Members must: (i) eliminate all export support (subsidies, credits, guarantees etc) and halt the dumping of their agricultural products on other markets, especially those of developing and least-developed countries; and (ii) agree to provide preferential access to their markets for agricultural exports from small farm holders of developing and least-developed countries; and (iii) agree not to retaliate against or block the suspension by developing and least-developed country WTO Members of the implementation of their own market access commitments under the Agreement on Agriculture. WTO Members must agree not to use the WTO's dispute settlement mechanism to challenge national regulatory measures intended to enhance food security and promote domestic food production and agricultural development;
- (b) WTO Members must cease the on-going agriculture trade liberalization negotiations on the Agreement on Agriculture under the built-in agenda;
- (c) the United Nations must set up, as early as possible, but before the World Summit on Sustainable Development (WSSD) in Johannesburg in 2002, a UN Commission on Sustainable Agriculture and Food Security (UNCSAFS); one of the roles of the Commission would be to establish the modalities of a legally binding treaty on the sustainable production and trade of agriculture and food. The Commission would include both governmental and NGO stakeholders;
- (d) such UNCSAFS must, upon its establishment, immediately undertake a comprehensive assessment of the impact of the implementation of the Agreement on Agriculture and other WTO agreements (such as TRIPS and GATS) as well as all other international agreements and institutions that promote agricultural trade liberalization (i.e. NAFTA, the World Bank and IMF, bilateral agricultural trade agreements), on: (i) sustainability and food production and security of all countries, especially of developing countries; (ii) the economic and development benefits and disadvantages resulting to local farming communities, especially in developing countries; (iii) the maintenance of biological diversity in farming areas; (iv) access to agricultural genetic resources by traditional farming communities, especially in the South; and (v) the ability of governments to undertake regulatory actions needed to support the change in orientation of agricultural production from exportation to domestic consumption;
- (e) WTO Members must agree to provide a "sunset" clause or expiration date for the effectivity of the Agreement on Agriculture to coincide with the proposed effectivity in 2006 of the proposed new treaty for food and agriculture below, and removing or amending the relevant clauses in other WTO agreements (TRIPs, SPS, SCM, TBT and GATS) so as to ensure the eventual full exclusion of food and agriculture from the coverage of WTO rules;

(f) initiate talks for the negotiation, starting at the WSSD in Johannesburg in 2002 and carried out under the auspices of the UNCSAFS, of a new United Nations treaty for food and agriculture, intended to bring about food security, safety, and sustainability, that will take into consideration the results of the assessment referred to above, plus the following guidelines: (i) recognize the existence and validity of the precautionary principle; (ii) the trade of food and agriculture products should be regulated at the national, regional, and/or international levels; (iii) the objective of regulation of food and agriculture is to promote food sovereignty and security and the people's welfare in terms of nutrition and access to food, land tenure, biological diversity, and environmental sustainability; (iv) there must be a clear recognition that governments and peoples have the right to determine and set the limits under which food and agriculture trade may take place; (v) there should be a global ban on the use of export support (subsidies, credits, guarantees, tax breaks, marketing assistance etc) and the treaty should ensure the effective implementation of a decision to eradicate all forms of dumping; (vi) clear controls and limits must be set on the ability of agro-industrial corporations to undertake and play major roles in domestic and global food and agricultural production and trade; (vii) sustainable agricultural systems are supported and promoted by the trading system rather than agricultural systems that favor large-scale export oriented and chemical input-dependent industrial agriculture; (viii) agricultural support measures must be based on meeting local and national needs for employment and food security, targeted support for sustainable agricultural practices and environmental protection, access to appropriate technology, and recognition of the contribution of traditional farmers worldwide to crop diversity and their rights to an equitable access to all resources; and (ix) ensure that the Biosafety Protocol is the sole acknowledged forum for any negotiations relating to trade in biotechnology and to trade in genetically modified commodities.

(g) the negotiations for such treaty should be concluded, and the treaty made effective, by 2006. Once effective, this new treaty should provide the framework for regulating global trade in food and agriculture in lieu of the WTO Agreement on Agriculture.

2. **SERVICES (GATS):** The current negotiations under the General Agreement on Trade in Services (GATS) must address environmental and social concerns. Hence, negotiations on further trade in services liberalization should be halted. A full and complete assessment of the actual and potential environmental and social impacts of the GATS, including impacts on local communities and developing countries, and including all sectors currently covered or proposed for inclusion must be conducted. In addition, governments need to clearly exclude from the current GATS disciplines all publicly provided services and any services related to the extraction or collection of energy (including nuclear) fuels, minerals, water, timber and other natural resources. Countries must ensure that the GATS

negotiations do not become the vehicle through which investment policies become subject to GATS rules by clearly stating that such policies are excluded from the scope of coverage of the GATS. The GATS must also include clear exceptions that guarantee that it will not be used to challenge laws to promote and protect development, the environment, conservation of natural resources and biological diversity, public health, and other public interests. Further, any “necessity test”<sup>\*</sup> must be removed from the GATS.

3. **INTELLECTUAL PROPERTY RIGHTS (TRIPS)**: Ensure that the TRIPS Agreement, as well as other international agreements relating to intellectual property rights referred to by the TRIPS Agreement as essential to its operation, do not:

(a) obstruct people’s access to medicines and seeds, regardless of whether such medicines or seeds are the subject of intellectual property rights;

(b) lead to private appropriation of life forms and indigenous and traditional knowledge and knowledge systems, and undermine biodiversity; and

(c) interfere with the right of governments and peoples to promote and protect essential public interests to health, the environment, and development by regulating and controlling the extent to which intellectual property rights over certain products or inventions may be enjoyed by the rights holder.

Furthermore, the patenting of life forms, including microorganisms, and other intellectual property rights over biological or genetic resources or materials must be categorically prohibited in all national and international regimes. Genetic diversity is not a category of private property and biopiracy and theft of traditional knowledge must be stopped. In recognition of this fact, intellectual property rights - especially those relating to agriculture and food - should not have been included within the scope of the WTO’s trade agreements.

As a first step, the on-going review of the TRIPS Agreement must be focused on the mechanisms and modalities for removing agriculture and food from the TRIPS Agreement, and for initiating negotiations for the adoption of a new treaty during the 2002 WSSD relating to genetic resource access. Such new treaty should provide the mechanisms and modalities through which governments and indigenous peoples communities become “caretakers” of the genetic commons within their territories, taking into consideration national sovereignty and open access to the flow of genetic information. Pending the conclusion of such a treaty, WTO Members must agree not to use the WTO’s dispute settlement mechanism to challenge measures affecting intellectual property rights that are intended to promote essential public interests to health, the environment, and development, including the protection and promotion of traditional knowledge and access to genetic resources.

4. **TRADE RELATED INVESTMENT MEASURES (TRIMS)**: The TRIMS review must not be used to extend the investment issue in the WTO. WTO Members must agree to eliminate the TRIMS Agreement. All countries, especially developing and least-developed countries, must have the right to use policy options (such as local content policy) to increase the capacity of their own productive sectors, especially small and medium sized enterprises. We strongly oppose, and call on all WTO Members to oppose, all attempts to start negotiations on investment rules, or an investment framework or an investment agreement of whatever kind in the WTO. The proposals for a GATS-type approach, or an initial transparency agreement on investment, or a plurilateral agreement, are only changes in tactics aimed at drawing in countries or groups that have refused to support the broader and more far-reaching Multilateral Agreement on Investments (MAI).

Foreign investments need to be regulated so as to ensure that they are supportive of the host country's development priorities and do not cause physical, social, cultural, or economic damage or harm to the host local community or their environment. As a trade body, the WTO is not the proper forum of any discussion relating to investments. Regulation of investments through the establishment of international rules that would govern the conduct of corporations making such investments, and which would take into consideration and ensure transparency, corporate accountability, and progressive social, human rights, and environmental standards for investment flows, must be done under the auspices of the United Nations.

5. **FORESTS**: Ensure that no further trade liberalisation negotiations, including those with respect to tariff and non-tariff measures, are undertaken in the forest products sector. Governments should reject trade agreements that identify and prohibit as trade barriers those legitimate forest conservation measures, such as the recycling of wood products; log exports ban; independent forest product certification and labeling, that are necessary to ensure that the remaining forests of the world are not further degraded and destroyed as a result of increased trade pressures

Governments should also recognise that the negative impact of export-oriented agriculture on forests is an additional and important reason for changing direction on agriculture (as outlined above).

### **C. Dispute Settlement**

The current international enforcement mechanisms for international trade rules and other commercial interests, such as the WTO dispute settlement system as well as those under NAFTA and bilateral trade agreements, are unacceptable in that they enforce an illegitimate system of unfair rules, operate with undemocratic procedures and usurp the

rulemaking and legislative role of nations and local governments.

Hence, governments must:

1. Agree not to use trade rules to challenge laws designed to promote and protect public developmental, environment and health objectives. A moratorium on the use of international trade dispute settlement and enforcement mechanisms, including the WTO dispute settlement system, for such purposes, should be put in place until governments agree that the precautionary principle; environmental protection; national and international environmental and health standards that promote and protect the people's welfare; and public transparency and openness in the implementation of any international trade dispute settlement process, are all fundamental considerations that need to be taken into account, recognized, and implemented by such international trade dispute settlement and enforcement mechanisms.
2. Protect local, national and international environmental and social laws from unfair challenges and weakening by trade rules, by ensuring that all relevant dispute fora are required to give a presumption of validity to national and local laws and policies. A conclusion that an international trade obligation has been violated by a challenged measure should be made only if the challenged law clearly serves no legitimate purpose other than discriminating against imported products.
3. Require international trade dispute settlement bodies to:
  - (a) take cognizance of the precautionary principle as a customary norm of international law;
  - (b) do away with any "necessity test" for measures sought to be justified on public health or environmental grounds;
  - (c) ensure that the burden of proving that a disputed measure is adopted solely for trade-protectionist or trade-discriminatory purposes rests on the country challenging the measure;
  - (d) ensure that the disputed measure is deemed to be prima facie compliant with international trade rules in the absence of substantial evidence being presented regarding the trade-protectionist or trade-discriminatory intent or impact of the measure; and
  - (e) take cognizance of existing customary norms of international law and provisions of other multilateral treaties in force - such as those relating to the environment, human rights, health, and labor standards - as part of the body of international law that should be relevant to and must be taken into account in international trade dispute settlement cases.

## **D. Transparency and Democracy**

The WTO's rules and the mechanisms developed to implement those rules were developed largely in the absence of public input and debate as to their necessity, form, and desirability. International trade institutions such as the WTO operate in a secretive, exclusionary manner that shuts out effective participation from developing and least-developed countries and the public. They are dominated by a few powerful governments acting on behalf of their corporate elite. Hence, international trade institutions, as well as international trade negotiations, need vast increased scrutiny by parliamentarians and civil society groups.

In this light, governments must:

1. Improve the democracy and transparency of the global trading system. To this end, governments must recognize the people's right to self-determination and the right to know and decide on international commercial commitments. Among other things, this requires that decision-making processes in negotiations and enforcement at international commercial bodies be democratic, transparent and inclusive. This includes recognizing that the activities of international trade institutions fall within the scope of current and future United Nations instruments. Furthermore, the degree of and mechanisms for access and participation enjoyed by civil society within the UN system should also be applicable to international trade institutions.
2. WTO Members must ensure that national trade and economic policy-making undertaken as a result of their WTO obligations must be done in an open, transparent, and genuinely publicly participatory manner that encourages the participation of their domestic civil society and community and peoples' organizations. Such policies must reflect and take into account the social, economic, and political concerns of the poor and marginalized sectors of their society, as well as the ecological impact and sustainability of economic and human activities as a result of such policies. Commitments to transfer funds and technology must also be made by developed countries in favor of developing countries in order to develop capacity among the latter to enable them to effectively and meaningfully participate, on their own terms, in international negotiations.

## **E. Relationship with Other International Agreements**

International trade rules and interests do not exist independent of other international laws and norms that seek to better the lives of peoples and countries. In recognition of this, governments must:

1. Acknowledge that other multilateral treaties on the environment, development,

health, labor and human rights, generally take precedence over WTO trade rules in cases where they conflict, especially in cases where the application of WTO trade rules to the subject matter of such other multilateral treaties causes or would cause harm to people, their rights, or the environment, and to the extent that such other multilateral treaties effectively promote people's rights and environmental sustainability.

2. Initiate negotiations for an international agreement at the upcoming World Summit for Sustainable Development in Johannesburg whereby governments agree:

- (a) to strengthen and reform the UNEP, or to transform UNEP from a UN Program into the UN Environment Organization (UNEO) on the same level as other UN implementing agencies (such as WHO) that provides effective political, financial and technological support for the implementation of existing agreements, as well as ensure the full and effective participation of civil society and developing countries in its operation;

- (b) that multilateral environmental agreements (MEAs) take precedence over trade rules in cases where they conflict, especially in cases where the application of WTO trade rules to the subject matter of the MEA causes or would cause harm to people, their rights, or the environment, and to the extent that the MEA effectively promotes people's rights and environmental sustainability; and

- (c) to establish a joint compliance and dispute settlement system for MEAs that is publicly transparent, accessible to civil society, and has formal compliance mechanisms. Such a new treaty should also lead towards the establishment of legally binding international rules on the conduct of transnational corporations, including in the area of investments, in order to ensure that such transnational corporate conduct is publicly transparent and accountable, and complies with human rights and social and environmental standards that promote the welfare of the people.

## **F. Exports, Ecological Debt, and Development**

The rules for international trade are closely tied to policies that promote exports and the payment of foreign debt, especially by developing countries. The implementation of these rules and policies have had adverse impacts on the poor and marginalized sectors of national and global society. Hence, governments must:

1. Reject export-led development and place more emphasis on policies (developed in a publicly participatory and transparent manner) that:

- (a) prioritize the provision of basic needs for food, clothing, shelter, health, education, and environment as a minimum;

- (b) encourage production for local, domestic and regional markets;
  - (c) promote the reduced and sustainable use of scarce natural resources in ways that will meet the needs of the people;
  - (d) promote the equitable redistribution of economic wealth and resources in society globally and nationally;
  - (e) strengthens the economic capacities of local communities; and
  - (f) regulate corporate activity through legally binding rules.
2. Recognize the ecological debt countries of the North owe to the South, and agree to comprehensively and unconditionally cancel all public bilateral and multilateral debt for all developing and least-developed countries and emerging economies. This is the only way in which developing and least-developed countries will be able to free up scarce public governmental resources in order to pursue policies that put their societies in the road to sustainability.

## **Conclusion**

At the beginning of the 21st century, the world needs trade rules that reflect society's current values and needs. Our existing trade rules and institutions and indeed the current global economic system are out of date and do not do this. Instead, they undermine biological and cultural diversity. They are still based on the pursuit of profit regardless of social and environmental costs; and inequitable access to and the overuse of limited natural resources. Current rules also prevent the maintenance and development of locally-appropriate and sustainable systems of commerce.

For these reasons, it is vital that governments reject proposals to expand the mandate of the World Trade Organization. They should agree instead to review and rectify both the current trade system and the economic context within which that system operates.

It is time to develop a system of international trade that promotes self-determination, environmental protection, sustainable livelihoods, equity and cultural diversity, amongst all nations and people. A new and sustainable framework for the regulation of trade for the twenty-first century needs to be based on the principles of democracy, equity, reduced consumption, co-operation and precaution.



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