

Global Citizen Initiative

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The failure of Cancun

By Paul Trân Van Thinh

The ministerial session at Cancun was only an intermediate meeting (failures of the same type have occurred before, such as at Heysel in Belgium during the Uruguay Round). It is also very difficult to be ambitious when the world economy is suffering from lethargy if not recession. 30 years of participation in trade negotiations throughout my active career allow me to confirm this: the industrialised countries make no concessions while seeking markets in order to find a way out of their recession. This exercise is even more difficult today, because the increasingly globalised economy has more insidious barriers such as standards, subsidies and anti-dumping measures. Therefore this

failure should be seen in relative terms, though lessons still need drawing.

The Group of 21, just like the Group of 90, both born from circumstance, sought to accomplish a glorious deed by laying low the two elephants of world trade, the USA and the EU. One must bear in mind that when two elephants fight, they trample the grass, and when they mate, the result is the same or even worse, with the grass around them crushed. The rather low profile and hardly dynamic participation by China inevitably pushes the G 21 towards the high seas equipped only with an oscillating compass. There is no political esteem for the love between the two elephants: such is the background to the failure.

Perhaps questions need asking about the motivations behind the presidency of the ministerial meeting?

Whatever the case, the world at the beginning of the 21st century has changed since that of Raul Prebisch and the epoch of the G 77. The confrontation between North and South has been rekindled in other forms since Seattle, with the disappearance of the Group of Eastern Countries, the upsurge of the young elephant, China, the impetuosity of the emerging countries, the growing battalion of countries left by the wayside, the birth of civil society and its explosion of expression, with its movements against globalisation and for another world.

There is a risk of the Doha Round not being concluded before the end of 2006 or 2007. The margins of manoeuvre of the two elephants, the USA and EU, will become very narrow in 2004:

- with the enlargement of the new Commission in the European Union,
- and the Presidential elections in the United States, whose result will depend on America's economic vitality.

More generally, economic recovery in America in 2004 could be faltering, with that of Europe and the rest of the world lagging behind. The WTO negotiations will continue at normal intensity in 2004, when many of the diplomatic personnel in Geneva will be replaced. Thus we shall have to await 2005 for genuine negotiations to start anew.

However, it is advisable as from now to study the possible consequences of this failure. Who does the crime profit and who will foot the bill?

The rhythm of negotiations for the accession of new countries will also slow down. This pause gives rise to serious risks for the genuine developing countries. Firstly, the United States will continue to develop their unilateral legislation and practices to attack aggressively what Donald Evans, the Secretary for Trade, qualifies as "unfair trade practices" (the European Union has already suffered from such harassment), in particular by setting up an "unfair trade practices team". The United States will continue with bilateral and regional agreements as announced by Robert Zoellick, thereby undermining the multilateral system by increasing American influence via a selective strategy. The American economy is theoretically very vulnerable since it depends on 75.5% of world savings, i.e. US\$528 billion in 2002. Furthermore, the American defence budget of US\$379 billion in 2003 is covered, de facto, by foreign capital (source: IMF). Indeed, foreign capital continues to pour into America drawn by its level of productivity, its organisation and the efficiency of its labour. This siphoning of world savings leads to a financial drought for the developing countries (though not China, which owns US\$126.1 billion in American Treasury bonds) and guarantees the supremacy of the American economy in its traditional role of locomotive, pulling the carriages constituted by Europe, which in turn pulls the rest of the world. This siphoning will certainly become hazardous when the "Lex Americana" crosses the Rubicon, by switching from acts of empire to acts of imperialism, which is inevitable.

This forced pause will also see the inevitable increase of China's influence. The economic power of China will outstrip that of America in the next two decades, even though it considers itself as a "developing country". The Chinese elephant entered the porcelain shop of Cancun as part of the emerging Group of 21/22 that took up the American-European challenge. This mixed bag of countries led by Brazil and India (whose population, still weakened by the cast system, will reach 1.6 billion by around 2050 though) is a new force of reaction. However, it will have a hard time reaching

agreement on a constructive platform with a new or alternative architecture. In the meantime, and since its invasion of Iraq, the United States is betting on an alliance with China. This country with a population of 1.3 billion, has a large percentage of the world's population of 6.5 billion, but only has 7% of its arable land. The policy of urbanising rural towns has up to now failed to improve the far from desirable lot of some 600 million peasants or stem the exodus of 200 million migrants to the coastal megalopolises: social disparities are rife and augur badly for the country's social cohesion. In the meanwhile, the refusal by the Chinese to re-evaluate or allow the Yuan to float causes serious problems for the countries of the region and could constitute an obstacle to global economic recovery.

This leaves Europe, one of the promoters of the Doha Round, and a supporter of multilateralism: the United Nations, the International Criminal Tribunal, the Kyoto Protocol, etc. In the throes of change, Europe must, as the voice of the happy medium, do everything it can to relaunch and complete the negotiations, though without haste, since the changes of direction will be painful. These negotiations are absolutely vital for better and more sustainable global equilibrium. The failure of the Doha Round will sap the WTO and push the multilateral system to the sidelines. To prevent this from happening, it will have to tone down its demands related to the Singapore issues, access to its markets, its subsidies, especially those in the agricultural sector, its regional preferences and so forth, all in the difficult framework of renewing the team in Brussels, its enlargement and poor growth. Although Europe is also perfectly capable of taking a bilateral and/or regional approach, any deviation from the ultimate aim of achieving multilateral constitutional law will be fatal to "developing countries". Consequently, in combination with an appeal mechanism independent from the WTO, it must do everything possible to promote and develop the WTO dispute settlement body. It will then be necessary to return to the original reasons for setting up the multilateral system to make sure that trade policy negotiations are oriented towards development in general and sustainable human development in particular.

For Europe, this will represent a crusade for civilisation against disparities and poverty whose justification can be summed up in two words: law and development.

THE WTO WAS BORN AT CANCUN

By Pierre CALAME*

Was Cancun a failure? How can one cheer at this new manifestation of disagreement between the members of the international community, as if some terrible dragon had been slain by the populace? We should leave this cheap imagery to one side, since our interdependency in the emerging global society makes the construction of respectable and respected international rules both primordial and essential. The construction of efficient, legitimate and democratic world governance is a categorical imperative for the coming decades, just as the construction of Europe was a categorical imperative for the previous generation. The creation of the World Trade Organisation against the will of the United States was a historic victory for those who do not believe that the law of the jungle suffices to build a liveable, reasonably just and peaceful world. The very success of the GATT and the large number of countries that rallied round it ended in changing its nature. It is possible for two, ten or even twenty countries to sign an agreement, but when it comes a hundred then such an agreement becomes international law. So long live the WTO, at least in its principle. However, up to now its construction has been shoddy and makeshift, in the image of the multilateral system with its three pillars, the UN, the Bretton Woods institutions and the WTO, all juxtaposed though without coherence between them, overloaded over the years with more or less contradictory objectives, swollen to excess and, when all is said and done, terribly unfair and inefficient. In addition to the crisis of the UN aggravated by the invasion of Iraq, the failure of Cancun is particularly instructive since it is far from dramatic (there is no urgency to continue liberalising trade), and reminds us that the adaptations made on the sidelines of the institutions as they stand at present are not up to solving the problems.

Demolishing the existing systems of rules because of their inadequacies would be a cure worse than the disease. The only way forward is to reforge and conceive a new architecture for world governance. However, the reasons for the failure of Cancun are significant enough to provide perspectives for this reconstruction. Thus in this respect, Cancun will be a second birth for the WTO.

I had the honour of coordinating the reflections and proposals of the *Alliance for a responsible, plural and united world*, devoted to world governance and I consider that the failure of the Cancun negotiations is a genuine case study that illustrates the weaknesses observed and several of the principles proposed by us. I shall give five examples.

First, there is the irritation of the developing countries confronted by the hypocritical “do what I say, don’t say what I do” of the industrialised countries. Moralising sermons on the virtues of free trade are meaningless as long as America subsidises cotton and the OECD countries subsidise their agriculture. One can plead just as eloquently for the right to defend domestic production vital to maintain local harmony as for the vitalising virtues of free trade, but it is not possible to do both at the same time, changing from one register to another as a function of whether one wants to defend one’s rights or impose obligations on others. Likewise, one can plead for the right of people to feed themselves, provided that one does not cheer the fact that an international agreement has run aground due to a coalition more or less impelled by the ultra-liberal Cairns Group.

Secondly, there is the impossibility of remaining in a situation where only the rich countries set the agenda and decide what is and is not negotiable. This has been blatantly obvious since the Earth Summit in 1992, when George Bush declared to his peers that the American way of life was not negotiable. By continuing to build a world in which it is forbidden to forbid the free circulation of goods and services but forbidden to permit the unhindered circulation of labour, something had to give in the end.

Thirdly, a really good piece of news from Cancun is that the African Union finally spoke with one voice.

The international system no longer has any chance of progressing with the hypocritical rule of “one country, one vote”. World governance is impossible without the emergence of a limited number of communities bound by interest.

Taking this direction a step further, the solution of regional communities with more or less similar demographic weights offers promising perspectives. In order to achieve balanced representation at the World Citizens Assembly at Lille in 2001, we divided the world into 20 regions, each having a population of over 100 million. We could be accused of doing this for the sake of neatness though a simple rule was used that privileged the “small” regions – the number of representatives of each region was proportional to the square root of the population and not to the population itself. This enabled us to take into account the real diversity of the world in a balanced way. The most recent UN conferences, for example, on further education and science, have shown the advantage of preparatory regional meetings that are far more dynamic than the world conferences themselves. This approach comprises a pedagogical aspect that gives rise to the desire to seek compromise with one’s neighbours when involved in a global negotiation.

Cancun also brings to the fore a subject about which everyone is aware: that of the rule of unanimity. Already impracticable in a Europe of 25 nations, it has no chance of working in a WTO with 150 nations. The answer is to set up intermediate stages that bypass “no-go” coalitions; they could be regional communities or communities of common interest. It is they that would formulate the terms of negotiation. In certain cases, it might also be necessary to define rules subject to majority voting at global level. The experience learned through European construction, which has known both high and low roads but has never gone backwards, could be of great value for building a world order. Those who were devoted to building Europe at the end of the 1940s had the same reputation of being idealists as those who are now campaigning to build a global community.

In the fourth place, Cancun shows that the era in which market philosophy dominates everything, much lauded after the fall of the Berlin Wall, has now come up against other barriers. The market is not a universal and eternal law of nature, it is a human mechanism that can be remarkably efficient in many areas, though it is nonetheless one condition among others for regulating human society, and one among others for governance. Accordingly, it must be judged using the same criteria of efficiency and legitimacy as the other conditions.

However, the generalisation of the market has gradually caused its application to areas outside those where it is both efficient and legitimate. This has occurred in two ways: global free trade has been made into an absolute objective, and it is applied to areas that cannot reasonably belong to the market.

Let us first look at the market as an absolute objective. One of the conditions of legitimate governance is what I call “the principle of the least constraint”, i.e. reaching an objective of common welfare by limiting as much as possible the constraints imposed on each person to achieve it. Politically, this is known as the principle of active subsidiarity, that is to say setting an obligation of result rather than an obligation of resources, to restore freedom of choice as a function of the diversity of contexts. However, the dogma of the single world market creates obstacles to forms of trade that could be organised on other levels; it leaves hands idle while failing to satisfy elementary needs.

The legitimacy of global free trade above all declines when applied to areas where it has no relevance. Symbolically, the coup-de-grace was given by Monsanto, the agribusiness leader in genetically modified organisms (GMOs). It called a gene it introduced into plants to stop them reproducing “Terminator”. The moral of the story is that market economics is matchless when managing industrial goods that can be divided by sharing, but loses all sense of direction when applied to goods that are multiplied by sharing. The movement for another world came up with the unarguable observation that “the world is not for sale”. Sooner or later the warning shot of Cancun will lead to serious global debate,

progressively cleansed of the ideological dross inherited from the Cold War, on what objectively, can be considered as belonging to the market and that which just as objectively, cannot. Thank you, Cancun.

Lastly, in fifth position, Cancun represents the forceful intrusion into the public arena by community expertise organised in networks. We are only just beginning to become aware of its technical superiority over government expertise. It is also obvious that free software will be superior to commercial software for the same reasons. In a global system, genuine expertise requires an international information system linked to different circles, freedom of expression and movement, and above all shortcuts between in-the-field observations and their convergence at global level. Although still disorganised and sometimes irresponsible, this community awareness will certainly become one of the essential conditions of tomorrow’s governance.

If governments and above all the European Union, decide to treat these five points seriously, we shall see the birth of a new, more legitimate, more democratic and more efficient WTO.

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Cancun: a North/South divide?

By Cédric Rabany, Rongead

Since no significant gains were obtained from the agri-subsidising countries, the developing countries refused new negotiations on the Singapore issues (investment, competition, transparency in government procurement, and trade facilitation) leading to the breakdown of the Ministerial Conference of Cancun. For all that, is it possible to explain this breakdown by talking of a North/South divide?

Certainly, the rich countries have done little (especially the USA and EU) to satisfy the legitimate expectations of the WTO's other members, as can be seen by the lack of progress on African cotton. However, analysis of the latest geostrategic deployments at Cancun reveals a slightly less clear-cut view of the situation, in particular regarding agriculture.

The Cairns Group was very quiet at Cancun due to too many divergences over an excessively rigid position. However, the G21 or 22 (*"twenty something"* as some wag at Cancun called them), led by the developing agri-exporting countries of the Cairns Group associated with the major emerging countries (India and China), was very active. This group formed rapidly in reaction to the consensus between the USA and the EU on agriculture (defined by Martin Khor as *"the lowest common denominator of the largest most protectionist developed countries who want to accommodate each others' interests"*). This group remained focused on agriculture, firmly criticising American and European subsidies and refusing to make any distinction over access to markets by the developing countries (to the detriment of the least advanced countries?). The interests of this groups were upheld by three countries whose strategies were nonetheless very different: Brazil, India and China¹. The place taken in the media by this new alliance, characterised by its clear positions and demographic weight (more than half the world's population) partially obscured the internal differences between the developing countries.

Two other sub-groups can be distinguished that defend their specific characteristics. The "strategic products" group (comprising certain countries belonging to the G21) defends a less liberal position centred on its members' development requirements. There is above all the alliance of the ACP countries (Africa, Caribbean, Pacific), of the African Union and the least advanced countries, though it has very little economic and political clout. This group

¹ The presence of Egypt in this group should also be noted, since it belongs to the group of agri-importing countries and demanded special status for such countries at Marrakech.

was formed as a refusal of the purely offensive logic pursued by the G21, emphasising the urgency and reality of developing countries pushed to the sidelines. The member countries of this group, individually, expressed ideas contrary to the dominant ideology, by calling for the regulation of raw materials markets.

The North was just as divided, including the EU (a "G25" according to Pascal Lamy). Regarding the sensitive issue of cotton, opposition by Greece and Spain made it impossible for Europe to explicitly support the African initiative. Furthermore, the supporters of multifunctionalism (G10) were present, led by Japan, a country that always takes a very defensive position.

Decision-making by consensus becomes a real lottery in this splintered panorama of a "G148". The question in this multi-block system is that now the developing countries are capable of rejecting unfair proposals, will they be equally capable of gaining acceptance for fairer rules?

About Global Citizen Initiative

GCI intends to contribute towards strengthening and promoting trade policy rules that are consistent with the other components of global governance and international institutions so that trade is practiced to support equitable growth and sustainable development.

GLOBAL CITIZEN INITIATIVE does not aim at being a new "representative" organisation. Its mission is to provide a reference and a concrete contribution from civil society to a viable system of multilateral law.

GCI was launched at Geneva in March 2001, with 5 aims:

- 1- To facilitate dialogue between civil society, decision-makers and politicians.
- 2- To facilitate the expression of different opinions and the formulation of alternatives:

- by producing and diffusing analyses, ideas and proposals,
 - by re-balancing the room given to the voices of the South, North and East,
 - by taking a pedagogical approach to better inform civil society about the WTO, the negotiations carried out within it and the stakes in play.
- 3- Improve the quality and (universal) pertinence of a debate on regulating international trade.
- 4- Make the different actors concerned aware of the nature of the debate, and in particular the issues negotiated.

GCI has given itself 3 missions:

- 1- As a “Resource Centre” to assist and reinforce capacities in regions of the world that lack information and training in multilateral trade policy and negotiations managed in the framework of the World Trade Organisation (WTO).
- 2- As a “Forum” acting as a meeting place for decision-makers (negotiators) and entities of civil society.
- 3- As a means of supporting innovation and experimentation aimed at developing practices, policies and trade rules designed to reduce inequalities between the rich and the poor.

GCI’s participants are experts on international trade policy, persons active in social movements and development organisations and members of parliament from different regions of the world (Europe, Asia, Africa, North America and Latin America, Oceania).

PROGRAMME IN PROGRESS

GCI – Forum

Proposal 1 “Towards a new generation of imperative standards”

The first significant “initiative” consisted in coordinating a workgroup on a system of arbitration between the WTO and the other international agreements. In particular, the workgroup benefited from very informative discussions with Gabrielle MARCEAU, councillor at the Legal Affairs Division of the WTO secretariat. The result is the proposal

presented in this document to set up a new generation of “imperative” norms. To make progress in this direction, the proposal suggests stronger cooperation between private labelling actions and cooperation between the latter and those related to formulating international law for sustainable development.

To support this approach, Rongead, as partner of the GCI, has produced a guide of social and environmental labels for sustainable development². This guide, which provides an accurate and synthetic analysis by comparing 24 tools (labels, standards and codes of behaviour) specifically used in South-North trade, shows how different the many criteria used to “label” products are.

The discourse developed in this proposal was expressed at both Porto Alegre and Cancun and was very well received. NGOs, experts and senior functionaries are ready to participate in the reflection we intend to launch in this area.

Proposal 2 “Initiate negotiations at the WTO on access to energy resources”

This proposal, which is also presented in this document, has not been subject to debate. However, it was well received by the several NGOs, senior functionaries and experts to which it was submitted prior to its publication here.

GCI- Resource Centre

Support debate in Africa

In partnership with INADES international – *Institut Africain pour le Développement économique et social* (an NGO specialised in training and supporting development initiatives with 100 instructors in 15 African countries) we are updating four illustrated teaching manuals (45 pages each) on the market and trade and their regulation, international relations, governance, etc.

These manuals are intended to be accessible to a public with little knowledge on the subject

² see www.rongead.org – New – Guide to social and environmental norms (available end of october).

but which is involved in reflection and action for development. The aim is to promote debate in Africa that goes beyond a closed circle of experts. In particular, it will be distributed to rural libraries.

The first version of the manuals will be published for debate, criticism and proposals for improvement before being published again in a second edition.

Proposals for debate

By Joseph Rocher, Rongead

Proposal 1- Build a new generation of “imperative norms for sustainable development”

Today, at international level, there are only 6 **norms** recognised as **imperative** and respected in principle by every international agreement. They are **the prohibition of aggression, genocide, the abusive practice of torture, crime against humanity, slavery, and lastly, the right to self determination** and are qualified by the latin term “*jus cogens*”.

However, no definition of *jus cogens* exists anywhere and certain experts are even of the opinion that *jus cogens* does not exist anyway: i.e. there is nothing higher than the will of governments.

In spite of this, the imperative nature of these norms means that no international agreement can contain any condition contrary to them. At any rate, this is the position of the International Law Commission (ILC)³.

The question as to whether these norms are effectively respected by governments leads us to the WTO. The strength of this institution stems from a dispute settlement body that enforces the rules: a mechanism which, thanks to the sanction it metes out in the last resort, obliges its member States to conform to their commitments. It is the WTO's capacity to settle disputes that has given it the influence it has today: It alone is capable of enforcing the negotiated rules of multilateral law among all

its members, whether powerful or weak and the stumbling block of Cancun will have no effect on this aspect.

The six imperative norms do not benefit from such support at any international institution. On the contrary, they take precedence over all other norms in the WTO dispute settlement body, which may lead to imagining that this body, though still imperfect thus perfectible and which constitutes the real backbone to multilateral trade law, provides a concrete basis for conformity with these imperative norms.

The question now is to know whether, in order to respond to the major challenges of sustainable development and also to oblige the WTO to remain within its scope of competency, it is necessary to add a new series of imperative norms to this short list. International treaties and conventions related to social and environmental aspects exist but the world legal system is a fog of juxtaposed agreements and conventions without hierarchy or link between them, forming a ramshackle and inconsistent series of texts. NGOs and the International Federation of Human Rights may well claim that human rights should prevail over all else, but everything is dealt with on the same level.

Therefore we are have an institution that has become unavoidable and in relatively good health when compared to its sister institutions, handicapped and frayed by the problems of enforcing rules that are nonetheless accepted by the member States. So why not try to make headway for the right cause by taking a pragmatic approach?

First of all, it should be noted that the WTO itself does not place trade above sustainable development. It should be recalled that the WTO's basic objectives are, among other things, to raise the standard of living and ensure full employment and not just to develop trade. One only has to read the 8 points of the

³ This commission groups highly qualified jurists from international institutions. It should be noted that *jus cogens* does not include “racial discrimination”.

Ministerial Declaration of Marrakech of 15 April 1994 and above all the preamble of the Marrakech Agreement that founds the WTO. Everything is included to take up the challenge of civil society. If the WTO's member States had not gone "astray" in their negotiations and in implementing the ensuing results, the WTO would not have been where it was at Seattle or where it is today after Cancun. For all that, not everything is lost, but it is necessary to return to the starting point.

Next, the intrinsic value of the dispute settlement body should be dissociated from evaluations of the WTO as a whole, its objectives, operation, evolution, the policies applied, and from its negotiations. One could quite well "use" the DSB without having to agree with everything that occurs at the WTO.

The above considerations can be used as a stepping stone to debate on the following proposal: this consists in building a new generation of imperative social and environmental norms that would permit better protection of fundamental individual rights and world public property.

Building the structure required for this would have to occur via an arbitration system external to the WTO, at a higher level, preferably under the aegis of the General Secretariat of the United Nations.

Towards new imperative norms

Naturally, the first question is to know what these new norms will be.

World environmental agreements, International Labour Organisation conventions (some 180), Agenda 21 of Rio, the UN Charter, Universal Declaration of Human Rights, the pact related to economic and social rights: these are all agreements to which many States are committed and which represent valuable references. But which ones should be given priority and according to what criteria, given that for some, for example, sustainable development ought to reduce inequalities? But isn't this everybody's priority?

On this level, the private initiatives that have been taken to implement codes of behaviour, norms and labels have not been of any real help. The fact that there have been so may is

reason for satisfaction, since they express the strength of feeling present in civil society, but their confusion also reveals great dispersion regarding both the criteria used and the methods of implementation. Some people estimate that about 700 codes of behaviour are currently in force. 24 labels exist just for trade between developing and developed countries. These labels that refer to labour, environmental and economic norms, have been identified and analysed⁴.

The second important thing is to know how these norms will be formulated from the legal standpoint.

We saw that one of the 6 imperative norms used the term "*abusive practice of torture*". This is because there is no international agreement on the definition of torture today.

The legal formulation of new imperative norms will not be an easy task. By way of example, awareness campaigns are carried out on the subjects of "food sovereignty" and "the right to food".

In international law, the term "sovereignty" is defined as the sovereign right of States and not that of their populations, whereas the right to food can be considered as an individual right. In the first case, power belongs exclusively to the State. However, this right is discretionary and includes no obligation or result, if not subject to the suffrage of the community where it exists.

On the contrary, the right to food may refer to the "Pact on economic and labour rights" (1966) ratified by a large number of States. In this case: States have the duty to feed their people and must prove that they have made a "reasonable" effort and made available resources capable of satisfying this commitment.

It is understandable that the second formulation gives more room in which civil society can manoeuvre. This is why it is difficult to comprehend why some social movements are committed to supporting "food

⁴ See www.rongead.org for the "**Guide to social and environmental norms**". It will soon be available in 3 languages (Fr. Eng. Esp.) on the Alliance "international trade" website.

sovereignty”, as the very term “sovereignty” requires some kind of legal redefinition.

The choice of criteria chosen to define the norms represented raises considerable stakes. The introduction of environmental and social norms in trade has often been seen as a means of introducing new protectionist barriers. Besides the fact that the new generation of “imperative norms” should avoid vulnerability to this criticism, the aim is nonetheless to start a dialogue of civilisation in order to build a common ethical foundation. Well, the road is long ...

***Under the direct authority of the
UN General Secretariat: a body
responsible for arbitrating disputes
between the WTO and the other
international conventions and
agreements.***

How can we progress towards setting up a new generation of imperative norms?

On the face of it, this new generation of norms will only see the light of day if civil society acts by using two types of reference:

- International governmental conventions and agreements related to environmental, social and economic issues.
- Specific private criteria related to labels, norms and codes of behaviour. Indeed, although references to different conditions of international conventions and agreements are frequent, particular conditions, such as the price paid to producers in developing countries, lie in the private domain.

Thus there is a need to bring together the criteria used by private initiatives related to labels, norms and codes of behaviour and those that explicitly belong to international conventions and agreements. The aim of this is to draw up a list of imperative norms sufficiently short to be efficient though which attracts the maximum amount of support from civil society organisations to be valid.

Things could occur as follows:

Phase 1: The governments that have committed themselves to the WTO could, unilaterally, decide to waive their obligations to the WTO in order to comply with one or more norms considered as imperative.

Phase 2: Countries that consider themselves wronged by the measure or measures taken should logically call on the WTO’s Dispute Settlement Body and request the constitution of a panel.

Phase 3: The Dispute Settlement Body could then :

- Invoke the Vienna Convention on the interpretation of treaties, which stipulates that the application of a treaty must not lessen the scope of another treaty, and declare itself incompetent in so far as considerations other than commercial are involved. For this to be possible, it would suffice to amend the Memorandum on the agreement on the settlement of disputes. This triggers the dispute settlement system immediately a member alleges that WTO obligations are being violated and ...in this case... only WTO tribunals are recognised as being competent to decide whether or not a violation has occurred (Art. 23 DSU);
- or override the question and judge the dispute on purely commercial grounds.

Phase 4: In the first case, the Dispute Settlement Body would call on the UN General Secretariat to arbitrate. In the second case, a State or civil society would call on the UN General Secretariat to arbitrate.

Phase 5: A series of judgements would permit the gradual constitution of the list of the new generation of imperative norms.

To react to this proposal from 15/10/03 to 30/12/03, consult the electronic forum on the site of the Alliance “International Trade” workshop: <http://in-trade.socioeco.org>

Initial reactions ...

This proposal was first made public at the Social Forum of Porto Alegre in January 2003, then at Cancun in September 2003, and via several media.

One of the first comments was quite encouraging. It came from a Chinese partner who said: "The proposal will raise problems in China since it strengthens the possibility of civil society to act against the government, but it must be supported because it is morally justified".

The second reaction was: "How can these new imperative norms be seen as anything other than barriers to the liberalisation of trade, given that priority should be given to the economic conditions capable of ensuring these norms rather than simply calling for new rights?"

The first answer is that nobody considers the condemnation of slavery, for example, as an obstacle to free trade. Therefore this may well be the case for the new series of norms.

For the second part of the question, we must dive deep into the question of the chicken and the egg!

The most positive reaction came from our Latin American partners faced by the effects of NAFTA and their fears of the forthcoming Free Trade Area of Americas (FTAA). Although regional agreements were considered in the original texts of the GATT as openings created by countries in preparation for wider openings, they are now increasingly used to "bypass" or reduce the scope of the WTO's rules. What is more, the WTO is powerless confronted by this phenomenon. More than 150 regional agreements have been notified to the WTO. Only one agreement out of the 150 was considered by the WTO as being compatible with its rules. This was the agreement between the Czech Republic and Slovakia following their separation. All the others have been declared neither compatible, nor incompatible.

Although the regional agreements are supposed to be compatible with the WTO rules, they often dictate tougher conditions in relations between developing countries and developed ones. The introduction of new imperative norms would therefore be a way of influencing regional agreements.

Proposal 2 - Initiate negotiation at the WTO on access to energy resources

The Iraq Crisis: lessons and questions on the WTO and governance

The Iraq war, sparked off against a backdrop of struggle for energy resources, is just one more illustration of the poor state of the current system of world governance based on the balances of power between governments, especially between those with more or less power. Worse still, it shows up the decrepitude of constitutional law in our present multilateral system.

If there were no visible mobilisation of civil society or signs of alarm at the United Nations about this issue, we might believe that the world has stopped still since Vattel (1714-1767), who analysed the "regulation" of international relations in his treatise "the right of people". He asserted the full sovereignty of the State and observed the disorder of international life without regret: "The State knows no rules other than those that converge with its own interests. The State is both the source of international law and its subject. There is no better expression of the insecurity of nations that submit to international law." Consequently, Vattel felt that war was the normal solution for settling conflicting interests. Far from considering it as a crime, he thought it simply necessary to regulate how it was waged.

Access to energy resources at the WTO

The issue of energy has long been a taboo subject at the WTO, in the same way as the liberalisation of access to natural resources:

- The developing countries have always been against placing the subject of natural resources on the agenda of trade negotiations, as they consider it to be a question of national sovereignty (and the private economic hunting reserve for the powers that be).
- Specific access to energy resources has never been placed on the agenda either. The oil producing countries see such an attempt as the end of OPEC and agreements on production quotas, which the WTO condemns. The European Union should have accepted negotiations on nuclear energy and the United States consider that the issue is too sensitive for them to accept any international interference. All have formed an implicit union to prevent such a negotiation.
- The only “natural resources” placed on the WTO agenda (and only during the Doha round) are fishing resources and, indirectly, water resources. Both issues were introduced in a very roundabout way. Regarding fishing resources, Europe found itself caught in a trap since it had demanded that the environment appear on the Doha agenda. However, in return, it was obliged to accept a reduction of its fishing subsidies (which contribute to the over-exploitation of fishing resources and

thus the environment). Regarding water, negotiations are continuing in the framework of General Agreement on Trade in Services.

The proposal to start negotiations on energy at the WTO stems from the following observations:

1- A better way to achieve peace would be to start multilateral negotiations on an essential resource for the world rather than to stand by powerless while the most economically and militarily powerful nation, at present, takes armed unilateral action.

2- There is a risk of tension occurring with China for which energy will become a crucial requirement.

3- The forthcoming accession of Saudi Arabia to the WTO and that to come of the oil producing countries of central Asia, may make negotiations possible and even inevitable.

But for all that, negotiations cannot start in the framework of the Doha Round since its agenda has been closed. However, there is nothing to prevent this idea from being introduced in the future.

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