Global Citizen Initiative

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From the failure of the WTO at Seattle

… to the conditions for global governance

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FOREWORD

The 135 member countries of the WTO[1] – with the passive participation of about thirty candidate nations – ran aground at the end of November 1999 at Seattle, a city on the west coast of the United States and the cradle of two symbols of American commercial power, namely Boeing and Microsoft.

What failed exactly was the third ministerial meeting of the WTO, which was to decide on launching a new round of multilateral trade negotiations known as the Millennium Round .

The objective announced for the round was to continue and expand the deregulation of trade in a certain number of areas:

- those decided and agreed on at Marrakech in April 1994: agriculture, services and intellectual property;

- those which could have been agreed on at Seattle and which would have been "chosen" from the numerous subjects proposed by the members: these subjects above all reflect the predominance of national and regional interests over global interests and the "gap" between developing and industrialized countries.

The objective of Seattle was not to negotiate on substance but simply to define the "mandate" of negotiation". More clearly this meant reaching agreement on the list of subjects to be negotiated during the round, the method to be used and the objective to be reached.

Much has been written about this failure being the result of pressure from civil society. True enough, although there are other types of pressure, undoubtedly stronger:

- the stakes at play in the American presidential elections;

- the insistence of the European Union to negotiate on a range of subjects (to balance the gains and losses between its member states);

- the obvious opposition of the developing countries against including "labor standards " and the poor treatment to which they were subjected in the negotiation process itself.

[1] 138 since Albania's recent membership

In fact, the seeds of failure stemmed from the process itself.

Firstly, the failure of Seattle revealed the glaring absence of will and capacity of the multilateral system to do anything about reducing the growing disparities between the rich and poor members of the WTO.

It also revealed the inconsistencies and weakness of the entire multilateral system.

Furthermore, the WTO was criticized for allowing its influential members to dictate the organization's law over issues that were out of its scope of competency. True enough, but isn't this the result of the ineffectiveness of the other institutions concerned, which are better suited for implementing the measures required?

All said and done, beyond the ups and downs and gesticulations of Seattle, the basic problem was neither raised, nor understood: that of world **governance**.

Secondly, although an autopsy is required of the failure of this ill-prepared conference, which signaled the end of the ambitions of a General Director who only had a compromise mandate for three years while those responsible for the compromise knew full well that such important negotiations would obviously last much longer (thus demonstrating the anachronistic and irresponsible nature of multilateral diplomacy), it is also necessary to send out warning signals: economic globalization, initially spurred by technological progress, is a more or less irreversible process. Trade will continue to expand whether a new cycle is launched under the aegis of the WTO or not.

Without going as far as the "The Economist" in saying that the poor were the primary victims of the failure of Seattle, it can at least be asserted that more and more commercial practices will escape regulation without the existence of an appropriate multilateral framework .

This is the basic challenge of international trade at the dawn of the third millennium.

This is why it is necessary to get the WTO back on the right track. What makes this still more important is that it is an international organization that has an efficient jurisdictional mechanism capable of imposing effective sanctions by which even the great powers must abide. This is something that other institutions such as the IMF and World Bank cannot do.

This document has two objectives:

- take stock of the failure of Seattle and of the different subjects that made up or that could have made up the "agenda of the Millennium Round";

- explore the proposals aimed at both civil society (which has woven a network of international relations) and the governments of the WTO's member states which bear the burden of relaunching the institution as well as the next round of negotiations.

Formulating the proposals raises a number of difficulties:

Experience has shown that formulating international economic laws serves more often than not to officialize the existing balance of power rather than reform. It would therefore be pointless to make proposals that did not take this inevitable reality into account.
But we also know that debate can soften positions and instill tendencies, making it possible to overcome diverging views and interests.
Regarding the proposals, they are not simply there to be taken or left, rather they should fuel what we hope will be a constructive debate.

To conclude, failing consensus, the aim is to encourage convergence, if not consensus, between the different organizations representing civil society capable of acting together en masse and using their influence when the time comes.

It is an ambitious program, but we have the time to start it. At least two years are needed before the negotiations can be relaunched: the time needed for the new president of the United States, an obligatory and influential partner, to compose his teams as from January 2001, and for civil society to formulate its proposals and consolidate its potential for action.

In order to give this project substance, we present at the end of this document the project to set up a Observatory/Resource Center on the WTO and world governance, named "**Global Citizen Initiative"** by its launching committee. Its mission in the coming years will be to provide information useful to all and above all to those who are in most need of it, and to assist civil society to speak out in the service of the common good.

Let us hope that this initiative bears fruit.

PART I

WTO: A CONTRIBUTION TO GLOBAL GOVERNANCE IN ORDER TO TAKE UP THE CHALLENGE OF GLOBALISATION

Globalization: an irreversible phenomenon – Deregulating trade: a political choice

"Globalization is like a long river with myriad tributaries. Its course and flow depend on the terrain it crosses, hilly or flat, between two constantly irrigated and fertile banks. Like the river, globalization is a source of nourishment and can even be tamed and dammed for the generation of energy, but sometimes it rages, bringing disastrous floods. Globalization demands only to be tamed and above all possess a soul. At the dawn of the new millennium, it is already being harnessed by technological progress and by dynamic economic players, such as the now famous start-ups.[2]

Therefore globalization should be analyzed as being a practically irreversible phenomenon. Deregulating trade aids to progress, through making political choice – less and less contested – based on the observation that opening up to international trade stimulates economic growth. Thus, it can be seen that the world has become richer in overall terms over the last fifty years, during which trade has been progressively deregulated.

However, this has happened simultaneously with:

- widening disparities, not only between rich and poor countries, but also within countries themselves, whether rich or poor;
uncontrolled growth occurring in general to the detriment of the environment .

Thus, the automatic and mechanical impact of deregulation on growth cannot be considered as an infallible credo. Deregulation in the dynamic and imperfectly competitive framework in which the increasingly globalized economy operates can occur to the detriment of the poorest economies in the system.
Consequently, and paradoxically, the WTO may appear as an international bureaucracy managing trade in an organized and orderly way rather than as precentor of free trade.

[2] Tran Van Thinh, former European Union Ambassador to the WTO – Extract from a speech.

Extract from an interview with Rubens Recupero, UNCTAD General Secretary

Do you agree with the idea expressed at Davos according to which the countries of the South should be integrated in globalization?

There is no point in going too fast. Brazil has been exporting its sugar and coffee production for three hundred and fifty years and paid a high price for it: slavery and "latifundisme". That which integrates us in the world economically disintegrates us socially. Globalization does not mean a unified market.

Libération 9/02/2000

Up to now, the process of deregulation and globalization has been used to serve strategies that do not work in the general interest or that of the world but in antagonistic national interests or merely the specific interests of private groups (financial and industrial).

The background of this process highlights the uncontrolled and irresistible development of financial markets that are gradually making international bureaucratic financial institutions such the IMF and the World Bank obsolete. Furthermore, a still worse problem is the impossibility of bypassing or replacing the role of national governments as regulators of society, either as fully sovereign states or as groups of states exercising joint sovereignty.

It is here that action by civil society is necessary and promising, provided that it can channel revolt and protest sustainably toward constructive objectives.

Deregulation/Globalization: are they uncontrollable processes?

Taking up the challenge of globalization means having policies and instruments capable of regulating and controlling it.

However, regulation at international level is not enough; it must be combined with and completed by policies and actions at regional, national and local levels. They should be formulated in the framework of a global approach.

It is clear that the policies and instruments already implemented at different levels have not been sufficiently pertinent.

Pertinent responses need to be formulated by the reasserting basic principles, by defining policies and instruments at levels consistent and appropriate with each other, and by identifying the place and role of civil society in their definition, formulation and implementation.

In the face of globalization: the importance of reasserting principles

While reasserting our support of the fundamental principle of the freedom of circulation of goods and services, capital, persons and ideas, we nonetheless state that this support is conditional. In order for it to have a "human face" and a "soul", the process of deregulation stemming from this principle must occur with due respect for the diversity of economies and cultures, in the interest of humanity and nature and, lastly, in the framework of multilateral law.

Efforts have been made by international organizations to promote and make progress with these principles. However, at multilateral level, it is vital that the organization responsible for setting the framework and stimulating world trade is endowed with clear rules for doing so.

WTO, development, environment and the citizen: the need for a contractual relationship?

1. Making the WTO's rules converge with the objective of sustainable development.

Sustainable development is referred to in the statutes of the WTO. However, it is up to the member states to demonstrate their political will and capacity to make this objective a reality. This requires taking joint and shared responsibility of the future of the 6 billion human beings now living on our planet.

Among other things, the universally acknowledged idea that trade serves the cause of peace, needs examining. In fact, trade only serves the cause of peace between the rich, without eliminating the tension and risks of conflict between them. Moreover, the expansion of trade, the cause and effect of growth, exacerbates inequalities between rich and poor countries and, what is worse, within each country.

The WTO's members are now running astray on a large number of subjects, some of which are important and even vital in terms of their specificity, but they are dealt with in piecemeal fashion with no orientation toward the basic and founding objective of sustainable development. The fragmentation of this approach leads inevitably to failure or else to new agreements lacking viability in terms of their longevity and above all to their questionable effects on disadvantaged populations. The absence of determination to achieve the objective of sustainable development – demonstrated by real conflicts between partial and contradictory approaches – brings to light differences between member countries and the contrast between the importance of the stakes at play and the disjointed attempts at negotiations.

The WTO's members must therefore agree on a clear definition of sustainable development. They must also specify the compatibility of the WTO agreements with the conditions of the multilateral agreement on the environment, and the consistency between the WTO's principles and those of the institutions carrying out specific activities in the areas of the environment and development.

2 . International Institutions and Organisations: convergence, coherence, cohesion

Global policies and instruments are needed to meet the challenge of globalization. At world level, the instruments of this globalization are international organizations such as the IMF and the World Bank.

However, there is a considerable lack of coherence between the policies implemented by these institutions.

Thus the structural adjustment policies promulgated by the IMF and the World Bank have led developing countries to deregulate their agriculture to a far greater extent than demanded by the WTO agreements.

This encroachment by the IMF and the World Bank on what should fall within the scope of the WTO is not new: these institutions have always waived the obligations of developing countries vis-à-vis GATT in the case of balance of payment deficits.

In order to lessen the negative effects of globalization, the policies required at international, regional and national levels should be implemented with the aim of:

- convergence (at least),
- coherence (imperative),
- cohesion (a hope).

3. Channeling and orienting the place and role of trade and the WTO

The WTO deals with subjects that imply **an exchange:** an exchange between countries and also within a country, since imported products must be treated in the same way as those produced doemstically.

Furthermore, the characteristic that makes the WTO efficient is that it is the only multilateral organization that has a dispute settlement system, backed up by a sanctions mechanism applicable to every member country, whether powerful or weak.

These two facts explain why the WTO has "infiltrated" into all activities of an economic nature to the point, according to some, of jeopardizing the very foundations of our cultural identities.

True, deregulating trade is a growth factor, but growth is not development nor is the world a merchandise, to quote the slogan of those demonstrating at Seattle.

Thus the task to be undertaken is to define and negotiate rules that are good for businesses without constituting a threat to societies and individuals, i.e. rules that treat all as equal, for example, an American producer who owns over 1,000 ha and a Chinese peasant who scrapes a living from 0.5 ha.

It is here that the rule of "non-discrimination", the keystone of the WTO system, deserves examination.

4. The place and role of civil society

The principle has been accepted: The Marrakech treaty stipulates that the WTO must set up "appropriate" means of consulting with NGOs. However, there no such structure for consultation exists as yet.

This type of consultation is inherent to democratic ethics and is all the more justifiable and legitimate since it is individuals who are affected indirectly by agreements and their management.

It has also become difficult to avoid participation by civil society: the number of NGOs present at Seattle has been estimated at about 2,000. They diffused information from there to 48,000 people in 46 countries. This figure has since grown and civil society remains very much on its guard.

Lastly, the participation of civil society is needed to ensure the upholding of constitutional law in international economic and trade relations. The role of this law is to set out universal rules and sanctions against the temptation of unilateral action and the belief that might is right.

Civil society at the WTO: Antigone or the Little Prince?

Recognition of civil society at the WTO as an "unavoidable partner" was achieved thanks to environmental NGOs (influential in industrialized countries).

The demonstrations of AFL-CIO at Seattle to demand a "labor clause" in world trade rules showed that labor unions were capable of taking over front stage rapidly.

The image of consumer organizations suffered some damage at Seattle: dominated by Anglo-American organizations, and the spirit of consumerism (obtaining the largest number of goods and services at the lowest price), they gave strong voluntary support to deregulation policies. So there is nothing remarkable about the fact they were the only organizations invited to speak at the official tribune during the plenary session of the Ministerial Conference.

The development NGOs, which defend the interests of developing countries and which have militated in particular during recent years on the subject of Third World debt and development aid, took a stand on the issue of "Fair Trade".

Lastly, in line with the powerful organization led by Ralph Nader, "Public Citizen", the citizen approach appeared to be alone in trying to reconcile the sometimes contradictory aspirations of all the social movements. However, this type of organization generally exists and acts only in industrialized countries.
A little history: Rongead, with the support of the United Nations Non-Governmental Liaison Department, organized the first international meeting on the GATT at Geneva in November 1986, two months after the Uruguay Round started. 45 representatives from 23 countries from the North and the South participated

PART II

ANALYSIS OF THE STAKES AND PROPOSALS

Should a new round of negotiations be launched?

The WTO is a permanent negotiating forum. Nonetheless, negotiation rounds are necessary as they permit making public opinion and economic operators aware that negotiations must not be restricted only to deregulation and that the whole negotiation process must be more coherent. Lastly, they make it possible to advance on the issue of constitutional law. No global approach can be taken without the rounds.

Another even more decisive dimension is that the American administration needs to start these rounds in order to obtain a mandate for negotiating.

The disadvantage of the round is that it raises the problem of defining the mandate within which the administration can act, leading to excessive media exposure. This makes the negotiators become defensive, with the risk of blocking positions.

The best solution would probably be to hold an annual meeting at Geneva.

Should past agreements be evaluated and is a "moratorium" required?

The present situation

The commitments made at Marrakech have not yet been fully implemented. This is the reason why a large number of NGOs request a moratorium before new negotiations are launched. This would permit both evaluating the effects of the initial measures taken and finalizing, with the necessary corrections, the application of the commitments.

The evaluations made up to now are not convincing: there are still many dark areas and there is a major imbalance in the way commitments are complied with. From this standpoint, after having been forced to implement structural adjustment and deregulation policies by the IMF and the World Bank before the Uruguay Round negotiations, the developing countries are now "way behind" in implementing the commitments made to the WTO.

The question is delicate and the source of divergences between the WTO's members.

More broadly, there is also the question of measuring the impact of the WTO agreements on sustainable development. The method of achieving this is as difficult as the question is pertinent. At present, analyses have been limited to cases dealt with by the dispute settlement system and which concern the environment: the panels for tuna, shrimps, turtles, hormones, etc.

The stakes in play

The moratorium is advantageous for poor countries that are indebted to rich ones. In this case, it is the creditor who pays the cost of the late reimbursement.

However, in the case of the WTO, a moratorium is equivalent to a group of passengers stuck on a platform watching their train go by.

Lastly, the postponement of negotiations will only encourage the proliferation of regional agreements.

Proposals

The issue of evaluating the application of commitments should be set within a larger framework of a new global balance of rights, duties and concessions between the members of the WTO viewed in the light of the Uruguay Round agreements and new memberships since Marrakech.

The task of carrying out an audit of the new global situation should be given to an independent body. This amounts to a very controversial and highly political issue too sensitive to be entrusted to the WTO secretariat or even to the WTO's different offices.

Whatever the case, an audit risks criticism and protest, but at least it deserves to exist as an "objective" reference at least capable of putting (if not defusing) the excessive positions behind which certain WTO members shelter into relation with reality.

The audit's terms of reference and the report should be subject to consultation with civil society.

What strategy should be used for relaunching negotiations after the failure of Seattle?

The present situation

The document that was to be used at Seattle as the basis for drawing up the agenda of negotiations was inappropriate and poorly prepared. It included a compilation of subjects proposed by at least one member of the WTO as well as the recommendations and proposals of groups of members referring to them, i.e. 260 pages!

There were only three survivors of the wreck of Seattle: agriculture, services and intellectual property (subjects termed as the "built-in agenda" already agreed on at Marrakech).

But here again, the perspectives are not very encouraging: the Marrakech text does not give any indication as to an obligation to perform or the milestones by which things should be done. This amounts to saying that recalcitrant members can drag things out as long as they like.

The positions of the players

The most disadvantaged are those obliged, for internal reasons, to carry out reforms before the negotiations start again. In a negotiation, a good strategy is to get the others to "pay" for your own reform in exchange for trade concessions. According to a former high functionary of the European Commission, the agreement is the "outlet" of the reform.

Subject to structural adjustment policies during the eighties, the developing countries were the first victims of this "mechanism".

Europe risks being the second. Indeed, it is faced with an urgent need to reform its agricultural policy which is expensive to taxpayers, but without satisfying the expectations of consumers or, more generally, those of citizens.

Proposal

The failure of Seattle has dealt a hard blow against the WTO's credibility. It will have to be reconstructed anew before relaunching negotiations, demanding work in three directions:

Initially, transparency of the organization's operations must be encouraged and ensured, as must be its relations with civil society. Dialogue must be set up between the different participants.

This should create favorable conditions for reaching agreement on the agenda.

Before defining the agenda itself, the parties must agree on the principle that no subject should be forbidden. However, this will only be possible if the members undertake not to take any unilateral protectionist or aggressive measures (e.g., trade measures related to labor or environmental clauses). Under

these conditions, it would be possible to include subjects such as sea-food products or even energy (highly sensitive for petroleum producing countries, but also for Europe because of nuclear energy) on the list of negotiations.

Lastly, it is vital to develop cooperation between the WTO and the other treaties and institutions belonging to the multilateral system. Certain subjects need close consultation with other international organizations or conventions to ensure, among other things:

- compatibility between the WTO's rules and the trade conditions of certain conventions (MEA agreements);
- coherence between the undertakings made at the WTO and the actions of other international institutions;
- the conditions under which the competency of a given organization is recognized (e.g., intellectual property). From this standpoint, seeking coherence between the rules and policies affecting specific issues would be good training for setting up a system of global governance.

The question of transparency

Despite the WTO's transparency, that of participation tends to be obscure on two levels.

The issue of transparency was first raised, internally, by the contracting parties of the GATT and later by the members of the WTO which were unable to reach a satisfactory *modus-vivendi* on the subject during negotiations. This demonstrates the difficulty of finding a solution agreed on unanimously by the 137 members participating unequally in multilateral trade.

In fact, the question of transparency leads to that of genuine participation in the negotiating process as such.

The lack of transparency and/or participation at Seattle was obvious: negotiations on the most sensitive questions took place in the "green room" (a system that was first abandoned then revived), between the key countries.

There is no doubt that civil society has something to say about this lack of internal transparency; however, in-depth consideration can only be productive if it is done within the different departments of the WTO with the aim of setting out a formal *modus operandi*.

Considerable progress has been made in terms of external transparency thanks to the Internet, not withstanding the "leaks" stemming from both within the Secretariat and the member countries.

However, taken to its extreme, transparency bridles traditional style negotiations.

It will be improved when the mandate given to the WTO to find appropriate forms of consultation with NGO's leads to satisfactory solutions.

"Global Citizen Initiative" (presented at the end of this dossier) which consists in setting up an Observatory in Geneva should contribute toward finding concrete responses to this need.

The dispute settlement system, the backbone of the organization

The present situation

The Uruguay Round restructured the GATT dispute settlement system, in particular by setting up the Appelate Body. The aim was to improve the security and predictability of the trading system. It above all entails implementing a procedure that preserves the rights and obligations of the member countries of the WTO, which is responsible for managing trade agreement related disputes and consultations. The structure of the procedure for settling disputes, which was relatively informal under the GATT, has been improved. However, maintaining a balance between the rights and obligations of the member countries is difficult, especially with respect to the disparities existing between the economic influence of these countries and the inability of many of them to estimate the prejudices done to them and claim their rights. By way of example, even though the developing countries represent a relatively low proportion of world trade, they only submit a third of the claims, whereas they represent three quarters of the WTO's members.

In the spirit of the GATT, the aim of the dispute settlement procedure was to maintain a balance regarding concessions, but this was done by constant attempts to find positive solutions to the conflicts. Thus the first aim was not to proclaim who was right or wrong or to impose sanctions, but to maintain the "spirit of cooperation". This was done by the political management of disputes, by "domesticating" them via international cooperation rather than by applying an over-rigid legal system.

Thus the system above all dealt with demands for conciliation and not with passing judgement on disputes.

Article 5 of the Agreement Memorandum reasserts the principle according to which the WTO should give priority to an approach of "demands for conciliation", mediation and good offices rather than one based on

confrontation. Here, external arbitration (UNCTAD, Chambers of Commerce, etc.) is possible though hardly ever used.

204 claims have been submitted to the Appelate Body during nearly six years of operation. Although it is true that many of these disputes are settled amicably and that busy periods can alternate with calm ones with regard to the number of claims submitted, the mechanism could nonetheless collapse under the sheer number of disputes. What is the solution? By increasing the budget and employing more people to cope with the overload of work or by making the rules clearer and inflicting severer sanctions to enforce compliance with the rules? The debate is open.

How the subject has evolved

The term "trade wars" stemmed from the conflicts occurring in the framework of the GATT and the WTO. These wars have often hit newspaper headlines, especially those pitting the United States against the European Union, and have contributed to the WTO's poor reputation.
Increasingly aware of the negative effects of globalization and the malfunctioning of regulatory systems, civil society has decided to act. Reforming the dispute settlement system was one of the many claims made by civil society at Seattle.

In the GATT texts of 1947, only two articles (XXII and XXIII) dealt with the settlement of disputes. It was a simple condition concerning consultations to be carried out to ensure "the protection of concessions and advantages". The panel's decisions were adopted by all the member countries by consensus, meaning that all the countries that wanted to give their opinion (they could abstain) were expected to give their approval (or not be opposed) in order for a decision to be accepted. However, in the case of panels dealing with dumping and subsidies, this consensus generally failed (the countries on the losing end were generally against) and the solutions announced by the panels were regularly rejected. The trade wars then followed.

With the advent of the World Trade Organization, the "Agreement Memorandum on the rules and procedures regulating disputes" was adopted and the Appelate Body was set up.
The United States wanted a more efficient system than that ^provided by the GATT. The EU and the less developed countries sought at any cost to forbid recourse to unilateral sanctions, fearing that they would become almost systematic. Indeed, the United States frequently invoked the "Trade Act 301" authorizing retaliatory measures against countries and companies in violation (…), i.e. whose practices were considered by the American government as discriminatory, unjustifiable and impeding or restricting their commercial activities. These measures were unilateral since they were based only on American appreciations.

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The SUPER 301

In 1998, the "Omnibus Trade and Competitiveness Act " brought in the "Super 301", the name given to a special procedure to pursue investigations into "unfair" trade practices. On March 3rd 1994, President Clinton had an executive order passed which set priorities for expanding trade. Referring to the "Super 301"(2) procedure, this executive order requires the United States Representative for Trade to identify, on the basis of information in the annual "National Trade Estimates", the unfair trade practices to be dealt with by priority and undertake procedures against them by virtue of article 301. On September 27th 1995, this executive order was renewed for a two-year period. Some members of the American Congress demanded that the system be brought back into force.

The United States often use the Super 301 to protect intellectual property outside its borders. Its Trade Representative has drawn up a list of "countries to be given priority monitoring" and a second list of "countries to be monitored". The former are monitored closely and are subject to an investigation liable to result in unilateral trade sanctions. The latter are those countries that do not ensure the protection of intellectual property rights held by American individuals or companies or which refuse access to sectors related to intellectual property rights.

Finally, the Memorandum led the United States to agree to give up resorting to unilateral measures. Nonetheless, the American government has not abrogated its unilateral trade legislation. The legal pirouette allowing the USA not to condemn the Super 301 at the WTO was to say that this law could not be condemned since its application (Statement of Administrative Action) stated quite clearly that the Super 301 would be applied in strict compliance with the conditions of the Memorandum".

In clearer terms, the USA obtained permission from the WTO to brandish a gun under the pretext that it was not loaded. The question is now to know whether the "threat of using an unloaded gun" (the USA reject this analogy) is acceptable under international law. When all is said and done, how many countries have read the report and know that the Super 301 is only a "paper tiger"

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In thirty pages with 27 articles, the Memorandum describes the procedure to be applied in the case of dispute (from starting a dispute procedure to the adoption of a panel report by the member countries). It should be remembered that the WTO (or its secretariat) is not empowered to start an investigation or a procedure. This power belongs to the members, which can start conciliation procedures, constitute panels to deal with complaints, adopt their reports and those drawn up by the appeals committee, and authorize the suspension of concessions.

Contrary to the GATT system of consensus, the panels and reports of the WTO's Appeals Committee are adopted according to a completely new system regarding international law that can be termed a "reversed" consensus system. According to this system, in order for a decision to be rejected, all the members that

want to express their opinion must oppose it formally. Thus the panel reports are almost always adopted automatically, leaving the Appeals Committee as the only means of recourse. In simpler terms, consensus was required at the GATT to obtain the green light. Nowadays, consensus is necessary only when a red light is wanted.

This procedure was widely criticized by the NGOs and the developing countries belonging to the WTO, rightly concerned that the procedure merely served to validate the decisions of the panels without providing the possibility to oppose them.
The Memorandum also made changes to the "sanctions" system.
When a GATT panel finished its report (insofar as it was adopted by the Contracting Parties), a plaintiff party was entitled to suspend concessions only in the sector concerned by the violation. For example, a conflict in agriculture could only lead to revoking concessions for an agricultural product.
With the WTO, the scope for retaliation is wider. For example, a complaint about agriculture may lead to the suspension of concessions in the sanitary and phytosanitary sectors. And "if the circumstances are serious enough" the plaintiff can even be authorized to suspend concessions relating to another agreement. In this case, the term "crossed retaliation" is used. Thus, a dispute in the framework of the ADPIC agreement (i.e. related to intellectual property rights) can result in an embargo on soya imports. The link between the subject of the complaint and the subject of the retaliation disappears completely. The WTO therefore widens the scope for reprisals, strengthening their dissuasive nature. The developing country members of the WTO, including the least advanced countries, find advantages in this change: Ecuador has applied crossed retaliations against Europe). Nonetheless, due to the unequal strengths of the economies in play, in the case of a sanction applied by a developing country against an industrialized country, the country that sanctions often finds itself sanctioned in return.

The positions in play

Two types of group – international NGOs and developing countries – have expressed positions that match the stakes at play at the WTO.

The NGOs (especially environmental and consumer groups) have actively criticized the dispute settlement system and the decisions made by the panels. They demand the reform of this system both in substance and in form.
Concerning the form, they demand transparency (especially concerning access to information) and openness permitting the participation of members of civil society in the dispute procedures. As for the substance, they demand that the system takes greater account of public health, the environment and human rights.

The developing countries consider that the Appelate Body does not fulfil its role of "guarantor" of the balance between the rights and obligations of the member countries. The least advanced countries claim "special and differentiated" treatment more in their favor, in other words different and less restrictive obligations than those imposed on rich countries. This stance can be justified by several reasons at least:

- The exceptionally high cost of the dispute procedure: a panel costs $500,000 on average. What developing country can afford this kind of budget?

- Lack of access to legal experts. The lack of legal experts and specialists on the rules of the WTO prohibits any approach made by them and reduce their capacity to defend their national interests.
- Regarding trade sanctions adopted in the case of dispute, they question the current system's "advantages". What effect can the sanctions applied by a small country have against European imports?
- Lastly, the adoption of decisions taken by "reversed" consensus is liable to be coercive: no member alone can invalidate a decision taken by the dispute settlement system.

Nonetheless, the developing countries are wary of the demands made by the NGOs (whose representativeness is sometimes questioned), since they add social and environmental problems to their economic ones. They feel that these new parameters involve new risks and above all that of making access to markets difficult due to sanitary, environmental and social standards.

The stakes for a "responsible and united world"

The credibility of the system is at stake.
First of all, this stems from the absence of effective and systematic sanctions against ALL defaulting on undertakings.
Sanctions require that a complaint be made first. However, many developing countries are afraid of "attacking" rich countries from which they receive aid.
Secondly, the reason so panels exist is because the rules are obscure and poorly negotiated. This also shows the reticence of member countries to conform to their commitments.

Does legalism obscure the basic problems?
Since the ORD was set up, several panels have brought to a head the debate about the lack of correspondence between the operation of the multilateral trade system and the global expectations of citizens. The panels take a purely legal approach: they are responsible for analyzing objectively the issue they are called on to examine and only check the conformity of the facts with the texts of the WTO or the agreement in question.
However, all the WTO's texts refer to the notion that the individual well-being of the consumer should improve due to the freer circulation of "individualized" goods, but not enough account is taken of overall well-being and public property.
This is the case, for example, of the Multilateral Environment Agreements (MEA). Although there has not yet been a dispute between an MEA and a WTO agreement, the lack of clarity between the compatibility of the conditions recommended in the different agreements leads to genuine risks.
Thus the WTO seems to consider its "law" as that which prevails outside the scope of its competencies.

The principle of precaution
When a country adopts an exceptional trade measure, such as prohibiting the import of beef raised on hormones, due to its risk to health or the national environment, it must provide "scientific proof" that the risk is genuinely proven and recognized.

In the hormone dispute, the United States demanded that Europe prove scientifically that the product forbidden was harmful. There is near unanimity among European countries on the right to preserve health and the environment, even in the absence of scientific proof. This is to protect the general interest and consumers. Consideration on the principle of precaution has sprung from these recent disputes.
Justifiably, civil society demanded that the principle of precaution be used for sanitary and phytosanitary reasons in the absence of scientific proof. The pertinence of the principle of precaution for social and economic reasons should be tested in the light of the commitments made in the WTO's agreements on sustainable development.

The question of development
Several articles of the "Memorandum" provide for special conditions in favor of developing countries. For example, industrialized countries are asked to "pay particular attention to the problems and interests of member developing countries". When a dispute concerns an industrialized country and a developing country, the latter can ask that at least one of the three members of the panel is a national of a developing country. Lastly, industrialized countries should show "moderation" when they raise questions about the least advanced countries. However, no instrument has been mentioned and none is planned to ensure that these conditions are respected.

In the present system, a country that "loses" a panel is faced by several options:
- it can modify its trade policy to conform with the WTO's rules,
- it can be sanctioned (these sanctions are always temporary),
- or it pays the "bill" by proposing voluntary and temporary compensation of a non-discriminatory nature (calculated on the basis of the Most Favored Nation clause). The evidence shows that this condition gives a "comparative advantage" to rich countries.

Who will constitute "Civil Society"?
The decisive role and influence of Chiquita, a multinational corporation, in setting up the panel to deal with the banana dispute was obvious. On this occasion, civil society was able to show how companies could intervene abusively and it launched a debate on the influence of vested interests in the operation of the dispute settlement system.
However, by opening the dispute settlement system to participation by development and environment NGOs, there is a risk of the WTO being obliged to allow even greater participation of "industrial NGOs".

<u>Proposal and directions for reform</u>

1. Clarify the rules of the different agreements by giving them a dissuasive orientation.
Clear and well negotiated rules are needed that are not called into question systematically and which are less open to interpretation.

2. Professionnalise the judges.

The appointment of three members of the panels and the appeals committee (chosen from nine permanent members) raises a problem. There is a lack of expertise, quality of judgement, impartiality, etc.

3. Set up the right to legal aid.
The WTO recently set up a legal assistance office for developing countries, thanks to Dutch finance. This approach needs encouraging.

4. Set up a "collective sanction" system in the settlement of disputes.
The present system is based on the capacity of the country that wins its case to suspend trade concessions to oblige the losing country to abide by the panel's decisions. For industrialized countries, the loss of concessions does not represent a sufficiently high economic cost to oblige them to apply the panel's decisions, especially when the winning party is a developing country with no way of exerting pressure. In this case, shouldn't it be possible to enforce the collective withdrawal of concessions, i.e. retaliations applied by all the members?

5. Promote transparency.
Public hearings should be opened to allow journalists and the public to listen to the panels' deliberations.

6. Accept the hearing of third parties, including NGOS.
Article 10 requires modifying with the provision for intervention by civil society organizations (those particularly concerned with the general interest and not the interests of specific groups) in the dispute settlement system, when they deem that a measure taken in the framework of the dispute settlement system is prejudicial to undertakings at international level on development and the environment.

7. Make it obligatory for the members of the panel to take the "Amicus Briefs" submitted to it into account.
These are documents drawn up by experts providing additional information and elements concerning the dispute. The Memorandum states that the panel is entitled to consult with experts. It would be preferable for the panel to be obliged to consult with experts.

8. Provide for the "temporary exclusion from the WTO for serious nonconformity with essential obligations"
.A "temporary exclusion system" is required in the framework of the dispute settlement system. This would mean that a country whose trade practices constitute a serious violation of its obligations vis-à-vis WTO rules would be considered as "persona non grata" at the WTO for a given period (to be defined). As with the above proposal for collective sanctions, temporary exclusions decided by vote (according to a method to be defined) would be applied by all the members.

Membership of new countries to the WTO

What definition of economic democracy is shared by 137 member countries[3] when over 30 countries are left waiting at the door?

The conditions for membership are much too complicated: countries that want to join the WTO must answer over a thousand questions.

The membership process is discretionary, arbitrary and unconscionable: new members are asked to open their markets under conditions surpassing those of already existing WTO members, without reciprocity (the WTO's basic rule). By becoming a member, Mongolia has become an export market for the trading powers, America in particular.
This problem needs to be re-examined by defining objective and fair criteria and conditions and not by leaving every country to "save its skin" without any legal basis.

Agriculture

A reminder

Every country has, at some time or other in its history, gone through periods of food shortages (caused by drought, wars, etc.) which make products unobtainable by poor consumers or, on the contrary, crises caused by excess production leading to the collapse of prices for producers.

These upheavals, both old and new, to which we must now add food contamination, are rooted in the collective conscience, thereby making agriculture an extremely sensitive issue politically, economically and above all socially. It is therefore hardly surprising under these conditions that governments intervene in the agricultural sector more than in any other.

During the thirties, America paved the way with Roosevelt's Adjustment Agriculture Act (1933), a law that gave the President the power to waive the United States international obligations in the case where it was faced with scarcity of supply or overproduction. Better still, in 1955, the United States obtained an almost permanent waiver from GATT totally dispensing it from having to comply with GATT rules on agriculture.
Under these conditions, it easy to see that agriculture was placed "under protection" in the GATT agreements of 1948 and "protected from any negotiation" during every the round preceding the Uruguay Round.

However, the landscape and economics of agriculture had changed. Although the risks of scarcity were eliminated definitively, the protection and the subsidies given to agriculture exacerbated a trend of

[3] 138 with the recent membership of Albania.

overproduction, whereas the share of agriculture on the world markets progressively decreased. Agricultural exchanges represented 50% of world trade in the fifties, though fell to only 10% during the eighties. These figures call into question the advantage of strong protection within borders and fuelled criticism from the developing countries in Asia and Latin America, which were emerging as exporters of agricultural produce to which Europe and the United States wanted to export more industrial products and services.

This is the context in which the Uruguay Round was launched, resulting in the Agriculture Agreement signed and incorporated in the Marrakech Agreement.

In this agricultural agreement, the member countries of the WTO undertook to reduce their support for agriculture on three levels:

- access to markets (reduction of customs duties, for example, improve the possibility of trading partners to export to protected markets);
- internal support (reduction in this area reduces the competitiveness of hitherto subsidized products);
- export subsidies (which permitted reducing the prices of exported products and therefore win greater shares of the market).

In parallel with this agreement on agriculture, other more specific measures concerning the sanitary and phytosanitary sectors, technical standards and intellectual property will have, as will be seen further on, far from negligible impacts on the structure of agricultural and food trading.

Observation

Despite the provision of specific conditions for developing countries, implementing the agriculture agreement has led to:

- serious imbalances remain in the levels of support and protection between industrialized and developing countries;
- the exacerbation of this imbalance in the post UR phase by the structural adjustment policies imposed on the developing countries by the IMF and the World Bank.

Thus, in 1995, customs duties in the developing countries were on average 36%, whereas they were only 20% in developing countries, whereas the industrialized countries subsidized their exports by 84%. The green box measures, that only the industrialized countries can provide themselves, increased by 54% during the period from 1986 to 1995.
Recent changes give no reason for encouragement: during the period 1997-1999, the equivalent support to production doubled in the United States, rising from 12 to 24%, while it rose from 39 to 49% in Europe[4].

[4] L'équivalent soutien à la production (ESP) est calculé en cumulant toutes les formes de soutien dont bénéficie un produit dans un pays donné, la référence de base, pour définir le soutien en pourcentage, étant le prix de ce produit sur le marché mondial (ce qui peut être une référence contestable lorsque ce prix est la conséquence de pratiques de dumping).

The period of deregulation that we have undergone, spurred by both the application of the Marrakech Agreement and structural adjustment policies, has left a surprising heritage:

- the developing countries with net import deficits have had to cope with higher world prices, without being able to obtain the aid promised in the Agreement on Agriculture by the industrialized countries.
- in general, the developing countries have had to increase their agricultural and food imports by conforming to their commitment to open up their markets further
- This increase in imports was not compensated by an increase in their agricultural and food exports: the constraints related to sanitary and phytosanitary standards, technical standards, and methods or allocating import quotas imposed by the industrialized countries have often been more dissuasive than customs duties.
- Lastly, although gains in productivity are achieved in particular by increasing the size of farms, the developing countries are unable to profit from this possibility. They did not have the resources to finance a "safety net" or job-conversion assistance that would have enabled them to deal with the problem of dispossessed small farmers.

The positions in play

Agriculture, along with services, is part of what is called the "built-in" agenda. In other words, it was an obligatory item for the Millennium Round.

The United States used this advantage by demanding negotiations sector by sector, limited to agriculture and services.

It also wanted to focus the negotiation on export subsidies. Once again it would play the role of the righteous: most of its agricultural subsidies have been converted into direct income support while the export loans and the food aid it gives are not considered as export subsidies by the WTO.

The European Union wanted to negotiate on agriculture in a global framework in order to balance the results between the Union's member countries.

If it were to eliminate export subsidies, it would have to solve a difficult problem: if milk quotas were not reduced at the same time, it would mean an increase of 10% on production hitherto exported, that the internal market would have to absorb. This would occur with the "bonus" of a fall in prices of nearly 50%!

This is why the EU, among others, did not want to limit negotiations only to reducing subsidies, preferring to widen them to cover everything that goes toward subsidizing exports (loans, tax incentives and even food aid used for commercial ends). By way of example, the EU was refused entry to the Korean pork market, simply because the USA granted Korea an interest free period of three years to pay for its imports.

The European Union also wanted to retain the "Blue Box" which permits, whatever else is said, subsidizing exports and maintaining direct aid targeted solely on the "cereal producers of the 15 countries composing the EU without central and eastern European countries being able to benefit. These aids are in fact paid to offset falls in guaranteed prices (which is not the case for the latter countries) and not subject to commitments to reduce them.

The Cairns Group, composed of 15 countries, is undoubtedly the most "aggressive" critic of any form of agricultural subsidy. It is composed of exporters of agricultural products that do not have the financial resources to pay for direct aid, unlike Europe or the United States.

This leaves the poor group of net importing countries "led" by Egypt. They wanted the industrialized countries to commit themselves more firmly to dealing with the price rises caused by deregulation. Since this has not the case, these countries have shied away from those that promulgate greater deregulation of the sector in the industrialized countries.

The stakes

Finally, the question is to know how the curve of agricultural support and protection will change, given that today, paradoxically, the richer the country, the greater the amount of protection and support. Will we therefore "witness":

- fall in the support and protection accorded in industrialized countries?
- an increase of support and protection in developing countries?

And in what proportions?

Proposals

The question of agriculture is complex and politically sensitive. However, it suffers above all from the fact that it is dealt with only by economic players with big appetites (agri-businesses) and economic and social players (farmers' federations and unions) that tend to project their view of the future of the world's agriculture through the prisms of national and vested interests.

Recognition must be given to the Uruguay Round for having started the process that has shed light on the disparities with which the agriculture of different nations is treated around the world.

The challenge to be met at the Millennium Cycle will be to set up negotiations on the basis of fundamental principles that hold valid for every type of agriculture and farmer around the world and not only for a few regional systems and multinational companies.

Thus the principle of humanity and respect for human dignity, preservation of the common good and responsibility, inspires us to make the following proposals:

Evaluate the agricultural agreement made at the Uruguay Round on the basis of more rigorous and fairer criteria

It would seem that so-called "scientific" criteria, formulated to define the impact of the different measures and instruments implemented by agricultural policy on prices, are based on questionable ethics. How is it possible to accept that $52 billion in aid paid to American farmers under cover of the "Green Box" has no impact on world prices?

From this standpoint, in-depth work should be carried out in order to formulate a clear definition of agricultural dumping.

The Agreement on Agriculture stipulates that subsidies (including export subsidies) which are paid in conformity with commitments do not entitle the application of anti-dumping measures by the importing countries. But this amounts to having one law for the rich and another for the poor, when, contrary to the spirit of the self-limiting agreements, the industrialized countries have made wide use of anti-dumping measures against imports of textiles and clothes from the developing countries. The agreement on agriculture needs correcting on this point. What effect can a customs duty of 20% (the average applied by developing countries) have when an agricultural product is put onto the international market at a quarter of its cost price?

The Marrakech Agreement legitimated and legalized a farm aid system that privileges the industrialized nations insofar as it is based more on budgetary aid than on protection at the border.

Considerable rebalancing is called for if the principle that peoples have the right to self sufficiency is to take form.

Lastly, the undertakings made by the developing countries in the agreements signed at Marrakech or by countries making changes in the framework of becoming WTO members should be reevaluated. Most of them were incapable of assessing the impacts of these undertakings. Here again, and according to a principle of equity, it is indispensable to restore balance to the undertakings.

Starting off from a new basis

According to article XX of the Agreement on Agriculture signed at Marrakech, agriculture will be an "obligatory" subject of the Millennium Cycle. However, this article does not make any stipulation in terms of period, content or negotiating method. Thus there is room to make proposals.

On the basis of the fundamental principles evoked above, and also by taking into account the simple logic of common sense, the rules and undertakings drafted in the next agreement must permit better coherence and convergence between this agreement and other international agreements: the Convention on Biodiversity, on climate, the Charter of Human Rights, etc.

Frank Wolter, the Director of the Agriculture and Raw Materials Division at the WTO, stated in his speech at the FAO conference on food security that this raised several questions, one of which was the need for better and surer access to food.

Over the last few years, with climatic incidents and geopolitical pressure using food as a weapon, food security is in danger of being weakened by the systematic deregulation of trade and agriculture policies insofar as production and exports will be concentrated in the most competitive areas.

Consequently, there is a need to define the rules and commitments capable of dealing with this issue.
From this standpoint, strict regulation of competition on the world market would immediately prevent dominant positions and excessive concentrations of supply. These rules would concern agricultural products and fertilizers.

Furthermore, a move must be made toward redefining the rules concerning access to markets.

Regarding this, the level and the form of protection should be defined as a function of productivity levels and by taking into account the following criteria:

. Rural population / employment in relation to the total population;

. Productivity of the earth, fertilizers, labor;

. The potential for diversification (problems linked to being hemmed in, insularity, the size of the country, etc.);

. The share of production exported: the products intended for the domestic market could benefit from greater protection (to be defined in relation to an international convention on food security).

These undertakings regarding access to markets, adapted roughly to existing productivity, should be consolidated and be subject to commitments to apply gradual reductions. This would oblige each country to progress.

The IMF and the World Bank should be associated in the formulation of these systems of "enlightened deregulation", as should other institutions (UNDP, UNEP, FAO, etc…), and thes should undertake not to call into question, for example, by demanding the applicaiton of structural adjustments, policies decided on by the developing countries in the framework of WTO agreements.

Investments

The present situation

The issue of investments was brought into GATT during the Uruguay Round of negotiations. The agreement on the measures on investments related to trade, better known as TRIMS (Trade-Related Investment Measures) is of relatively limited scope and only applies to the trade of goods. It deals essentially with measures on investments (TIM) that contravene the principle of national treatment or that could include quantitative restrictions. The most interesting part of the agreement is undoubtedly its appendix which gives a so-called "exemplative" list of TIMs that should be eliminated by 1997 for industrialized countries, and by 2000 for the least advanced countries. These are, for example, incentive measures that oblige a foreign company to procure at least part of its supplies in the form of local raw materials or which limit the import of raw materials or the export of finished products.

Admittedly, this agreement did make the headlines, likewise with the different conditions of the General Agreement on Trade in Services (GATS) which opened the issue of investments in the area of services.

In fact, it was not before public opinion became aware indirectly of the fact that a Multilateral Agreement on Investments was being negotiated at the OECD that interest in this issue spread beyond that of a few insiders.

The positions in play

The incorporation of the subject of investments in future negotiations is being pushed for most part by the industrialized countries led, among others, by the European Union. Indeed, since the "adjournment" of the Multilateral Agreement on Investments (MAI) at the OECD, the USA seems to have retreated somewhat from its original position.

- Although all the developing countries recognize the advantages of foreign investments and desire them, they are against a negotiation on the subject in the framework of the WTO insofar as they fear for their sovereignty. The justification given by the European Union for including this subject can only increase this fear, since emphasis is given to the protection of European investments in other countries.
- The report demanded from Catherine Lalumière by the French Prime Minister before Seattle proposed that countries committed themselves, in the same way as for services, to positive lists. According to this principle, any sector of economic activity not mentioned on the list of commitments should not be subject to deregulation. This strategy was the reverse, in a certain way, to that which had been

proposed in the framework of the MAI. The effect hoped for from this approach was to protect state sovereignty.

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This method would result in the following: to attract foreign investment, small countries would be obliged to lengthen the list, whereas countries such as China, which represent a huge market with hopes for fast return on investments, could satisfy themselves with less lengthy lists.

The stakes for a responsible and united world

An agreement on investment is necessary, i.e. a regulatory framework to avoid "uncontrolled delocalizations" linked in particular to the existence of tax havens.

However, it is too early to talk about an agreement, thus its scope should be limited. If it is to be applied in a multilateral framework on investment, it should be limited to direct investment abroad, since general consensus exists as to its genuine utility.

Proposals

"Negotiations" should start under the following conditions:

- They should take place in the most appropriate multilateral framework, something which is far from simple. It is obvious that the OECD cannot provide this framework, since it represents industrialized countries and a few emerging economies.

- An evaluation of the TRIMs agreement should be carried out before starting any new negotiations. If the reports of the committee specialized in TIMs are to be believed, certain developing and emerging country members have difficulties in identifying the TIMs considered as incompatible with those that are and, consequently, notifying them to the committee.

- The task of the working group on trade and investment, started in December 96 following the Ministerial Declaration of Singapore, must be continued. Its agenda should include the following points:
  - Examination of the different codes of behavior and guidelines regarding corporations (especially transnationals) formulated by the different authorities, since the OECD is not the only reference on the subject.
  - Draw up an inventory and take stock of the different Bilateral Investment Treaties (BIT) and their impact on sustainable economic development in the countries in which the investments are made.
  - Set up a committee on bilateral agreements to which all countries would notify their investment procedures and bilateral agreements: there are 1,630 bilateral investment treaties (most of them are secret, and it is common knowledge that they give rise to kickbacks). The texts of these agreements would serve as the committee's basis of work.

Competition policy

The present situation

Competition policy includes all the regulations that a country implements at national level to permit consumers to buy the product they want, without limits on quantity and at reasonable prices, and ensure that genuine competition exists between companies. In particular it aims to present corporations from taking over a dominant or monopoly position on the national market.

The issue of relations between trade and competition policies is closely linked to that of trade and investment. They have at least two points in common, which explain why they are "sensitive" subjects in the framework of the WTO:

- They concern measures, considered as obstacles or impairments to trade, set up within countries, whereas the WTO Agreements generally deal with measures applied at borders.
- They are closely bound with company practices, whereas the WTO Agreements deal mainly with governmental measures.

Since Marrakech: Singapore

During the Singapore Conference, a decision was taken to set up for a period of two years a working group on trade and competition policy (its mandate was renewed in December 1998), in order to explore and study the subject in-depth.

The positions /proposals/interests in play for the main protagonists

Likewise with investments, the issue of competition policy is above all impelled by the industrialized countries (with the European Union and Japan at their head), for whom the deregulation of investments goes hand in hand with bolstering competition policies. In particular, they hope that commitments can be made by all the member countries with regard to the transparency of their national markets and non-discrimination against foreign companies.

Most developing countries (especially African ones) do not possess any national regulations on competition policy and thus have little experience, skill or distance from which to analyze the subject. Although they acknowledge the advantage of having a national policy on competition, they are unable to evaluate efficiently the stakes that may be involved by possible negotiation on the subject. In particular, they fear that it amounts to a new attempt by the industrialized countries to oblige them to open up their markets still further. They demand that the "educational work" started in the *Working group on trade and competition* policy be continued before any negotiations begin.

Other countries, including the United States, place emphasis on the international dimension of competition policy and hope that antitrust laws are brought to the fore along with international cooperation to meet the challenge of concentrations of corporations at world level.

The stakes

There is a stalemate over GMOs, for example, as they are not only a risk for the environment, health and biodiversity, but they also raise the problem of monopolies by companies.

The lawsuit taken out by American farmers against Monsanto is an example of this situation. This firm, which has opted for GMOs, is the only company to supply American farmers with seeds. As consumers do not want GMOs, the farmers seek non-GMO seeds, but these can no longer be found on the American market.

A healthy competition policy formulated not only within each country but also on the international market would be a key response to the demands made by civil society.

It would seem that such regulations would never find support from the economic players of the major powers, as they amount to a direct threat to their expansion on international markets.

Its implementation WILL DEPEND EXCLUSIVELY ON THE DETERMINATION OF CIVIL SOCIETY.

This is undoubtedly the most urgent and basic task at the WTO.

Proposals and directions for work `

The "educational" work carried out by the Working group on Trade and Competition Policy should be continued, with emphasis placed on:

- . Defining that which constitutes barriers against competition set up by companies (since this has not yet been done). This would improve their identification;.
- The international dimension of policy regarding competition and especially the issue of cartels, mergers, concentrations, etc..
- The implementation of real international cooperation on the technical and financial levels to investigate the case of anti-competition practices at international level.

The proposal made by Brazil to draw up a world report on competition, similar to the World Investment Report, should be taken up. This task could be entrusted to the UNCTAD.

The industrialized countries should be obliged to commit themselves to giving genuine technical and concrete assistance to countries which do not have a competition policy, so they can implement suitable national legislations and administrations.

Lastly, the notion of progressiveness in the commitments of countries to defining a further multilateral framework for competition policy.

SPS (Sanitary and Phytosanitary Measures) and TOT (Technical Obstacles to Trade)

The SPS Agreement

Article XX of the GATT of 1948 stipulated that a member country of the agreement could oppose the import of a given product if it considered that this measure was necessary to "protect the health and life of persons and animals and preserve plants".

It is therefore in reference to this article that a large number of sanitary, phytosanitary and technical standards came into law, imposed on imported products by the "contracting parties of the GATT".

However, for sanitary and phytosanitary questions, the use of these standards for protectionist ends has led, to the conception of what are called the "three sisters": the Codex Alimentarius, the International Office of Epizootics (IOE), and the International Convention for the Protection of Plants (ICPP).

The Codex Alimentarius, managed jointly by the FAO (Food and Agriculture Organization) and the WTO (World Health Organization): a small structure where the delegations led by the Ministries of Agriculture of the Organization's member countries sit (though the representatives of private firms are also prominent). The Codex is responsible, at international level, for formulating the standards, directives and recommendations concerning:

- food additives and contaminants,
- veterinary medicine residues,
- pesticide residues
- analysis and sampling methods,
- hygiene codes.

The International Office of Epizootics (IOE), is responsible, according to the same method of operation, for formulating:

- an international code for animal health,
- zoonoses: standards and recommendations
- monitoring, control and eradication of infections,
- the map of areas free of infections.

The International Convention for the Protection of Plants (ICPP), responsible for managing:

- pest control,
- quarantine principles,
- risk evaluation methods,
- criteria for establishing infection free areas,
- glossaries, codes of behavior, etc.

Insofar as not all the member countries of the GATT/WTO are also members of these organizations or agreements, and since the standards they contain are not of an obligatory nature (due to the sanctions system), the WTO, although acknowledging that these agreements constitute references in their areas, has set up a specific agreement called the SPS (Sanitary and Phytosanitary Agreement).

While reasserting the sovereign right to establish a level of sanitary protection deemed appropriate (art. 2.1), this agreement attempts to guarantee:

- non-abusive application by demanding:
    - scientific justification (art.2.2),
    - transparency (art 7) by making obligatory the notification, among other things, of drafts and modifications of standards, the setting up of a national organization of notification and a national information office

- non-protectionist application, by demanding, among other things, that imported products do not have to meet severer standards than that of national products (principle of national treatment).

The SPS agreement encourages the harmonization of standards at international level and "monitors"' this harmonization process. Lastly, it provides for a technical assistance program for the developing countries (art. 9) that can be implemented according to three possible modes of cooperation: bilateral aid, programs managed by the "three sisters", and technical assistance from other organization such as the WTO.

The TOT Agreement

The SPS Agreement covers all the measures aimed at protecting the health of human beings, animals and plants, whether they are technical instructions or not.

The TOT agreement, which is framed according the same logic as the SPS Agreement, is aimed at all the technical rules and voluntary standards as well as the procedures intended to enforce compliance with them, apart from the sanitary and phytosanitary measures defined by the SPS Agreement. Consequently, it is the nature of the measure applied that determines whether or not it falls within the scope of the TOT agreement, and its objective which determines if it falls within the scope of the SPS agreement.

The TOT measures can concern any subject whatever, for example, safety devices for cars, energy savers or the shape of cardboard packages for food products. In the area of human health, for example, TOT standards can include restrictions applicable to pharmaceutical products or the labeling of cigarette packets.

Most of the measures linked to the fight against human infections fall within the scope of the TOT agreement, except those concerning infections borne by plants and animals (such as rabies). Consequently, the SPS agreement applies above all to the protection of plants and animals.

The progression of the subject

The disputes between the United States and the European Union on the question of hormones and GMOs have demonstrated that the rules drawn up by the WTO in the sanitary and phytosanitary area were not clear enough and did not shelter trade relations from conflicts.

Regarding the dispute over hormones, the WTO used the Codex Alimentarius which draws up its standards on the basis of scientific proof. In this specific case, scientific proof of the danger was not forthcoming. Therefore hormone treated meat is considered as being without risk for human consumption.

This case led to the following demonstration: when testosterone (for example), which is produced naturally by non-castrated animals, is injected into castrated cattle, the same hormones are obtained as those produced and injected artificially.

The only proof that came to light was that both types of hormone can be equally dangerous for certain groups of consumers, namely adolescents. The conclusion drawn was that if one type of hormone was forbidden, then the other should be forbidden, too. Thus the European Union can blame its "defeat" before the WTO panel on the Codex Alimentarius.

Regarding GMOs, the scope is a little wider. The works of the Codex are just beginning and a program is underway.

The idea is to apply here the well-known "principle of precaution" which, through want of clear scientific proof, consists in protection against possible risks by banning the product.

Firstly, it should be mentioned that the term "principle of precaution" does not appear explicitly in the WTO agreements. However, the hormones panel made it clear that the WTO did not forbid its application. Indeed, the SPS stipulates that temporary measures can be taken, while awaiting scientific and genuine proof founded on the basis of "preliminary scientific evidence" (which was not the case in the hormones dispute).

Lastly, genuine scientific proof may be supported by a minority in the scientific world.

The European Commission considers that in this case there are more arguments to show that certain risks exist: the risk of propagation of undesirable (resistant plants), the unpredictable effects of "gene bombarding", and the procedure used to bring about genetic modifications.

The positions in play

For the moment, it is the consumers who have won the GMO "battle" war, as they have been increasingly numerous in refusing to purchase GMO based products. This has reached such proportions that American agri-businesses have requested farmers to sell them only products without GMOs. However, this was almost impracticable, since, as mentioned above, attempts by American farmers to find supplies of non-GMO seeds had become impossible due to the monopoly held by Monsanto over the seed market.

The result of the lawsuit taken out by American farmers against Monsanto is now pending.

As stated above, the battle over GMOs was "won" in the field by consumers, though not in the scientific field.

Proof of this can be seen, for example, in the French scientific journal "La Recherche", which criticizes the fact that the judgement on GMOs only takes into account their risks and disadvantages rather than the advantages they provide.

A challenge on the level of disparities

All said and done, although the scientific approach is vital for assessing the soundness of the new standards and technologies introduced into the market, it is not enough. Good governance requires taking into account all the phenomena that these introductions cause with respect to society, economics and politics.

The drafting of sanitary and phytosanitary standards and technical standards is legitimate as such, since it aims to protect health and the environment.

But it can also bring about rapid and substantial changes in the structure of comparative advantages and thus the structure of trade.

This is true for exports by developing countries to industrialised ones insofar as they have problems in conforming to the standards set by the latter and in adapting to their rapid progression.Likewise for the exports of industrialized countries to developing countries without the technical and financial means required to formulate their own standards, thus they adopt those of the industrialized countries with which they trade most of which set the "strictest" standards. Consequently, when developing countries adopt European standards on hormones and GMOs, the United States finds itself not only refused by the European market but also those of all the developing countries that have aligned their standards with those of the European Union. Consequently, these standards attract even more hostility!

In Senegal, regulations concerning product standards and quality have been in existence for a long time. They stem from Law 66-48 of 27th May 1966 and the rulings for application 68-507 and 68-503 of May 1968.

They serve as the basis for all the measures setting the quality and control of food products as well as those on fraud prevention.

However, only 159 standards were identified in 1982, 41 of which concerned agricultural and food products.

Nonetheless, these standards are the indispensable keys for gaining access to export markets. Under these conditions, the experts recommend the temporary adoption of internationally recognized standards (Codex or the European Union) and additional work in view to bolstering Senegalese laws and regulations so that they reach international standards.

Source: FAO Doc.

Insofar as we are moving toward the progressive elimination of traditional protection measures (certain experts predict that customs duties will have disappeared by 2010), standards will become a key element in determining comparative advantages.

For the moment, most of these standards are formulated in Anglo-Saxon countries. At Seattle, the developing countries insisted that the countries that represent the interests of all the regions of the world be associated with the drafting of these standards.

Proposals

This approach is laudable but insufficient.

The introduction of new technologies often goes hand in hand (the cases of Microsoft and Monsanto are cogent) with building monopolies that are not only contrary to the aim of reducing disparities and inequalities but against the very principle of the market economy.

Thus a new workshop should be started on "new technologies, standards and the right of competition". In the case of GMOs, the need to formulate rules against dominant positions should prevail over the insistence of demonstrating the risks we run vis-à-vis GMOs with respect to health and the environment.

Lastly, agencies specialized in food safety are being set up in France and Europe, with the aim of escaping pressure from the lobbies. It would be preferable that these agencies sit at the Codex instead and in the place of the delegations led by Agriculture Ministries and Departments.

TRIPS (Agreement on Trade Related Intellectual Property Rights)

The present situation

As with services and agriculture, the TRIPs is part of the "built-in" agenda (the agenda drawn up at the Ministerial Meeting at Marrakech in 1994). It was included on the agenda since it contains "temporary" conditions that expire in 2000.

The TRIPs agreement was negotiated during the Uruguay Round and adopted at Marrakech in 1994. The TRIPs and GATS (acronym for the agreement on services), along with the GATT agreement, constitute the entirety of the WTO agreements. However, whereas the GATT and GATS demand more open markets for trade and less state control, the TRIPs aims at giving greater protection to intellectual property and thus greater control by the state in the sectors specified by the agreement. This paradox is hardly surprising given the commercial stakes at play.

During the 8 years of the Uruguay Round negotiations, the TRIPs agreement was a bone of contention between the industrialized countries as well as those of the South regarding both its form and substance. Concerning the form, most of the countries of the South only have rudimentary national protection systems. As for the substance, they were aware that a new agreement implied new obligations and they were wary of entering into a subject they could not control, neither did they have sufficient understanding of the stakes. Nonetheless, the TRIPs was adopted by consensus at the end of the negotiations: the developing countries had no choice but to sign the final Act which included the TRIPs agreement or withdraw completely.

The TRIPs covers the protection and respect of intellectual property rights. The signatory countries committed themselves to guaranteeing a minimum level of protection to intellectual property in eight sectors, including copyright, trademarks, geographic indications, industrial designs and models, patents and topographic configuration diagrams. Intellectual property rights are considered as private rights. As with the GATT, the agreement is based on the principle of the most favored nation and national treatment.

The conditions related to special and differentiated treatment, which are in all the GATT agreements, were not included in the TRIPs. Only a few modifications concerning the level of economic development were granted for the period provided to implement the undertakings.

During 1999, the TRIPs was again at the center of trade disputes in the framework of the GMO affair and the wider debate on patenting living organisms.

How the subject has evolved

The insistence of industrialized countries in defending a multilateral system of control via, among other things, licenses and patents led the developing countries (headed by India) to awareness of the stakes at play. The developing countries own the majority of the world's genetic heritage, giving rise to potential royalties that could become a huge resource for financing their development. This observation brought them to change their position. They called into question the idea of "common heritage" (at the core of the Convention on biological diversity), substituting it with that of "national heritage". Thus there was no longer any question of giving free access to resources that could be sold, unless compensatory measures such as technology transfers were exchanged in payment for those countries claiming to own the resources in question. The industrialized countries, on the contrary, wanted free access to what they deemed as essential resources for the future of agriculture and biotechnologies. Furthermore, conservation costs money and the developing countries did not intend footing the bill for conservation alone.
The original aim of conserving species and ecosystems therefore found itself in competition with that of technology transfers and access to genetic resources. Two years after Marrakech, at the Ministerial Conference of Singapore, intellectual property rights (IPR) have been relegated to the background of discussions by new subjects: the protection of investments and competition policy.

Given the stakes represented by all these subjects for the developing countries, it was vital for them demonstrate their opinions right from the preparation phase of the WTO's third ministerial conference and participate actively in defining the agenda of the Millennium Round.

The main points debated and the positions in play

One of the most important subjects at Seattle for the developing countries was the renegotiation of the TRIPs agreement, particularly the section on patents (section 5 of the Agreement), with special attention given to patents applicable to genetic resources and species.
According to the agreement, the period of protection granted was 20 years. The developing countries wanted to review this agreement that they had signed without understanding the content or the nature of its commitments.

The developing countries, headed by India and the African countries, demanded:

- the revision of Article 27.3b to include the protection of traditional know-how, compensation for the use of local resources and the condemnation of "bio-piracy". Article 27.3(b) focuses particularly on the protection of resources and biodiversity and the setting up of a patent system known as "sui generis". This is needed by the developing countries so that they can enjoy ownership of patents and therefore demand compensations for the use of local genetic resources by foreign firms. At present, the developing countries claim that the work of generations of farmers has created and maintained traditional varieties and that such work should be recognized. We are thus moving toward a twofold recognition:
  - that of the rights of patent owners so they have exclusivity over the sale of specific varieties of cultivated plants;

- that of farmers' rights which corresponds to the contribution of local communities toward creating and maintaining genetic resources.

Therefore Article 27 is a key element in the debate opposing the countries of the South against the industrialized countries. Nonetheless, the revision of this article is scheduled for 2000.

There is also the issue of setting up an obligatory license concession system. This amounts to a kind of pre-emption right used by a government to grant a license to a national government that has been refused the license by the company owning the rights. This system is mentioned mainly for medicines featuring on the list of those considered essential.

Another issue that is sure to be raised is that of the obligation of firms to produce full information guaranteeing the traceability of a product and the geographic origin of the genetic resources used in it. This type of condition would complete the enforcement of "prior consent" according to which a country can grant, in writing, its authorization to exploit and use local resources.

The NGOs of the North and the South have taken stands against patenting living organisms:Rapid progress in the field of genetic engineering has spurred biotechnology firms to apply for patents on living organisms. The firms in question see this as being a fair return on investments. However, civil society sees this as a problem of ethics.

At Seattle, the Friends of the Earth and more than 65 NGOs called on the governments of developing countries and the WTO not to include biotechnologies in the negotiations. The challenge of patents on living organisms directly concerns the rights of consumers to be informed correctly about what they consume and about the risk of new biotechnologies, especially genetically modified organisms. This demand is justified insofar as we are unable to stand back and identify possible impacts on health and the environment.

The American administration, The European Union and Norway.

The American administration has adamantly refused the principle of renegotiating the TRIPs. The EU and the USA wanted to set up a working group on biotechnologies within the WTO at the WTO ministerial meeting at Seattle. The NGOs think that this is a maneuver to open the way to a new agreement. Among the industrialized countries, Norway distinguished itself by taking a stand against patents on living organisms.

<u>The stakes</u>

According to the terms of the TRIPs agreement, "the protection and respect of the intellectual property rights procured should contribute to promoting technological innovation and the diffusion and transfer of technology to the mutual advantage of those who generate and those who use technological know-how and in a propitious way for social and economic well-being, thereby ensuring a balance between rights and duties".

However, when examining the real situation, it is difficult to see how this objective can be reached. The number of applications for patents, for example, has reached incredible proportions in the expectation of substantial royalties from the least discovery. And what if there is a trend toward patenting each step of research and development? This would mean that the rights will be paid not only for the discovery but for each of the different steps required to make it.

Here, a fundamental question needs raising: in what way will intellectual property rights slow down or promote development? Furthermore, what indicators do we possess to make such an analysis?

The TRIPs Council must examine the present agreement when the transition period expires, i.e. in 2000. This evaluation must involve NGOs and developing countries, but are the latter capable of making new and pertinent proposals?

Whatever the case, the debate on issues related to the rights of farmers, GMOs and biodiversity should be linked with the TRIPs rules.

Lastly, Article 8.1 on the "Principles" states: "The Members can, when they have formulated or modified their laws and regulations, adopt the measures required to protect public health and nutrition and to promote public interest in sectors of vital importance for their socio-economic and technological development, provided that the measures are compatible with the conditions of this agreement".
On this point, debate must be started on the links of subsidiarity between the agreement's conditions and the measures required to protect public health.

Proposals for directions of work.

1. An evaluation should be demanded of the pertinence of the agreement's objectives on the basis of specifications drawn up by independent experts, governments, the WOIP (World Organization of Intellectual Property), the WTO and the Convention on Biodiversity.

2. The products stemming from biodiversity liable to be treated as sensitive and therefore protected products need to be identified and subjected to special conditions in the TRIPs, similar to the way in which agricultural policy instruments are classed in the "Green Box" and exempted from any commitment to reduction.

Services

Reminder: The WTO Marrakech Agreement on Services

The stakes on services dominated all the negotiations in the Uruguay Round (U.R. 1986-1994).

The developing countries are nearly all net importers of services and did not ask for services to be included in the GATT rules, since they were aware that this inclusion could prevent them from setting up their own national sectors. In 1986, the UNCTAD warned that transnational corporations were the main suppliers of services, whether by "exporting" them directly or via investments made abroad to supply external markets.

The main sectors of the American service industry (banking, insurance, data banks, marketing, consulting) had formed a lobby named the Coalition of Service Industries, whose sole objective was that the U.R. would result in the obligation for trade in services to obey the principles already considered strategic in the deregulation of trade in goods, i.e. the most favored nation clause, national treatment, the right of establishment and transparency.

The stiff resistance put up by the developing countries led by India resulted, in 1994, in ensuring that the GATT Agreement on Trade in Services (GATS) was separate from the general rules of GATT.

In Articles IV (Growing participation by the developing countries) and XIX (Progressive deregulation) of the GATS, managed by the WTO, the developing countries obtained a framework declaration recognizing the legitimacy of promoting a national service industry and the right to "appropriate flexibility" allowing the "developing countries to open up fewer sectors, deregulate fewer types of transactions, and open their markets gradually as a function of their development". (Article XIX).

The GATS of 1994 stipulated that the member states "will open their markets sector by sector through successive negotiations, respecting the interests of all the participants on the basis of mutual advantages and by ensuring a global balance between rights and duties". The GATS chose 1999 as the date for starting negotiations in view to increasing the level of deregulation. This is what is called negotiations on the basis of "positive lists".

The progression of the subject

From 1994 to 1998, the process of negotiating the agreements sector by sector occurred to the detriment of the developing countries and led to doubt over the desire of the industrialized countries (in which services represent 60% of GNP) to comply with the framework of the principles of articles IV and XIX.[5]

Thus the developing countries succeeded in obtaining three new agreements: the agreement on deregulation in the basic telecommunications sector, signed in 1997; an agreement on the raising of tariffs on information technology products; and, last but not least, the agreement on the deregulation of financial services in 1997.

[5] (R. S. Kaubab, 1999)

On the other hand, no progress had been made at all since the Uruguay Round agreements in two areas of prime importance for many developing countries:

- the deregulation of the circulation of persons only gave rise to a declaration of principle in 1995, without any undertaking made since: increasing use of "examinations of economic needs" and the absence of agreements on mutual recognition for supplying professional services were deemed by India and Pakistan as "major obstacles to the circulation of persons as suppliers of services."[6] As for the agreement on financial services, it mirrored the privileged treatment reserved for the circulation of capital[7].

- regarding the emergency protection measures to limit the effects of deregulation in trade in services (provided for by the GATS in 1994), no progress was made to define them and the industrialized countries went as far as denying that there was any need for them[8].

The Third World Network observed that the process of negotiating sector by sector occurred to the detriment of developing countries, which were unable to impose their priorities on the agenda: professional services, services related to construction, engineering and tourism[9].

The agreement on the deregulation of financial services, signed by 70 WTO member countries is of capital importance: it deregulated more than 90% of the world market for insurance, bank and broking services. Although the agreement did not oblige all the countries to open their markets from the outset, it "locked" access to the market and deregulation, making it impossible to set up new protection measures.

This agreement also highlights the new methods of coercion used against the interests of the developing countries:

. In 1996, the leaders in financial services in the USA and EU founded a joint lobby named "Financial Leaders Group", whose chief work consists in identifying the barriers to deregulation in 20 emerging markets in other countries and proposing the measures to be taken by American and European negotiators;

. On these bases, the high functionaries of the EU and the USA go to Asian capitals to convince governments of the advantages that deregulation will bring them in the form of new flows of direct foreign investments after the withdrawal of capital in 1997. The work of the Financial Leaders Group was presented by the European Commissioner, Leon Brittan, as "a model of cooperation that should be used for the next round of negotiations on the deregulation of services". (Corporate Europe Observatory, 1999)

[6] (ICSTD, Passerelles, n°1, janvier-février 1999).
[7] (B. L. Das, 1997);
[8] (R(B. L. Das, 1997).
[9] S. Kaubab, 1999)

The positions in play

The start of negotiations at the end of 1999, scheduled to continue the deregulation of services as programmed by the GATS of 1994, is therefore the main front that the transnational groups in America and Europe are trying to open up. A WTO document of July 1999 outlines the stakes clearly: "at world level, the GATS is the first multilateral agreement on investment, since it covers not only cross-border trade but every possible way of supplying a service, including the right to set up a commercial branch in the market receiving the exports".

The Coalition of Service Industries (CSI) in the USA announced that "the Millennium Round of global negotiations on services at the WTO" could be the first global negotiation on services whose success must not be hindered by seeking consensus on other subjects, such as an international agreement on investments, which should (according to the CSI) be postponed for examination at a later date.

The CSI also insists that examination of a reform of the agreement's rules, demanded by the developing countries, should not hinder the rapid negotiation of sectorial agreements. It adds that new negotiations must "ensure national treatment, access to the market and cross-border services in as many sectors as possible".[10] The CSI also considers that subjecting trade over the Internet to the rules and obligations of the WTO is a priority.

Another initiative in the same direction is the Transatlantic Business Dialogue, which was set up in 1995 as a consultative body at the initiative of the EU and the USA. It is a platform for preparing the deregulation of services between the representatives of American, European and Japanese transnational corporations.

What of public health services at the WTO?

The developing countries must expect to receive the proposals already drawn up by the EU and the USA to redefine the classification of services; the European proposals cover more than 160 sub-sectors and activities, in particular financial services, construction, communication services, cultural services, and also education and health services. (S. George, 1999). Up to now, education and health have been excluded from the GATS, since they are provided under government authority.

In its document "Services 2000" addressed to the American administration, the American Coalition of Service Industries also proposes to include health in the WTO negotiation on services. It suggests three objectives that constitute an offensive to dismantle public health services:

. the right to hold the majority share in health establishments (which implies privatizing these establishments in the short term);

[10] Discours du président de l'US Coalition of Service Industries le 13 mai 1999 au symposium " *Agenda for the next WTO negociation* " - Tokyo, Japan.

. national treatment, the most favored nation clause and accesss to national markets wherever they exist;

. The opening up of all public markets in the health sector to international tenders.

The coalition's offensive is not targeted mainly at the developing countries but at "winning a substantial share of the market related to the health of the elderly in other OECD countries, which are markets protected by different barriers: restrictions on authorizations granted to foreign suppliers, and excessively severe regulations on confidentiality".

Another target in view is "capturing the new emerging demand for healthcare by the middle classes of countries undergoing rapid development". Although there are few laws in these countries hindering penetration by foreign suppliers of health services, the Coalition underlines that including health in the Agreement on Trade in Services will permit preventing the developing countries with emerging markets to set up such legislation.

Proposals: strategic directions for the developing countries

Confronted by this offensive in negotiation on services, the developing countries need to join together and stand united in demanding:
. The formal exclusion of health and education from the WTO negotiations on services.
. a review of the rules of the Agreement on Services and its evaluation so that the "concept of protecting emerging industries remains a separate element in the debate on trade policies."[11].
. an inventory of the circulation of persons and the possibility of extending the scope of application of the circulation of persons to skills that interest the developing countries.

Textiles

The present situation

The developing countries should draw considerable advantages from the Agreement on Textiles and Garments (ATG) negotiated during the Uruguay Round.

[11] (CNUCED, 1999)

Then it was estimated that "over a third of all the gains resulting from the Round would result in the deregulation of trade in textiles and garments". (WTO annual report, 1998, page 42).

The industrialized countries undertook to incorporate the entire trade in textiles and garments in the normal GATT rules of 1994, by progressively eliminating the Multi-Fiber Agreement.

The agreement stipulated that the undertakings would be fully implemented by the end of 2004. This allowed the industrialized countries to continue limiting imports from the developing countries via self-limiting export quotas (tolerated by the agreement and with exceptions to the rule) with export licenses granted automatically and admission on presentation of export licenses.

In practice, this undertaking has not been complied with, thereby explaining the "anger" of the developing countries, which demand the full implementation of the agreement and the goodwill of the undertakings.

In fact, there was no real deregulation program in the agreement, which was left to the discretion of the industrialized importing countries. The developing countries did not want to sign the agreement, but this was almost impossible insofar as the Uruguay Round had to terminate, since it had lasted much too long (eight years). What is more, changes had occurred during that time, with the expansion of international trade and the growing sophistication of the means and practices used in trade transactions.

The developing countries were not total losers in this case. They had obtained compensations in other areas: better access for tropical products and industrial products in the industrialized countries and the elimination by the latter of selective protection. These protections, applied in the name of the differences mentioned in article XIX of GATT, allowed the industrialized countries to impose self-limiting export agreements in sensitive sectors on the developing countries. This type of agreement (named "the gray zone") was so common that it represented a third of world trade.

How the subject has evolved

The agreement allowed maintaining restrictions on imports for ten years, from 1994 to 2004. There was no application schedule: it is possible to implement everything on the last day. Thus the developing countries have noted that the industrialized countries have done nothing and thus consider they will be unable to meet their commitments on the last day.

The subject has become a bone of contention, as there has been no significant progress over the last five years. The subject is even thornier since the industrialized countries are now using an anti-dumping clause in addition to their insincerity and the self-limitation agreements.

The European Union often resorts to these practices due to pressure from industry, but the USA is not exempt of criticism.

However, in this affair it is the importers who are the "worst enemy". In Europe, the companies in this sector have all but disappeared: there a few left in textiles (highly automated) and printing. Jersey is woven though no garments are produced. It was impossible to keep up with the competition; the importers have become more powerful than the companies.

The fact is that deregulation was applied to what was already deregulated and which concerns 10% of European trade.
In the meanwhile, European garment companies delocalised, first to Mauritius and then Asia. The movement is now taking the opposite direction, in the framework of local economic cooperation, to Central Europe, and, in the framework of partnership between Europe and the Mediterranean to the "Mare Nostrum" zone, with Tunisia in particular, where French and Italian companies have invested.

Both Morocco and Algeria would like to welcome companies, but the movement has slowed down due to "fears" that the sector will be deregulated at the last moment.

The positions in play

Romano Prodi and Bill Clinton conjured up a "favor" to be conceded to the least advanced countries: free access to the developing countries. However, this good intention got stuck over the textile sector. The forthcoming membership of China raised union hackles.

The position taken by Europe was not without ulterior motives. Indeed, the main beneficiaries of this measure would have been textile product exporters and in this sector the country that should have made the biggest effort was the United States.

Be that as it may, Bangladesh, for example, cheats with respect to the original rules: it imports from India, China, etc. and since it does not have the capital to invest in weaving, it buys synthetic fibers from Korea, Taiwan and India. The problems are endless.

Proposals

The first requirement is that the industrialized countries effectively apply the agreement and conform to its schedule. Today, however, it is obvious that the commitments made will not be respected.

The fears of developing countries in this respect can be explained by the fact that there are no automatic sanctions for defaulting on commitments. This is never the case with the WTO.

But they are not sure to win if they lay a complaint, since they are weak. They do not have the capacity to apply sanctions against the major countries, although they would be acting within their rights by attacking them.

Furthermore, it is not possible to renegotiate the agreement (by trying to get a firm commitment) at the WTO.

The geographic redistribution of the textile industry, and above all the garment industry, is a crucial subject due to the numbers of jobs involved. It is also a strategic step in the process of industrial progress in an increasingly large number of developing countries able to manage this type of investment.

The industrialized countries should therefore take stock of the stakes at play and at least comply with their commitments. Otherwise, it would constitute another blow against the interest of trade negotiations and the multilateral system.

There is no doubt that compliance with commitments would lead to restructuring. In Europe, at least, this should be undertaken as part of a dynamic framework of cooperation with the countries of the Mediterranean basin, i.e. cooperation that would no longer be based on vertical relations but on a regional basis.

This could be the opportunity for implementing systems of regional import quotas (rather than quotas per country) and thus taking a step towards greater compatibility between regional agreements and the WTO.

In Europe, measures required to assist the process should be planned for those sectors most affected by restructuring.

The agreement on textiles and garments plans for the total elimination of tariff contingents (according to which the industrialized countries allocate to the developing countries "guaranteed" quantities for export at reduced rates).

Today, caution is undoubtedly the best attitude in this area. China's membership of the WTO will cause a major upheaval in the world market in this sector. Its deregulation could lead to an "invasion" of the market by Chinese products. The small countries that considered the Multi-Fibre Agreement and its associated bilateral agreements as a form of "protection" against competition by India could be hit severely.

Environment

The present situation

In 1989, during a meeting organized by UNCTAD with international NGOs, the issue of the source of environmental degradation was raised in the following terms: Does poverty cause environmental degradation

or does environmental degradation cause poverty? The concept of sustainable development was in gestation at the time, as was that of "polluter-payer". But this was before Rio.

At the same time, Martin Khor, a young expert on the WTO at the Third World Network in Malaysia (and one of the movements protesting at Seattle) expressed concern over the growing power of environment NGOs, underlining the risk of "green protectionism" practiced by the industrialized countries against the developing countries.

In fact, the GATT first showed concern about the environment in 1971, by setting up the "Group on measures concerning the environment and international trade". This was given the responsibility of dealing with "environmental policies liable to have significant commercial effects on the contracting parties of GATT".

The group was "consultative" in that it was prepared to act on THE DEMAND OF A CONTRACTING PARTY. However, no such demand has been made in 20 years and thus the group has never functioned.

In 1990, during the preparation of the Ministerial Meeting at Brussels, intended to conclude the Uruguay Round (December 1990), the EFTA countries demanded that priority be given to the question of interdependency between trade and environmental policies.
In particular, they requested the CONTRACTING PARTIES to carry out a study on "the link between environment related polices and the rules of the multilateral trade system" and to "examine the implications of preparatory work related to the United Nations Conference on the environment and development UNEDC – RIO (1992)". Moreover, they demanded that a meeting of the GATT work group on the measures concerning environmental and international trade be convened at last.
This was the first attempt to mobilize the Group on environment and international trade related measures. Some countries backed their demand while others felt it was premature and that priority should be given to concluding the Uruguay Round. Thus there was no further action.

Therefore it took over twenty years in order for the GATT working group on environment related measures to be brought into action on a formal basis, in 1993. The Contracting Parties recognized the "need to act so that trade and environmental policies supported each other".

A large number of concepts and instruments, such as the principles of precaution, polluter-payer, transparency, traceability and the "general interest" took form during this period. These principles became the vectors via which states became aware of the importance of sustainable development and they illustrated the need for coherence between environmental and trade policies and industrial practices.

<u>How the subject has evolved: from GATT to the WTO</u>

When signing the Marrakech agreement, the Trade Ministers adopted the "Decision on Trade and the Environment". A formal committee was set up in the WTO with the mandate to study the compatibility of environmental protection measures with WTO rules.

The committee was to deal with the environment "in view to identifying relations between trade and environmental measures" and "identifying appropriate recommendations to determine whether there are grounds for modifying the conditions of the multilateral trade system, by respecting its open, fair and non-discriminatory nature".

The committee drew up a very detailed working agenda to deal with more specific subjects, including:

- "The relationship between the conditions of the multilateral trade system and the trade measures taken for the purposes of environmental protection, including those belonging to multilateral environmental agreements (Point 1)",
- "The relationships between the conditions of the multilateral trade system and the levies and taxes applied for the purposes of environmental protection (Point 3)",
- "The relationship between the dispute settlement procedures of the multilateral trade system and those provided in the MEA (Point 5)",
- "The effect of environmental measures on access to markets, in particular for developing countries and the emerging countries (Point 6)",
- "The question of exports of products prohibited on domestic markets (Point 7).

The first ministerial meeting of the WTO after Marrakech took place two years later at Singapore. The food security question and several trade disputes led to greater account being taken of the environment. However the movement did not have enough momentum to ensure that the environment appeared on the agenda. The Committee of Trade and the Environment simply submitted a report, as had been agreed at Marrakech.

In parallel, public opinion on environment related issues was stirred little by little by the actions carried out by NGOs. The WTO panels, especially those dealing with turtles and shrimps, gave them reason for concern. It became imperative to show the need to better define the relationship between the multilateral trade system and the trade measures taken in order to protect the environment.

At the second ministerial meeting at Geneva, in 1998, the developing and industrialized countries emphasized the importance of the link between trade and the environment as well as the need to analyze the interactions between them. The use of unilateral measures taken by the USA, justifying them as measures to protect natural resources, drew strong protests from the developing countries. However, the United States resolutely defended its right to intervene outside its territory when it considered a situation as being sufficiently serious: here the issue of extending national law to cover another country (extraterritoriality) came to the fore.

The issue of trade and the environment went well beyond the capacity of the Committee of Trade and the Environment at the third WTO ministerial meeting. This "overspill" was due to at least two factors:

- On the one hand, there was growing pressure from the environmental NGOs and civil society in general in favor of improved protection of "public property", including tropical forests, biodiversity, the ozone layer, etc.

- On the other hand, it became clear that the WTO lacked the means that would have permitted it to elucidate opinion on the impact of deregulation policies on the environment. The arguments lacked substance, leaving opinion frustrated. The leitmotif on the fact that "the formulation of national environmental policies should not constitute an unjustified obstacle to trade" entered into every speech, whereas during the nineties, the number of Multilateral Environment Agreements increased (there are now nearly 200) and there is still no idea of how they can be linked with the WTO.

The positions in play

To better understand the positions in play, two basic questions need asking:

- Is the WTO the appropriate forum for dealing with the links between trade and the protection of health and the environment?

- How can the different scientific disciplines that deal with the environment be linked with international economic law?

A third, subsidiary question can be added to those above, i.e. that of the link between subsidies and environmental degradation.

For the most part, the developing countries remain against the introduction of the environment at the WTO. They are afraid that the industrialized countries will practice "Green Protectionism". Since they already lack the resources to comply with the sanitary and technical standards applied by the industrialized countries, they obviously consider demands by the latter for the application of environmental standards as an additional barrier to prevent their goods from penetrating Western markets.

The USA took a stand in favor of sustainable development and wanted the Committee of Trade and the Environment to demonstrate its capacity to make "substantial progress". It set itself the following priorities:
- the elimination of subsidies that affect the environment negatively (i.e. fishing),
- the development of relations with other multilateral and intergovernmental authorities,
- technical assistance to the developing countries.

The European Union distinguished itself over the principle of precaution. It stated that is was clear that links between the WTO and the MEAs required clarification if there were a real desire for this principle to become operational.

The UNITED STATES and the EUROPEAN UNION
on the subject of Trade and the Environment

During the meetings between the EU and the USA held in the framework of the preparatory phase of the 3rd ministerial conference, several specific subjects were discussed on a bilateral basis. Although these discussions were limited to subjects that concerned both great powers, a brief presentation of their respective positions provides clearer understanding of the debate's substance.

1. The MEA (multilateral environmental agreements) and the WTO

Problem: How can the relationship between the MEAs and the WTO be defined? What might occur in case of conflict? How can sometimes contradictory objectives be reconciled?

For the European Union:
- Respect of MEAs by the WTO.
- No subordination between the WTO and MEAs
- No WTO "intervention" in the MEAs
- We need the support of the United States
- We need constructive dialogue with the developing countries
- Environmental protection and access to markets must be linked: We could propose a "0" tariff on products from the least advanced countries.

"Special and differentiated treatment" must be used to promote environmental protection.

For the United States:
- There is a need for technical assistance to strengthen the capacities of the developing countries to cope with their constraints
- This question requires partnership with the developing countries based on equality in order to avoid "a united front".

2. PPM (on production processes and methods)

Problem: to determine whether a product should be evaluated according to the way in which it was produced. In what way can the production system be considered as a characteristic of the final product?

For the European Union:
- The PPM are intrinsic to "eco-label" systems
- Taking them into account harms the comparative advantage of certain countries
- The subject is too delicate
- It is very complex from the legal point of view

- There is no "reliable" method of analyzing "life cycles".
- There is no foreseeable harmonization on the subject
- Work is necessary on labels, whether they are voluntary or obligatory.
- The problem of "extraterritoriality" must be dealt with[12]".The subject is too delicate to be submitted for negotiation.

3. <u>The principle of precaution</u>

<u>Problem</u>: The principle of precaution results from concern over managing environmental problems on a global level. When associated with the concept of sustainable development, it also expresses the reaction caused by the shortcomings in preventive measures observed during recent sanitary crises, as well as the desire expressed by the public to participate more in managing technological development. By reversing the onus of responsibility in demonstrating danger and noxiousness, this principle aims to reduce risks.

For the United States: Efforts made by the UNEP to define this principle should be supported.

For the European Union:
- The Principle of Precaution should have been on the agenda at Seattle
- Implementing it is a way of reassuring the public.

The potential effects of its applications on developing countries should be analyzed and national capacities for ensuring this principle should be strengthened.
Notwithstanding the importance and the urgency of the environmental question, and in spite of the time given to it before Seattle by governments, this issue was simply postponed during the four days of the official meeting. The only "survivors" were the protection of natural resources and the impact of subsidies granted to the fishing sector.

<u>The stakes for a responsible and united world</u>

Action should not be taken in the name of protection of the common good that could lead to stifling the economies of the developing countries. The efforts to restore the environment must be divided fairly between the industrialized and the developing countries.

It is vital for the developing countries to participate in defining the criteria intended to protect the environment. Achieving this requires:
- greater transparency in the authorities responsible for setting standards
- genuine participation in standards organizations by the experts of developing countries

[12] Pratique qui consiste à imposer sa loi nationale au territoire d'un pays tiers/partenaire commercial.

- more technical resources so that the developing countries can conserve their local and national environments. To achieve this, more support should be given to countries that demand access to clean technologies.

Proposals and paths of work

1. The definition of similar products.

The definition of "similar product", currently limited to identifying the components of a final product, could henceforth include the "production means and methods" used to produce it, and its environmental impact. This raises a number of questions:

- What criteria should be chosen to define product similarity?- Shouldn't only environmental criteria be chosen?
- How is it possible to tell the difference between "environmental protection and "protectionism"?
- Lastly, what technical and financial resources should be granted to the developing countries to permit them to adapt. This question is linked to the previous question?

2. Compatibility between Multilateral Agreements and the WTO Agreements.

The WTO's ability to enforce its law to the detriment of that of other multilateral institutions encourages certain members to demand it to act outside its scope of competency. This is so, for example, in the case of the MEAs. Although there has never been any conflict between an MEA and a WTO agreement, this could occur in the future: the compatibility of commitments and/or the conditions set out in the different agreements is far from obvious.

3. The PPM: production processes and methods.

The criteria that characterize a final product require clarification, so that sustainable production systems are strengthened and enhanced by trade.

4. Compensation for the developing countries

The efforts made by the developing countries regarding environmental policies should be linked to concessions in other commercial areas identified as being of vital interest to them. For example, their environmental efforts should be compensated by the reduction of certain high tariffs and a fairer application of GATT article VI (anti-dumping).

5. Determining responsibility It is urgent to identify the legal means and instruments capable of judging and assigning responsibility in the case of environmental incidents and the degradation of natural resources. The commitment of governments to environmental policies should result in genuine constraints for companies.

Labor standards

The present situation

Although agriculture appeared to be the most delicate subject at Seattle, that of labor standards was undoubtedly the most controversial. Discussion was amplified by the subject's ethical dimension. The core of the problem is whether workers' rights should be approached via debates on trade and through the WTO in particular? At present, there is no WTO agreement on labor standards, as this question is the responsibility of the International Labour Office (ILO).

The UN General Secretary, Koffi Annan, summarized the debate a few weeks before Seattle, by declaring, "What we need is not new restrictions, but greater political will so we can attack political and social problems and give the existing institutions the funds and means they require to fulfil their roles. Trade should not be considered as a means of raising the issue of workers' rights or environmental degradation. Globalization should not be the scapegoat for problems and the failures of domestic policies; rich countries should not seek to solve their problems to the detriment of the poor ".

The question of labor standards at the WTO concerned in particular four conventions known as "core labor standards" formulated at the ILO, i.e. the freedom of association, the right to belong to a union and negotiate collectively, the prohibition of forced labor, and the prohibition of child labor and non-discrimination at the work-site.

How the subject has evolved

The subject of labor standards and their link with the WTO was not even brought up during the eight years that the Uruguay Round negotiations lasted.

The ILO's first contact with the WTO was when it was invited to attend the first ministerial meeting at Singapore. However, very strong protests from the developing countries, which considered this as a bad omen, prevented its participation. These countries then took a formal stand by declaring that work for low wages was their comparative advantage. The final declaration of Singapore mentioned labor standards by referring to the ILO as the only body competent to deal with the issue and by calling for closer cooperation between the ILO and the WTO.

During the preparatory phase of the ministerial meeting at Seattle, the issue of labor was given much exposure and mentioned by a large number of industrialized countries. Thus, although labor standards did not appear on the agenda at the start of the meeting, they nonetheless featured as one of the central reasons for protest by those demonstrating on behalf of civil society and it ended by featuring on the program of the five or six working groups of the ministerial delegations.

However, by attacking labor standards, the WTO risks opening other thorny issues, in particular that of PPM (productions processes and methods) which are currently used when evaluating the characteristics of imported products. Consideration should also be given to developing countries that fear, quite reasonably, the formulation of new criteria as technical barriers to trade.

It is particularly difficult to understand the positions of the players involved vis-à-vis trade, labor, economic and ethical issues.

The positions in play

The key to the problem can be found in the word "linkages". The developing countries say that what is at stake is not whether children should or shouldn't work, nor whether workers should be allowed to organize themselves. What is at stake is to know whether a link should exist between production conditions and trade rules.

India, Cuba, Pakistan, Malaysia and Nigeria led opposition to this link while other countries, particular Latin American ones, tended to stay on the sidelines.

Supachai Panitchpakdi, the WTO's future General Director, declared that it would be a mistake to authorize trade sanctions against countries that did not respect certain labor rights.

At Seattle, the labor unions of the industrialized countries declared that the WTO needed "humanizing". An estimated 25,000 union members demonstrated there. They demanded that the WTO solve the problem of labor rights without having understood that, up to then, the institution had neither the competency, nor the mandate to deal with this issue. In fact it appears that the unions were above all driven to act by the threat of unemployment caused by unfair competition. Bill Clinton knows the stakes well, since the unions made big contributions to finance his election campaign. He also seized the opportunity of the meeting at Seattle to sign, in the middle of negotiations, the ILO Convention "against the worst types of work". He added the edifying threat of taking unilateral sanctions, if necessary, to protect the interests of children: this was tantamount to initialing the failure of the Conference.

At the end of three days of negotiations, the EU proposed a compromise, consisting in setting up a WTO work group in cooperation with the ILO and other institutions. Nonetheless, the USA remained adamant in its desire to see labor standards set as a specific subject dealt with in full in the WTO's formal negotiations.

The European Union was in favor of dealing with the issue of labor standards at the WTO, since it is in direct relation with human rights. The other industrialized countries remained on the sidelines and the subject was abandoned through lack of consensus.

The stakes

Now that the issue of social standards has been introduced into the WTO, it is conceivable that it will become increasingly important in discussions, in the same way as environmental issues. Traditionally, the issue of working conditions belongs to the ILO. This special UN agency is composed of representatives from the private sector (employers, organizations), labor unions and governments. This tripartite system functions on the basis of negotiations on highly specific subjects that often result in the adoption of conventions. The ILO recently organized an enquiry in the framework of an internal working group on "the social dimension of the deregulation of international trade". The final report includes studies per country on the social impact of globalization. The approach taken by the ILO puts emphasis on "the social dimension" and highlights the need to support it as the principal institution for drawing up labor standards and their criteria.

Whatever the case, China's membership of the WTO will change things radically. A recent study revealed that most Americans want trade used as a lever to defend human rights.

Proposal for reform and paths for work

1. Give greater strength to the ILO, its work and conventions.

2. How is it possible to link the issue of labor standards, if it were taken into account at the WTO, with other sensitive subjects for the developing countries, such as competition policies and the need for better regulation over investments? There is a need to progress to labor standards associated with legally binding industrial responsibility and the adoption of a code of behavior by firms.

3. Bilateral agreements aimed at linking the issue of labor standards with national arrangements and resources could be negotiated under the aegis of the ILO in cooperation with other institutions (UNRISD, WTO and UNCTAD) and in consultation with employers federations, labor unions and governments. A transitional period for the effective application of commitments could be considered for each case.

E.commerce

Definition

E.commerce, or electronic trade, covers all the products and services that are sold and purchased via the Internet, whether they are delivered physically or as digital information.

The present situation

E.commerce will modify the structure and nature of international trade and even its nature. This genuine revolution is essentially due to the advances made in communication technologies.

A simple comparison demonstrates the speed at which this new technology is being diffused: whereas, in the USA, it took 38 years for the radio to reach 50 million people, while it only took the Internet 4 years to reach the same number.

The growth of E.commerce is spectacular. In 1991, only 5 million people used the Internet, whereas there are now 300 million users and E.commerce will soon represent more than $300 billion per year of business.

Concerning trade: the problem at the WTO

Three steps can be distinguished in concluding a commercial transaction:

- The step of prospecting for a producer or consumer, or a purchaser or vendor;

- The step of making an order and paying once the agreement has been made;

- The delivery;

To which after-sales-service must be added.

For products and services that are delivered physically, the usual rules at the WTO on goods and services apply.

However, the most serious problem is raised when the product is "delivered" by the Internet itself.

The authors of a study carried out by the WTO propose that both the service of providing access to the Internet and the products delivered over the Internet be covered by the agreement on services. However, they also acknowledge that the need to clarify how and to what extent certain activities enter within the scope of application of the members' commitments regarding access to the market.

The study also emphasizes that e.commerce raises a large number of regulatory questions: the protection of personal information and the consumer, applicable law, and beyond this, changes in the system of according public contracts.

Levying taxes on this type of activity raises very real problems:

- Should the service be taxed according to the duration of the communication (which is meaningless) or on the value of the transaction (which is very difficult to control)?
- What country should levy the tax, given that every scenario of geographic situation of the parties involved in the transaction is possible?

From Marrakech to Seattle

The issue of e.commerce was not submitted for negotiation during the Uruguay Round.

At the Ministerial Conference at Singapore, the United States insisted that none of the WTO's members should raise any barrier to hinder the development of E.commerce and it obtained a provisional agreement to this end.

A working group was set up and the issue is dealt with by three committees: Trade and Development, Intellectual Property and Services.

The stakes

It is difficult to predict the consequences of the development of e.commerce on the commercial strategies implemented by companies.

Up to now, direct investments have been vital for firms wanting to break into foreign markets; it was their principal reason for investing in the first place. However, e.commerce will probably reduce the necessity of these investments, although it has been proven that producing a Web site has its limits: in order to advertise its site in Japan, a Swiss company has had to organize a 100 conferences in order to get off the ground.

Some experts also postulate that the reduction of communication costs will encourage companies in the industrialized countries to delocalize their production activities to those with lower labor costs.

Other experts think that this tool will enable medium sized businesses, including those of developing countries, to gain access to the world market at lower cost, due to the elimination of middlemen.

Still others think that it will multiply the possibilities of corporations to set themselves up on every market in the world.

The positions in play

The developing countries said little about e.commerce at the WTO. Cuba, Venezuela and Indonesia were alone in making proposals before the Seattle Conference.

However, these proposals were not very innovative. The developing countries underlined the fact that, due to their meager equipment and infrastructures, this type of trade would widen the divide that separates them from the industrialized countries still further.

In addition, countries such as India are concerned by whether e.commerce is a viable alternative to the resistance industrialized countries have shown against the circulation of persons across their borders.

The position taken by the European Union and the United States reflects that taken by the industrialized countries in general, i.e. they want the current situation of not levying any customs duty on this new type of trade to continue.

Proposal and paths for work

E.commerce has introduced a fundamental innovation regarding the agreement on services. In 1993, the Internet was nothing like as well developed as it is now, so a large number of services were technically impossible and, consequently, the lists of commitments by the WTO's members did not take into account.

One might imagine that the industrialized countries have an advantage in resisting the application of any barrier against the growth of this type of trade.
The issue deserves attention, though no legal basis exists that permits members to reconsider and renegotiate their commitments.

Lastly, e.commerce raises serious questions with respect to cultural diversity, intellectual property and, above all, protection against intellectually and morally harmful materials.
This almost virgin terrain awaits material form.

Regional agreements

Reminder

The aim of the Havana Charter was to eliminate customs duties and import quotas. Since the negotiators were aware of how difficult this was, they invented article XXIV on Free Trade Zones and Customs Unions, which was used later in the GATT.
These two types of regional agreement were considered as a midway step towards opening up the world market and the multilateral system, in other words, it was a crucial step forward. What is more, every country had something to gain.

However, these regional agreements have not only become rigid and fixed, they now raise problems since they cause entire sectors to escape the WTO's rules (on agriculture in many cases).

Article XXIV stipulates that these agreements should cover "most of the trade" of the member countries. This has led certain members to conclude that if every sector were concerned, except agriculture, for

example, this still means that most trade is covered. This has led to interminable discussions at the WTO to reach agreement on the legal definition of "most" and attempt to make the conditions of article XXVI stricter.

Progression of the subject

In reality, about fifty regional agreements have been notified to the WTO, and only one, between the Czech Republic and Slovakia, has been deemed compatible with article XXIV, though none of them has been deemed incompatible either.
A regional agreements committee was set up at the WTO only two years ago with the aim of making the regional agreements compatible with the rule on non-discrimination.

The experts observed and forecast a movement towards stronger local cooperation and regional integration is continuing. However, this integration is occurring in different contexts that incorporate the power balances and pressure exerted at the WTO.

Thus, agreements such as the Treaty of Rome, which was judged as neither compatible, nor incompatible with the WTO, are political advantages that we must accept, in as much as they comply with a minimum number of rules.

Elsewhere, Malaysia wants APEC to consist only of Asian countries, and thus exclude the USA. This is the reason why it privileges ASEAN.

As for the Lomé Agreements, pressure from Latin American countries (which considered that they were penalized) has led them to evolve toward the rule of reciprocity, stipulated by article XXIV. From being agreements on free access of ACP products to the European market, they are becoming free trade agreements between the EU and the ACP regions.

Free access for European products and services to ACP markets could result in the risk of what some term "colonial re-conquest".

The positions in play

Nearly all the WTO's members are also party to a regional agreement. The positions are simple: we are for them if we belong to one, and against them (e.g., Bangladesh and Tonga) if we don't.

The stakes

Regional cooperation is both necessary and indispensable for developing and upholding regional balances.

However, these agreements should not be allowed to result in a fragmentary system. They should retain their primary role of aiding countries to pass on to a multilateral system.

Proposal (directions for work)

The evidence points toward the need for regional agreements to become more coherent and compatible with the multilateral system. Consideration and negotiation should start on the basis of the following:
Divisions caused by regional agreements are justified when they spring from temporary situations, but they must not be allowed to become permanent arrangements. If change is to occur, it must be in the framework of global negotiation.

PART III

WHAT SHOULD BE BUILT?

GLOBAL CITIZEN INITIATIVE

An international resource center on the WTO and global governance An economic and social observatory

The needs

For the most part, the main claims of "civil society" are clear, i.e. the need for participation, the need to democratize the WTO and make it more transparent, the need to make the goal of sustainable development operational in both the definition and application of rules and practices, the need for greater coherence between different policies (trade, environmental, social, financial, monetary, etc.) that together lead to global governance.

However, methods must still be identified and resources must be implemented that will permit:
- linking the debate between governments, the WTO, "civil society" (with its multiple, varied and contradictory components), private interest groups, the other international institutions, etc.
- promoting convergence, if not consensus, between the different protagonists towards "fairer" trade rules that conform more to the goal of sustainable development.

Dealing with this issue raises problems at different levels:

1- The need to process strategic information

At collection level

As has been made obvious over the past few months, the surfeit information diffused (via the Internet and different publications) leads to confusion and rumors that are often incomplete or even biased through want of a system of validation. However, without reliable and valid "bedrock materials", any action would be pointless and questionable.

Thus, while awaiting the circulation and diffusion of validated and structured information, it would be advisable to propose an information "classification, sorting and selection" service, if only to provide addressees with a mode of access and information adapted to their means and needs.

Valid and reliable information generally comes from "international decision centers" (Geneva, Brussels, Washington, etc.) and also from different countries in which concrete problems arise with respect to the pertinence of the WTO's rules.

Thus there is a need to organize the collection of information on a geographical basis.

At diffusion level

There is a surfeit of information in certain regions (the same information is frequently diffused several times), whereas it is very scarce in continents such as Africa, and French-speaking Africa in particular.

If the primary goal in terms of sustainable development is to combat inequality, then information should be distributed in a more equitable basis.

2. <u>The need for expertise and analysis for advice and training</u>

It is essential to understand and assimilate the WTO's rules and be capable of identifying the economic, political, financial, social and environmental stakes underlying the negotiation of new rules; this demands a high level of skills in a large number of areas.

Experienced experts, trainers and communication specialists that can be called on according to the changes occurring in the subjects dealt with, are needed in order for members of parliament, journalists, ordinary citizens, and the negotiators themselves, especially those of developing countries, to obtain better access to understanding of highly complex stakes.

3. <u>The need to organise collective exchange and expression.</u>

There are a large number of forums on the Internet where private individuals and organizations exchange their points of view in the WTO. However, since Seattle a growing number of diverse organizations have focused their attention on the subject. The confusion that stems from the expression "collective" is equal to the shadow cast by the following question asked in reasonably good faith by one of the WTO's deputy directors a few weeks after Seattle, "But why exactly do the environmental NGO's reproach the WTO?"

4. The need for intermediation

"Civil society" showed its capacity for action at Seattle. The organizations present demonstrated the pertinence of their claims. However, there were few initiatives (if only it had possible to make them) to attempt to give coherence to this many faceted action.

Overall, two currents could be distinguished: the organizations that were against the WTO and those that wanted it to undergo radical reform. I

n the framework of seeking solutions for global citizenship, which is what we attempt to do, the second direction seems the most constructive.

However, it is unquestionably difficult to trace. Great skills are required to understand the different points of view and organize the exchange of ideas between "civil society", the private sector and governments with their divergences and oppositions. Moreover, great determination is required to ensure that the process itself results in constructive proposals and actions.

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Citizen proposals for the WTO

As citizens concerned for the general good, we address the following analyses and proposals to all responsible political leaders and members of civil society.

We are convinced of the importance of the instruments and institutions that regulate world trade. We are against a "law of the jungle" that incorporates only hints of bilateral agreements. We consider that the WTO should undergo radical reform in order to become consistent with the principles shared by all humankind.

- **the principle of protection** in order to pass on a livable planet to future generations;

- **the principle of humanity and dignity** of every human being;

- **the principle of responsibility** for each person and every organized entity, so that they can contribute toward building harmony between societies, human beings and their environment;

- **the principle of prudence and precaution**, so that human societies do not use new products and technologies until they are certain of their capacity to control present and future risks,

- **the principle of diversity** of cultures and living beings, as diversity is common property whose preservation is a duty;

- **the principle of citizenship**, as every human being is an integral part of the human community.

The market cannot become the supreme value of humanity! The above principles can be used to orient and govern it. They must give rise to clear orientations: respect for and the application of human rights, the right of peoples to feed themselves and choose their food, the recognition of biodiversity as the heritage of humankind, the refusal to patent life, etc. Hence we make the following proposals:

1. The Uruguay Round Agreements must be evaluated according to the objectives and criteria of sustainable development.

Much is said of the advantages of the forced march towards deregulating the world's economy, but existing evaluations refer only to economic growth. This is not enough. These goals are included in the preamble of the WTO's articles of association, which refer to sustainable development and are set out in Agenda 21 and in other United Nations' texts. They must be the focal point of such an evaluation. We, citizens and watchful observers of the world's realities, have seen the damage inflicted by this forced deregulation, undertaken by politicians, supported by transnational corporations and implemented by the WTO, the International Monetary Fund and the World Bank. Globally, the world is a richer place though the gulf has widened between the rich and the poor. Trade is said to serve the cause of peace but in truth it merely serves peace between the wealthy and it often leads to practices incompatible with sustainable development.

The reduction of disparities and inequalities, economic democracy and the protection of natural resources must be placed at the core of the WTO's rules. These must stipulate the definition of sustainable development and the international conventions to which they refer.

2. Convergence and coherence for the development of trade but refusal of greater deregulation.

Politicians and governments often sign conventions on human rights and the protection of natural resources by applying contradictory policies. Moreover, international institutions often take different directions. For example, the IMF's structural adjustment policies have led most developing countries to deregulate their agriculture to extents exceeding that required by the WTO. No attempt is made to achieve convergence, coherence or cohesion, leading to colossal costs for humanity. Experts estimate that these incoherences amount to 10% of the gross world product. The quest for convergence and coherence must be given precedence over the goal of increased deregulation that we reject. In particular, we propose that the WTO's rules and agreements should be linked to and made compatible with the multilateral agreements on the environment and with other rules and conventions defined and managed by the different international institutions (International Labor Office, FAO and United Nations), in the same way as they are with the Codex Alimentarius which defines standards for food products.

3. The reform of the dispute settlement system to achieve greater equity

The fact that a system for settling disputes exists at the WTO is a good thing. However, this system is still unfair and unjust, since it gives precedence to the economic powers and, behind them, to transnational

corporations. The excessive costs involved by the system are out of reach for developing countries. Sanctions during a dispute can only be applied by the plaintiff country; however, trade between the countries must be sufficient for retaliation to be effective in the first place. The flood of complaints and American harassment highlight the lack of clarity and pertinence of the existing rules. These reasons lead us to propose the following reforms:

1. clarification (and renegotiation if necessary) of the WTO's rules so they become dissuasive and less open to interpretation.

2. The composition of panels: the panel members should be professionals, since at present they are not legal experts. They should seek to be neutral and objective.

3. A dispute settlement system with "collective sanctions" so that the loss of concessions becomes sufficiently expensive on the economic level to oblige industrialized countries to implement the panel's decisions.

4.Transparency

5. The hearing of third parties, including NGOs (modification of article 10) and the possibility for NGOs and experts to contribute additional elements.

6. The setting up in the long term of an international and independent commercial court that operates according to the founding texts of the United Nations (including the universal declaration of human rights), international conventions and the WTO agreements.

4. Membership given to new countries under acceptable conditions

How can the 134 members of the WTO be said to share principles deemed economically democratic while 35 countries representing a fifth of the world's population are left outside? The conditions of membership are much too complicated and the membership process itself is scandalous, i.e. new members must open up their markets more than is demanded of the WTO's existing members, without any reciprocity. The main risk is the economic and social destabilization of whole populations. A crisis in China linked to a brutal opening of its frontiers, especially for agricultural products, will have considerable consequences for this country and the world. Thus objective and fair conditions must be defined so as not to oblige each candidate country to "defend its own skin" without any legal basis on which it can defend itself.

5. The setting up of an observatory of the WTO and the regulation of international trade

Acknowledgement of the principle is general: the WTO must set up means for consulting with the NGOs, and citizens and popular movements. However, there is no structure for consultation at present. It is essential that such a structure be set up and brought into action from the outset of the next cycle of negotiations. Civil society should be involved in particular in founding and operating an international observatory and an information and consulting system. A large number of NGOs and citizens organizations demand a moratorium on launching new negotiations. An international observatory, operating independently and recognized by the WTO, could evaluate the effects of measures taken, raise them for debate and implement the undertakings made. It should be capable of bringing civil actions when trade practices infringe the rules and run counter to the goal of sustainable development, even when such practices are not subject to complaints made by the countries concerned.

6. An international resource center

Of the 134 member countries of the WTO, 80 of them are unable, due to lack of competency and technical resources, to participate at the next round of negotiations under satisfactory conditions. There is an urgent need to set up a resource center accessible to civil society and to the administrations of WTO member countries as well as non-member countries. The resource center would supply evaluations on the real and potential impacts of agreements and undertakings, giving information and training on the rules, providing advice on negotiations and offering legal assistance. Without the will to place the WTO within a framework of values and principles, without a clear definition of the objectives pursued and in the absence of democratic rules, the discussions begun will eventually lead to social upheavals and the aggravation of ecological problems. Given this perspective, we believe that world-wide opposition to the rationale of free trade can only lead to the negotiations grinding to a standstill.

Extracts from the text "Citizen proposals for the WTO "
By January 15th 2000, this text had been signed by 234 people from 42 countries.
To obtain and sign it, too: propositions.omc@globenet.org or
http://www.sentenext1.epfl.ch/fph/french.wlproj/apm.html. It is also available on www@rongead.org

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*What should be built?

A large number of organizations meet regularly to discuss how to take up these challenges and find means to achieve the following objectives:

- Make accessible (materially and intellectually) to the largest number, especially in the most disadvantaged parts of the world, the information and analyses available on the stakes at play at the WTO and the negotiations taking place at present.

- Make the contribution by "civil society" more effective and operational in identifying the multilateral rules of international trade.

- Contribute to making the workings of the WTO more transparent and promote a practical mechanism for monitoring and participation.

Who is concerned?

Global Citizen Initiative will become structured progressively as a network by seeking to associate all those who seek to contribute toward achieving the goals defined previously. The responsibilities will be shared between the different working subjects and according to geographic area.

The resource center will be "open" without discrimination and be permanently accessible to civil society and the administrations of WTO member countries and to non-member countries.

The actions taken by the resource center will not be "neutral" inasmuch as relations with the following organizations will be given precedence:
- Those that work in or to the advantage of developing countries and WTO candidate countries lacking in information and the capacity to negotiate.
- Those of the network's members that are most committed to formulating "operational" proposals for reforming the WTO, to subjects of negotiation and to the link between the WTO and the issue of global governance.

Priority subjects

Regarding the evaluation of the agreements signed and the operation of the WTO, Global Citizen will give priority to the treatment of the following subjects:
- The implementation of the results of the Uruguay Round.
- Transparency
- Reform of the dispute settlement system.
- The global role of the WTO and most especially the problem of new memberships.
- The least advanced countries, special and differentiated treatment for the developing countries and their participation in formulating standards.

Regarding the subjects of negotiation as such, Global Citizen Initiative will make proposals on the issues crucial to the development of economic democracy, i.e. agriculture, services and intellectual property, insofar as these subjects are on the "built-in" agenda, but also on subjects such as e.commerce, energy sea products, etc.

Lastly, work will be carried out on the "WTO/World governance system" interface, it being understood that world governance embraces every institution (whether it be international, regional, national or local) involved in economic, social and environmental affairs. The program is ambitious. It will be carried out in collaboration with organizations and movements which, like the Alliance for a responsible and united world, work on this issue.

To give substance to this approach, Global Citizen Initiative will work on the proposal to set up an **international arbitration system external to the WTO** responsible for settling any dispute that goes beyond the framework of multilateral trade policy.
Indeed, although disputes stemming from trade policy actions fall under the jurisdiction of the WTO's dispute settlement system (the real backbone of the WTO system), any dispute that calls into question the enforcement of other multilateral policies (environment, labor, etc.) should be subject to arbitration outside the WTO.
This should also be the case even when policies implemented by other international institutions (in particular financial) upset the global balance of rights and duties stemming from trade negotiations.

This idea of an international arbitration system external to the WTO would be a concrete demonstration of coherence in the framework of a global approach.

Rongead Lyon 27/06/2000

The following organizations and persons contributed to this dossier:
RONGEAD: Meredyth Bowler Ailloud, Rose Marie Di Donato, Joseph Rocher
GRESEA: Anne Peters and Bruno Carton (for the section on services).

as well as the members of RONGEAD's scientific committee, and experts, most of whom wish to remain anonymous.

Overall coordination: Joseph Rocher