

# Failure of the fifth WTO Ministerial Conference in Cancun: *a looming crisis in the multilateral trade system?*

A discussion paper

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# **1. The high points of the Conference**

## **1.1 Opening of the Ministerial Conference: the priorities are displayed**

The tone of the conference was set in the opening statements of, Vicente Fox (President of Mexico), Supachai Panitchpakdi (Director-General of the WTO), Carlos Perez del Castillo (Chairman of the WTO General Council) and Rubens Ricupiero (Secretary-General of UNCTAD, speaking on behalf of Kofi Annan).

All expressed their satisfaction about the agreement on patents and medicines narrowly reached at the end of August. They thus stressed that the preoccupations of developing countries could be heard and that parallel progress in the liberalisation of trade and development was possible.

WTO developed country members were called upon to show proof of more flexibility towards the developing countries, especially on agricultural questions and on access to their markets for non-agricultural products. They were asked to display more coherence between their rhetoric and their actions, with the reciprocal opening of markets and the removal of protectionist measures by Northern countries. In particular, the question of developed countries' support to agriculture was returned to frequently in the speeches as an area in which changes are essential if developing countries are to share in the benefits of freer trade. The conference was reminded that aid to developing countries cannot be effective if trade barriers remain. Finally, as the President of Mexico and the WTO Director-General stressed, the Doha round should be handled in such a way as to respond to the objectives of the United Nations' Millennium Declaration (2000) on the subject of the eradication of poverty.

Negotiation priorities emerged from the declarations—agriculture, access to industrial-product markets and the 'Singapore issues' (competition, investment, trade facilitation and transparency in government procurements). The reciprocal question of 'special and differential treatment' was also pronounced to be a core issue. Stress was laid on the link between trade and development, and rightly, as the Doha round is presented as 'the development round'.

In contrast, the term 'sustainable' to qualify development seems to have been quite simply forgotten, as if the World Summit on Sustainable Development in September 2002 had not taken place. Although the absence of reference to sustainable development in the speech by the Director of the WTO was not surprising, it was curious that it was also missing from Kofi Annan's speech, read by the Secretary-General of UNCTAD. Respect for undertakings made at the World Summit on Sustainable Development and the link between the environment and poverty were not mentioned at all in the statement by the UN representative. Only the President of Mexico set the Cancun Conference in a post-Johannesburg context, underlining the notion of shared responsibility in the sustainable management of natural resources.

## **1.2 Chronicle of a predictable failure**

Luis Ernesto Derbez, Mexican Minister of Foreign Affairs, was appointed chairman of the Cancun Ministerial Conference on 10 September. The task was delicate, given the tight negotiation schedule and the rigid positions of certain member countries since Doha.

The first difficulty encountered by the chairman was the choice of an agreed basic text for the discussions. It was assumed that the text published on 24 August by the WTO secretariat was to serve as the basis for negotiations in Cancun. However, to the great surprise of the developed countries, numerous developing countries rejected the entire text, considering that it was weighted in the interest of the developed countries, and especially the USA and the EU. The agricultural component was a problem in particular. A group of 21 countries<sup>1</sup>, including Brazil, China and India, put forward a new text. They were followed by the African countries, which proposed another.

Which text should be chosen? The choice was all the more difficult as the content of the three proposals differed considerably. To avoid the initial tensions that the selection of any one of the texts proposed could not fail to cause, the chairman of the Conference decided to hold negotiations in five groups: agriculture, development, non-agricultural product market access, the Singapore issues and other points. 'Friends of the Chairman' were appointed to chair each working group. They were to facilitate discussions and were responsible for drawing up draft projects on their respective topics.

Ministers and experts met in these groups for two days to try to make their positions closer. No fundamental progress was made. However, alliances were formed and strengthened in the corridors. The G21 sought new allies among the developing countries, and especially African countries. However, the group was far from homogeneous and positions were divergent, not only on agricultural questions. The African countries therefore preferred to form a new alliance combining the least developed countries (LDCs), countries of the African Union (AU) and ACP countries. The developed countries, and in particular the EU and the USA, initiated bilateral contacts with countries belonging to these two groups, delighted to see what they thought were fissures in the developing country bloc.

On the evening of 12 September, the chairman Luis Ernesto Derbez announced that a draft ministerial text would be circulated the next morning. Tension increased at the conference centre in the hours following the publication of the text on 13 September. The proposed text received a somewhat cool reception as it was far from satisfying everybody, least of all the developing countries (see draft text analysis point 2). The proposals concerning agriculture and non-agricultural product market access were unacceptable as once again the developed countries faced fewer constraints. The same applied to the opening of

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<sup>1</sup> The G21 consists of South Africa, Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Egypt, El Salvador, Ecuador, Guatemala, India, Mexico, Pakistan, Paraguay, Peru, the Philippines, Thailand and Venezuela.

negotiations on three of the Singapore issues as the developing countries did not wish to discuss these points.

The leaders of delegations met in the early evening. The 'green room' meeting on the Singapore questions started during the night, attended by the EU, the USA, Brazil, China, India, Malaysia, Mexico, South Africa and Kenya. Discussions continued in the morning of 14 September with other countries representing the LDC-AU-ACP alliance. Blockages between the developing countries and the EU continued, with on the one hand the EU stuck in its request for the opening of negotiations on all four Singapore issues and on the other the developing countries that did not really want to open these negotiations and in no case wished to address all the questions. Pascal Lamy, the European trade commissioner, finally obtained a broadening of his mandate from the member countries, both on these questions and on the right to split the discussions. The EU was ready to abandon the questions of investment and competition. Japan and Korea had supported the EU in the confrontation during the night and were furious. On the other hand, the developing countries did not seem to consider the EU concession as constituting satisfactory progress, and remained firm, rejecting all the Singapore issues.

The negotiations reached a deadlock, and the Mexican minister announced that a consensus could not be achieved at Cancun. The Conference had failed. Reactions were rapid at the conference centre. Developed country delegates were vexed and those of the developing countries, despite being proud of having stood firm, were also disappointed. NGOs were delighted, and the press conducted interview after interview.





## **2. Why was the compromise text not acceptable?**

The draft statement presented by the WTO secretariat in Cancun on 13 September 2003 took up and developed the statement presented on 24 August. It covered all the areas of the Doha agenda, including subjects barely discussed in the Geneva negotiations, such as TRIPS, small economies, trade deficits and trade finance, technology transfer, etc. The text noted the progress made in most of these subjects and invited the countries to continue their work.

### **2.1 The Doha round: a round for developing the developed countries?**

Since the launch of the Doha round of negotiations, referred to as the 'development round', Southern countries have continually claimed the application of 'special and differential treatment' and requested that greater attention be paid to the question of the implementation of the Marrakesh Agreements. Although they were able to organise themselves so as to make their joint voice heard during negotiations, these efforts seem to have been in vain, as the proposals in the draft declaration were very timid and constituted only a very partial response to their preoccupations regarding development.

The developing countries have had to make do with technical assistance measures. One might wonder about the relevance of this response in a context of decreased budgets for public aid for development at the world level.

### **2.2 Agriculture: the liberal approach confirmed**

Agriculture has been the focus of tensions since the start of the Doha round, as in all recent rounds, and this was again the case in Cancun. Indeed, although discussions broke down because of a dispute concerning the Singapore questions, the refusal of the developing countries to address new issues was directly linked to the fact that the Draft Statement of 13 September contained no significant progress in agriculture for these countries.

The Draft Statement confirmed an approach based on the deregulation and liberalisation of agricultural markets, the consequences of which have already proved to be catastrophic for millions of farmers, in developing countries in particular.

#### **The contents of the Ministerial Declaration on agriculture**

##### **Domestic support**

*In conformity with the Doha Declaration, the text plans reductions of trade-distorting domestic support. It introduces a ceiling for product-specific supports in the 'amber box', plans a reduction in 'blue box' support and a revision of the 'green box' criteria. The text is very vague on the subject of the special and differential treatment awarded to developing countries in this respect. The measures concerning domestic support did not satisfy any of the member countries: the developing countries requested more liberalisation (abolition of the blue box, limiting of the green box) while the developed countries considered that the undertakings were too substantial (even*

though the text reflected to a great extent the joint text published by the USA and the EU before the start of the conference).

**Access to markets**

*While pursuing the dismantling of tariffs undertaken in the Marrakesh Agreement, the text envisages the possibility of additional flexibility for all countries on the basis of non-trade considerations.*

*For the developing countries, the text takes up the concept of 'special products' again, but still plans a decrease in customs tariffs on these products, while the great majority of these countries requested on the contrary not to be subjected to any undertaking on special products, including the possibility of increasing tariffs when they are too low. Neither does the text specify the procedures for defining these products, whereas one of the strongest requests of developing countries is to be able to determine these themselves. It also plans the defining of a special safeguard measure, whose outline remains to be determined, for developing countries and the taking into account of preferential access for these countries.*

**Export competition**

*The paragraph on export subsidies is very similar to the text of the EU-USA proposal. It plans the end of export subsidies for products that interest developing countries, the reduction of the other export subsidies and a reduction in export credit. However, the developing countries, and especially those belonging to G21, want more, and in particular the total removal of export subsidies.*

**Other questions**

*The text also plans that LDCs should be exempt from the reduction undertakings and that recent WTO members should have special treatment. It also mentions the 'peace clause' and plans that it should be extended for several months, without specifying the duration. This is a victory for the EU as the developing countries were strongly opposed to the measure.*

The paragraph on cotton is a real insult to the developing countries and especially African countries. The question was central to their agricultural negotiations and the question of cotton was as symbolic as that of access to medicines (see box below).

**Cotton: a textbook case at WTO**

*Cotton is a perfect illustration of the divergences between developing and developed countries in agricultural trade. Indeed, the USA provides strong support for its cotton growing; this leads to over-production and a fall in world prices with dramatic consequences for cotton-exporting developing countries. The EU also provides substantial aid for the sector but its production is smaller and the effects on the world market are slighter. In the face of this unfair competition, Benin, Burkina Faso, Mali and Chad have made a proposal to the WTO concerning cotton; this is aimed at removing all cotton subsidies in the short term and obtaining financial compensation while the subsidies still exist.*

*With support from NGOs and other developing countries, the African countries have given the question of cotton symbolic weight. It is one of the rare sectors in which they are competitive on world markets and this competitiveness is undermined by particularly unfair competition. It is the first time that a sectoral proposal concerning a single product has been discussed at the WTO. The African countries could not agree to leave Cancun without significant progress on this question.*

However, it is proposed in the text that the subject should be addressed from the angle of market access for non-agricultural products. This is in no way a short-term solution to the problem of the African cotton-producing countries which in any case do not possess

competitive textile industries operating for export. The text also suggests that African countries that are victims of dumping should solve the problem by diversifying their economies with, in particular, support from the Bretton Woods institutions. This text deeply shocked African countries ('Leave us to grow our cotton and you do something else' seems to be the reply from the USA, the main country targeted in the dossier). Recourse to the IMF and the World Bank has also drawn much criticism insofar as the countries concerned are already subjected to the conditions of these institutions within the framework of structural adjustment programmes.

Finally, the question of the regulation of world raw materials markets was ignored. Although it is positive that there is recognition of the problem of the collapse in agricultural raw material prices, and their instability, the text is very weak on this question.

### **2.3 New issues: the WTO moving forward blindly**

At the Doha Ministerial Conference, the developing countries had expressed their reluctance with regard to the launching of negotiations on new issues (trade facilitation, transparency in government procurements, investment, competition). The reasons given mainly concerned the shortage of technical, financial and human resources that might be required by new agreements. In spite of many reservations the developing countries accepted the proposal by the developed countries to include the Singapore issues in the agenda of the round but set the condition that 'negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations'. Developing countries also obtained undertakings from developed countries concerning technical assistance and capacity strengthening.

Discussions on procedures remained at a standstill from Doha to Cancun. In fact the gap between developing and developed countries became wider, with the former urgently demanding the clarification of certain points before the start of negotiations. In the final weeks before Cancun, the lack of progress in agriculture, questions of implementation and special and differential treatment, was enough to further radicalise the position of the developing countries.

The draft ministerial declaration was undoubtedly the straw that broke the camel's back. Whereas no consensus had been reached on negotiation procedures either before or during the conference, the statement proposed the launching of negotiations on three of the four Singapore issues: investment, transparency in government procurements and trade facilitation. The start of negotiations on these subjects was considered as agreed independently of the process of the clarification of their scope. Negotiations on questions of competition were postponed.

In general, these decisions confirmed an approach broadening the field of competence of the WTO without calculation of the real consequences. The impact on the developing

countries, in particular in terms of development, has not been appraised and neither has the financing of the technical assistance promised.

#### **2.4 Environment: considerable effort still needed!**

Since the launch of the Doha round, member countries, with the exception of the EU, Switzerland and Norway, have displayed little interest in negotiations concerning the environment component (paragraphs 31 to 33 of the Doha Declaration). This inertia is explained mainly by the systematic opposition of developing countries to making progress in this field. They suspect an attempt, by certain developed countries like Switzerland or the EU, to impose new environmental conditions as part of trade rules, in the discussions on the relation between the WTO and multilateral agreements on the environment, on environmental goods or observer status.

The draft statement proposed at the end of August already reflected the lack of progress in negotiations on the environment. As no decision had been taken, member countries just reaffirmed their undertakings in the continuation of negotiations on paragraphs 31 to 33.

Few people were surprised by the 13 September statement. Even if the section on environmental negotiations was slightly fuller, little attention was paid to the environment overall.

One year after the United Nations World Summit on Sustainable Development most countries have plainly forgotten their undertakings. The absence of references to the undertakings made at the conclusion of that summit shows the determination of most WTO members to liberalise trade in clinical isolation from other areas subject to international law. Furthermore, it confirms the present crisis in the systems of world governance, in which the WTO operates independently without taking into account the preoccupations concerning development and the environment expressed in other arenas.

The draft text is very limited in scope as can be seen at various levels:

- *There was no effective decision on the status of observers from the secretariats of multilateral agreements on the environment*

In paragraph 10 concerning environmental negotiations, it is merely agreed that '*...the Committee on Trade and Environment Special Session [shall] continue to invite to its meetings, in accordance with its current practice, the secretariats of the multilateral environmental agreements MEAs) invited thus far and of the United Nations Environment Programme (UNEP) and the United Nations Conference on Trade and Development (UNCTAD)*'.

Participation of the secretariats of the MEAs and UNEP is limited, as has been the case in the past (reference to the 'current practice' of the extraordinary session of the Committee). These institutions can only participate in the trade and environment committee and only on an ad hoc basis. In other words, they have no say in the other WTO committees where decisions with considerable effect on the environment are taken (agriculture,

TRIPS council<sup>2</sup>). Within the Committee on Trade and Environment itself, these institutions will continue to have limited access without any opportunity to influence outcomes based on their specific expertise.

- *There was nothing about co-operation between the WTO and UNEP*

A strong reminder of this imperative was made in Johannesburg but it has been left in the background. Nevertheless, the strengthening of collaboration between the WTO and world economic institutions is strongly encouraged in paragraph 29 of the draft ministerial declaration on coherence. A focus of economic domination is thus created on which it will be difficult to exert any political control. The international environmental institutions are cut off from economic influence.

- *There was nothing about technical assistance aimed at sustainable development*

The developing countries do not possess the technical capacity to handle the multiplication of environmental and sanitary standards in Northern countries. In fact, developing countries often consider that developed country environmental and sanitary standards are disguised protectionist devices. However, the problem is more one of a lack of capacity for implementation than one of the legitimacy of the standards themselves, and the developing countries' fear of losing competitiveness if they must meet production criteria that are in fact better suited to developed-country production and/or control technology. The solution lies in particular in technical-assistance programmes to promote conformity with the standards. The WTO, UNEP and UNDP should collaborate closely and provide technical assistance for sustainable development. This will establish links between trade-development and the environment. Such considerations were totally absent from the draft. This could only strengthen the opinion of developing countries that environmental and sanitary standards are an obsession of Northern countries.

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<sup>2</sup> The secretariat of the Convention on Biological Diversity (CBD) requested observer status at the council on aspects of trade-related intellectual property rights (TRIPS). Although the implications of the TRIPS agreement concerning CBD measures on access to genetic resources and the sharing of benefits are important, the request was refused. Several countries, including the USA, were against the CBD secretariat having the right to speak or even the right to examine what is discussed at the TRIPS council.



### **3. The lessons of Cancun**

Should the failure of the WTO Ministerial Conference in Cancun be an occasion for rejoicing or regret? Feelings are mixed. As the concerns of developing countries were not taken into account, the first reaction of the delegates of these countries—and of NGOs—was one of relief. Indeed, the statement was unsatisfactory in many respects (cf. part 2), promising difficult negotiations whose results were uncertain. However, relief and pride in having faced up to the main trade powers soon gave way to disappointment as nothing was able to be negotiated and so nothing was obtained. The negotiations have not progressed.

Strong lessons must be drawn from this failure with regard to the role of the developing countries in trade negotiations, the relevance of free trade as a basis for the regulation of international trade and the future of multilateralism.

On a more short-term basis, questions should be asked about the impact of this failure on the continuation of the negotiations launched in Doha.

#### **3.1 What are the consequences of the failure of Cancun on the negotiation calendar?**

It is tempting to compare the failure of the Ministerial Conference in Seattle and that of Cancun. But the issues were very different at the two meetings. The aim at the first was to launch a new round of negotiations. That at the second was to make progress on the agenda decided at Doha. It was more a mid-term review, and the failure of Cancun has certainly slowed the process, but it has not frozen it.

The question now is whether the agenda for negotiations set out in the Doha Declaration remains valid. The official completion of the negotiations is due in a year and a few months and the reply is clearly 'no'. It is unlikely that the Doha round will be completed in the time allotted even though at Cancun the ministers decided to convene the WTO General Council on 15 December to try to conclude the round 'in a positive manner and on time'. However, it already seemed clear in August that the controversial questions of agriculture and market access for industrial products could not be settled in a few days in Cancun. Likewise, the next Ministerial Conference, which could be held in Hong Kong before the end of 2004, will probably not see significant progress in the negotiations.

This is all the more so as other events may influence the discussions in a decisive manner. For instance, 2004 will be marked by US presidential elections and changes to the European Commission in the autumn. These two events will probably have a strong impact. In Cancun, the pressure of the US elections was already being felt in the position of the US representative, Robert Zoellick, on several sensitive subjects such as market access for non-agricultural products and export credits for agriculture. The second event will lead to the replacement of Pascal Lamy, the present Trade Commissioner. Even if by definition European Commissioners receive their mandate from the member states, the origin and

political sensibility of his successor will be important in the attitude of the EU in the negotiations.

Another important thing to remember in questions of agricultural negotiations is that early 2004 will be marked by the end of the Peace Clause that prevents member-countries from contesting the use of aid for agriculture as long as it is in conformity with undertakings at the WTO and does not exceed 1992 levels, even if it constitutes dumping. The EU is insisting on the extension of this clause and will probably try to achieve this in the next three months.

Finally, few rounds in the history of GATT negotiations have been concluded in four years, so failure to complete the Doha round in the time allotted would hardly be surprising.

### **3.2 How sustainable is the joint front of the developing countries?**

The Cancun Ministerial Conference will be remembered for the role played by the large alliance between the G21 countries, the LDC group, the Africa-Caribbean-Pacific (ACP) countries and the African Union (AU), representing in all nearly 90 WTO member-countries. The Cancun Conference revealed the division between the North and the South once again.

However, a broad alliance in agricultural negotiations seemed difficult at the opening of discussions, as the first group had a more liberal approach than the second (cf. paragraph 3.3). This joint developing country front only emerged after the publication of the draft ministerial declaration. Indeed, many points in the text did not meet the expectations of these countries (cf. paragraph 2). US cynicism concerning the question of cotton was particularly irritating to many. As the developed countries—Japan and the EU in particular—were not ready to abandon the Singapore issues, the developing countries could only observe the deadlock in discussions. Everybody knows what happened next. Luis Ernesto Derbez, the Mexican Minister of Foreign Affairs, took the decision considered by some as hasty to announce the failure of the conference, and most countries were caught unawares.

The developing countries showed throughout the conference their ability to negotiate or at least to resist to the end the various pressures applied by the large trade powers. The considerable cohesion between the national representatives and those of delegations at WTO, together with support from Northern and Southern NGOs, probably played an important role in the forming of a joint front.

It is useful to remember that although the mobilisation of civil society on the streets in Cancun was weaker than in Seattle, civil society turned out to be an important partner for certain Southern governments. However, one should question the sustainability of the broad alliance formed by the G21 and the ACP-LDC-AU group and its ability to carry weight in trade negotiations in the future. Indeed, the alliance is fragile from both inside and outside.



First, it consists of countries with very varied levels of development and national contexts. Priorities are therefore different. Beyond their joint opposition to the Singapore issues, the various countries have distinctly different positions in negotiations concerning access to markets for non-agricultural products and with regard to questions of intellectual property rights. The positions expressed in agricultural negotiations since 2000 have always varied among supporters of the 'development box', the Cairns Group developing countries and India. These divergences remain today, in particular concerning the treatment of 'special products'. Now, the political sustainability of the alliance is founded on the ability of these countries to devise a joint strategy for the entire Doha agenda and thus to overcome these differences. However, in the face of the heavyweights Brazil, China and India, the position of the African countries may well become marginalised in the long term. Likewise, there could also be splits between the heavyweights. China has just joined the WTO and could be tempted to go it alone in these negotiations in the face of the USA and the EU and thus change the balance of power. Furthermore, the alliance could be weakened from outside by the bilateral initiatives of certain countries. The EU and the USA can use the numerous bilateral agreements already signed with developing countries as a means of pressure to shatter this alliance in the multilateral framework.

Finally, it is useful to remember that the developing countries strongly criticised the negotiation process at Seattle in 1999 and were opposed to the developed countries on several subjects (social issues and questions of implementation). There was talk of a rise in the power of the South. This round was finally launched at Doha and many promises were made to the developing countries (Doha, 'the development agenda'). But none of these promises have really led to anything, proving the difficulty for developing countries to have their interests taken into account throughout negotiation in Geneva.

The developing countries certainly pulled off a big political coup in Cancun by forming a united front against the developed countries and in particular the EU, the USA and Japan. They left the conference apparently stronger and united. Nevertheless, the ability of the developing countries to pull together in long-term trade negotiations has a fragile base. From a technical point of view, it depends on their understanding of the issues of the negotiations. This underlines the importance of programmes of technical assistance in negotiations. Furthermore, the positions of the developing countries will be all the more defensible and firm if they are the fruit of discussions between national governments, permanent delegations in Geneva and civil society (farmers' organisations, NGOs, the private sector, etc.).

### **3.3 Calling free trade into question?**

The failure of Cancun may be interpreted by some as a blow to the free trade dogma that dominates trade negotiations today. The role of developing countries in bringing about this result might thus lead to the belief that they have succeeded in making trade one of the instruments of development rather than trade for its own sake. The developing countries

indeed demand that the Doha round should lead to substantial adaptations of trade rules to take account of their low level of development.

However, the position of the developing countries does not call the primacy of free trade into question. Their claims are based more on the procedures for adapting the rules rather than a full reshaping of the principles of international trade.

Agricultural negotiations illustrate this situation particularly well. The developing countries in the G21 founded their alliance on a request for the liberalisation of agricultural support policies implemented by the USA and the EU. The measures proposed for special and differential treatment for developing countries are not very ambitious. As a whole, the latter countries above all defend the status quo, except in questions of access to markets for which they request the recognition of special products (even if these products will still be subject to low tariffs) and a special safeguard measure for the developing countries (even if access to this measure depends on the degree of tariff liberalisation). The positions defended in Cancun by these countries, and in particular those of India, Brazil and China were not consistent with those taken during the discussions in Geneva.

The ACP-LDC-AU countries also focus their position on the improvement of access to markets in developed countries and the removal of domestic support in the latter countries, even if measures concerning special and differential treatment are developed more fully. These countries point at the agricultural policies in the North and seem to consider that their dismantling would go a long way towards solving the problems of their agriculture. None includes in its negotiation priorities more important problems such as the regulation of world supplies and the collapse in the price of raw materials. This problem is illustrated clearly by the situation of coffee and cocoa, whose production does not receive any support but whose prices have been falling over a long period.

It is obviously important that developing countries should attack agricultural policy measures in Northern countries that destabilise world markets, where they cause unfair competition. However, it seems even more important to discuss the impact of the liberalisation of agricultural trade on the problems of prices and world supplies. This discussion implies the need for a reconsideration of the whole structure of agricultural negotiations by authorising the need for protection of national or regional markets, and for the management of world supplies. None of these questions has been mentioned explicitly. The agricultural discussions undertaken at the WTO are not going in this direction and the developing countries are failing to contest this.

### **3.4 Serious concern for the future of multilateralism**

However, the greatest fears generated by the failure of the Ministerial Conference in Cancun concern the future of the multilateral trade system. Indeed, the fate of the Cancun conference further highlighted the crisis in the international trade regulation system based on the rule of consensus and intended to consecrate the primacy of multilateralism. Several

disturbing features can be noted. First, the functioning of the WTO has shown its limits in the framework of trade negotiation on nearly 20 subjects and involving 146 countries. Next, the difficulties of multilateralism are heaven-sent for the promoters of bilateralism in which the balance of power is much less favourable for the weakest.

#### **3.4.1 Seized up negotiating mechanisms**

WTO trade negotiations have been hampered by a handicap inherent in the functioning of the institution since it was founded. This is the difficulty of achieving a consensus among 146 countries, each of which in theory has an equal voice in negotiations. In fact, this equality has never really been applied. In practice, negotiations are always characterised by lack of transparency, with 'green room' negotiations between the largest countries with a resulting agreement that can only be modified at the margin by the other member countries.

This method of negotiation was strongly criticised at the Seattle conference, in particular by the developing countries who were the main victims. Negotiating practice has since improved, with the opening of 'green rooms' to developing countries, the strengthening of the representation of developing countries thanks to the increasing importance of regional groups (Caricom) or specific alliances (Friends of the Development Box, Alliance for Strategic Products and Special Safeguard Measures). But only a few 'representative' developing countries were admitted to mini-ministerial meetings.

However, the questions of negotiation procedures have still not been settled. Paradoxically, the consensus rule leaves the way open to the right of veto, that is to say the possibility for each member country to block negotiations if it considers that its trade interests are not satisfied. Finally, an agreement is only concluded if no country is against it.

The question of negotiation method was raised once again at Cancun. This time, the choice made by the chairman of the General Council and the Director-General of the WTO to present a text with no parentheses, a supposed synthesis of the discussions and their interpretation of a possible compromise, was strongly criticised by most member countries. Published 'under their own responsibility', the document did not set out the different options possible, as reflected in the positions of the member countries, and was considered as exceeding their power.

Finally, the Doha round also contains the ingredients for particularly difficult negotiations, as it should address nearly 20 questions at once. This is very difficult to perform, especially for the developing countries. Although in theory this can enhance the search for a consensus, which involves bargaining between sectors, the consequences can be dramatic for certain countries, explaining the difficulty for some in participating in these negotiations.

Further proof – were this needed – of the difficulties of negotiation is that the ministerial conferences that are supposed to give an incentive to accelerate negotiations no longer function in this way. In Cancun, the true negotiations only began on the last day of the

conference. The final failure shows that the concentration of discussions in a five-day period does not form sufficient incitement to conclude an agreement.

The functioning of trade negotiations was already strongly handicapped by its intrinsic features and then further hindered by the behaviour displayed by the member countries since the start of the Doha round. In particular, at the Cancun conference, most countries showed that they were not ready for compromise and that they remained focused on the defence of their own trade interests.

This observation has been clear from the start of the Doha round. None of the deadlines set in the Doha Declaration have been met, whether for agricultural negotiations, agreements on medicines or negotiations concerning market access for non-agricultural products. The only negotiation completed—that concerning the access of poor countries to medicines—has turned out to be very disappointing for the latter. The agreement will indeed be very difficult to implement because of the numerous restrictions and conditions included to obtain US assent.

Lack of co-operation from developed countries has probably been an important factor in the difficulty of reaching a consensus. The USA and the EU went to Cancun with no concessions to make to the developing countries. The former was particularly aggressive on the question of market access for non-agricultural products. Its attitude to cotton was insulting for developing countries. Japan and Korea refused until the last minute to reconsider their position on the four Singapore issues that they wanted to incorporate in the round of negotiations at all costs.

As for the EU, its inflexible position on the Singapore issues served only to aggravate the rancour of the developing countries. Its strategy, aiming at holding on until the end and then finally giving way on two of the Singapore questions, was short-circuited by the unexpected announcement of the end of the conference. This EU strategy was aimed at focusing discussions on investment in order to avoid having to make too large concessions on agriculture. In reality, the EU would have been ready to accept the draft statement of 13 September. Its official rejection was pure tactics aimed at avoiding making further concessions.

The difficulties for the EU in making progress towards a compromise in the negotiations were aggravated by the need to obtain a consensus among EU member countries. Here again, the respective positions of each European country turned out to be fairly unfavourable for any compromise. The torpedoing of French reticence with regard to the agricultural dossier is one illustration of this. A second is that it was only on the last day that Committee 133, the EU decision-making authority, agreed to abandon two of the four Singapore issues.

But the developing countries also exhibited considerable intransigence, requesting the start of discussions on agriculture before any other subject. In particular, they refused to get

trapped into showing moderation in the negotiations on agriculture in return for abandoning the Singapore issues. This attitude was doubtless generated by frustration accumulated from the start of the Doha round.

In fact the core concerns of the developing countries have been neglected since Doha. Discussions aimed at significantly improving the special and differential treatment awarded to developing countries have become bogged down. Some have even been ignored. This is the case in particular for questions of implementation, with the developing countries requesting that the state of the implementation of the Marrakesh agreements should be examined before the pursuit of any further negotiation. This was a firm condition laid down by these countries. They were not listened to, and the talks addressed subjects that they did not wish to discuss.

This series of frustrations could only radicalise the developing countries, who saw the opening of negotiations on the Singapore issues as a final, unacceptable provocation.

### **3.4.2 Bilateralism strengthened**

The new failure of a WTO Ministerial Conference obviously encourages opponents of the multilateral system, who criticise in particular the length and slowness of negotiations and the extent of the concessions to be made in comparison with the benefits expected. The failure of Cancun will very probably strengthen the trend towards bilateralism in which trade agreements are easier to obtain because they involve fewer partners.

Indeed, the USA and the EU have clearly signalled their intentions following the conference. The US trade representative, Robert Zoellick, stated that the USA would increase its efforts to seek bilateral agreements. He recalled that his country has recently signed 6 bilateral agreements and that 14 further agreements of the type are envisaged. Latin American countries are targeted first, but African countries are also concerned.

The EU has traditionally been in favour of multilateralism, but Pascal Lamy announced that it would re-examine its undertakings in favour of it and would soon put forward proposals for the reform of the WTO. It should also be remembered that the EU is engaged in important negotiations with the ACP countries (Africa-Caribbean-Pacific) with the ultimate aim of forming free trade zones between the EU on the one hand and the ACP countries, grouped in regional integration zones on the other.

However, the strengthening of bilateralism raises two major questions for the stability of the international trading system:

- *When it involves trade negotiations between developing countries and developed countries, it is a source of inequality and often serves the interests of the strongest*

The developed countries are indeed better able to put pressure on developing countries to obtain larger concessions than they would have gained at the multilateral level. Financial carrots and polished speeches on the benefits of free trade are generally enough to gain

developing country approval in these bilateral or regional agreements, even if these benefits do not subsequently take a concrete form. The difficulties encountered today in Mexican agriculture in the face of US agricultural products after the signing of NAFTA are a perfect illustration of this. Another is the introduction by the USA in the AGOA of measures similar to a social clause, and the EU incorporated investment rules in the Cotonou Agreement, whereas developing countries are firmly opposed to these two features in multilateral negotiations.

- *Contrary to the assertion of its supporters, bilateralism is not always an intermediate step towards multilateralism*

The norms established do not always correspond to those of the multilateral system. Some agreements cover only a limited number of products, which is incompatible with the logic of WTO agreements. The multiplication of bilateral or regional trade agreements carries a risk of the splitting up of the multilateral trade system.

Finally, the multiplication of regional and bilateral agreements is a further burden for developing countries whose administrative and institutional capacities are often limited. The negotiation of several trade agreements simultaneously leads to less involvement in each of the processes, and increases the risk for these countries of signing agreements that subsequently prove to be unfavourable.

## **Conclusion**

The failure of the WTO Ministerial Conference in Cancun has generated more fears than hopes for the future of the multilateral trade system. It is one more crisis in the world institutional landscape after the serious problem of legitimacy experienced this year by the UN with the war in Iraq. This failure indicates a dark future for any attempt at the balanced regulation of relations between countries.

As a result, it is urgent to rethink the instruments of international governance. As regards the WTO, numerous questions remain to be addressed. How can the WTO be reformed to make the negotiation process more effective and fairer? What are the objectives? What subjects should be placed on the negotiating table?

Replies to these questions are a prerequisite for overcoming the difficulties encountered in making the implementation of international regulation of trade promote the development of the poorest, and equity in world trade. It is essential that politics should finally take control of economics. Environmental and social standards must not be subordinated to trade rules. A hierarchy of international standards should be drawn up to ensure the primacy of human rights (the right to food for example) over trade law. The WTO must cease taking decisions in isolation from the institutional system of the United Nations and should co-operate more closely with its organisations (UNCTAD, FAO, UNEP, ILO).

All is not lost. The Doha round of negotiations has been started and lessons must be drawn from Cancun. It is all a question of political determination, and the political determination of the various states will be tested over the coming months.

Although they sometimes rejoiced, the NGOs, and especially those of the North, have a share of the responsibility (and they admit this) for the failure in Cancun. It is true that they played an important role, side by side with the developing countries, but their influence on their own governments has been weak.

During the negotiations, they have a fundamental role to play in order to change the positions of the governments of Northern countries in favour of the interests of developing countries. In particular, it is important that they should incorporate the objectives of the Millennium Declaration and the principles of sustainable development as a joint base for concerted work (NGOs both in the North and the South). They should also help to move discussions away from simplistic patterns and refocus them on real questions. For example, it is necessary in agricultural negotiations to move debate away from subsidies and address the really fundamental questions such as those concerning the remuneration of producers, the regulation of international prices, and the management of supply.