Governing rules and principles of the WTO: Its scope and future development in the context of globalisation

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It is quite common today to speak of globalisation and the crisis of the nation-state as being two interwoven phenomenon that characterise recent world evolution. Globalisation appears as the new winning paradigm in international relations. It seems therefore necessary to try first to understand what this concept means.[1]

In fact, the title of my contribution provides the outline of my presentation. I shall first address the context of globalisation and its implications and then the rules and principles of WTO, in order to see if the new trade organisation is a good tool for dealing with globalisation.

1 THE CONTEXT OF GLOBALISATION

1.1 Globalisation is a universal and "one dimensional" phenomenon

The economy has become universal. This globalisation – or "*mondialisation*" as it is expressed in French language[2] – began in the middle of the nineteenth century, more precisely in 1858, when the first transatlantic phone wire was installed under the ocean, and is still going on: the word "globalisation" itself shows that it is an ongoing process.

To speak of globalisation[3] is to insist on the fact that there are increased economic exchanges and intercourse between states and that as a result these states have become increasingly interdependent. Professor Robert Dahl has expressed this quite clearly: "A country's economic life, physical environment, national security and survival are highly, and probably

1 The first part of this presentation entitled "The context of globalisation" is largely inspired by a conference given by the author in Oxford during a symposium in 1998 on "The Role of Law in International Politics. Regulating the International Economy: What Role for the State?", Entitled "How to Regulate Globalisation?", to be published in Michael Byers *The Role of Law in International Politics* Oxford Univ Press 2000.

2 I thank David Boyle for having corrected this English text.

3 For some general views on globalisation, see Bruno Simma & Andréas Paulus "The 'International Community' Facing the Challenge of Globalisation", *EJIL* 9 1998 266–277; also Pierre-Marie Dupuy "International Law: Torn between Co-operation and Globalisation" *EJIL* 9 1998 at 278–286.

increasingly, dependent on actors and actions that are outside the country's boundaries and not directly subject to its government".[4]

Economic globalisation has three main aspects: internationalisation of trade, globalisation of companies and globalisation of flows of capital through the international financial system.[5]

Trade has an inherent tendency to escape from the state's territory. It is worth underscoring that in the last 50 years, international trade has developed twice as quickly as production of goods, and Renato Ruggieri, the then Director-General of WTO, declared in 1998 that by the end of the century, 60% of world trade will be realised without any customs barriers.[6]

Also, today, *transnational firms* are major actors in international relations whose importance compares with the economic weight of many states. As an example, it can be recalled that the turnover of ITT was higher than the gross national product of Chile when President Allende was overthrown, and that it has been said that ITT took part in that event. It is quite clear that the power of multinational corporations competes with the power of states and can hamper their economic – if not political – sovereignty. The power of those multinational corporations is concentrated in a few hands: of the 37 000 existing multinational firms, 100 of them realise ¾ of the global turnover of multinational corporations in the world.

One of the sectors where globalisation seems at its climax is the international transfer of funds through financial markets: may-be this is so because financial markets are dealing with immaterial goods. It is impressive that the private flow of capital is twice as important as the reserves of all central banks in the world.

Recently, however, a step forwards seems to have been attempted, with the famous MAI or "AMI" in French, which allows the play on words made by a former French minister of culture, Jack Lang, saying *"L'AMI c'est l'ennemi"*.[7] Why is the MAI the enemy? Because, if adopted, this multilateral agreement on investment, prepared by the Organisation for Economic Co-operation and Development (OECD), would have allowed total liberalisation not only for international trade which, of itself, transcends the states' frontiers, but also for investment and therefore production, which is an activity rooted in the territory: this is a sort of ultimate attack against state sovereignty over its territory, and has therefore met with very negative reactions from most European countries, and even more from developing countries.

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4 Robert Dahl *Democracy and its Critics* New Haven 1989 at 319.

5 This is in line with the definition given by the IMF: globalisation is "l'interdépendance économique croissante de l'ensemble des pays du monde, provoquée par l'augmentation du volume et de la variété des transactions transfrontières de biens et de services, ainsi que des flux internationaux de capitaux, en même temps que par la diffusion accélérée et généralisée de la technologie", IMF *The Prospects of World Economy* May 1997.

6 See http://www.wto.org/press.htm; see Babette Stern "AMI et NTM, les mauvais chemins de la mondialisation" *Le Monde* 27 March 1998 at 15.

7 *Le Monde* February 1998.

While globalisation, as we all know, is not a purely economic feature, globalisation has a tendency to appear in many fields of human activities and mainly today in the field of *information and communication*: television without frontiers, fax, e-mail, not to mention Internet, which appears as one of the revolutions of this century.

Because it started in the economic field, although it is now expanding into other fields, globalisation implies that today, the privileged approach to any problem seems to be an economic approach. In other words, globalisation carries along with it "*merchandising*" of every aspect of social life, as well as *liberalisation* as the only regulatory device of human relations. It is often said that in the contemporary period we have evolved from a market economy to a market society.

Globalisation, as it stands, rests merely on regulation through the free market, implying that liberalisation is the key word. No barriers to free trade, and especially no state barriers. The question is whether this is a satisfying solution. My answer is "no". I think there is a need for legal rules in any society and not only economic "rules".

1.2 There is a need for law in the global society as in every society

It is sometimes stated that economy has its own inherent rules of regulation, which would render laws unnecessary. It is quite simplistic to oppose law and economy in this way. Law, with its procedures guaranteeing security in economic dealings, has been one of the key factors of the development of liberalism. Regulation exclusively through the "invisible hand" of market forces is not satisfactory.

Since the time of Ricardo, nobody would contest the fact that liberalisation brings about economic growth. Economic growth will be higher, on the national as well as the international level, if international division of labour is based on the theory of comparative advantages rather than on autarkic theories.

While there seems to be general agreement on "global" positive aspects of liberalisation of economic relations between states, two schools of thoughts emerge that do not analyse the ultimate consequences of liberalisation in quite the same way.

For some, the global economic efficiency of liberalisation and deregulation is enough to justify its absolute reign in all aspects of human behaviour.

For others it is not enough to look at global efficiency, as it appears that the gains are distributed unevenly, between states, as well as within them, thus requiring corrective action: for this reason the trade director of the OECD has declared that "this is why politics and the exercise of leadership at both the national and the international level continue to matter greatly".[8] To complete the picture, it could be added, "this is why law, both at the national level and the international level, continue to matter greatly".

8 Pierre Sauvé "Open Market Maters" *Journal of World Trade* July 1998 at 18.

It can seem that neither national law nor international law is capable of dealing with the multiple aspects of globalisation. At the same time, the need for regulation is clear. It is becoming more and more evident that "savage liberalism" cannot bring prosperity and justice to the people of the world. This is not a statement of a dreaming professor or a dangerous leftist. This is a fact recognised by as serious an economic authority as Jacques de Larosière, President of the EBRD who warns us against the global dangers that necessarily appear in a global world: "In a global world, the dangers too are global: pollution of the atmosphere, competitive devaluations and so on. This world thus requires rules and an effective monitoring that applies to the strong ones and the less strong ones. This is the challenge of the 21 century".[9]

In order to respond to this *need for law*, several attempts are being made or could be made. Some are based on mere assertions of power, even when they pretend to use the channel of law: this is the case when a State tries to impose a *worldwide extension of a national legal system*. Others are clearly attempts to create regulatory systems by entities or individuals that have no territorial confinement like states, which are neither national law, nor international law: this is the case of the *creation of private regulatory systems*. None of these attempts at the regulation of globalisation seem to be satisfactory, as they all have what I would call "a legal deficit". The only way to regulate the global economy and the global world is to develop the efficiency of international law, there is no salvation outside the *creation of a truly world-wide international law system of regulation*. I will now deal in turn with these three different attempts to regulate globalisation.

1.3 Attempts at unilateral regulation by a state through the world-wide extraterritorial extension of a national law

Considering that the economy is global and that the legal field is fragmented into multiple national legal orders, one practical device to regulate the global order would be to extend the national legal order of a dominant State to the global order. Although this has been, and still is, attempted by the United States, such an imperial imposition of a national legal order, although it may have some efficiency in international economic relations because of the existing balance of power, is in contradiction with the basic structure of the international community of states and violates the existing rules of international law. One of the most striking examples of such

9 Jacques de Larosière: "Dans un monde globalisé, les dangers aussi sont globaux: ceux de la pollution de l'atmosphère, ceux des épidémies, ceux des dévaluations compétitives, etc. Ce monde requiert donc des règles et une surveillance effective qui s'applique aux forts comme aux faibles. Tel est le défi du XXIe siècle . . . Il en va de la paix, il en va aussi de nos nations, qui, malgré les contraintes et les chances offertes par la mondialisation, doivent absolument conserver leur culture, leurs traditions et leur identité, conditions même de leur survie", in "Implications de la mondialisation", in "L'éthique financière face à la mondialisation" *Rapport Moral sur l'Argent dans le Monde* 1997 Paris Montchrestien 1997 at 36.

an approach is the extraterritorial application of US law for political purposes, as organised in the Helms-Burton and D'Amato-Kennedy laws.[10]

1.4 Attempts at multilateral regulation by private powers through the creation of non-state regulatory systems

Law, as a creation of state, has to compete with other means of private regulation. Because of globalisation, many non-state actors tend to refer only to the global world as their play ground: this is, of course, the case for multinational firms, but also for other emerging actors of international relations, like NGOs, or even private individuals through Internet.

The existence of globalisation can first raise the problem of what is called in the French doctrine *lex mercatoria*, the "law" of international merchants. What kind of "law" is that? Quite often, the rules adopted by multinational firms have been qualified as rules merely embodying the power relations between the different private actors of international economic relations. However, it must be emphasised that these rules are ultimately subordinated to state law, whenever they are not spontaneously enforced and one of the parties to a dispute needs enforcement of its rights.

The same type of autonomous regulation can be found today among "Internet-users". Like merchants, they live in their own global system namely the "www", the worldwide web, which seems completely detached from any state. The participants in the system adopt codes of behaviour, in order to avoid some of the inevitable excesses of absolute freedom.

But ultimately, as with the "law of merchants", the "law of Internet-users" will need the states' enforcement powers, if conflicts appear on the interpretation or application of the self-regulatory norms.

1.5 Attempts at regional regulation by states through regional organisations

One frequently insists today on the decline of the nation-state,[11] and one reason[12] sometimes put forward to explain it, is the transfer of sovereign powers or duties from states to multilateral supranational entities. However,

10 For an analysis of those laws, see Brigitte Stern, "Can the United States Set Rules for the World? A French View.", *Journal of World Trade* 32 August 1998 at 5. See also Brigitte Stern, "Note d'actualité. Vers la mondialisation juridique ? Les lois Helms-Burton et D'Amato-Kennedy" *RGDIP* 1996 at 879–1003; for a political science point of view, see Brigitte Stern, "Einsitige Wirtschaftssanktionen. Helms-Burton, D'Amato und die Europeär", *Internationale Politik* 1997 at 7–16 (this article has been translated in the Russian issue of *Internationale Politik*); for the European Union reaction, see Brigitte Stern, "De simples 'Commentaires' à une 'action commune': la naissance d'une politique juridique communautaire en matière d'extraterritorialité" *Europe* 1997 2 at 8–9; see also *Le Monde*, "Les Etats-Unis et le droit impérialiste" 12 Septembre 1996; and "Helms-Burton and D'Amato Flout International Law" on Internet http://www.AdeTocqueville.com.

11 See, for example, Oscar Schachter, "The Decline of the Nation-State and its Implications for International Law" *Columbia J of Trans L* 1997 at 7.

12 We only deal here with the "attacks" on the nation-state from "above", not from the "attacks" from "below", through nationalistic or religious claims.

in my opinion, there is a great difference in the decline of sovereignty which is *imposed* on states against their will by the *facts* of life, by globalisation of the economy, development of new communication technologies or diversification of the actors of international relations, and the "decline" of sovereignty *accepted* and even welcomed by states in the name of global solidarity, in the form of supranational *norms*.[13]

The development of regional organisations participates in the second trend, whose meaning is quite different from the first. Faced with economic globalisation, states have endeavoured to act collectively. The best example is of course the slow but steady creation of what was first the European Economic Community and which is now the European Union. European states have endeavoured to act collectively in order to promote development and to establish a common legal order to master the economic relations between them, and to a certain extent with the rest of the world. From the Treaty of Rome adopted in 1959, through the "Single European Act" of 1986, unifying in a single "European Community" the three existing different communities, the Steel and Coal, Euratom and the European Economic Communities, creating a single market in Europe with no inner customs or barriers, the Treaty of Maastricht, signed on February 7, 1992, which created the European Union, and decided that this new entity would have a common currency, the "Euro" and recently, the Treaty of Amsterdam, signed on October 2, 1997, deepening the political aspects of the European Union, Europe has developed a new legal order which is quite efficient. The efficiency of the new "communitarian" legal order was strengthened, if not completely created, by the jurisprudence of the European Court of Luxembourg: first through the *Van Gen Loos* case,[14] in which the "direct effect" of European rules (the rules of the Treaties as well as the rules adopted by the European organs, the so-called "*derived legislation*") was asserted; then through the *Costa v Enel* case,[15] in which the superiority of the European legal order over national orders has been averred, that superiority resulting from the "definitive limitation of the sovereign rights of states". But this limitation was decided by the states, in order better to deal with globalisation.

Many other economic regional international organisations try to answer the challenges of globalisation – MERCOSUR, NAFTA, APEC, SADC and so on[16] – but none has really given birth to a true legal order of its own like the European Union.

1.6 Emerging world-wide regulation by states, through international organisations

Everyone knows that after World War II, the need emerged to regulate the world economy on a multilateral basis, especially after the 1929 crisis.

13 See L Henkin *International Law: Politics and Values* Martinus Nijhoff Publishers 1995 at 8 sq.

14 5 February 1963 case 26/62 rep at 1.

15 15 July 1964 case 6/64 rep at 1141.

16 See FM Abbott *Law and Policy of Regional Integration* Martinus Nijhoff Publishers NAFTA Law Series Kluwer 1995 at 35 sq.

The idea was to create three international organisations:

- one to regulate monetary problems, especially the question of the rate of exchange between the different currencies: this has been the task entrusted to the IMF.
- one to regulate financial problems, especially those raised by reconstruction. The World Bank was charged with this.
- one to regulate commercial problems. These questions should have been entrusted to the ICO (International Commerce Organisation).

It is well-known that this last organisation never came into existence, because of the refusal of the American Congress to ratify the Havana Charter, its constitutive charter. The reason was a certain distrust for any regulation of international trade, which would limit the expansion of liberalism: this position of the US was in line with its own interests as the hegemonic power, which can impose its views on trade regulation, without the need of an international organisation in which it has to co-operate with other states.

A chapter of the Havana Charter has however been provisionally put into force: this is the origin of the GATT, the General Agreement on Tariffs and Trade, which was not so provisional, as many of its rules are still in force through what is called GATT 1994.

In 1947, GATT had 23 Contracting Parties – "Contracting Parties" and not "Members" as GATT was not an international organisation, just an agreement. In 1997, GATT had 123 Contracting Parties.

This agreement was modified, deepened and expanded through several rounds of negotiations namely: Dillon Round, Kennedy Round, and Tokyo Round.

Finally the Uruguay Round started in 1986. It was to be completed in 1990 but finally ended only in 1993: the "Marrakech Agreements" that were signed on 15 April 1994 comprise in fact almost 30 agreements and constitute a document of 22 000 papers. It entered into force on 1 January 1995, and now has 135 members and 36 negotiating to become member.

I will try to give the substance of it without, naturally, entering into all the technicalities.

Why did the US welcome such an organisation, only after World War II? I think the answer is in the balance of power relations since the beginning of the sixties, the United States has to count with Europe that has become the first trade power in the world, and must also take into account Japan. So there is a need to develop rules to regulate the relations between them.

2 THE WTO AS A WORLD-WIDE INTERNATIONAL SYSTEM OF REGULATION OF GLOBALISATION

There is a clear and evident globalisation of the legal rules of the trade game through WTO. I will first describe the globalisation of the legal rules, and then question the final aim of these rules.

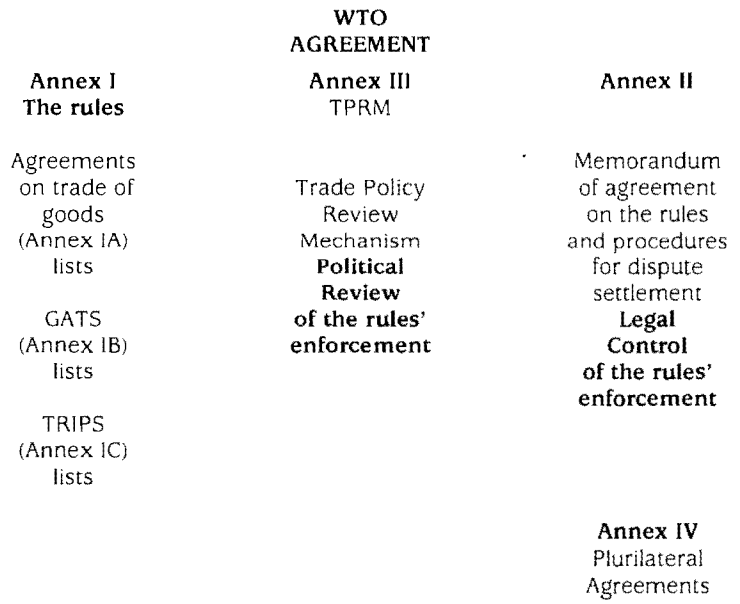
Certainly there was also a trend under the GATT to have common rules that applied to all the contracting parties. However GATT permitted so many exceptions and waivers that, at the time when the Uruguay Round started, it was no longer possible to distinguish the rule from the exception.

2.1 The globalisation of the rules governing trade is currently taking place

There is a hard core of rules in WTO[17] that a state must accept imperatively if it wants to become a member of WTO.

There is a common set of rules that apply to all the members of the WTO. This consists of:

- the WTO agreement setting up the organisation. These are institutional rules and can be considered as the framework of the whole construction. This major agreement creating WTO has only 16 articles.
- the first three Annexes.



Thus, there is a body of rules applying to all WTO members,[18] covering a great part of the world, which consists of the first three Annexes, the last Annex applying only to members that have specifically ratified it.

17 See all these WTO texts reported in *The Law of the WTO – Final Text of the GATT Uruguay Agreements Summary* The Practitionner's Deskbook Series Oceana Publications 1995.

18 At the present time – February 2000 – there are 135 members and 35 states engaged in the process of accession, among which China. See *http://www.wto.org/wto/about/organsn6.htm.*

Moreover, besides a common set of rules that apply to all members of WTO, there is unity in the political interpretation of the rules.

Not every state can, as often happens in international law, interpret the rules as it considers fit. Only the ministerial conference, which is the highest body of the organisation and is composed of one representative of each member state, can interpret the WTO agreement and the different agreements. And only a ¾ majority can adopt such an interpretation. The same holds true with the granting of derogation, which requires a ¾ majority. These voting rules guarantee that the body of norms is uniformly interpreted and that a hard core of rules applies equally to all members. These voting rules are also a guarantee that derogations will not become more important than the rules, as derogations must be broadly accepted and must also be justified: in other words, the ministerial conference must give details of the "exceptional circumstances" justifying a derogation.

Another rule tending to universality of application is the end of the so called "*grand father clause*" of GATT: in GATT, a state was allowed to keep its legislation contrary to GATT when that legislation preceded it.

Finally the organ for the examination of trade policies also plays its part in the creation of a common body of global norms, as provided for in Annex II.

This uniform political interpretation would be insufficient to ensure truly global rules if there were not also unity of legal interpretation of the rules governing world trade. This unity of legal interpretation and enforcement of the rules is realised through the new dispute settlement mechanism.[19]

The "judicialisation" of the procedure of dispute settlement is one of the biggest steps forwards in WTO institutionalisation, although some advances had already been made during the GATT period.

It has to be said that the existence of the Appellate Body is an important guarantee ensuring that law plays its role in the settlement of disputes and not only politics and conciliation of interests. By the same token, the so-called "negative consensus" rule, the result of which is that a report must always be adopted, is a major improvement and tends to guarantee universal application of the trade rules to all states, including the more powerful ones.

Considering all these features (a hard core of universal rules), common interpretation of these rules and universal application of the rules (some see WTO as the "United Nations Economic Organisation"), the UNEO of the future with rising importance and power.

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19 An important body of literature exists on this mechanism, which cannot be extensively cited. See, however, C Lafer "The World Trade Organisation Dispute Settlement System" Gilberto Amado Memorial Lecture United Nations 1996; D Palmeter & PC Mavroidis *Dispute Settlement in the World Trade Organisation. Practice and Procedure* The Hague Kluwer 1999; E-U Petersmann *International Trade and the GATT/WTO Dispute Settlement System* The Hague Kluwer 1997.

2.2 However, there are some limits to globalisation of the rules of WTO

The first limit stems from the special situation of developing countries and among them, of least developed countries.

Special procedural treatment for the settlement of disputes, but also moderation, is requested as far as the consequences of a violation by a less developed country are concerned.[20]

However, the New International Economic Order that WTO is now designing is different from the New International Economic Order of the seventies. This NIEO was based on generalised preferences, unequal treatment in favour of the less developed in order to restore a certain balance. In WTO, the treatment is the same, the ultimate rule to be applied is the same even if some time is needed to apply it. Most of the special rules for developing countries concern time limits. For the moment however, their group is in a special situation, even if, in the end, they are deemed to participate fully and on an equal footing in globalisation.

A second limit comes from the priority focus on trade and the necessity to co-ordinate with other international organisations. It is true that some concern exists to go beyond trade and take into consideration questions closely related to trade: the TRIMS agreement is a good example. But co-ordination must still be organised and developed with other economic or non-economic organisations. A few examples can be given. There must be co-ordination with IPWO for all questions raised by the rules included in the TRIPS. There must be co-ordination with FAO and WHO for all sanitary and phytosanitary questions. This problem was raised in the *Beef Meat (hormones)* case[21] between the US and the EU. The above-mentioned organisations, FAO and WHO, set some rules for food security called *Codex Alimentarius*. The WTO appellate body had to rule on the status of these rules, which were finally considered as merely recommendatory in a decision of 16 January 1998. There must also be co-ordination with OECD. MAI has raised, in an exemplary manner, the difficult question of the relations between OECD and WTO and between investment and trade.

Finally, a third and last limit is encountered as a consequence of the existence of plurilateral agreements and the possibility of reservations to the hard-core rules. Four plurilateral agreements exist and concern specific matters namely: civil aviation, milk, beef, and anti-dumping. A state can be a member of WTO without accepting any of these agreements included in Annex IV.

Also a State can always make a reservation to some of the rules set in order to regulate world trade. A reservation means that a state declares that it excludes the application of a specific rule as between itself and another state. But such reservations already existed under GATT in order for it to be acceptable: this is a kind of "grand father's reservation".

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20 For an in-depth analysis of the position of less developed countries in WTO, see Bérangère Taxil, "L'OMC et les pays en développement" (with a foreword presented by John Jackson) *Perspectives Internationales* 11 Paris Montchrestien 1998.

21 *Canada & United States v European Community (Measures affecting Livestock and Meat (Hormones)* WT/DS 26 & DS 48 (Appellate Body 1998).

2.3 The question remains whether the content of the rules of WTO really answers the challenges of globalisation

The globalisation of the rules described above has a principal purpose, which is to foster liberalisation in all sectors of economic activity. An example of the far-reaching extension of liberalism is the will of WTO to consider cultural production as merchandise like any other. This explains the recent conflict on the "cultural exception" led by France, in an attempt to react against mercantile globalisation in all sectors.

So the real question here is whether or not the rules of WTO can cope with the main problems raised by globalisation?

My answer is unfortunately "no". I think it is a good tool, as it is universal, and can therefore deal with global problems. However, for the moment, the tool is being used for *more globalisation*, instead of being used for *better globalisation*, which is to correct the structural deficiencies of the market economy.

And in this respect I see three main defects of liberalism.

Firstly, it is not a self-regulatory system. Secondly, it is a system aimed at optimising production with no concern for distribution, as already pointed out. Thirdly, it is a system that is not really concerned with social values.

To none of these defects does the WTO provide a serious answer, or even attempt to provide an answer.

It cannot be doubted that the rules of WTO tend towards more liberalism. As already indicated, derogation to liberalisation will only be granted in exceptional circumstances. In addition, WTO fosters liberalism, without really being concerned with competition rules. In other words, if it is not limited by rules on competition, liberalism destroys itself by a natural tendency to concentrate power in too few hands. It is worth underscoring that, for the moment, WTO incorporates no rules on fair competition.[22]

Only an anti-dumping agreement exists, but no general policy to avoid the system ending up not in a free market, but in a market dominated by one firm in each field, which is, of course, the end of liberalism. The fear that the world will be dominated by a few omnipotent "world companies" seems quite real, if one considers the ongoing mergers of huge national or multinational corporations in all major economic fields.

Another concern comes from the fact that the rules of WTO do not take into account social values.

A good example here is the *Beef Meat (Hormones)* case[23] in which the liberal rule of unhindered entry of the hormone treated beef into Europe

22 During the Singapore conference, the question of the establishment of worldwide rules on fair competition has been raised.

23 Op cit WT/DS58/AB/R 12 October 1998 38 *ILM* 1999 at 118 and following. See Robert Howse, "The Turtles Panel – Another Environmental Disaster in Geneva", *Journal of World Trade* October 1998 vol 32 5 pp 73–100. Asif Qureshi "Extraterritorial Shrimps, NGOs and the WTO Appellate Body" *ICLQ* January 1999 pp 199–206. Gregory Schaffer "United States – Import Prohibition of Certain Shrimp Product" *AJIL* 1999/2 vol 93 pp 507–514.

has been considered as more important than the protection of health based on the principle of precaution as seen by European society.

Also, naturally, WTO had no serious concern for the environment until the Singapore conference.[24]

A question is also raised concerning the compatibility of positive discrimination, like for example "affirmative action" in favour of the black population as understood in South Africa, with the rules of WTO based on non-discrimination.

If WTO really wants to be the world economic organisation, it must include such social considerations in the legal order it aims to impose on the world.

The European Council Parliamentary Assembly has adopted a recommendation to this effect in 1996 concerning WTO and social rights: "*The Assembly regrets that the globalisation of trade, taken into account through the creation of WTO in order to replace GATT, is not followed by provisions guaranteeing the fundamental social rights. The Assembly is however convinced that economic development and social development must go together, and that in the short or long range, the economic development will be hindered if the social rights are neglected.*"

Discussions concerning the "social clause" have shown the limits of the account taken of social values, especially the protection of workers under WTO rules.

Last but not least, it must be emphasised that the rules of WTO are not concerned with distribution of the proceeds of the economy. This again favours the rich, and widens the gap between them and the poor. The then UN Secretary-General Boutros Boutros-Ghali said, back in 1991: "*If we want to avoid great cataclysm, we have to accept that the rich become less rich and that the poor become less poor*". Liberalism produces well (much better than communism for example), but liberalism does not know how to distribute either work or revenues.

Everyone knows that the gap between the North and the South is broadening. In the last UNDP Report on Human Development, it is stated that in approximately 70 countries, where more than a billion people are living, the level of consumption is inferior today to what it was 25 years ago.[25] Another alarming figure has been recently given by the IMF and the World Bank: according to these two institutions, of the 6 billion people living on earth, 3 billion live on less than $2 a day!

It must be repeated again and again that even the optimal functioning of liberalisation and globalisation does not guarantee the decent survival of the whole population. According to Jean-Paul Fitoussi, "This structural deficiency of the market economy calls for a social model, collective

24 However the dispute settlement system seems to take into account, to a certain extent, environmental concerns and such concerns have also been incorporated as one of the parameters to be considered during the Singapore conference.

25 "*Human Development Report 1998.*" Report from the *United Nations Programme for Development*. For a comment of this report see Brigitte Stern "Les chiffres de la honte. A propos du rapport mondial sur le développement humain du PNUD" http://www.ridi.org/adi/19981la1.html.

considerations and solidarity. Market and 'socialism' are thus closely linked, as the first is senseless without the second."[26]

The recent Nobel prizewinner, Amarty Sen, through his work on the economy of poverty, shows that famine is not the result of a lack of food resources, but only the consequence of bad organisation of the distribution of the proceeds of agriculture in the world.

At the same time, he has declared that one cannot really refuse globalisation; one cannot be against globalisation. I quote him: "*Not only is globalisation unavoidable, but it can also be a major force for the world prosperity, on the condition to be adequately oriented by national policies*". And I would add, on the condition that it will be adequately orientated by international policies.

Everyone knows that one is more efficient with two hands than with one. I think this is true also for our problem: besides the ***invisible hand of the market***, there should be a ***visible hand of justice and solidarity***, which is the hand of states acting unilaterally, or preferably, multilaterally in organisations like WTO. This is the challenge of WTO at the dawn of the 21 century.

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