

**European Conference on Corporate Social Responsibility**  
**Competing for a Sustainable Future**  
**Maastricht, the Netherlands**  
**7 to 9 November 2004**

**Panel Session on CSR and Trade**

**Moderated by: Dr. Katherine A. Hagen, Geneva Social Observatory**

*Description:*

In response to public concerns about business practices in developing countries, a growing number of governments, including the European Commission and the US, have begun to link trade agreements (that regulate the behaviour of governments) and voluntary CSR initiatives (which are voluntary efforts to self-regulate corporate behaviour). Is this a good idea? Are there other ways to address the issue of CSR and trade?

*Panelists:*

Dr. Susan Ariel Aaronson, Senior Fellow, Kenan Institute, Washington, DC, USA  
Ms. Corinne Dreyfus Politronacci, European Commission, DG Commerce G1, Brussels, Belgium

*Moderator's Introduction:*

CSR is a wide-ranging phenomenon that is calling upon business to reach beyond their existing legal obligations for the benefit of society at large, and it applies to business conduct in both developed and developing countries. The impetus for looking at CSR in the trade context is a more limited aspect of this phenomenon. It has to do with trade liberalization and its implications for business practices in developing countries.

Concern about exploitative environmental and labor conditions in developing countries has contributed to voluntary codes of conduct, multistakeholder monitoring and certification initiatives for multinational companies operating in these countries. It has also led to the negotiation of side or supplementary agreements to ensure governmental compliance with these same environmental or labour standards. Even in developing countries, however, the legal framework is typically in compliance with basic international norms, and the controversy has not been directed at any official violation of or refusal to accept these standards. (There are exceptions to this, to be sure: e.g., freedom of association in China or forced labour in Myanmar.) Rather, the focus in recent years has been on the need for better governance. Side agreements on environment and labour were negotiated, for example, to supplement the North American Free Trade Agreement, in order to ensure that each of the three member countries of NAFTA effectively implemented their respective environmental and labour laws. Under NAFTA, the targets have been the practices of particular companies that have been charged with labor or environmental violations, for which the government with jurisdiction has been held responsible.

While this approach is not in itself a direct linkage of corporate social responsibility with trade, it encompasses the kinds of issues that are the basis for this linkage. In other words, the promotion of corporate social responsibility is itself linked to the trading activities of companies that are operating multinationally and especially of those companies that are benefiting from the lower costs for their production or delivery in developing countries and bringing their products or services into international trade.

The interest in CSR is integrally linked to trade because it is linked to the expectations of enterprises that come to light as a result of their trading behavior. CSR runs parallel to the conditionality that is directed to governments in enforcing labor and environmental standards through various bilateral and multilateral trade agreements. As a result, one is also starting to see direct linkages to the promotion of CSR in various bilateral trade agreements and other trade negotiations.

In the longer run, one can also argue that CSR will become increasingly important when trade liberalization is tied to sustainable development, as it has been in the Doha Development Round. Concern about how multinational enterprises might behave with freer trade in agriculture or services and with reduced barriers generally is leading to an interest in alternative approaches to the promotion of CSR globally.

On this panel were experts on trade and CSR trends from both the European and the US perspective, who addressed how these CSR instruments are being used in the context of trade.

*Corinne Dreyfus Politronacci, European Commission, DG Commerce:*

Ms. Dreyfus started her presentation by reaffirming that the European Union is concerned about promoting globalization with a human face. They are looking beyond pure trade to the underlying conditions that create wealth AND disruptions. CSR is a business contribution to sustainable development. And while rulemaking is the preferred route to setting the standards for sustainable development, CSR is a second best option that can help, in particular when rule of law is weak. The specific case of the Kimberley Process resulted in a voluntary agreement to certify conflict-free trade in diamonds. It required a WTO waiver to be implemented. Public authorities like the European Commission see public/private partnerships like this one to be part of the answer to difficult governance situations, and CSR is a tool for this.

Ms. Dreyfus noted that CSR refers primarily to social and environmental standards. These standards are, in fact, international agreed standards, and the EU does believe that one can refer to them in trade agreements. These standards are also reflected in the OECD Guidelines, which were adopted by governments and thereby encompassed a commitment from public authorities to implement them. Thus, there is a clear commitment from governments to promote CSR.

The role of CSR in EU trade policy is based on a series of initiatives, in both their multilateral and bilateral negotiations, as described by Ms. Dreyfus. First, she noted that the EU made specific reference to CSR at the WTO Working Group on Trade and

Investment. CSR can also help address issues in the context of intellectual property rights and HIV/AIDS. In general, she observed, the EU recognizes the difficulty of compliance with extraterritorial measures, but they have pursued a policy dialogue to promote host country enforcement instead of imposing CSR obligations. Thus, in the EU's trade policy review strategy, for example, they have encouraged social and environmental reporting. She reported that on 10 February 2005 the Commission adopted an amended proposal for an early entry into force of the new Generalized System of Preferences Regulation (1<sup>st</sup> April 2005-31 December 2008). Under this new scheme, the new "GSP Plus" incentive will grant additional tariff preferences to countries which ratify and effectively implement the key international conventions on core labour standards and environmental protection. Then there is the "Everything but Arms" policy in relation to the Least Developed Countries. Finally, she referred to the new set of policies announced in September to ease the phase out of the Agreement on Textiles and Clothing.

In addition to these multilateral initiatives, Ms. Dreyfus pointed out that the EU is integrating CSR into their bilateral trade negotiations as well. With Chile, for example, they have reaffirmed the OECD Guidelines. CSR is also included in the EU's Japan investment promotion initiative, as well as in the future trade and investment enhancement agreement with Canada. Sustainable development chapters are also being discussed in their trade negotiations with both MERCOSUR and ACP countries in the framework of the Economic Partnership Agreements.

One final observation is that the EU will be issuing an official publication on CSR building on the Green Paper on CSR issued in 2002 and the report of the Multistakeholder Forum this year (2004). Ms. Dreyfus observed that this new Communication, due before Summer 2005, will contribute in a significant way to the overall strategy of the EU on CSR and trade.

*Dr. Susan Aaronson, Senior Fellow, Kenan Institute:*

Ms. Aaronson started her presentation by stating that the overriding theme of her presentation is that social issues are a part of trade in reality even though they are not recognized as such. From the perspective of US trade policy, this has become well established. During the GATT Uruguay Round, for example, there was a slogan to the effect that people should not think that multinational enterprises have acquired certain rights without any responsibilities, and yet that seems to have been the outcome of the GATT negotiations. Investment agreements delineate rights but do not delineate the responsibilities of international firms in nations with inadequate governance. As a result, firms do not know their responsibilities when they operate in countries where the governments are inhumane, corrupt or inept. CSR is often the business response to dealing with public concerns over MNC activities in these countries. Trade and investment agreements, to be sure, are intended to regulate governments, not private actors, and there is no international institution that regulates corporations or foreign investments. Under these circumstances and looking beyond a CSR response, it ought to be the objective of companies to pressure governments to be responsible.

CSR, according to Ms. Aaronson, is in its infancy and is a rough guide on how companies should behave ethically in different national settings. One source of guidance for ethical behaviour is the way in which social provisions have been incorporated into the MFN principles. They show that CSR can be linked to trade. CSR is already being integrated into all of the US bilateral trade agreements. This is the US strategy, i.e., the inclusion of corporate stewardship language in all bilateral agreements. The Bush Administration has also supported the Kimberley Process that has been described by Ms. Dreyfus.

What the US Government can do is to do more to link CSR with trade. For one thing, Ms. Aaronson suggested, the US can and should use the OECD Guidelines. For another, she recommended that the US should pursue other waivers on the Kimberley model. A big issue right now is intellectual property rights in China, and, she argued, the US could prod the suppliers to do more to insist on these rights. Other types of linkages to CSR could and should be integrated into public procurement policies, where there ought to be a basic human rights clause. The US Government should also help build capacity for developing international standards. Another big issue right now is intellectual property rights in China, and, she argued, the US could prod the suppliers to do more to insist on these rights. Other types of linkages to CSR could and should be integrated into public procurement policies, where there ought to be a basic human rights clause. The US Government should also use foreign aid to build capacity to enforce national and international standards as well as to help build capacity for developing international standards.

*Discussion:*

A lively discussion with several participants from the audience followed these presentations. Many of the observations challenged the feasibility of voluntary initiatives, while also pointing out the diversity and inconsistency among different codes and multistakeholder initiatives. Another point of inconsistency had to do with the accountability of foreign versus domestic companies. Others questioned the ability of government policy to define the scope of something that is supposed to be voluntary. The panelists suggested that there were certain basic principles that had been articulated in the OECD Guidelines that could define the scope of CSR without necessarily operating as a regulatory initiative.

A second theme related to the absence of an existing international legal framework for holding companies – or governments – accountable for basic labour and environmental standards. Some participants argued that the inadequacies of the enforcement mechanisms for labour and environmental standards called for stronger enforcement through the WTO. Countering that position, other participants observed that the main issue is good governance. That requires capacity-building to help governments enforce their laws. It also requires the willingness of governments to join together to condemn the misbehaving ones. These are not options that can be left to individual companies to carry out.

A third line of discussion was directed to the pragmatic question of whether CSR-type conditionality would ever be accepted in the WTO. The Kimberley Process, after all, required a waiver of WTO rules. On the other hand, it was noted that the WTO Ministerial Conference in Singapore had actually endorsed the existence of certain core labour standards as applicable to all countries – albeit with the understanding that their enforcement was appropriately in the jurisdiction of the ILO and not the WTO.