

“CSR and the WTO: Towards a Fairer Globalization or 'Misguided Virtue'?” Geneva Social Observatory

Like proud parents, we're pleased to report that the Geneva Social Observatory held its first public event - a panel discussion on corporate social responsibility and the WTO - at the recent WTO Public Symposium. The purpose of this event was to stimulate a broadened information exchange and participatory dialogue on how CSR might be able to contribute to equitable trade liberalization and development. CSR has recently received relatively much more attention in the context of regional and bi-lateral trade agreements than it has gotten in the multilateral WTO context. The EC presented its views on this issue as early as 1999 in the WTO's Working Group on Trade and Investment (WT/WGTI/W/81) asking whether governments should encourage codes of conduct or voluntary guidelines approaches and, if so, by what kind of incentives. Although the EC has pulled back from its interest because of the likelihood that investment will not be included in the current round of trade negotiations, we recognize that CSR and trade can easily be linked to CSR and development, and we wanted to look at how the debate might play itself out. The WTO Symposium provided an ideal forum for this debate because it has developed a reputation for being a platform for open and innovative discussion on even the most politically sensitive trade issues.

Our panelists included:

- Tricia Feeney – the Director of Rights and Accountability in Development, and previously with Amnesty International and Oxfam;
- Auret van Heerden – Executive Director of the Fair Labor Association;
- Dwight Justice – an ICFTU specialist on multinational enterprises;
- Hugh Pullen - a representative of the Trade Directorate of the European Commission;
- Fasih Karim Siddiqi, Hinopak Motors Ltd. and Employers Federation of Pakistan, and;
- Michael Stopford - Head of Global Public Affairs and Government Relations at Syngenta.

Katherine Hagen, the session's moderator and Managing Director of the GSO, kicked off the event by asking each participant to describe their work with CSR. The panelists' experiences were diverse, ranging from involvement with the EU's Multi-stakeholder Forum, to the sector-specific programs of the Fair Labor Association, national and community-based initiatives, and work with the UN's Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Congo. They also illustrated the special challenges faced by enterprises operating in countries where many of society's basic needs are not being met. In Pakistan, for example, Fasih Karim Siddiqi described how the private sector has recently played an active role in a wide-ranging effort to reform the police system.

As has often proved to be the case in structured dialogue on this issue, the panel was not inclined to agree on a universally applicable, operational definition of CSR. According to the ICFTU's Dwight Justice, definitions (nonetheless) matter very much; they are tied to the political dynamics of the debate. The trend is presently to take a broader perspective when defining CSR, i.e. to consider anything that business does in the way of philanthropy or that goes beyond legal requirements as CSR. In his view, this is a mistake. Narrow definitions are desirable, as, ultimately, is some form of social regulation to correspond to the existing multilateral economic disciplines. Without a clear understanding of what's under discussion, what needs to be regulated and who has the legitimacy to set standards, politically productive dialogue is not possible.

Michael Stopford agreed that there was a need for "tighter definitional frameworks", but emphasized that there had to be better understanding of who the key stakeholders were, too. Furthermore, he argued, CSR had to be firmly embedded in the business rather than just philanthropy or public relations. Aret van Heerden brought in the question of when and how companies should challenge the existing law, above and beyond those situations where they simply obey existing laws voluntarily, even when they aren't being effectively enforced. In contrast, Fasih Sidiqqi pointed out that the dilemma of corporate culture in developing countries implies an apparent dichotomy between economic and social priorities.

Tricia Feeney presented a significantly different argument when she pointed out how corporate misconduct contributes to the destabilization of a country and the outbreak of conflict. Companies whose operations are disconnected from their sense of community need a more structured approach to social responsibility than mere voluntarism. Hugh Pullen chimed in that development issues are a challenge for CSR and that CSR is "one of an armory of instruments to make globalization work for sustainable development." However, existing instruments tend to be too broad and difficult to apply in specific circumstances, lack reliable monitoring and follow-up – and there are simply too many of them. Confusion has also emerged, said Pullen, on the very meaning of compliance with standards, with NGOs and business representatives having taken contrary positions on this. He argued, nonetheless, that compliance can still be voluntary and not necessarily binding.

Later, there was considerable audience input on the subject of definitions. One participant, Sweden's newly-appointed ambassador to the WTO, Ambassador Mia Horn af Rantzen, described an instructive debate that had ensued in discussions in the EU's Multi-stakeholder Forum on CSR. There, 4 different perspectives on what can constitute CSR have been identified: Corporations' 1) compliance with national law; 2) compliance with internationally-agreed norms; 3) compliance in either of these senses, plus positive contributions to society, and/or; 4) practices that exceed compliance.

An examination of how a linkage between CSR and the WTO might ultimately evolve followed. Panelists initially weighed in on the question of how effective voluntary standards for corporate behaviour have been. There was concurrence that such

mechanisms have often been effective - especially in certain sectors - but little agreement over what to do when “good deeds”, as Tricia Feeney put it, “aren’t enough”. Problems stemming from anti-democratic regimes, weak states and/or ineffective governance were recognized as being particularly difficult for CSR to address. “Should companies be obliged to take over the job of (ineffectual) national labor inspection services?” asked Aurret van Heerden. Similarly, “Is it appropriate for the US Olympic Committee to source goods from the military junta in Myanmar?”

As an example of the kinds of things that CSR could accomplish, van Heerden went on to describe a 10,000 worker, American-owned factory in China where the management had trained 20 worker representatives and had subsequently facilitated the holding of an authentic election for worker representation in the factory. This kind of programme has the potential to have a significant impact on both the economic and the political status quo in China because the Chinese Constitution places strict limitations on workers’ right to organise. Public pressures on the multinational corporations operating in South Africa during the apartheid regime not to comply with discriminatory national laws ultimately led to important human rights breakthroughs, he concluded.

On the other hand, Tricia Feeney outlined the way that some 85 Western companies associated with the extractive goods sector had blatantly violated the OECD Guidelines between 1998 and 2002 in the Congo. As reported by the previously-mentioned UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Congo, these companies were involved in direct trading with the belligerents in the war that was underway there at that time. The end result was that natural resources became a critical element in the conflict. The matter has yet to be resolved definitively as debate has continued within the OECD’s Committee on International Investment and Multinational Enterprises (the group that oversees Members’ application of the voluntary OECD Guidelines) relating to what should be the appropriate follow-on to the Expert’s Report and any future Expert Panels that might be mandated by the Security Council

Responding to this situation and others not necessarily so extreme, Sidiqqi acknowledged first and foremost that CSR must be owned by all the stakeholders and not just left to enterprises. Nonetheless, it should be addressed by the right institutions, a question of balancing. Trade issues should be in the WTO and social development needs, in the ILO. Van Heerden then suggested that there should be a link between trade and social standards and that delegations have been playing political football on this linkage for ten years now. The ILO should set standards, accredit and enforce them.

Stopford observed that there is nothing wrong with regulation as such. It was not necessarily undesirable, even to the private sector. Indeed, to the extent that regulation is associated with market stability, it may be the preferred way to go. This, however, is not an opinion that is necessarily prevalent in the business community. Business organizations such as the International Chamber of Commerce, the OECD’s Business and Industry Advisory Committee and the Union of Industrial and Employers’ Confederations in Europe all have a much more conservative perspective on this issue.

In terms of the calls that some have made for international standardization, panelists singled out the OECD Guidelines for Multinational Enterprises from the plethora of codes and other private initiatives that currently exist. Because the Guidelines contain implementation structures – and even though their language is vague in places – they represent a kind of hybrid instrument. Notwithstanding the ongoing debate in the OECD relative to how the compliance mechanism should be used, the fact that it is there does have the potential to make an important difference. As described by Tricia Feeney, the next step in this sense would have to involve the development of a case law from the application of this mechanism, a prospect that some OECD States apparently do not support at this time.

Another advantage associated with the Guidelines is that, relatively speaking, they are more democratically legitimate than the vast majority of voluntary mechanisms. This is because they were agreed by the representatives of OECD Member States (as opposed to, for example, the Board of a single corporation or NGO).

Finally, there was much discussion of the fact that CSR in developing countries poses an entirely different series of challenges for all stakeholders, particularly where legal regimes are deficient and democracy doesn't exist. Because CSR is a business-led approach, these challenges can be particularly acute for public authorities. In any case, as pointed out by Hugh Pullen, they are certainly different from those associated with the application of existing developmentally-oriented trade programmes like the EU's GSP programme and its Sustainability Impact Assessments.

In terms of the WTO-specific work that has been done on CSR to date, Pullen went on to explain that the Commission's focus was initially on the WTO discussions taking place relative to investment. Given the political opposition that the possibility of an agreement in this area has engendered, however, the dialogue has effectively shifted to a bi-lateral and regional trade context. Acknowledging that not that much had been accomplished to date in this sphere, Pullen observed that the on-going EU-Mercosur negotiations may take an innovative approach to this issue.

Michael Stopford added that other sectors besides labour were creeping in to the WTO, citing the issues covered by the Convention on Biological Diversity.

Where is the debate likely to go next? The EU has advocated promotion of existing global codes as being a key policy mechanism, whereas the emphasis in the EU's Stakeholder Forums was on removing practical barriers to delivery of CSR. Some panelists, on the other hand, contended that the focus should now be on promoting better coordinating mechanisms between WTO and the UN's various specialized agencies, e.g. the ILO and UNEP/CBD, i.e. more coherence. As Justice suggested, global collective bargaining institutions may be necessary as well. In this latter sense, what is notably lacking is the political will to do so. As van Heerden noted, "Companies have been forced to step in to fill regulatory holes," but the main concern, as Justice put it, is the governance crisis at the national level. Business should not be asking how government

can help business do CSR initiatives. Rather, business should be showing governments how to do their duty.

In wrapping up, Katherine Hagen asked the panelists where the debate should go next. Some said that more – and especially sectorally focused - dialogue would be critical to the future development of CSR and its relationship to trade. Others felt, similarly, that we are “beyond the point of having general CSR discussions and need to make sure that (in future) we engage on specific issues that are in contention”. Finally, the view that the time for constructive dialogue had passed and that action was needed to ensure corporate accountability was also expressed. There was, too, a need for more monitoring, reporting and actual feedback on the OECD Guidelines and on specific implementation strategies. All agreed, in any case, that CSR was never going to solve all the problems associated with poor governance and poverty but that it was a significant element of the debate on promoting a fairer globalization.