"Minding Our Business"
What the US has done and Can Do to Ensure that Its Multinationals Act Responsibly in Foreign Markets"

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American business represents America and Americans overseas. How US based companies treat their stakeholders and the environment as they produce goods and services is a policy issue. As Secretary of State Colin Powell has noted, American companies are "ambassadors of American values—values like democracy, freedom and respect for human dignity." (Powell:2003) Thus, it is important that American firms uphold such American values as they produce goods and services abroad. When firms act irresponsibly, America's foreign policy interests can be compromised.

Global corporate social responsibility is also an economic issue. (Lindblad et al:2002). As America's population ages, executives at US multinationals increasingly recognize their future markets will be overseas. Thus, these companies are focusing their investment in nations such as China and India, nations with a growing relatively young population and burgeoning middle class. (UNCTAD: 2004) While these countries are growing rapidly, they are also nations where governance is inadequate. Some such nations have decent laws on their books but fail to enforce these laws due to a lack of funds, expertise, or will. Other developing countries do not have good laws protecting human rights or the environment.

Yet many Americans, including scholars of management, do not think of global corporate responsibility as an issue for policymakers. They believe executives and their shareholders must decide whether and how to promote global CSR.

But American citizens work for, invest in, and purchase from the companies struggling with issues of global corporate responsibility. These companies are the backbone of the US economy. (BEA: 2002) Their future is our future. Moreover, Americans increasingly want these firms to act responsibly. When Americans make decisions about employment, investment and consumption, polling data reveals that they take stock of a firm's corporate social responsibility practices. (Wirthlin:2004). Finally, while policymakers may not want to regulate globally responsible behavior, policy sets the context in which such firms manage their operations and compete.

America's largest organization devoted to promoting CSR, Business for Social Responsibility, defines corporate social responsibility as "achieving commercial success in ways that honor ethical values and respect people, communities, and the environment" around the world. (BSR, 2004) Public policies to promote global CSR can be defined as policies and actions by policymakers (including exhortation) designed to promote globally responsible business practices. Yet the US government has no formal or clear policy regarding the human rights and environmental responsibilities of US firms. Nor have policymakers fully explored the international implications of this lack of clear guidance.

This article begins with a brief history of the roots of CSR pressures, and how these pressures have influenced US policymakers. I then examine the signals US policies send to global market actors regarding their social and environmental practices. (I do not focus on philanthropy, lobbying, or payments to foreign governments to obtain or maintain business). I argue that the US often sends confusing and contradictory signals to multinational corporations. Moreover, the US government is not itself a model of CSR practices. The article ends with suggestions on what the US government could do to encourage and assist US firms to consistently act responsibly everywhere they operate.

There are many ways policymakers can promote global CSR—but there is no one best way. However, an effective approach has certain characteristics. First executives, policymakers and other corporate stakeholders must develop a shared definition of global CSR. Policymakers must make it clear that that they expect US firms operating overseas will attempt to adhere to this definition. Second, one agency and/or department head must be in charge of overall CSR policies and coordinate government wide strategies. Third, policymakers must not simply advance CSR thru rhetoric. They must encourage global CSR with incentives or when necessary use disincentives to discourage certain behaviors.

Since CSR is "voluntary," some readers might ask why governments such as the US should play any role in promoting CSR in global markets. They may argue that market forces (consumers, producers and other stakeholders) are clearly demanding ethical behavior. It is up to managers to respond to these market signals or risk the consequences. But markets fail. Although market forces are increasingly pressing companies to act responsibly, markets have not succeeded in prodding **all** corporations to "do the right thing" **everywhere** they operate **all of the time**. Governments have a responsibility to address such market failures especially in nations such as China where adherence to Chinese law and international norms is in essence voluntary.

Moreover, market forces have not yet rationalized the plethora of voluntary approaches to promote CSR around the world. These approaches include codes of conduct, certification strategies, and reporting requirements. Codes of conduct are formal statements of the values and business practices for companies or business sectors. Certification strategies are strategies that allow firms to use audits to reassure their stakeholders that their factories have been certified to meet internationally accepted standards. Reporting standards are guidelines for reporting on the economic and social performance of corporations. In 2001, the OECD found 246 codes of conduct alone designed to promote global corporate responsibility. Many of these codes are not compatible with each other.(OECD: 2001) Executives and citizens find it hard to sort out these many different approaches.

Meanwhile, citizens are demanding that business act responsibly. Polls reveal that citizens around the world are concerned about the behavior of corporations that operate in politically and environmentally sensitive regions.[1]

Finally, the human rights responsibilities of global companies are unclear and as a result, companies are being sued. In recent years, companies as diverse as BHP (Broken Hill Proprietary), Coca Cola, IBM, General Motors, Exxon Mobil, Shell, and Unocal have been called into court for allegedly aiding and abetting human rights abuses in nations such as Burma, South Africa (under apartheid), Indonesia, Columbia, Nigeria, and Guatemala. These cases have proliferated in the United States (and to a lesser extent, Britain, Australia, Canada, and Belgium). These cases signal that policymakers must provide clarity at the national and international levels.

A Brief History of Global CSR Pressures on US Policymakers and US Corporate Actors

The rights and responsibilities of corporations are relatively easy to define within national boundaries, because citizens share norms regarding the roles of public and private sectors. But the responsibilities of the global corporation are ill defined. The system of rules governing international investment does not delineate the social and environmental responsibilities of global investors. The WTO also does not regulate investment.[2] As a result, corporate officials do not have clear policy guidance regarding their social and environmental practices at the international level. These executives confront a world not only with many different governments, languages, cultures, and norms, but also with many different expectations for the private sector. Companies adopt CSR strategies as a means of addressing public concerns about social and environmental practices in global markets.

Some individuals allege that because of the lack of universally rules to govern international investment, companies attempt to shift their operations with lower social environmental or transparency requirements or weak enforcement of such rules. There is no evidence that firms deliberately seek locations with inadequate governance to lower their costs. It is one of many factors that firms weigh and that their investors assess over time. [3]

However, investment is increasingly flowing from the developed world, where social and environmental regulations are relatively comprehensive to the developing world where such laws and regulations are inadequate or inadequately enforced. For example, China has become the world's leading recipient of investment.[4] China does not enforce its own social and environmental laws adequately at the federal, provincial or local level. As a result, corporate adherence to the rule of law is essentially voluntary. The goods we purchase are made in often-unacceptable social or environmental conditions. This poses a great challenge to policymakers and investors alike.

From 1945-until the late 1960s, few Americans questioned the benefits of international investment to the global economy or polity. After all, international trade and investment were much less important to the nation's economic health. Moreover, the bulk of investment stayed home. Yet Americans were supportive of international investment because they thought it could help promote global prosperity and help prevent the spread of communism. Neither policymakers nor citizens focused on the dark side of American capitalism. US investors (as well as those from other countries) were sometimes linked to corrupt and tyrannical regimes, they permitted their suppliers and subcontractors to use sweatshops and they ignored how their firms affected the environment and local culture. But in the 1970s, several events forced Americans to pay closer attention to the behavior of US companies. First, Americans learned that US companies had pressed the US government to act against the elected socialist government of Salvador Allende in Chile. Several American multinationals provided funds to Allende's opposition.[5] The SEC found more then 400 companies admitted making questionable or illegal payments to foreign government officials. [6] For the first time, Congress began to regulate the behavior of multinationals.

In 1977, Congress passed the Foreign Corrupt Practices Act, which set rules regarding bribery and corruption in overseas markets.[7] The Foreign Corrupt Practices Act (FCPA) was the first domestic law that effectively regulated global corporate behavior: companies not acting "ethically" around the world could be denied taxpayer-funded benefits. The Act provided a model for how global CSR policies could be implemented and communicated. Moreover, it also provides an example of how steps taken in the US led to a more comprehensive international initiative. When the FCPA became law, some business leaders argued it made US companies less competitive. These executives began to pressure other governments to act on corruption so that their overseas competitors would not underbid US companies, constrained by domestic regulation. Ultimately, these multinationals succeeded in urging other governments to sign an international code of ethics. In February 1999, the OECD Bribery Convention went into force, signed by 34 countries. Thus, the FCPA encouraged the development of shared norms regarding global ethical behavior.[8]

Meanwhile, Congress also began to address what some Americans saw as unfair competition between US workers and those in countries where they did not have core labor rights. As manufacturing began to move overseas, some members of Congress demanded protection, while others demanded the inclusion of labor standards within the GATT. In 1974, Congress directed the President to seek "the adoption of international fair labor standards and of public petition and confrontation procedures in the GATT." But the GATT (now WTO) moves forward only by the consensus of its members. Many other governments could not support such labor standards language, fearing it was a de facto trade barrier. The GATT/WTO still doesn't includ explicit language on how workers should be treated as they make goods and services.[9]

These early efforts to promote corporate social responsibility in global markets were not continued n the 1980s and 1990s. In fact, today the US is a laggard, rather then a leader of using policies to promote global CSR. For example, in 2000, the United Kingdom appointed a CSR minister. In 2001, the European Community issued a Agreen paper,@ on Apromoting a European framework for corporate social responsibility.@ In 2002, the European Trade Minister, Pascal Lamy announced he was trying to find ways to help Europe strengthen the links between public policies designed to stimulate the competitiveness of European firms and those designed to stimulate greater global corporate responsibility. In 2002, the French government revamped their basic corporate laws, and required all publicly traded companies to report on their social and environmental practices. Finally, in the last two years, the German, Belgian and British government have all developed regulations that require pension funds to report on the social and environmental performance of their investments.[10] But the US has not adopted similar strategies.

The British government has taken an extremely visible role in promoting global CSR.[11] The British government stresses that has an "ambitious" vision for promoting global corporate social responsibility. It has also put forth an easily understandable strategy for achieving CSR (domestically and globally). The strategy is based on raising public awareness of CSR; promoting tools to facilitate transparency and corporate reporting; and encouraging socially responsible investment. Finally, the British government has devised systems for evaluating how well it is achieving this vision. [12] Britain and the US have quite similar approaches to democratic capitalism. In both countries executives have made it quite clear they don't want global CSR mandated. Yet the British government approach has made it clear that it has definitive expectations for its firms operating overseas and British firms are responding positively. The British approach contrasts dramatically with that of the US.

Overview of the US Approach to Promoting Global CSR

Since the Bush Administration first took office in 2001, policymakers have frequently spoken of the importance of acting responsibly in global markets. For example, President Bush has noted, "There is no capitalism without conscience[13] According to Assistant Secretary of State Lorne Craner, "Gone are the days when multinationals could source products overseas without concerning themselves with factory conditions and worker rights."[14] But these pretty words have rarely been translated into effective policy initiatives. The Bush Administration has developed policies, used exhortation, convened meetings, and even nurtured organizations to help companies monitor their CSR strategies. Yet the US approach is incoherent. There is no one agency or individual in charge, despite the importance of multinational enterprise to global economic stability and growth. To some degree, this problem stems from the fact that the US has no agency coordinating globalization policies. Moreover, there is no coordinative body—an interagency working group, as example that can mitigate between agencies with different mandates and constituencies. Finally, even within cabinet departments, different branches promote different CSR initiatives, further confusing market actors regarding global CSR. In contrast with other governments, the US has not taken a leadership role in ensuring that is many multinationals, a great source of political, social, and economic influence act responsibly.

Global Corporate Responsibility as an Objective of U.S. Foreign Policy

The Department of State leads America's foreign policy activities and thus, it takes a substantive and coordinative role in promoting global corporate responsibility. But State must balance many foreign policy objectives, from advancing U.S. security interests to advancing U.S. economic interests. Thus, its policies on global corporate responsibility can appear disorganized or inconsistent.

According to Assistant Secretary of State for Democracy, Human Rights and Labor Lorne Craner, the Department supports corporate responsibility, to promote trade and business, to promote " legal and ethical behavior as well as respect for human rights and labor rights." But Craner insists, "We believe that voluntary guidelines and public private partnerships are the best ways to encourage corporate responsibility.[15]

Within the Department of State, no one Undersecretary or bureau has responsibility for global CSR. It is not a regional issue or a global issue that can be managed by one office. Thus, two bureaus, Economic and Business Affairs and Global Affairs, promote their own CSR initiatives. While the two bureaus share many of the same objectives and meet frequently, their staff does not have a coordinated approach to managing and promoting CSR initiatives.[16]

The Bureau of Democracy, Human Rights and Labor Rights generally is the most active arm of the government regarding global corporate responsibility. This bureau attempts to promote human rights, rule of law and democracy around the world and it reports on global human rights practices. This bureau's principal CSR initiative is the Voluntary Principles on Security and Human Rights.[17] This is an extractive industry specific initiative designed by a Clinton Administration official, Bennett Freeman in 1999, to govern extractive industry security and human rights issues. The companies agreeing to the Principles agree to report credible allegations of human rights abuses by government authorities and to press for "proper resolution." As of April 2004, there were 14 companies, the governments of the Netherlands and Norway, as well as Britain and the US, and ongoing dialogues/implementation efforts in Colombia, Indonesia, Nigeria, Georgia, Azerbaijan and Turkey. [18]

The Department has not made clarification of the human rights responsibility of business a top priority. In fact, it has consistently argued against the use of US law to ensure that corporate actors do not undermine human rights overseas. Under US law, however, private individuals can file civil actions for grave human rights abuses committed in another country. The complainants can seek monetary damages, and in some of the cases against multinational corporations, also seek court action to stop the abuses ("injunctive relief").

The Department has intervened in several important cases involving human rights and extractive industry firms. Most of these cases were based on the Alien Tort Claims Act (ATCA, which has been part of American law since 1789. These cases involve allegations of direct or indirect complicity in overseas human rights violations. ATCA grants the federal district courts, "original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." The ATCA was rarely used until 1980, when the US Court of Appeals for the Second Circuit took a more expansive view of the law. It has been held to apply to human rights violations by agents of foreign nations occurring outside the

United States. It has also been held to apply to violations of certain core principles of human rights.[19] When the US Government has intervened in these cases, it has generally argued that these cases could undermine international cooperation and could affect the international interests of the US, including the fight against terrorism.[20]

In March 2004, a case involving ATCA (but not corporations) was brought to the Supreme Court. The Bush Administration argued that ATCA must be narrowed. They stress that the ATCA does not authorize tort actions, but that it is merely a grant of jurisdiction. Several business groups also submitted amicus briefs in support of the Administration position. They argued that not only does such legislation interfere with foreign investment, but also it "contains no private cause of action." The Supreme Court upheld the legislation, but did not rule on whether or not companies could be sued.[21]

Companies are correct to argue that these cases are multiplying in the US because US courts can award huge damages.[22] But these cases are proliferating not because companies have huge pockets, but because around the world, some citizens allege that their rights have been violated by corporate activities. As of this writing, not one case has resulted in a final judgment against a US company, although many companies have settled such cases, including most recently Unocal (December 14, 2004). The federal courts have dismissed frivolous cases. While executives have complained about these cases and are lobbying the Congress to limit ATCA, they have not sought greater specificity regarding their human right obligations. Consequently, they are left in limbo to decide whether or not to invest in nations which deny their citizens rights that their shareholders take for granted.

Nor has the US government under this bureau taken a lead role in working with business to attempt to delineate these rights (responsibility of this bureau). The Bush Administration remained strangely silent during the discussions about the UN Norms (a set of norms for multinationals developed under the aegis of the UN Commission on Human Rights.) The Norms were designed to bring together international human rights instruments in a single code and envisage ways to enforce it. But the Democracy, Human Rights bureau has basically monitored the Norms rather than trying to actively shape them. Some European firms (ABB, Novartis, Barclays Bank, and Statoil, as example, have agreed to "road-test" these Norms, in the hopes of providing feedback on their relevance and design. But American firms and their associations continue to argue that such a code shifts the obligation for protecting human rights from governments to corporations. (Maitland, 2004).

The Bureau of Economic and Business Affairs, which monitors the foreign policy implications of international trade and investment, has also not provided clarity regarding the responsibilities of global corporations. It administers the Corporate Excellence award, which is designed to recognize best practices, strong community service programs, and exemplary corporate social responsibility practices of US businesses abroad.[23] This bureau has responsibility for the one code of conduct advanced by governments and linked to international investment rules, the OECD Guidelines. The Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in a variety of areas including employment and industrial relations, human rights, environment, information disclosure, competition, taxation, and science and technology. The Guidelines have the support of all the member countries of the OECD, including the US, as well as Argentina, Brazil, Chile, Latvia, Lithuania, Estonia, Israel, and Slovenia.[24] With the prominent exception of China, these countries include the principal recipients of US foreign investment. Yet the Bureau has done little to promote the use of these Guidelines and to make them useful to executives working on the ground. Although the Guidelines were approved in 2000, it was not until 2002 that information about the Guidelines was posted on the State Department web site. Unfortunately, the department seems to do little beyond the web site to inform the public or business about the one code of conduct to which the U.S. Government has agreed.[25] Senior State Department officials rarely publicly tout or even discuss the Guidelines.[26]

The Guidelines can only meet their potential as a tool to mediate globalization issues if citizens know about them. Signatories to the Guidelines are required to set up a government arm, a National Contact Point (NCP), where complaints can be brought and investigated. The Investment bureau of the Department of State staffs the US NCP. [27] These officials do not appear eager to encourage public use of the OECD Guidelines, because they have a multitude of other responsibilities.

Another bureau in the Department, Global Affairs, has responsibility for international environmental human rights, public health and other cross-border issues. This office works with business to forge “partnerships to effect change…such as increasing access to clean, reliable, affordable energy and to fresh water…halting the dramatic trend of biodiversity loss, and attacking the scourge of global diseases such as malaria.” [28] Senior U.S. Government officials such as Undersecretary of State Paula Dobriansky and Secretary of State Colin Powell have spoken frequently and prominently about the need for these partnerships. [29]

Despite these various initiatives, it is clear that promotion of global CSR is not a foreign policy priority for the United States. This is both understandable and regrettable. It is understandable because the U.S. is currently giving priority to the war against terrorism. Yet many policymakers understand that if they fail to advance sustainable development based on human rights, terrorism can blossom.

Global Corporate Social Responsibility and Development

Promoting sustainable development became a US foreign policy objective in 2002, to meet the goals of the World Summit on Sustainable development. According to the Department of State, US policy reflects an international consensus that sustainable development must foster economic growth, invest in people and promote stewardship of natural resources. In 2002, the

US government surveyed what various US government agencies were doing to promote sustainable development and found some 23 agencies had over 400 initiatives. These initiatives are based on partnerships with the private sector, but also civil society and academia. These partnerships are designed to address critical issues like energy, water resources, and biodiversity.[30]

Companies often want to partner with government agencies to obtain risk insurance or to develop new markets. As a result, these partnerships offer an opportunity to prod firms to do more to meet their social and environmental responsibilities overseas. But that potential has not yet been met because development policies continue to send inconsistent signals to market actors.

US AID, the U.S. Agency for International Development, develops and administers U.S. foreign aid policies. Its partnership program with business is called the Global Development Alliance.[31] GDA has partnerships in areas such as basic education, vocational training, information technology, forest certification, and sustainable tree crops.[32] Unfortunately some of these partnerships seem designed to create new markets for US producers instead of creating new markets for goods and services produced in the developing world. For example, the US has partnered with Procter and Gamble in Nicaragua to "show the nutritional benefits of the P&G patented beverage Nutristar." AID claims the partnership helps to improve mother child health among the poor.[33] But it also looks like the partnership helps create a new market for the corporation.

Another partnership focuses on the world coffee crisis. Coffee is the second most heavily traded commodity after oil, requiring the labor of some 20 million people. Over 130 million Americans drink coffee, buying some 450 million cups a day. Americans spend $3 a day on coffee, which is about what each coffee picker earns in Nicaragua.[34] In recent years, Brazil and Vietnam have flooded the market with products and as a result, the price of coffee is down to about 80 cents a pound. According to the *Wall Street Journal*, "the collapse of world coffee prices is contributing to societal meltdowns affecting an estimated 125 million people." Many of these people live in America's backyard-Mexico, Central and South America.[35]

Farmers in some Central American countries have increasingly turned to coca plants (which can be turned into cocaine) as an alternative crop, to ensure that they can feed their families and escape poverty.[36] US AID is hoping to work with civil society groups such as Oxfam and coffee wholesalers to help increase both the demand for coffee and the price given to farmers through fair trade certified coffee. Fair trade companies agree to pay producers a living wage—or one that gives them enough money to meet basic monthly needs in their communities. The Transfair USA label certifies fair trade coffee products.

The coffee example appears to be having an impact on markets—a growing number of companies are marketing fair trade coffee, including Dunkin Donuts and Procter and Gamble.[37] But the biggest coffee sellers are still not marketing fair trade coffee—nor relying on the more expensive Arabica beans. Moreover, US AID's support for fair trade coffee is not backed by consistent policies throughout the USG. For example, the U.S. has done little to coordinate its procurement policies with its efforts to promote sustainable development. This effort on coffee is a good example. The US Government could assist AID in promoting development (and assist other government agencies in the war against drugs) by requiring its contractors that feed government employees to purchase only fair trade coffee. This would bring these efforts greater attention and larger market share, and could prod more producers to sell more fair traded products. [38] It would make U.S. policy internally consistent. And finally, it would send clear signals to business that development efforts and profit maximization can be complementary.

America's commitment to sustainable development would be more credible if its trade and development policies were better coordinated and if other US policies did not thwart global corporate responsibility. For example, the U.S. continues to subsidize and protect key agricultural sectors including sugar, rice, and cotton.[39] These subsidies make it harder for developing country farmers to sell to the U.S. Agribusiness firms dominate some of these same sectors and thus, corporations are reaping the benefits of relatively closed markets—not a socially responsible position. The U.S. and other nations recently proposed reducing these subsidies as part of the Doha Round of trade talks.[40] If such trade liberalization occurred, it would make it much easier for foreign agricultural producers, especially smaller farmers in the developing world, to sell to U.S. markets.[41]

Trade policy cannot bear all the blame, however for continued poverty in many of the world's poorest countries. In the 1990s, aid levels fell substantially around the world. But it was particularly unfortunate that the U.S. did not use its wealth to further encourage sustainable development in this boom period. Throughout the 1990s, the U.S. dedicated only .10 percent of its GNP to development assistance. [42] But in 2001, in reflection that the past approach wasn't working, the Bush Administration reevaluated its commitment and strategy for foreign aid. On March 14, the US announced a new development strategy, called the Millennium Challenge Account. The U.S. agreed to increase core assistance to developing countries by 50% over the next 3 years to those countries that meet the following criteria: a) don't sponsor terrorism; b) respect human rights and the rule of law; c) promote sustainable health and education policies; and d) strengthen economic freedom by opening markets and promoting free trade. [43] If fully funded, this rethinking of foreign aid could help promote CSR, by improving governance in the developing world and by sending a signal that good governance is important to attracting foreign investment.

At the same time, however, this new approach to foreign aid is contradicted by aid linked to trade policy. The US Government recognizes that in order for developing countries to reap the benefits of trade liberalization, the US must build the capacity of developing countries to participate in the trade regime. Often, projects are funded in concert with the signing of a free trade agreement with nations such as Morocco, or the Central American Free Trade Agreement (CAFTA.) In this regard, the US provides funds not only to governments, but also to labor unions and environmental organizations to promote workplace democracy and environmental activism. As the chart below shows, the largest share of these funds goes towards preventing child labor—a core international labor standard. The US could do more to partner with US firms to help their suppliers meet internationally accepted social and environmental conditions. The US however has supported only one such project $300,000 to help Guatemalan firms adhere to internationally acceptable labor standards in their factories.[44] Thus, the US is not working with business to help improve labor standards and workplace conditions to the extend it could. This may reflect greater business and US cultural ambivalence towards these core labor standards, or the fact that many developing country officials seem convinced that the only way they can attract investment is through low wages and poor working conditions.

Trade Policy and Global CSR

During its first term, the Bush Administration began to link trade agreements and policies to global CSR initiatives. However, it is not easy to create such a link. Trade agreements regulate the behavior of governments, but they do not directly obligate corporations. If CSR initiatives are embedded into trade agreements, the language placing obligations upon corporations must be voluntary or it will not be "CSR." Moreover, such a link must be done in a way that does not violate America's most favored nation trade obligations. Under WTO rules, the US is obligated to treat all of its trading partners as most favored nations (except nonmembers of the WTO or terrorist nations). The Bush Administration has placed exhortative language designed to encourage CSR in the Singapore, Chile and CAFTA Agreements. These free trade agreements are outside of the scope of the WTO, and thus they do not undermine the nondiscriminatory principle on which it is based. This language, now contained in article 17.4 of the environmental chapters of the recent FTAs calls upon each party to encourage the development and use of incentives and voluntary mechanisms to protect or enhance the environment[45]

The Bush Administration also pressed for and approved the Clean Diamonds Trade Act. The legislation allowed the US to participate in a trade waiver from its WTO obligations regarding trade in one product diamonds. WTO members, including the US accepted a linkage between a waiver of its rules and a voluntary private certification in the interest of banning trade in conflict diamonds. [46]

This action however set two important precedents. It is the first time that the WTO has approved a waiver of trade obligations based on a human rights rationale. It is also the first time that the WTO (and the US) has accepted a waiver based on a link to a private voluntary certification process.

Hybrids linking CSR and trade strategies could be mimicked in other trade agreements and for additional sectors. For example, the CSR language in America's free trade agreements (FTAs) relate only to the environment. This language could be strengthened and replicated in the labor sections. These FTAs have strong language on transparent rule making. This language could be enhanced to encourage widely accepted corporate disclosure strategies. Finally, the US could use the trade waiver/trade certification precedent in other instances where the UN has found conflict and multiple human rights abuses and where corporate involvement could exert a lever on governmental behavior. An example where such a strategy could prove useful is in preserving the peace in the Congo, where Coltan, used in cell phones and electronic devices is mined. A 2002 UN Security Council report outlined the alleged exploitation of Coltan by militia and armies from other countries. These forces smuggled Coltan out of the Congo and used it to finance their arms purchases.[47]

One important tool of U.S. trade policy can be used to help firms operating overseas improve labor standards. The Generalized System of Preferences (GSP) was begun in the 1970s to offer trade preferences to developing countries. As of 2001, the US offered nonreciprocal trade preferences to 151 countries and territories.[48] Under GSP today, any interested party may petition the committee monitoring GSP, the Trade Policy Staff Committee, to review the eligibility status of any country designated for benefits. If a country is selected for review, the committee then conducts its own investigation of labor conditions and decides whether the country will continue to receive GSP benefits. In addition, USTR staff can express their concern about worker rights issues to foreign officials, who may then pressure supplier factories to resolve labor conditions. [49] This situation happened in Guatemala, where outside companies, including U.S. retailers, prodded their Guatemalan suppliers to improve Guatemalan labor law and work conditions.

US policymakers have much to gain by creating other such links. Such links might bolster existing CSR initiatives or create an incentive for more companies to adopt CSR initiatives. It could strengthen the ability of trade agreements to promote global standards by linking them to CSR initiatives, and is an additional way to strengthen local compliance with global standards. Moreover, one side effect might be to encourage greater communication between policymakers, activists, and executives.

But directly linking CSR strategies and trade is not the only way trade policy could promote CSR. Another way is to link market access to social and environmental improvements. The Cambodia bilateral textile agreement says the Cambodians will get an increase in their textile quotas (they can sell more to the U.S.) if they work in concert with the International Labor Organization to ensure labor rights are protected in Cambodian textile factories. [50] This U.S. government sanctioned workers rights strategy may be an inducement for firms to locate production in Cambodia, for the costs and responsibility of inspection are not paid by the private sector, but by the US and Cambodian governments with the help of the International Labor Organization.

More recently, the Bush Administration rejected a petition brought under Section 301 of the Trade Act of 1974, alleging that Chinese failure to enforce its own labor laws constituted an unfair trade barrier. The Administration rejected the petition and noted," we announce that the US and China are launching a comprehensive joint effort aimed at the effective implementation by China of ILO core labor standards, in keeping with China's level of development and its emergence as one of the world's leading trading powers."[51] The Administration cannot deny China market access, because it is a member of the WTO. But it has a tool of leverage. China would like to be designated a market economy under section 771 (18) (B) of the Tariff Act of 1930, as is for example Russia and other formerly Communist countries. The Chinese view this designation as prestigious. One factor the government weighs in making such a determination is workers rights and workplace conditions. The Administration hopes that US companies will be its allies in this endeavor, by pressing their suppliers to fully and fairly compensate workers, by improving workplace conditions, and by allowing some modicum of workplace democracy. [52]

As noted above, trade policy can undermine CSR. Many American companies benefit from direct or export subsidies. They also benefit by US willingness to press the case of specific sectors in trade disputes (steel, bananas, semiconductors). But by encouraging corporations to partner with the US Government trade policy can also promote CSR and improved governance. This is the rationale behind the strategies described above. According to US Trade Representative Robert Zoellick, "the best way to help developing countries enforce good labor and environmental laws is through a cooperative effort that becomes endemic…we are teaming with the business community and NGOs to improve monitoring of labor standards in garment factories." [53]

While the USTR has some understanding of how trade and CSR are being linked, it has not developed position on the relationship of investment policy to CSR. Investment agreements delineate the rights and the responsibilities of international investors.[54] The EU and Japan pushed to have investment negotiations incorporated as part of the new Doha Round. The US position was not enthusiastic, but it did not object. India, China and other developing countries sponsored a paper for the WTO's working group on investment, which linked CSR strategies and international investment rules.[55] Many activists and policymakers in the US and abroad are concerned about embedding investment rules within trade agreements. The US has never supported formal delineation of investor responsibilities within such agreements. [56] USTR has also not seen CSR strategies such as the OECD Guidelines as a tool to clarify the responsibilities as well as the rights of investors in countries where governance is inadequate.[57] Yet other governments have made the OECD guidelines a prominent part of their investment and trade agreements. As noted above the Dutch require all firms seeking taxpayer-funded credits to state they adhere to the OECD Guidelines. The EU has begun to put CSR language in its cooperation agreements (its Free trade agreements). The language states that the signatories," jointly remind their multinational enterprises of their recommendation to observe the OECD Guidelines wherever they operate."[58]

Business Promotion and CSR

Agencies such as the Commerce Department, the Export Import Bank, and the Overseas Private Investment Corporation (OPIC) are responsible for promoting international trade and investment.[59] Commerce Department officials speak frequently of what they call corporate stewardship, but they have no defined or clear approach to encourage such "stewardship."[60] During the Clinton Administration the Department did come up with a code of conduct, the US Model Business Principles. These guidelines were designed to help companies implement their own CSR initiatives and to ensure these initiatives are embedded in corporate practice. However, they appear to have been abandoned by the Department after the Bush Administration took over.[61]

The Ex-Im Bank helps U.S. firms finance exports. In 1992, Ex-Im's charter was revised to require the bank to establish environmental review procedures consistent with the bank's overall export promotion objectives. The charter also authorizes the Board of Directors of Ex-Im to grant or withhold financing support after taking into account the beneficial and adverse environmental effects of proposed transactions. [62] OPIC mobilizes and facilitates the participation of U.S. private capital and skills in the economic and social development of less developed countries as well as countries in transition from nonmarket to market economies. OPIC is supposed to "assure that the projects it supports are consistent with sound environmental and worker rights standards." [63] Since 1985, OPIC has been required by statute to assess the environmental impacts of projects under consideration for insurance and financing.[64] While these agencies have environmental review policies, they have no clear procedures in place to support workers rights.[65] With or without intent, with these programs, the U.S. government is telling business that how workers and communities are treated is less important than how companies treat the environment.

Globally Responsible Procurement

Each year, the Federal Government buys about $200 billion of products and services. Through its purchasing the government affirms its social and environmental goals and sends important signals to market actors. With its global market clout, the federal government could create an environment more supportive of reducing solid waste, increasing recycling, and stimulating markets for fair trade, organic, or environmentally preferable products and services.

In 1976, Congress directed EPA to identify products made with recycled materials. In 1998, President Clinton issued an Executive Order encouraging federal agencies to buy products that are environmentally preferable (less toxic to human health and the environment) and/or bio based.[66] However, in a study of government procurement, the Congressional agency GAO found while government agencies are trying, they have been slow to develop and implement these programs.[67] Moreover, the US government has not determined how it can best ensure the promotion of labor rights through its purchasing power. As a result, the US has not used its procurement power to the extent it could to encourage producers to produce responsibly.

The U.S. Defense Department (DOD) has experienced some scandals related to procurement and workers rights. The DOD operates retail stores called military exchanges to provide merchandise and services for America's armed forces. These exchanges have sales of some $9 billion a year. In 2001, GAO found that the Department of Defense military exchanges were selling goods produced in unacceptable working conditions. Some of these goods were made in countries where workers rights have been abused (for example child labor, forced overtime, or poor working conditions). The House Armed Services Committee Report for the Fiscal Year 2002 directed the Secretary of Defense to ensure that the military exchanges implement a program to assure that their private labor merchandise was not produced by child or forced labor. [68] The GAO has not reaudited the Defense Department to see how well this strategy is working.

Promoting Worker Rights

The promotion of labor rights abroad does not seem to be a top priority for the United States. The agency in charge, Labor, conducts research on and formulates international economic, trade, immigration and labor policies in collaboration with other agencies. It also supports the objective of helping developing countries improve workplace conditions. Labor officials issue reports on global child labor, develop programs designed to help other nations

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eliminate child labor; and research overseas labor conditions. [69] But it does not have the authority to inspect foreign factories and thereby assess or monitor how non-U.S. citizens are treated abroad. [70]

The Labor Department has prodded other groups-business, labor, and civil society to improve overseas working conditions. In August 1996, the Department of Labor called upon representatives of the apparel industry, labor unions and nongovernmental organizations to join together as the Apparel Industry Partnership. This organization later became the Fair Labor Association (FLA), and it developed a monitoring plan to assure consumers that apparel imports are not produced under abusive labor conditions. Participant companies are monitored for compliance in implementing the FLA Workplace Code of Conduct in the manufacture of their products. The Code of Conduct addresses forced labor, child labor, harassment or abuse, nondiscrimination, health and safety, and respect for the right of employees to organize unions and bargain collectively. [71] The FLA is not directly connected today to the Department of Labor nor funded by it. Other than the FLA, the US Government has devoted relatively few resources to promoting labor standards through corporate responsibility initiatives. The International Labor Affairs Office of the Department of State administers a $4 million “anti-sweatshop initiative,” which funds development of and research into approaches and mechanisms to combat sweatshops at overseas factories that produce for the U.S. market.[72] Labor gave the ILO some $40 million to work on programs on worker rights in developing countries. [73] These are relatively small amounts. The Bush Administration recently slashed funding for programs designed to promote workers rights in the developing world. Its proposed 2005 budget sought only $12 million for international technical assistance capacity building, an 82% drop from the amount appropriated in 2004. The 2004 amount of $99.5 million was a 26% decrease in the 2003 budget. [74] While the US is under severe budget constraints, these cuts signal to corporations that promoting labor rights is not a top priority.

Preserving the Global Commons

The US Government has years of expertise in using incentives, regulations, and transparency to prod consumers and producers to choose environmentally sound options. For example, the US government requires that appliance manufacturers list the energy costs of their products. This gives consumers useful information while prodding manufacturers to improve their energy efficiency. Many of the same initiatives that promote domestic energy efficiency and lower environmental costs have global effects. [75]

Like USAID, EPA is developing partnerships with business to promote greater environmental protection and improved human health. In these partnerships, organizations willingly set voluntary environmental goals and commitments like conserving water and energy, reducing greenhouse gases, toxic emissions, solid, waste, indoor air pollution and pesticides. EPA stresses that these programs should complement current regulations and not circumvent traditional regulatory programs. For example the government-business partnership Climate Wise helps companies rethink their energy use and efficiency. This partnership strategy of fostering environmental protection has also been implemented internationally. [76]

EPA carries out bilateral cooperative programs with many other countries around the world. Like US AID, EPA provides grants to help improve environmental regulations, rule making, and to create markets for environmentally sound production and goods. Often these grants are designed to send clear signals to foreign investors that sustainable production is important. The bulk of these grants are designed to build capacity in the developing world to put in place and enforce environmental regulations. The agency says that these programs allow other countries -- especially developing countries and countries with economies in transition -- to benefit from U.S. experience in developing appropriate and effective environmental programs. [77] As with labor rights, the US government has not explored how best to partner with companies to help their suppliers meet internationally accepted norms for sustainable production.

The EPA claims that it works with the US Trade Representative and the Department of State to "decrease the possibility that economic integration could lead countries to relax their health, safety and environmental standards in order to attract international investment or gain a competitive advantage in the market place. Environmental agreements also help address the concern that increased global trade and investment could lead to patterns of unsustainable economic growth and development if not accompanied by appropriate environmental policies. These environmental agreements are designed to help slow or reverse environmental degradation and are in various states of negotiation and implementation." [78] At the same time, however, many critics of globalization argue that it is America's failure to sign global environmental treaties such as Kyoto that prevent US companies from acting responsibly on climate change and other environmental issues. [79] Finally, the US continues to send confusing signals regarding what companies can and can't do on the environment. A prominent example relates to the "circle of poison." US companies ship, sell, and use pesticides overseas that are banned in the United States. Moreover, US companies import and sell food sprayed with such pesticides.[80] Either these pesticides are dangerous and should be banned completely through international efforts, or the US should find ways to ensure that US companies do not knowingly export or use illegal pesticides overseas.

Finally, the Environmental Protection Agency, EPA could do more to use transparency to prod market forces to encourage global CSR. In January 2001, EPA launched a national campaign to get publicly traded companies to disclose their environmental liabilities to shareholders, as required by legislation. Environmental liabilities include costs of cleaning up any hazardous waste or polluted sites, or environmental litigation. In 1998 EPA found that although the SEC requires firms to report on their environmental liabilities, three out of every four publicly traded firms openly violated the SEC's environmental financial debt accounting regulations.[81] Tow members of Congress requested that GAO investigate why more companies don't report. GAO has not yet issued its report. Proper enforcement of these reporting requirements would provide incentives for better environmental performance and greater transparency to corporate stakeholders. [82]

Corporate Reporting and Global Corporate Responsibility

The Securities and Exchange Commission is the primary overseer and regulator of the U.S. securities markets. The SEC is responsible for ensuring that companies publicly offering securities for investment dollars must tell the public the truth about their business and the risks involved in investing.[83] Activists in the investment and environmental communities recently asked SEC Chairman Harvey Pitt to strengthen the requirements for company reporting of global social and environmental impacts (like the French have done). [84]

Advocates of such reporting note that the information they want to require is consistent with the SEC Act of 1934, which requires companies to supply all material information. Material information can be defined as anything that an average investor ought to know about before he or she buys a security.   But investment managers and financial executives question the materiality of environmental or social reporting. Moreover, the investment community (the sell side) and corporate executives as well as large numbers of shareholders (the buy side) are not yet demanding this information or calling for the SEC to require it.[85]

It will be difficult to implement new, comprehensive economic and social reporting standards. For such a broad approach to succeed, the SEC must develop, or build upon existing uniform reporting standards. Such standards must also have predictive value. According to Dr. Julie Gorte, Social Issues Director of Calvert Funds, one of America's largest SRI funds, "in order for investors to take social and environmental reporting seriously, companies must show their investors that the information they provide predicts the companies' future value."[86]

In the short term, the SEC is unlikely to require such "triple-bottom line reporting." In a recent interview, Commissioner Harvey Goldschmidt said the SEC and companies are on

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overload trying to address the new corporate reporting requirements of the Sarbanes –Oxley legislation passed in the wake of 2002's corporate governance scandals.[87]

The Role of Congress

Members of Congress have a long history of developing legislation designed to prod greater corporate responsibility. In 1991, Senator Ted Kennedy (D-MA) and Congressman John Miller (R-WA) drafted federal legislation creating a code of conduct for US multinationals operating in China based on internationally recognized human rights. The bill reflected Congress's concern that if China were granted MFN each year, then US multinationals operating there should make clear their commitment to international norms as a price of admission to China. Ultimately, the US government called on companies to adopt a code of conduct for their operations in China, and a few firms complied. But there has been no follow through on whether these firms have pressed their suppliers to do more to ensure that their operations do not undermine human rights.[88]

In 2000, Congresswoman Cynthia McKinney (D-GA) introduced HR 4596, the Corporate Code of Conduct Act. It required nationals of the US to implement a code of conduct with respect to employment. Under this bill, government agencies were supposed to investigate if firms violate their own code of conduct. If a violation was found, the bill said the US government should seek the withdrawal of government benefits to that firm. But this disincentive based approach, if it had been approved, could have undercut the "voluntary"" nature of CSR. [89]

Recently some members of Congress have taken a different tack. Two members of the House Appropriations Committee, Congressmen Don Price (D) and Cass Ballinger (R) and Congressman Sandy Levin of House Ways and Means, asked GAO to survey the signals public policies send to global corporations regarding their social and environmental practices. Are these policies really in the national interest, or do they undermine it. GAO is just beginning the study. [90]

Conclusion

The U.S. Government has a wide range of policies and programs that could promote global corporate responsibility. Yet many of these policies are not coordinated or even well defined. In several instances, agency staff in different bureaus did not cooperate or inform each other of their CSR strategies and objectives. Moreover, policymakers, like the public, are not well informed about the government's CSR policies. [91]

The US has a wide range of policies that undermine global corporate responsibility. These policies include subsidies, trade, procurement, and environmental policies. American companies and citizens would benefit from a review aimed at making policies more cohesive and complementary.

Given the important role of U.S. companies in the global economy, Americans need to examine what signals our policies send to corporate actors. For example, if human rights are a priority, then business must be constantly made aware that it will be held accountable for its activities that promote or undermine basic human rights.[92] Yet US programs and more comprehensive in the area of sustainability then worker rights.

Policymakers are clearly aware the global CSR pressures arise from inadequate governance in the developing world. Thus, they have a wide variety of programs to improve governance in the developing world. The US funds labor unions and civil society groups as well as trains policymakers to help developing countries improve their regulatory environment. But the US does little to partner with US firms to help their help their suppliers improve social and environmental conditions in their factories. Such a strategy would be particularly useful in China, where Chinese labor law is unenforced and thus compliance is essentially voluntary.

When the US does partner with business, as in the Global Development Alliance, it is unclear whether such partnerships are designed to circumvent funding decreases, to help companies create new markets, or to usurp traditional regulatory or program delivery strategies.

Many public services should be the responsibility of government, others can best be achieved or delivered through partnership with business or civil society. These partnerships may or may not promote global CSR.

Although this article argues that the US government should delineate a global CSR strategy, each sector is unique and markets constantly change. Thus government policies must be flexible and reflect country or sector specific differences. Moreover, as we design some of these policies, we may be creating a new 21st century tool: a hybrid that mandates the behavior of governments with a voluntary initiative for companies.

Last year, a study group organized by the Kenan Institute, Kenan Flagler Business School, made 18 recommendations to the US government on how officials can promote global CSR. This report is available at www.csrpolicies.org. The group, which consisted of thought leaders from business, civil society, labor, and government, recommended that the US government promote transparency and disclosure practices; encourage adherence to internationally accepted social and environmental standards; offer resources to improve governance institutions worldwide; strengthen US government coordination and capacity; convene multi-stakeholder dialogues to encourage and strengthen global CSR practices; and provide incentives and use government procurement policies as tools to promote global CSR.

In addition, this researcher believes policymakers should define clearly and consistently what the social and environmental responsibilities of global companies are. Second, the US should closely examine the policies that undermine global CSR and address such contradictions. Third, the President should make the US government a CSR model. In particularly, US government officials should examine how to use its purchasing power to promote internationally accepted labor standards. Finally, the US government should require pension funds to report on the social and environmental consequences of their investments. This will stimulate markets to move towards more long term and responsible thinking.

In sum, if the US government wants to encourage ethical behavior, it must move vigorously to develop more effective policies and greater policy coherence. By so doing, the US government can become not just a facilitator but also a role model for socially responsible practices.

ENDNOTES

[1] Environomics International of Toronto Canada, "Global Public Opinion on Globalization," February 2002, a poll of 20,000 citizens in 20 countries at www.environicsinternational.com/global/pdfs/executive.pdf. Also see Price Waterhouse Coopers in conjunction with the World Economic Forum, fifth annual Global CEO Survey, February 2002, pp. 16-19; Chicago Council on Foreign Relations 2002 poll at globalization.about.com/library/weekly/aa100302e.htm.

[2] However, many bilateral investment agreements include provisions governing trade-related investment mechanisms. Moreover, one voluntary multilateral code of conduct, the OECD Guidelines is linked to the OECD's Declaration on Investment.

[3] For example, investors have expressed concerns about investment in China and the access Chinese firms that abuse human rights have to US capital markets. Evelyn Iritani, "Curbs Urged on Foreign Firms' Wall Street Access," *Los Angeles Times*, 2/13/2000. In 2002, the stock index FTSE4Good announced the development of more stringent human rights criteria. William Baue, "FTSE4Good to Fortify Human Rights Criteria," 8/8/2002 at www.socialfunds.com/news/article.cgi?sfArticleId=900.

[4] "Prospects for FDI Flows, Transnational Corporation Strategies and Promotion Policies: 2004-2007, Results of a Survey of Location Experts," UNCTAD 27 April 2004, at www.unctad.org.

[5] www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB8/nsaebb8.htm and ww.gwu.edu/~nsarchiv/NSAEBB/NSAEBB8/ch20-01.htm

[6] Appendix A, Foreign Corrupt Practices Act Antibriberty Provisions at www.usdoj.gov/criminal/fraud/fcpa.html.

[7]. The Foreign Corrupt Practices Act is 15 U.S.C. 78m and was amended in 1998. See wwww.usaid.gov/democracy/anticorruption/usaidprogs.html.

[8] Department of State, "Fighting Global Corruption: Business Risk Management, 2001-2003," available from the Department of State and Anti-Corruption Resources, USAID, at www.usaid.gov/democracy/anticorruption/usaidprogs.html.

[9] Public Law 93-618, 93rd Congress, H.R. 10710, January 3, 1975.

[10] Aaronson and Reeves, Corporate Responsibility, Appendix 4, p. 110. //europa.eu.int/comm/employment_social/soc-dial/csr/sipade2.pdf For individual countries, see /europa.eu.int/comm/employment_social/soc-dial/csr/country/france.htm

/europa.eu.int/comm/employment_social/soc-dial/csr/country/netherlands1.htm
/europa.eu.int/comm/employment_social/soc-dial/csr/country/unitedkingdom1.htm

[11] For a more extensive comparison, see Susan Ariel Aaronson, "Corporate Responsibility in the Global Village: The British Role Model and the American Laggard," Business and Society Review (108:3) 309-338.

[12] For Britain's vision statement on csr, see www.societyandbusiness.gov.uk/2002/report/index.html and Forward by Douglas Alexander and www.dti.gov.uk/worldtrade.ukncp.thm, click on UK NCP annual report, 3-4. This is Britain's annual report to the OECD on its approach to implementing the OECD Guidelines a voluntary code of conduct promulgated by the OECD and agreed to by some 38 nations. Also see /europa.eu.int/comm/employment_social/soc-dial/csr/country/unitedkingdom1.htm

[13] Press Release, "2003 Baldridge Performance Excellence Criteria Challenge CEOs to be "Chief Ethical Officers': Criteria Support President's Effort to Promote Corporate Responsibility," 1/13/2003, at www.nist.gov/public_affairs/releases/2003Criteria.htm.

[14] Lorne W. Craner, Assistant Secretary of State for Democracy, Human Rights and Labor, before the 2002 Surrey Memorial Lecture, National Policy Association, Washington D.C., 6/18/2002, at usembassy.state.gov/bogota/wwwse117.shtml.

[15] Ibid.

[16] Lorne Craner, Ibid .

[17] Interview with Assistant Secretary Craner and Maria Pica, Special Assistant, Bureau of Democracy, Human Rights and Labor, 31 July 2002.

[18] Statement by the Governments of the United States of America and the United Kingdom, "Voluntary Principles on Security and Human Rights, December 19, 2000 at www.state.gov/www/global/human_rights/001220_fsdrl_principles.html. The update is in an e-mail from Bennett Freeman, formerly the Deputy Assistant Secretary for Democracy and Human Rights, 4/21/2004.

[19] "Alien Tort Claims Act," cyber.law.harvard.edu/torts36/readings/update-a-02.html; writ.news.findlaw.com/sebok/20040322.html; and David Corn, "Corporate Human Rights," *The Nation*, 15 July, 2002, at www.laborrights.org/press/nation071502.htm

[20] William H. Taft, Legal Advisor, Department of State to Judge Louis F. Oberdorfer. Doe et al., at www.laborrights.org/projects/corporate/exxon/stateexxonmobil.pdf.

[21] The case before the Supreme Court is Sosa v. Alvarez-Machian. See writ.news.findlaw.com/sebok/20040322.html. On business amicus brief, see www.uscib.org/index.asp?DocumentID=2815; on implications for business and foreign policy analysis, see Susan Ariel Aaronson, "Courting International Business," International Economy (Spring: 2003), 63-65; and Harold Hongju Koh," Wrong on Rights," Yaleglobal, 7/18/2003.

[22] www.usaengage.org/legislative/2003/alientort/alientorttpcases.html. The USA Engage is a coalition of firms and business associations working to promote the benefits of US engagement abroad.

[23] The award goes to large firms and small firms. Firms are nominated by the Chiefs of Missions from US diplomatic posts. www.state.gov/e/eb/cba/bs/ace/

[24] www.oecd.org/department/0,2688,en_2649_34889_1_1_1_1_1,00.html

[25] State.gov/e/eb/oecd/rel/; state.gov/e/eb/oecd/book;state.gov/e/eb/oecd/bkgd/

[26] State Department officials rarely talk about them publicly, although they have participated in two joint events co-sponsored with NPA in December 2000 and June 2001, and Assistant Secretary Craner mentioned them in a speech to the business group, Business for Social Responsibility.

[27] Telephone Interview with Ann McConnell, Economic Bureau, Department of State 7/30/ 2002.

[28] Paula J. Dobriansky, Under Secretary for Global Affairs, "World Summit on Sustainable Development: Ensuring a Successful Outcome," at www.state.gov/g/rls/rm/2002/10073.htm.

[29] Ibid. and Colin L. Powell, "Making Sustainable Development Work: Governance, Finance and Public-Private Cooperation," 7/12/2002, at www.state.gov….11822.htm, last searched 29 July 2002.

[30] Department of State, "Working for a Sustainable World: US Government Initiatives to Promote Sustainable Development," August 2002, 3; and update 3/3/2003, at www.state.gov/e/eb/rls/othr/18105.htm.

[31] To gain a better understanding of US AID, see USAID's Strategic Plan 1997 (revised 2000) at ww.dec.org/pdf_docs/pdabs960.pdf.

[32] www.usaid.gov/gda; and www.usaid.gov/gda/successfulpartnerships.htm; and www.usaid.gov/gda/threesector.htm.

[33] www.state.gov/e/eb/rls/othr/18105.htm.

[34] Oxfam America, "Fair Trade Coffee: Changing the World One Cup at a Time," see. www.oxfamamerica.org/fairtrade.

[35] Peter Fritsch, "Bitter Brew: An Oversupply of Coffee Beans Deepens Latin America's Woes," *Wall Street Journal*, A1, A10. In June, coffee farmers and pickers began protesting in the streets of Nicaragua. Ivan Castro, "Out-Of-Work Nicaraguan Coffee Workers Beg for Help," *Washington Post* 12 June 2002.

[36] Scott Wilson, "Coca Invades Colombia's Coffee Fields," *Washington Post, 30 October 2001, A17.*

[37] For a comprehensive list, see www.transfairusa.org.

[38] America's development efforts on coffee were almost thwarted by our trade policies. The Andean Trade Preferences Act that offered significant trade concessions to Andean nations expired earlier this year. But it was bundled under Trade Promotion Authority legislation, which was signed on August 6, 2002. www.state.gov/e/eb/rls/rm/2002/12483.htm

[39] See Matt Griffith, "European Cotton Subsidies: Meeting the Doha Challenge?" and Subsidy Challenges: Cotton and Sugar Disputes Update," Bridges, Year 8, No. 4 (April 2004): 4, pp 7-10, at www.ictsd.org.

[40] America's commitment to liberalizing agriculture was called into question when Congress passed and the President signed into law a new bill authorizing increased subsidies to certain agricultural sectors. But the Administration announced a new agriculture liberalization proposal in July. See www.usda.gov/news/releases/2002/07/0312.htm. And at www.ustr.gov the Transcript of Press Conference with USTR Robert T. Zoellick, Ambassador Allen Johnson, USTR Chief Agriculture Negotiator and David Hegwood,

Special Counsel to the Secretary Ann M. Veneman, 25 July, 2002. However, in recent months the US and EU have appeared more flexible on agriculture. Bridges, Year 8, No. 4 (April 2004): 1, 13 at www.ictsd.org

[41] Frances Williams, "Fresh Development Policies Needed to Cut world Poverty," *Financial* Times, 5/28/2004, 8.

[42] Oxfam, *Rigged Rules and Double Standards: Trade, Globalization and the Fight Against Poverty* (Oxford, England: Oxfam, 2002) 3, 247

[43] www.usaid.gov/gda/threesector.htm; and www.usaid.gov/press/releases/2002/fs_mca.html.

[44] USTR, "U.S. Contributions to Trade Capacity Building: Improving Lives Through Trade and Aid," September 2003, at www.ustr.gov and data base at…. esdb.cdie.org/cgi-bin/broker.exe?_service=default&_program=tcbprogs.act_cat_1.sas

[45] Draft of the Central American Free Trade Agreement, January 28, 2004, Chapter 17 on the environment, p. 17-3; at www.ustr.gov.

[46] www.customs.gov/ImageCache/cgov/content/import/commericial_5fenforcement/rough_5fdiamonds_2edoc/v1/rough_5fdiamonds.doc

[47] On Coltan, see abcnews.go.com/sections/nightline/dailynews/Coltan_explainer.html; Edith Lederer, "Security Council Reaffirms Congo Baking," Guardian at www.guardian.co.uk/worldlaatest/story/0,1280,-3926701,00.html. The Security Council resolution, was 1499, (2003), which demanded that all States concerned take immediate steps to end the illegal exploitation of natural resources and other forms of wealth in the Democratic Republic of the Congo, at www.un.org/News/Press/docs/2003/sc7841.doc.thm.

[48] GAO, "Comparison of U.S. and European Union Preference Programs," June 2001, GAO-01-647, 5.

[49] GAO, "Defense Management: Industry Practices Can Help Military Exchanges Better Assure that Their Goods Are Not Made by Child or Forced Labor," GAO-02-256, January 2002, 27-28.

[50] Interview with William Clatanoff, Assistant USTR for Labor, 29 July, 2002

[51] Statement of US Trade Representative Robert B. Zoellick on US China Trade Relations,", 4/28/2004, available at www.ustr.gov; and discussion with Chris Campanova and Rana Sui, Department of State, Bureau of Democracy, Human Rights and Labor, 5/4/2004. Also see Kimberley Ann Elliott, "Assessment of the AFL-CIO 301 Petition on Worker Rights in China," in possession of author.

[52] Testimony of Undersecretary of Commerce for International Trade, Grant D. Aldonas, at the House Committee on Appropriations, Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, 5/22/2003.

[53] US Contributions to Trade Capacity Building: Improving Lives Through Trade and Aid, September 2003, available at www.ustr.gov. Robert B. Zoellick, "Helping Labor Through Trade," Washington Post, April 19, 2004. http://www.ustr.gov/speech-test/zoellick/2004-04-19-wp.htm

[54] The EU has made investment negotiations a key priority. However, they have not commented on the relationship between investment and CSR. See WTO, "Communication from the European Community and Its Member States," WT/WGTI/W/115, 16 April 2002, available at www.wto.org.

[55] See /www.wto.org/english/tratop_e/invest_e/invest_e.htm; and www.globalpolicy.org/reform/business/2002/bizstandard.htm.

56 Edward M. Graham, *Fighting the Wrong Enemy: Antiglobal Activists and Multinational Enterprises,* (Washington: IIE, 2000), 9-10.

57 For USTR on investment, see 2001 Annual Report, 14 at www.ustr.gov.; for CSR as a tool to clarify the responsibilities and rights of investors, see Susan Ariel Aaronson, "Global Corporate Social Responsibility Pressures and the Failure to Develop Universal Rules to Govern Investors and States," *Journal of World Investment* (June: 2002) Vol 3., No. 3, 487-505.

58 The association agreement between the EU and Chile refers to the Guidelines. According to the EU, they plan to "insert CSR issues and the promotion of OECD Guidelines in our external trade relations." See European Multi-Stakeholder Forum on Corporate Social Responsibility: Roundtable on the Development Aspects of CSR," at April 14, 2003 at www.europea.eu.int/comm/trade/csr/index_en.htm.

59 www.ita.doc.gov/www.buyusa.com/cgi-bindb2www/index.d2w/input; and www.ita.doc/gov/td/advocacy/index.html.

60 www.commerce.gov/opa/speeches/Evans/2003/July_09_Evans_ClevelandCityClub.htm;www.usafreedomcorps.gov/dynamic_shared/includes/printable/dynamic_announcements.as…and on CSR in China, www.commerce.gov/opa/speeches/Evans/2003/Oct_28_Evans_AmChamChina.htm. Interestingly, on his bio page he notes, " Secretary Evans strongly believes in the free enterprise system, corporate accountability, and corporate stewardship." www.commerce.gov/bios/evans_bio.html

61 www.uscib.org/index.asp?documentID=2579.

62 www.exim.gov;www.exim.gov/envproc.html;

63 OPIC Environmental Handbook, April 1999 at www.opic.gov/Publications/envbookhtm.

64 OPIC, "001 Annual Environmental Report," March 2002, at www.opic.gov/Publications/2001AnnEnvRep.htm, 8; and "Forging New Partnerships, Annual Report 2003, at www.opic.gov/pdf/publications/03_AnnualReport.pdf

65 There is no real delineation of labor standards or workers rights at the OPIC site. It was mentioned in a speech at the Annual Conference by Congressman John LaFalce, a Democrat from New York. He called for more of a focus on human capital and labor rights. www.exim.gov/speeches/may0202.html.

66 GAO, "Federal Procurement: Better Guidance and Monitoring Needed to Assess Purchases of Environmentally Friendly Products," GAO-)1-430 June 2001, 1-3.

67 GAO, "Federal Procurement: Better Guidance," 3.

68 GAO, "Defense Management: Industry Practices Can Help Military Exchanges Better Assure that their Goods are not Made by Child or Forced Labor," GAO-02-256, January 2002, 2-5. On DOD's response, see 38-40.

69 On labor, see www.dol.gov/opa/aboutdol/lawsprog.htm;www.dol.gov/ilab/; www.dol.gov/ILAB?programs/main.htm; and www.dol.gov/opa/media/press/opa/OPA2002417.htm (on child labor on cocoa farms)

70 GAO, "Defense Management," 26.

71 www.fla.org FLA-accredited corporations include Adidas, Levi Strauss, Liz Claiborne, Nike, and Reebok. Its

members also include universities, human rights organizations and consumer groups.

[72] www.state.gov/g/drl/lbr, last searched 29 July, 2002..

[73] GAO, "Defense Management," 27.

[74] www.hrw.org/english/docs/2004/02/04/usint7268_txt.htm.

[75] Michael Brower, Ph.D. and Warren Leon, Ph.D., *The Consumers' Guide to effective Environmental Choices: Practical Advice from the Union of Concerned Scientists,* (New York: Three Rivers Press, 1999), 13-14.

[76] www.epa.gov/partners/index.htm and www.epa.gov/partners/programs/index.htm#global.

[77] www.epa.gov/international/regions/index.html

[78] www.epa.gov/international/trade/geninfo.html

[79] See the report of the California Corporate Accountability Project at www.nautilus.org/cap/reports/CapHandbook.pdf.

[80] www.ban.org/www.panna.org/resources/pestis/PESTIS.burst.22.html and Exporting Risk: Pesticide Exports from U.S. Ports. Global Pesticide Campaigner, Volume 8, Number 2, June 1998.

[81] All companies publicly traded on U.S. stock exchanges must file reports on their significant environmental material expenses both quarterly and annually to shareholders. Donald Sutherland, "Public Companies Tweak Accounting to Hide Environmental Debt, " Environmental News Service 18 February, 2002; and Robert Repetto and Duncan Autin, "Coming Clean: Corporate Disclosure of Financially Significant Environmental Risk," World Resources Institute, 2000.

[82] Donald Sutherland, "Public Companies Tweak Accounting to Hide Environmental Debt," Environmental News Service, February 18, 2002; and Robert Repetto and Duncan Austin, *Coming Clean: Corporate Disclosure of Financially Significant Environmental Risks,"* (Washington: DC: World Resources Institute, 2000).

[83] www.sec.gov/about/whatwedo.shtml.

[84] "Corporate Ethics, Good Management," 27 June 2002 Speech by Dr. Julie Gorte, Director of Social Research, Calvert, at www.calvert.com/invwcal_newsArticle.asp?article+1525&image=cnjpg. Interview with SEC Commissioner Harvey Goldschmid, 1/5/2004 and Interview with Ethiopis Tafara, Director of SEC's Office of International Affairs, 12/2/2003.

[85] Interview with Dr. Julie Gorte, Director of Social Research, Calvert Funds, 8/10/2002.

[86] Interview with Dr. Julie Gorte, Director of Social Research, Calvert Funds, 8/10/2002.

[87] Interview with Commissioner Harvey Goldsmid, 1/5/2004.

[88] E-mail, Gare Smith, former legislative Aid to Senator Kennedy, to Susan Aaronson, 1/25/2004. Information on S.1413 is available at Thomas.loc.gov/cgi-bin/query.

[89] thomas.loc.gov/cgi-bin/bdquery/D?d106:2:./temp/~bdK30Y::|/bss/d106query.html|

[90] The letter was sent February 12, 2004. It said, "We applaud the work of American companies setting positive corporate examples all over the world. Unfortunately, they often face a complex, sometimes contradictory, and often counterproductive array of national and international standards, regulations, incentives, and disincentives. While U.S. multinational companies and U.S. government representatives remain engaged and active participants in several international organizations and initiatives focused on voluntary CSR, there does not appear to be an effective federal policy to encourage it. We wish to better understand how the federal government and Congress can encourage voluntary use of best corporate practices without undermining competitive advantages or imposing new federal mandates.
On update, e-mail Lorne Yager, GAO to Susan Aaronson, 5/7/2004.

[91] For example, Enron had been widely cited as a responsible corporate citizen, especially because of its early acceptance of the need to develop global warming policies. However, as Congress investigated Enron in 2001-2002, a survey by the Environmental News Service found that none of the investigating House or Senate personnel knew that EPA required firms such as Enron to inform shareholders of their environmental liabilities. Donald Sutherland, "Public Companies Tweak Accounting to Hide Environmental Debt," 18 February 2002, Environmental News Service.

[92] *The Washington Post* recently made this point in an editorial on the State Department and the Exxon case described above. "The State Department's real objection to the Exxon Mobil suit is that it doesn't think courts are the right place to make foreign policy. …The State Department should move quickly to reassert its commitment to human rights and to corporate social responsibility." Editorial, "Human Rights and Terror," *The Washington Post,* 8/10/2002, A18.