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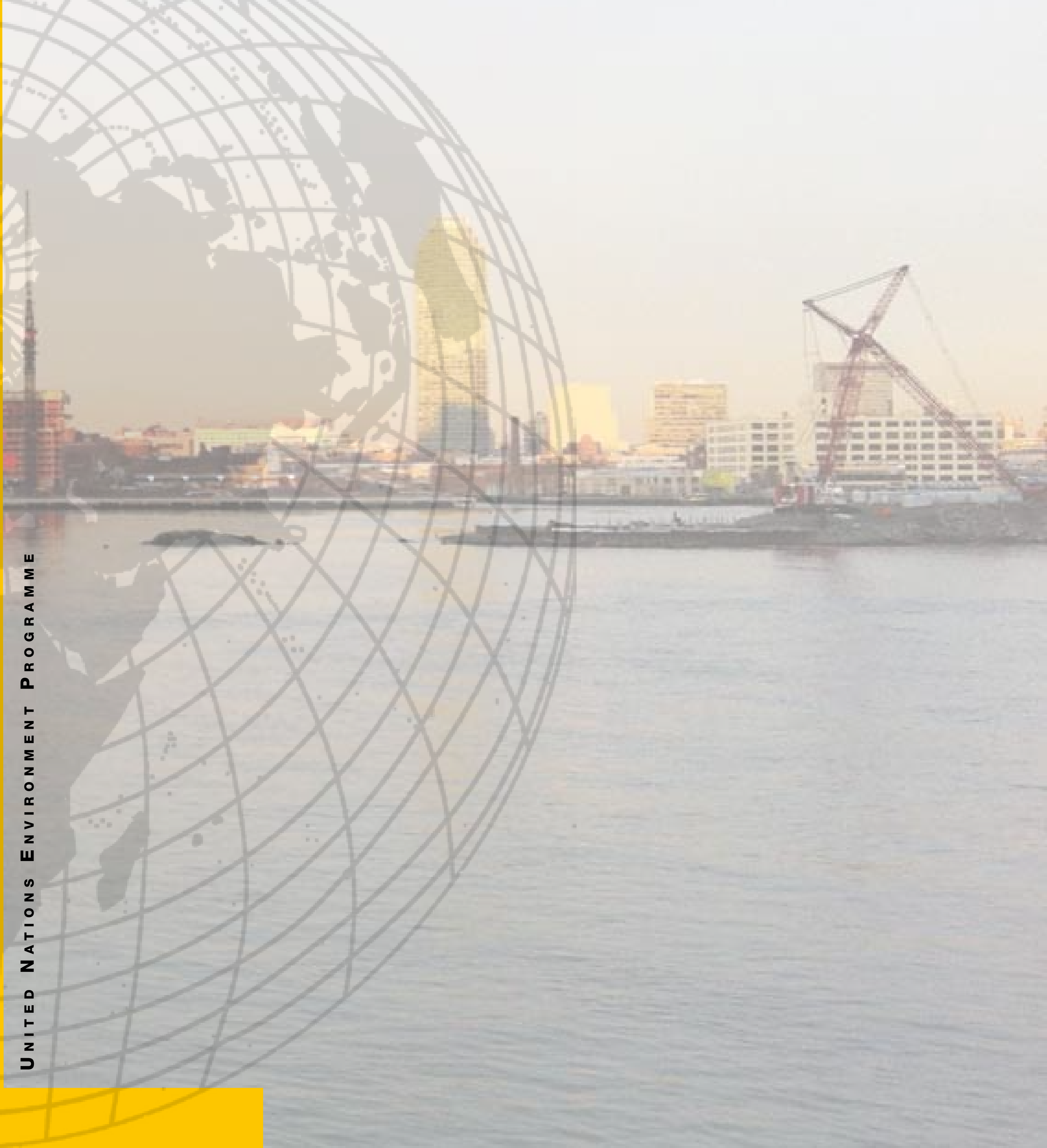
Corporate Social Responsibility and Regional Trade and Investment Agreements



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Executive Summary

Since the early 1990s, the public has increasingly focused its attention on the environmental and social consequences of globalized trade liberalization and investment expansion. As a result, governments have begun to reflect these concerns in specific provisions of bilateral and regional trade and investment agreements.

This increasing international attention on environmental and social issues has been mirrored in the private sector. Corporate Social Responsibility (CSR) programmes and tools have become commonplace in many companies and are influencing the ways in which these companies and their suppliers conduct business around the world. As global business continues to expand, CSR will play an increasingly important role in promoting sustainable development.

The United States-Peru and Canada-Peru trade agreements, which entered into force in 2009, include provisions promoting CSR principles. Although these are some of the first trade and investment agreements to mention CSR explicitly, it stands to reason that a number of future agreements may follow suit. The objective of this study is to explore the potential reflection of CSR principles and tools in bilateral and regional trade and investment agreements. In doing so, the study draws on some of the experiences of the US – and Canada-Peru agreements, as well as experiences stemming from the North American Free Trade Agreement's (NAFTA) environmental and labour side agreements.

The study begins with an introduction to core CSR principles and tools. Bilateral and regional trade and investment agreements are introduced with a focus on how CSR and other environmental and social considerations have been reflected in the past. The study then considers how reflecting CSR principles in trade and investment agreements might not only strengthen CSR but also the underlying trade and investment agreements. For instance, the study argues that inclusion of CSR provisions might help to promote CSR coherence, capacity building and adoption. The study notes, however, that how such principles and tools should be included in future agreements remains open to debate.

The study concludes by exploring some of the pros and cons associated with various options and methods for implementing CSR considerations in trade and investment agreements. It may nevertheless be necessary to await further experiences and developments in the field before sketching a discrete CSR-provision roadmap for international negotiators.

The study also briefly considers the possibility of looking to model agreements, notably the International Institute for Sustainable Development (IISD) Model International Agreement on Investment for Sustainable Development, for guidance on form and content of CSR provisions. In addition, the study provides a framework for considering various environmental and social issues in trade and investment agreements and potential CSR responses to these issues.

Finally, drawing in part on the experiences of the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA), the study reflects briefly upon the possibilities of CSR institutions mandated with the oversight of implementing CSR provisions in trade and investment agreements.

Acronyms and Abbreviations

AA1000	AccountAbility 1000
BIT	Bilateral investment treaty
DR-CAFTA	Dominican Republic-Central America Free Trade Agreement
CIFTA	Canada-Israel Free Trade Agreement
CBI	Centre for the Promotion of Imports
CSR	Corporate Social Responsibility
ECA	Environmental Co-operation Agreement
EFTA	European Free Trade Association
EPFI	Equator Principles Financial Institutions
ESG	Environmental, social, and governance
FSC	Forest Stewardship Council
FTA	Free Trade Agreement
GAP	Good Agricultural Practice
GRI	Global Reporting Initiative
GSP	Generalized System of Preferences
ICMM	International Council on Mining and Metals
IIA	International Investment Agreement
IISD	International Institute for Sustainable Development
ILO	International Labour Organization
ISO	Organization for Standardization
IUCN	International Union for the Conservation of Nature
LCA	Labour Co-operation Agreement
MNE	Multinational Enterprises
MSC	Marine Stewardship Council
NAAEC	North American Agreement on Environmental Cooperation
NAALC	North American Agreement on Labor Cooperation
NAFTA	North American Free Trade Agreement
NCPs	National Contact Points (OECD Guidelines for Multinational Enterprises)
NGO	Non-governmental organization
OECD	Organisation for Economic Co-operation and Development
PRI	Principles for Responsible Investors
RTA	Regional Trade Agreement
SA8000	Social Accountability 8000
SAAS	Social Accountability Accreditation Services
SAI	Social Accountability International
SIGMA	Sustainability: Integrated Guidelines for Management Project
SD	Sustainable Development
SLCA	Social life cycle assessment
T&E	Trade and environment (agreements)
T&I	Trade and investment (agreements)
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
WTO	World Trade Organization
WWF	World Wide Fund For Nature

I. Introduction

There has been a significant increase in the number of bilateral and regional trade agreements (RTAs), and a significant number of the world's states are parties to such agreements. Trade agreements build bridges between countries by creating common legal frameworks for engaging in commerce. The rights and obligations created by these agreements can greatly influence decision-making by companies. Corporate Social Responsibility (CSR) initiatives also aim to influence decision-making by companies through the promotion of better social and environmental business practices.

Two recent trade and investment agreements include language that explicitly promotes CSR. The inclusion of CSR in these agreements could have important impacts for both CSR and the underlying agreements. This report provides a road map for policymakers seeking to understand the potential linkages between CSR and regional trade and investment agreements, and how CSR principles have been, and in the future might be, reflected and promoted within these agreements.

The report begins with an introduction to key CSR principles and tools. Bilateral and regional trade and investment agreements are then introduced, with a focus on how CSR and other environmental and social considerations have been reflected in these agreements to date. The report also examines the relationship between CSR and trade and investment agreements and explores opportunities and challenges associated with reflecting and promoting CSR within these agreements. A framework for considering various environmental and social issues in trade and investment agreements and potential CSR responses to these issues is included in Annex I.

II. Corporate Social Responsibility

A. Defining CSR

CSR is generally understood to be a form of voluntary self-regulation by private enterprises, organizations, and other entities. CSR "encompasses the economic, legal, ethical, and discretionary or philanthropic expectations that society has of organizations at a given point in time".[1] As such, CSR has a dynamic and evolving nature that changes according to societal expectations.

Although there is currently no universally accepted definition of CSR, at a minimum, it requires that companies go beyond their legal obligations. As noted by the United Nations Global Compact, CSR goes beyond minimum legal requirements governing private entities and includes both absolute as well as aspirational elements.[2] In this sense, CSR encourages the private sector to exceed legislation and aim for best practices and experimentation with new technologies and approaches, thereby stimulating the company to attain a leadership role. Trade unions also support a definition of CSR that includes both "compliance and voluntarism", underlying the importance of voluntary approaches in supplementing mandatory requirements.[3]

Another crucial aspect of CSR is that it encourages companies to not only serve the traditional needs of shareholders, but also the needs of other stakeholders, including civil society groups, community leaders, customers, employees, government entities, international organizations, media, suppliers, trade unions, trustees, and future generations. A UN Global Compact training guide notes that CSR "is the continuing commitment by business to behave ethically and to contribute to economic development, while improving the quality of life of the workforce and their families, as well as the local community and society at large".[4] Stakeholders provide important feedback to a company that may allow company executives to address social or environmental concerns before they become high-profile problems. Stakeholders can also provide a more comprehensive view of a company and its impacts than the company would be able to achieve on its own.[5]

Companies in many sectors have begun using CSR tools to promote stakeholder involvement in corporate decision-making as well as to address the impacts of their industry on local communities. For instance, mining activities often have serious consequences for local communities, such as an increase in infectious diseases, pollution, and conflicts over land rights. These impacts are generally external to a company's operations and may only be raised and addressed through proper stakeholder engagement. Several mining companies are currently using CSR

1 Visser, et al., The A to Z of Corporate Social Responsibility (2007). Terms such as social responsibility, corporate citizenship, corporate responsibility, and corporate environmental and social responsibility are also commonly used to reflect CSR concepts.

2 The UN Global Compact: A Primer on the Principles, Greenleaf Publishing (2004). The UN Global Compact is a voluntary initiative launched in 2000 and includes ten principles that address environment, human rights, workers' rights, and combating corruption. UNEP, in liaison with the UN Global Compact Office, leads all environment-related activities associated with the Compact. Further information on the UN Global Compact can be found in Annex I.

3 van der Lugt, UNEP, Labour and the Environment, Chapter 4.2 (2007).

4 UNEP and the Global Compact, "United Nations Global Compact – Environmental Principles Training Package, Trainer's Manual," p. 48 (2005).

5 Wheeler, D. and Sillanpaa, M., The Stakeholder Corporation: A Blueprint for Maximizing Shareholder Value, Pitman Publishing, London (1997).

tools to address these concerns. For instance, the International Council on Mining and Metals (ICMM) has launched a Sustainable Development Framework that includes ten principles, mechanisms for public reporting, and independent assurance. Launched in 2001, the ICMM includes 16 of the world's largest mining and metals companies and 28 national mining and global commodities associations.[6]

As noted above, the notion of CSR has evolved over time. It began with a focus on philanthropy and external community affairs, but the concept has now evolved to address strategic concerns that incorporate mainstream business issues, such as brand, strategy, marketing, and general decision-making.[7] More recently, organizations are increasingly adopting CSR as an integral element of their business strategies, recognizing that CSR can yield tangible business benefits, including:

- Cost savings (due to recycling and resource efficiency);
- Greater access to capital;
- Enhanced productivity;
- Enhanced product quality (through enhanced employee morale and better working conditions);
- Attraction and retention of human resources;
- Enhanced reputation and brand; and
- Reduced legal liability.

While CSR practices can lead to real business benefits, these practices often remain marginalized within companies. For CSR to be implemented successfully, companies must provide sufficient resources and incentives to change behaviour across corporate functions. This mainstreaming of CSR within the company often requires leadership at the highest levels and robust reporting (see Box 1). In addition, CSR often involves upfront investment, which can

Box 1: Towards a Triple Bottom Line

Promoting the business case of CSR has also led to the advent of triple bottom line accounting and reporting. The phrase "triple bottom line" refers to the expansion of the traditional financial performance reporting framework to include reporting on environmental and social performance. This term was first coined by John Elkington to "underscore the fact that companies and other organizations create value in multiple directions".[8]

There are clear links between triple bottom line reporting and the concept of sustainable development, which was made popular by the Brundtland Commission's report *Our Common Future*. Sustainable development is most often articulated as having an economic, social and environmental component. Triple bottom line reporting follows this same construct. Sustainability, however, is a far more ambitious concept than corporate social responsibility. Although very few companies are sustainable over the long term, many companies are becoming more socially responsible.

Triple bottom line frameworks examine not only the present economic, environmental, and social impacts of a company, but also examine its future impact. Despite the articulation of a triple bottom line vision, most companies have found it challenging to integrate economic, social, and environmental considerations into daily business operations.

6 For further information on the ICMM Sustainable Development Framework, see http://www.icmm.com/our-work/sustainable-development-framework.

7 Googins, et al., Beyond Good Company, Next generation corporate citizenship, Palgrave Macmillan (2007).

8 Visser, et al., The A to Z of Corporate Social Responsibility, p. 466 (2007).

serve as a disincentive for some companies. The type of investment required depends on the type of standard or guidelines the company seeks to adopt, and the gap between current social performance and the standard or guidelines.

CSR may further stand in some relationship to regulatory practices. The problem of "greenwashing" in corporate advertisement, for example, is the subject of increases in oversight activity. Notably in France, the self-regulating Autorité de Régulation Professionnelle de la Publicité in April 2008 signed the "Charte d'engagement et d'objectifs pour une publicité eco-responsable". These guidelines, which address and seek to limit misleading environmental claims in consumer advertising, were co-signed by the French secretary of state for industry and consumer affairs and by representatives of the advertising industry.[9]

Similarly, in Australia, the 2008 guide *Green Marketing and the Trade Practices Act* instructs advertisers about obligations and on the scope of liability for misleading environmental advertising. The goal of the guide is to "assist manufacturers, suppliers, advertisers and others to assess the strength of any environmental claims they make and to improve the accuracy and usefulness to consumers of their labeling, packaging and advertising."[10]

B. CSR Principles

There are a number of CSR principles that guide companies in their management and decision-making processes. These principles promote certain types of conduct in companies' operations. The following provides a summary of the most commonly articulated principles, many of which were drawn from a draft International Organization for Standardization (ISO) voluntary set of guidelines on CSR (ISO 26000), which was published in late 2010 (see Box 2).

Promoting Accountability

Accountability has three dimensions: (i) compliance with rules and obligations; (ii) transparency or giving account in accordance with applicable principles; and (iii) responsiveness or the willingness and ability of a company to meet expectations.[11]

To be accountable, companies need to comply with a wide range of laws, standards and codes, in

Box 2: The ISO 26000 Process

The ISO 26000 guidelines, which do not include a protocol for certification, provide guidance on core social responsibility issues, including:

- Organizational governance;
- Environment;
- Human rights (to include civil and political rights, economic rights, and fundamental rights at work);
- Labour practices;
- Fair operating practices;
- Consumer issues;
- Community involvement and society development.

Companies will be able to use the ISO 26000 Guidelines in many ways. First, the guidelines provide a common language and framework for companies. Second, companies will be able to adopt the guidelines or use them to orient their own policies. Third, companies can use the listing of issue areas to report on key topics.

9 See http://developpement-durable.gouv.fr/Pour-une-publicite-eco-responsable.html.

10 See http://www.accc.gov.au/content/index.phtml/itemId/815763. Full text of guide available.

11 Visser, et al., The A to Z of Corporate Social Responsibility, p. 4 (2007).

addition to complying with their own commitments and targets. However, compliance is not enough. Companies need to be transparent about the manner in which they comply with these standards and norms, through their reporting and communications. Reporting is not enough: companies need to engage in dialogue with stakeholders to ensure that the company's strategies and actions are consistent with the needs of the community and other local, regional, and international stakeholders.[12]

Promoting Transparency

Transparency "denotes the quality of being clear and honest".[13] It is significantly easier to hold a company accountable when that company is transparent. Increasingly, organizations are becoming more transparent on social and environmental issues through a variety of reporting mechanisms. For example, the fruit and vegetable company, Chiquita, in its social report, lists its owned and operated facilities and describes the social issues that need to be addressed and where its social performance needs to be enhanced in these facilities. Likewise, other industries and other companies such as Shell, BT, and Dell have begun to adopt "sustainability reports", which often set social and environmental targets that are then reported against in subsequent reporting cycles.[14]

Promoting Ethical Behaviour

Another core CSR principle is the promotion of ethical behaviour. Organizations are composed of individuals and it is at this personal level that ethical decisions are often made. Organizations, nonetheless, can promote and guide personal ethical behaviour through various mechanisms, including the development of ethical codes of conduct, the provision of training on ethical standards, and by conducting ethical audits. A number of companies have also established confidential hotlines for reporting information on abuses within a company or a supply chain and have adopted policies to protect workers who file such complaints. For example, Adidas has established contact numbers in each supplier factory where employees may raise complaints. Since the inception of the complaints mechanism in 1997, Adidas has received 1200 complaints about ethics-related problems, such as discrimination and unfair dismissal.[15]

Exceeding Legally Binding Norms

Companies operating in the international arena must adhere to a multiplicity of laws. Most companies have adopted codes of conduct that require the company and its employees to follow all applicable laws. Given that CSR encourages companies to go beyond such legal requirements, a number of social standards explicitly indicate that in cases of conflict a company should follow the higher standard.[16] For example, a company's code of conduct or social standard may prohibit children under the age of 15 from working whereas national law may prohibit children under the age of 12 or 14 from working.[17]

Respecting International Expectations

Societal expectations are in a state of constant evolution, influenced by the media and non-governmental organizations, among other actors. Increasingly, companies need to be able to interpret how expectations are changing, not only in product design, but also in relation to social and environmental norms. Companies and NGOs often form partnerships to explore how to address social concerns, such as child labour. For instance, the International Cocoa Initiative is an example of companies in the cocoa sector, such as Mars and Hershey, working with UNICEF and others, to address the problem of child labour in cocoa-producing countries.[18]

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12 Zadek, et al., Building Corporate Accountability, Emerging Practices in Social and Ethical Accounting, Auditing, and Reporting, Earthscan (1997).

13 Visser, et al., The A to Z of Corporate Social Responsibility, p. 461 (2007).

14 See, e.g., Shell Sustainability Report 2007, www.showa-shell.co.jp/english/csr/sr2007/2007_sre_full.pdf, and HP's 2007 Global Citizenship Report, www.hp.com/hpinfo/globalcitizenship. Companies and governments participating in the Extractive Industries Transparency Initiative (EITI), for instance, have agreed to publish payment and revenue data for oil to ensure that governments do not misappropriate revenues.

15 Adidas, "Striving to improve performance", Corporate Responsibility Report, p. 22 (2007).

16 The workplace standard SA8000, established by Social Accountability International, is an example of a standard that requires that the most stringent law or standard be adhered to.

17 For example, when the Swedish retailer H&M finds cases of child labour among its suppliers it requires children under the age of 15 to attend school until they reach the legal working age in the country. However a child is not allowed to work in the factory if he or she is under the age of 14, despite the legal working age. For more information, see the H&M website and 2007 Social Report, www.hm.com.

18 Leipziger, D. Raw materials, raw issues and progress, Ethical Corporation, (July 2006). See *also* www.cocoainitiative.org.

Reflecting the Precautionary Approach

At the 1992 Earth Summit, governments agreed in the *Rio Declaration on Environment and Development* that "[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".[19] Many companies applied this precautionary approach to environmental issues, such as climate change, even before the scientific evidence was considered conclusive. Companies have also applied the precautionary approach outside the environmental context, including in areas involving worker safety and health standards.

Respecting Human Rights

Respect for human rights is a key CSR principle. The Universal Declaration of Human Rights defines economic, political, and social rights applicable to all human beings, regardless of gender, race, or country of origin. The Universal Declaration calls on "every organ of society" to follow its principles.[20] While the Universal Declaration enjoys no legally binding force, its symbolic status often remains a point of reference in human rights discourse. Binding treaty instruments such as the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and the African Charter on Human and Peoples' Rights offer more durable legal safeguards in the countries that have ratified the respective instruments.

However, the legal personality of private companies under international law and the scope, if any, of their liability for violations of human rights have not yet been legally established. Whilst there are suggestions of an emerging corporate responsibility for international crimes, including human rights violations where such violations constitute international crimes, corporate liability for non-criminal human rights violations is largely open for debate.[21]

A number of multinational companies, such as Shell, have on their own initiative developed principles that address human rights issues and conduct human rights impact assessments in areas where there is cause for concern. Companies also participate in sector initiatives that address human rights, such as the Voluntary Principles on Security and Human Rights.[22]

C. CSR Instruments

The CSR instruments may take the form of comprehensive guidelines, governance standards, management standards, reporting initiatives, and sector-specific standards. They provide corporations with the tools and mechanisms to reflect and incorporate CSR principles within their business activities. The CSR instruments, which are voluntary, range from global and regional to sector-specific instruments.[23] Firms are often motivated to adopt these instruments in order to gain an advantage over their competitors or to improve their reputation. The following section provides an overview of the most common categories of CSR instruments adopted by companies. In addition, Annex II provides detailed information about specific CSR instruments currently in use.

Comprehensive Guidelines

A number of CSR instruments are comprehensive and attempt to address various aspects of corporate

19 Rio Declaration on Environment and Development, Principle 15 (1992).

20 For the text of the Universal Declaration of Human Rights, see www.un.org/Overview/rights.html.

21 UN General Assembly, Human Rights Council, Fourth session, Report of the Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises, "Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts" (A/HRC/4/035) (9 February 2007) paras. 19-44.

22 Leipziger, Corporate Responsibility and Maturing Innovation: A Sector-by-Sector Guide to the Voluntary Initiatives, Ethical Corporation, Special Report (February 2007).

23 However, Denmark, for instance, has introduced mandatory reporting of CSR activities. In Denmark, certain large companies must provide information about their CSR activities in annual reports, or where a company covered by the law has no CSR policy, it must state this explicitly in its reporting. CSR instruments themselves remain voluntary. Press release by the Danish Ministry of Economic and Business Affairs, via UN Global Compact, http://www.unglobalcompact.org/docs/news_events/9.1_news_archives/2008_12_17/Danish_CSR_Law.pdf, 11 December 2008.

behaviour. For instance, the UN Global Compact includes ten comprehensive principles addressing the environment, human rights, workers' rights, and combating corruption, which are derived from various international legal instruments such as the Universal Declaration of Human Rights and the Rio Declaration on Environment and Development. The Compact combines a global approach with local networks. The UN Global Compact fosters the development of local networks or clusters of participants who meet to promote the Compact and its principles within a geographic region as a means to establish the Compact within different countries and regions.[24] Participating companies must report annually on the progress they have made with respect to the ten principles.

Another set of comprehensive guidelines are the OECD Guidelines for Multinational Enterprises adopted in 1976 and consisting of recommendations by governments to companies. The OECD Guidelines constitute one of the most comprehensive CSR tools available to companies. The Guidelines' principles and standards address all aspects of corporate behaviour. Areas covered include information disclosure, environment, taxation, and science and technology. The Guidelines encourage the widest possible observance of the principles by companies of all sizes, but observance remains voluntary and not legally enforceable.[25] Increasingly, the OECD Guidelines are used by governments to influence corporate behaviour, and numerous governments, international organizations and other bodies adhere to the guidelines.[26]

Governance Standards

Governance standards are used to ensure proper oversight in a company and increase the accountability of a company's shareholders and board of directors. Governance standards attempt to address the way a company is controlled by setting standards for company policies, institutions, customs, relationships and processes. The standards aim to help internalize the environmental and social costs of doing business, promote long-term impact assessment and profit planning, and involve relevant non-shareholder stakeholders.

The best known voluntary governance standards are the OECD Principles of Corporate Governance. The Principles can be applied to all companies and are written in such a way as to apply to a wide range of countries with different types of legal structures. They also provide common reference points and benchmarks for both process and performance guidelines (see Box 3).

Box 3: OECD Principles of Corporate Governance

In 1999, the OECD endorsed the OECD Principle of Corporate Governance, which are a set of non-binding principles that include both process and performance guidelines.

The Principles represent minimum standards that address the following issues:
- **The rights of shareholders:** Shareholders have the right to vote, to share profits and to receive information in a timely manner.
- **The equitable treatment of shareholders:** All shareholders, including minority and foreign, should be treated equitably.
- **The role of stakeholders:** The rights of stakeholders should be recognized as established by law.
- **Disclosure and transparency:** Information should be disclosed in a timely manner on all material matters regarding the corporation, including its financial situation, performance, ownership, and governance.
- **Responsibilities of the board of directors:** The Board must be accountable to the shareholders and to the company.

24 For more information, see www.unglobalcompact.org.

25 OECD Guidelines for Multinational Enterprises, Part I.I, see http://www.oecd.org/dataoecd/56/36/1922428.pdf.

26 http://www.oecd.org/document/10/0,3343,en_2649_34889_2663562_1_1_1_1,00.html.

Management Standards

Management standards help corporate officers implement company strategies by providing guidance to address in a better manner environmental and social considerations in daily operations and management. These standards provide guidance to companies on how to design management systems, and include guidance on training, control of suppliers, and maintenance of records, that can also be useful to develop CSR systems. There is a potentially limitless pool of management standards that companies may choose to implement.

In order to address the need for common and streamlined management standards globally, ISO has harmonized many national management standards. These management standards include standards on quality management (ISO 9000) and environmental management (ISO 14001).

Performance Reporting and Assurance Standards

There are also a number of CSR initiatives that promote environmental, social and financial performance reporting. For instance, the mission of the Global Reporting Initiative (GRI) is to elevate the quality of reporting to a higher level of comparability, consistency, and utility. The GRI launched the Sustainability Reporting Framework in 2000 and has since updated it periodically. Currently, several thousand companies use the framework to report on their actions taken to improve economic, environmental and social performance, the outcomes of such actions, and future strategies for improvement.

Standards have also been developed to assure the validity of performance reporting. Assurance standards provide criteria by which verifiers evaluate the completeness and accuracy of the environmental or social disclosure. One example of an assurance reporting guideline is the evaluation method set out in AccountAbility's AA1000 series. In applying the AA1000 Assurance Standard, the assurance provider evaluates the credibility of the sustainability report, and assesses the underlying systems and processes that deliver the relevant information underpinning the organization's performance.

Sector-Based Certification Standards

Sector-based CSR initiatives are growing in number and influence.[27] Many sector-based initiatives involve certification that requires an independent, accredited third party to provide written assurance that a product or process conforms to a particular standard. Sector-based standards are a type of private standard, and as such they are voluntary.[28] Certification standards provide a more stringent set of criteria than many other types of voluntary standards by evaluating not only the disclosures of companies, but also their actions and products. Certification standards are growing in importance as they provide consumers and retailers with the most reliable information about the way in which products are produced.

Sector-based standards also provide opportunities to create important alliances within a sector. Occasionally, the sector-based certifications become the standards that companies use to procure products and services across borders thereby influencing the action of suppliers (see Box 4).

27 For more information, see Leipziger, D. The Corporate Responsibility Code Book, Chapter 6, "Voluntary Principles on Security and Human Rights" Greenleaf (2010) and www.voluntaryprinciples.org.

28 Private standards are by definition voluntary, even though certification may be *de facto* compulsory for successful business operations. Public standards may be either voluntary or mandatory.

Box 4: The Rise of Sector-Based Standards

Two of the most successful sector-based natural resource initiatives are the Forest Stewardship Council and the Marine Stewardship Council.

Forest Stewardship Council (FSC)

Founded in 1993, the FSC promotes sustainable forestry by accrediting certifiers that audit wood producers to assure that those producers pass the *FSC Principles and Criteria*. Certified companies can display the FSC logo on their products and in their promotional materials. The FSC is one of the most admired of the sector initiatives. In the 17 years since it was founded, over 135 million hectares of wood have been certified in over 80 countries, covering several thousand types of products. FSC works with companies, such as Ikea and Home Depot, which have established buyer groups in several countries. The members of the buyers groups commit to selling only independently-certified products within three to five years.[29]

Marine Stewardship Council (MSC)

In 1997, Unilever and WWF laid the groundwork for the MSC when they engaged in discussions on how to ensure the long-term sustainability of global fish stocks. Currently, 94 fisheries worldwide are certified to the MSC environmental standard for well-managed and sustainable fisheries. The MSC approach is based on the successful model developed by the FSC, which uses a market-based approach to deal with social and environmental issues.[30]

D. CSR and Globalization

The era of globalization, spurred on by trade and investment agreements, has ushered in a period of expanding corporate influence. As noted by the UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, “[t]he rights of transnational firms – their ability to operate and expand globally – have increased greatly over the past generation as a result of trade agreements, investment treaties and domestic liberalization”.[31] In many cases, these corporations now have extensive operations in multiple countries where they wield significant economic and political power. Moreover, globalization has created global value chains and complex joint venture arrangements that blur the boundaries of specific companies and have often worked to extend the sphere of influence.

A company’s sphere of influence is generally understood to relate to activities over which a company wields control. For example, a company’s suppliers, wholesalers, distributors, and consumers may all be part of its sphere of influence. The GRI Framework includes a Boundary Protocol that states:

> The boundary for a [company’s] sustainability report is linked to the range of entities for which an organization is likely to be held accountable

29 Forest Stewardship Council, http://www.fsc.org/about-fsc.html.

30 Marine Stewardship Council, http://www.msc.org/track-a-fishery/certified.

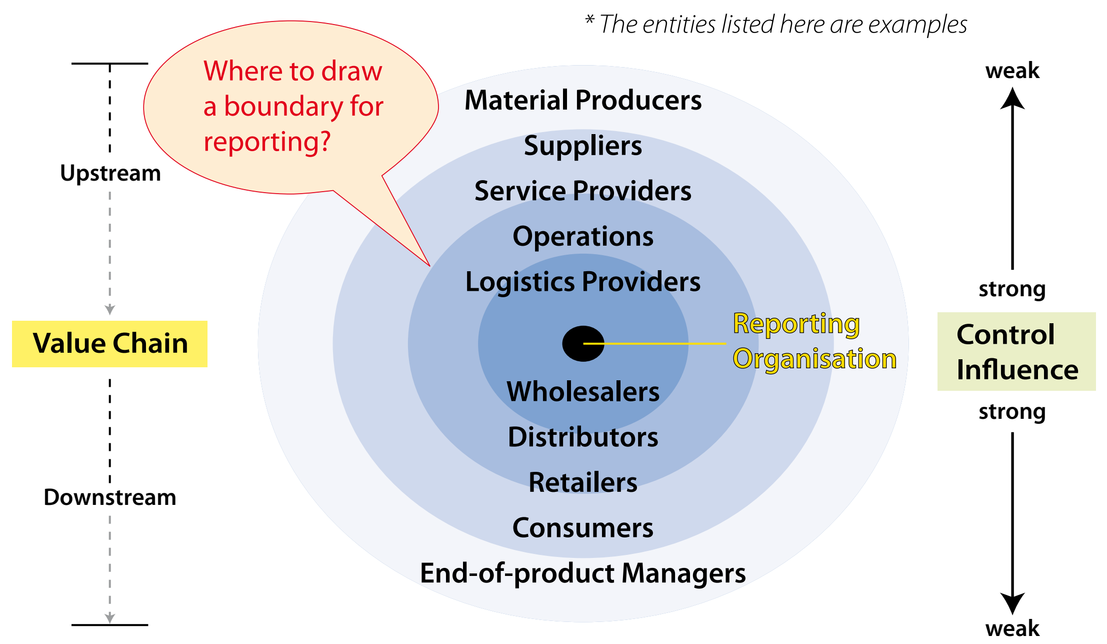
31 UN Economic and Social Commission, Commission on Human Rights, Sixty-second session, Interim report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (E/CN.4/2006/97), para 12 (22 February 2006).

> for, and whose actions will influence the decisions of stakeholders regarding the reporting organization.[32]

Different companies wield different amounts of influence and control over various parts of their value chain, and this influence can change over time (see Figure 1).

The advent of globalization has extended the range of activities for which companies are, or can be held, accountable. CSR is in part a response to consumer concerns over a wide range of externalities associated with these global supply chains, including pollution, child labour, health and safety of workers, product safety, discrimination, and wages and working hours. As companies increasingly source products from around the world, this social and environmental footprint has grown (see Box 5). Consumer fears about this growing footprint have been one of the driving forces behind the growing CSR movement in both developed and developing countries, such as Brazil, Argentina, Mexico, and India.

Figure 1



Source: Global Reporting Initiative, GRI Boundary Protocol (2005)

Box 5: Understanding the Life-Cycle of Global Supply Chains

The UNEP/SETAC Life Cycle Initiative is currently developing a guide for conducting social life cycle assessments (SLCAs). The objective of an SLCA is to assess the various social and environmental impacts from the perspective of various stakeholders along the different stages of the product/ service life cycle. The stakeholders include individuals or groups that are directly or indirectly affected by at least one life cycle stage of a product: local communities, employees, consumers and society. For each stakeholder a series of indicators are considered. For example, in the category of employees, indicators such as income, working conditions, safety conditions, among others are included. Potential uses for an SLCA include the identification of hot-spots for social issues, e.g. in global supply chains and the comparisons between different products or options.

32 Global Reporting Initiative, GRI Boundary Protocol, p. 4 (2005).

III. Regional Trade and Investment Agreements

A. Overview

Countries enter into bilateral and regional trade agreements in order to promote economic growth through the reduction of barriers to the flow of goods and services, and through increased investment. The number of these agreements has increased dramatically in the last decade. By February 2010, over 460 such agreements had been notified to the World Trade Organization (WTO).[33]

Likewise, there has been a rapid expansion of international investment agreements (IIAs), and by the end of 2008, there were over 2,600 such agreements in existence.[34] Although the primary objective of these agreements remains either the reduction of trade and investment barriers, or investment protection, an increasing number, although still a vast minority, address a broader range of issues, including environmental protection, labour standards, and more recently, CSR.

With this in mind, the present paper focuses primarily on how CSR has been, and in the future might be, reflected in bilateral and regional trade and investment agreements, and leaves the potential inclusion of CSR within multilateral trade rules (i.e. the WTO framework of rules) for another day.

B. Environment and Labour in Regional Trade and Investment Agreements

Before focusing specifically on CSR, however, it is worth considering how environment and labour issues have been reflected in bilateral and regional trade and investment agreements.

Trade Agreements

The North American Free Trade Agreement (NAFTA) signed in 1992 between Canada, Mexico and the United States was groundbreaking in the above regard. In response to public concern about NAFTA's potential impact on labour and the environment, two side agreements were negotiated – the North American Agreement on Labor Cooperation (NAALC) and the North American Agreement on Environmental Cooperation (NAAEC). The NAAEC also led to the creation of the Commission for Environmental Cooperation (CEC), which is an international organization focused on, *inter alia*, addressing regional environmental concerns, preventing potential trade and environmental conflicts, and promoting effective enforcement of environmental law.[35] Prior to NAFTA, few regional trade or investment agreements reflected these concerns.[36]

33 WTO, http://www.wto.org/english/tratop_e/region_e/region_e.htm, accessed on 16 July 2010. WTO Members must notify any regional trade agreements they enter into to the relevant WTO committee or council.

34 UNCTAD, Recent Development in International Investment Agreements (2008 to June-2009), (UNCTAD/WEB/DIAE/IA/2009/8).

35 See, CEC website http://www.cec.org.

36 The only exception was a limited number of trade agreements that included clauses allowing for exceptions to the trade rules for environmental objectives. See OECD, Environment and Regional Trade Agreements, p. 40 (2007). This language was modelled primarily on language included in Article XX of the GATT.

Since NAFTA, however, a number of countries and organizations, including Canada, the United States, MERCOSUR, the European Union, and more recently, New Zealand, have included environment references in trade agreements as a matter of course. The OECD produced a publication summarizing the environmental provisions found in many of these trade agreements, including:

- References to environment in the preamble;
- Commitments to enforce effectively national environmental laws;
- Commitments related to environmental standards (not lowering, enhancing or harmonizing standards);
- Procedural guarantees and public submissions processes to ensure enforcement of domestic environmental laws;
- Binding dispute settlement mechanisms with respect to environmental obligations;
- Co-operation and capacity building mechanisms;
- Language to reconcile commitments under the agreement and regional or multilateral environmental agreements;
- Environmental exceptions to trade disciplines; and
- Mechanisms for public participation in the implementation of the agreement.[37]

Trade agreements are also increasingly recognizing a commitment to promoting sustainable development. This language is often reflected in the preamble of the agreements, which is important in that it implicitly, and sometimes explicitly, indicates that environmental and social concerns should be considered on equal footing with economic and trade concerns. Moreover, in the case of disputes, an arbitration panel or other body settling the dispute may rely on language in the preamble when interpreting the overall purpose of the agreement.

A recent RTA entered into by Canada is a case in point. The Canada–European Free Trade Association Agreement makes an explicit reference to human rights, environmental protection, sustainable development, social development, and workers' rights. The preamble affirms parties' commitment to both the Universal Declaration of Human Rights and the ILO's Declaration on Fundamental Principles and Rights at Work.

Investment Agreements

A number of IIAs have also included environmental and labour provisions, although to a lesser extent. IIAs typically establish rules regarding private investment by nationals and companies of one state in the state of the other. Given the rapid expansion of IIAs in recent decades some governments are taking notice of the potential environmental and social impacts of such agreements.

The environmental and labour provisions reflected in IIAs and model bilateral investment treaties (BITs), which often serve as the basis for negotiations, have ranged from broad language reflected in the preamble to substantive and procedural language in provisions, annexes and special side agreements. A recent OECD survey of environmental, labour and anti-corruption provisions in IIAs found that 16 countries have included such language in agreements and that their use has increased in the last two decades with innovations in one agreement often being adopted by other countries for use in their own agreements.[38]

It is nonetheless important to recognize that although environmental and labour provisions have at times imposed obligations on governments, these provisions do not include direct environmental or labour obligations on foreign investors themselves. Rather, as with all intergovernmental agreements, there is an assumption that governments will establish the national regulations that will require action by foreign investors.[39]

37 OECD, Environment and Regional Trade Agreements (2007).

38 OECD, International Investment Agreements: Survey of Environmental, Labour and Anti-Corruption Issues, p. 2 (2007).

39 See Mann, H., International Investment Agreements, Business and Human Rights: Key Issues and Opportunities, IISD, p. 11 (2008).

C. CSR in Regional Trade and Investment Agreements

Unlike environment and labour provisions, the inclusion of explicit references to CSR in trade and investment agreements is a relatively recent phenomenon. In fact, one of the first references to CSR can be found in the US-Peru Trade Promotion Agreement, which entered into force in 2009. The Agreement establishes a Labour Cooperation and Capacity Building Mechanism as a means of improving labour standards and advancing common commitments regarding labour matters.[40] An Annex detailing the focus of this Mechanism notes that:

> The Parties' […] shall carry out the work of the Mechanism by developing and pursuing bilateral or regional cooperation activities on labor issues, which may include, but need not be limited to:
> […]
> (o) best labor practices: dissemination of information and promotion of best labor practices, including *corporate social responsibility*, that enhance competitiveness and worker welfare…[41]

This provision does not include mandatory obligations related to CSR, but rather lists CSR in an annex as an issue that the US and Peru *may* pursue in their labour cooperation activities. The import of such hortatory language is difficult to gauge. Indeed while the inclusion of CSR-related language in a trade agreement is a laudatory development, a 2006 report by the US Labor Advisory Committee for Trade Negotiations and Trade Policy suggests a cautious reading of the provisions. The absence of a requirement to go beyond enforcement of domestic labour provisions, according to the report, "will not protect the fundamental human rights of workers in either country", and may indeed lead to trading partners' escaping responsibility sooner than their incurring it.[42]

Another recent trade agreement to include CSR provisions was the RTA between Canada and Peru which entered into force in 2009. This agreement, however, goes beyond the limited reference to CSR made in the US-Peru agreement. In fact, the Canada-Peru agreement is groundbreaking in that it references CSR in both the preamble and in several chapters of the body of the Agreement, while also creating a forum to address CSR issues. In the preamble of the agreement, both Canada and Peru agree to:

> ENCOURAGE enterprises operating within their territory or subject to their jurisdiction, to respect internationally recognized *corporate social responsibility* standards and principles and pursue best practices.[43]

Several other references to CSR are made in the text of the agreement. For instance, the investment section of the Canada-Peru agreement includes a specific section on CSR:

> Article 810: Corporate Social Responsibility
>
> Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of *corporate social responsibility* in their internal policies, such as statements of principle that have been endorsed or are supported by the Parties. These principles address issues such as labor, the environment, human rights, community relations and anti-corruption. The Parties therefore remind those enterprises of the importance of incorporating such *corporate social responsibility* standards in their internal policies.[44]

This language clearly reflects a comprehensive view of CSR by linking the concept not only to labour, as in the case of the US-Peru agreement, but also to the environment, human rights, community relations

40 See US-Peru Trade Promotion Agreement, Article 17.6.

41 US-Peru Trade Promotion Agreement, Annex 17.6(2)(o) (emphasis added).

42 http://ustraderep.gov/assets/Trade_Agreements/Bilateral/Peru_TPA/Reports/asset_upload_file477_8979.pdf, p. 1 See especially p. 4–9.

43 Canada-Peru Free Trade Agreement, Preamble (emphasis added), http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Canada-PeruFTA_Preamble-en.pdf.

44 Id. at Article 810 (emphasis added).

and anti-corruption. It is also worth noting that both provisions above cover enterprises within Parties' territories *or* "subject to their jurisdiction". This appears to give an extraterritorial scope to the provisions, which might encourage companies to respect CSR principles abroad. However, the language in the provision ("should encourage") remains aspirational and may therefore be open to a certain degree of interpretation and flexibility.

The Canada-Peru agreement also creates an institutional mechanism to, *inter alia*, promote cooperation on CSR:

> Article 817: Committee on Investment
>
> 1. The Parties hereby establish a Committee on Investment, comprising representatives of each Party.
>
> 2. The Committee shall provide a forum for the Parties to consult on issues related to this Chapter that are referred to it by a Party. The Committee shall meet at such times as agreed by the Parties and should work to promote cooperation and facilitate joint initiatives, which may address issues such as *corporate social responsibility* and investment facilitation.[45]

Although this Committee does not hold enforcement powers to ensure companies include CSR standards in their practices or mandate reporting requirements, it could increase the likelihood that CSR will remain on the agenda in investment discussions between the countries.

The recent inclusion of CSR provisions within trade and investment agreements has the potential to change how CSR principles and instruments are interpreted and adopted. Nonetheless, there has been relatively little analysis on how these principles and instruments should be incorporated and reflected in trade and investment agreements and whether such inclusion is an effective means of promoting CSR.[46] The next section attempts to address these questions.

45 Id. at Article 817 (emphasis added).

46 See Cosbey, A., International Investment Agreements and Sustainable Development: Achieving the Millennium Development Goals, IISD, p. 18 (2005).

IV. Should CSR be reflected in Regional Trade and Investment Agreements?

A number of concerns have been raised about reflecting social and environmental issues within trade and investment agreements. As noted in a recent study by the International Institute for Sustainable Development (IISD), "[m]any states have argued that encumbering IIAs with the range of social and environmental issues associated with the establishment and operation of an investment would make the agreements too broad and unwieldy".[47] Moreover, many representatives from governments and international organizations have argued that these issues should be left to other international regimes with a specific mandate to work on these issues, such as the International Labour Organization or UNEP, rather than the trade and investment regimes.[48]

Nonetheless, the inclusion of social issues in these agreements may be appropriate given the extensive impacts that trade and investments have on society and the environment in the local communities where the investments are made and production is located.[49] Moreover, there seems to be growing interest within the private sector in making this connection more explicit. Numerous corporate groups in a variety of industries, including for instance Starbucks UK[50] and Sky Team,[51] provide relatively detailed CSR statements and information on their websites. The former for instance provides information about social responsibility, community involvement, fair trade, ethical sourcing and environmental stewardship.

The following section considers how reflecting CSR principles in trade and investment agreements might not only strengthen CSR but also strengthen the underlying trade and investment agreements.

A. Strengthening CSR

Promoting CSR Coherence

Reflecting CSR principles in trade and investment agreements could also strengthen the CSR movement by promoting greater coherence and adoption of CSR principles. At the national level, CSR policies are often developed in an *ad hoc* manner. This problem is compounded by the lack of a global architecture to address CSR issues. In other countries, CSR-related issues are addressed by several different governmental ministries and departments, often with very limited coordination between them.[52]

This lack of coordination and coherence not only occurs within a country but also between countries and has led to the development of divergent CSR codes of conduct and standards. Moreover, many sectors are currently working to develop sector-wide CSR protocols. However, there is little integration

47 Mann, H., International Investment Agreements, Business and Human Rights: Key Issues and Opportunities, IISD, p. 13 (2008).

48 Ibid., p.13.

49 Ibid., p.13.

50 http://www.starbucks.co.uk/en-GB/_Social+Responsibility/.

51 http://www.skyteam.com/en/About-us/People-and-planet/.

52 For examples, see S. Aronson and Zimmerman, J., Trade Imbalance: the Struggle to Weigh Human Rights Concerns in Trade Policymaking, (Cambridge University Press 2008).

between these efforts, which often leads to duplication. This general trend in the development of more codes, standards and labels has led to confusion among suppliers and consumers alike. This can be particularly troublesome for developing country suppliers, which often lack the capacity to address multiple codes and standards and comply with various labels.

The inclusion of CSR concepts and principles in trade and investment agreements may present an opportunity for achieving greater coherence in CSR by providing signals to companies about which guidelines, standards and labels to adopt. As noted above, the Canada-Peru FTA provides for the establishment of a Committee on Investment that will host a forum to promote co-operation and facilitate joint initiatives on CSR. This type of formal network may help to promote CSR coherence.

Linked to this, it may be useful to consider an "omission analysis" and whether the *lack* of references to CSR in a trade and investment agreement has had a detrimental effect on CSR. (Where such agreements do have CSR provisions, it would be equally important to analyse the impact of the provisions.) Countries with strong CSR programmes, such as Brazil, have developed the programmes without the benefit of trade and investment agreements that foster CSR. In countries like Brazil, some of the key factors that can influence strong CSR programmes appear to be the existence of leadership within civil society and businesses that foster dialogue and the promotion of best practice.[53] What remains unclear, however, is how much further CSR might have developed had it been promoted through trade and investment agreements.

Promoting CSR Capacity Building

Trade and investment agreements may also have a role to play in strengthening institutional capacity to adhere to CSR principles. The most successful CSR initiatives are those that offer significant training, but in general, resources focused on capacity building for CSR are limited.

An example of successful CSR capacity building is the Dutch government's Centre for the Promotion of Imports from developing countries (CBI), which provides training to exporters from developing countries on social and environmental issues. Housed in the Ministry of Foreign Affairs, the CBI offers training on codes of conduct as well as offering a website with comprehensive CSR materials. These training sessions are organized through national networks working to promote exports in Latin America, Asia, and Africa.

Given that trade and investment agreements sometimes include robust capacity building programmes, there may be an opportunity to use these programmes to ensure that CSR objectives are being met at the company level.

Promoting a Fair and Transparent Conflict Resolution System

Most CSR initiatives lack transparent systems for resolving disputes between a company and another party that stem from the company's operations in foreign countries. Linking CSR principles to trade and investment agreements may provide an opportunity for strengthening these dispute systems by providing enhanced transparency.

Likewise, the relationship-building inherent in CSR systems could serve to decrease the need to resort to dispute settlement systems incorporated in trade and investment agreements. Indeed, the multi-stakeholder networks within the CSR community can provide mechanisms for proactively building better relationships between companies and within sectors. These relationships can facilitate channels for the peaceful resolution of disputes.

One such channel may be the through the National Contact Points (NCPs) for the OECD Guidelines for Multinational Enterprises.[54] The NCPs are national government offices charged with the dissemination of and the encouragement of compliance with the Guidelines. The role of NCPs is important to

53 For a review of the history of CSR in Brazil, see Beat Grüninger, "The Impact of SA8000 in Brazil", SA8000: The First Decade, (Deborah Leipziger Greenleaf, ed.) forthcoming 2009.

54 See Business and Society Exploring Solutions: A dispute resolution community, Harvard John F. Kennedy School of Government Corporate Social Responsibility Initiative, http://baseswiki.org/en/BASESwiki:CaseStories. Recent matters channelled and reported through NCPs include the disputes between Survival International and Vedanta Resources plc (OECD NCP UK, 2008); between Thai and Filipino labour unions and Triumph International (OECD NCP Switzerland, 2009); between the Norwegian Support Committee for Western Sahara and Fugro (OECD NCP Norway, 2010); and between ForUM and Friends of the Earth Norway, and Cermaq ASA (OECD NCP Norway, 2009).

observance of the guidelines, and "[w]hen issues arise concerning implementation of the Guidelines in relation to specific instances of business conduct, the NCP is expected to help resolve them".[55] This process may offer a vehicle for addressing and possibly resolving CSR-related disputes under the OECD Guidelines without recourse to judicial or other institutionalized procedures.

B. Strengthening Regional Trade and Investment Agreements

Encouraging the Use of Impact Assessments and Stakeholder Participation

The incorporation of CSR in trade and investment agreements may encourage the use of impact assessment methodologies in the negotiation and implementation of these agreements. Many CSR instruments include some aspect of impact assessment as it provides a transparent process that results in consultation with all relevant stakeholders, enhanced data assimilation, and a strategic decision-making framework. For instance, the European Commission describes its Trade Sustainability Impact Assessments as "studies that determine the likely economic, social and environmental impact of a trade liberalization agreement".[56] For over a decade organizations such as UNEP have supported national-level "integrated" assessments that examine the environmental, social and economic impact of trade liberalization policies. These assessments have provided useful information to the participating countries about the impact of trade liberalization and opportunities for mitigating any negative impacts and supporting positive impacts (see Box 6).

Closely linked to the use of impact assessments is the concept of stakeholder participation. The credibility, legitimacy, and independence of assessments depend, to a great extent, on who has been consulted and how different views and positions are reflected in the process. Stakeholder participation is an essential component of CSR tools and is also essential for ensuring the quality of outcomes and decisions, including policy recommendations, developed through an impact assessment.

Box 6: Impact Assessment

An impact assessment is a "process for ensuring that the possible future effects of a particular intervention (e.g. a project or policy) on the environment, society, or the economy are well understood and taken into account in decisions concerning the progression and implementation of that intervention".[57] Impact assessments are valuable tools for governments because they:

- Provide baseline information;
- Determine how a project or an investment would alter the baseline;
- Identify which steps are needed to remedy potential damage to the environment and/or society;
- Report the potential impact to civil society;
- Consult with NGOs, civil society, and government bodies; and
- Make explicit how major environmental issues have been factored into decision-making.[58]

There are many types of impact assessments, such as: Human Rights Impact Assessment, Social Impact Assessment, Equality Impact assessment, Life Cycle Impact Assessment, and Sustainability Impact Assessment. Despite the various impact assessment methodologies, they all aim to provide decision-makers with the necessary information to make balanced decisions.

55 http://www.oecd.org/document/3/0,3343,en_2649_34889_1933116_1_1_1_1,00.html.

56 http://ec.europa.eu/trade/analysis/sustainability-impact-assessments/.

57 Visser, et al., The A to Z of Corporate Social Responsibility, p. 267-268 (2007).

58 Ibid., p.267-268.

Promoting Partnerships and the Sharing of Knowledge

CSR initiatives have forged important, and often unprecedented, partnerships between companies and other civil society actors. Multi-stakeholder consultations, such as those taking place through the Global Reporting Initiative (see Annex II) have helped to achieve consensus on a wide range of issues. CSR networks and alliances also provide knowledge, expertise, and build trust. These networks can be useful in forging better bilateral relationships between companies and sectors located in different countries and therefore can enhance the effectiveness of trade and investment agreements.

V. Reflecting CSR in Regional Trade and Investment Agreements

A. Options

There are a number of ways countries could choose to reflect CSR concepts and tools in trade and investment agreements. Countries could simply encourage their use in a non-binding manner, such as the way CSR was reflected in the labour chapter of the US-Peru FTA. Further yet, trading parties can incorporate concerns associated with CSR into a generalized system of preferences (GSP). The EU, for instance, builds human rights, labour and environmental standards into its GSP+ regime which is a special incentive arrangement for sustainable development and good governance.[59] This device creates significant incentives, namely additional tariff reductions, for trade partners to meet the GSP+ standards.

A slightly more ambitious method would be for countries actively to promote certain CSR concepts and tools within the agreements, which was the method adopted in the Canada-Peru FTA through the establishment of a Committee on Investment that promotes collaboration and joint initiatives on CSR. Although to date no agreement has gone this far, countries could also take the step of requiring companies to adhere to particular CSR principles and tools. The following provides an analysis of the pros and cons of these various options.

Encouraging CSR

In considering how to reflect CSR principles and tools within trade and investment agreements, one option is simply to encourage their use in a non-legally binding manner (see Box 7). A number of trade and investment agreements already contain language encouraging participating countries to adhere to environmental and labour guidelines and standards. This language is often aspirational and located within the preamble of the agreement. For example, the 1995 US–Honduras bilateral investment treaty includes the following language in the non-binding preamble:

> Recognizing that the development of economic and business ties can promote respect for internationally recognized worker rights;
>
> Agreeing that these objectives can be achieved without relaxing health, safety and environmental measures of general application…[60]

The advantage of this option is that it would maintain maximum flexibility for businesses in implementing CSR. Moreover, it is an option that is unlikely to generate much political backlash given that there are no binding requirements. On the downside, given that the requirements are not binding there is no guarantee that the CSR principles and tools will ultimately be adhered to by businesses subject to the agreement.

Promoting CSR

Governments may also choose to promote particular CSR instruments and tools within trade and investment agreements. This option would likely

59 http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/.

60 Identical language forms part of the preambles of the 1994 US–Trinidad and Tobago, of the 1998 US–Mozambique, and of the 1998 US–Bolivia bilateral investment treaties, for example.

Box 7: Soft Power Strategies

Governments have several soft power strategies available to advance CSR through trade and investment agreements, including:

- **Creating an enabling environment** to promote CSR principles, including the rule of law, accountability, and good governance;
- **Promoting CSR tools,** such as the Global Compact, the OECD Guidelines for MNEs, ISO 26000, among others;
- **Providing capacity-building** to promote better working conditions, increase environmental data collection, and foster environmental protection;
- **Convening stakeholder dialogues** at the local, national, regional, and international levels. Regular consultation on CSR issues between the governments party to an agreement and stakeholder groups could address some national and/or regional challenges;
- **Funding research** on the obstacles and challenges to CSR and sustainable development in a country, region, or sector and the development of CSR instruments;
- **Supporting partnerships** to address regional, national, and sectoral issues, or to address points of divergence among different initiatives; and
- **Ensuring legislative consistency** between national legislation and trade agreements. Governments can also work with other governments to promote harmonization between the legislation of different countries.[61]

require enhanced government involvement, and could include activities such as:

- Setting up a framework that can facilitate a dialogue between the relevant stakeholders;
- Providing CSR training to businesses in developing countries;
- Enhancing capacity of local institutions promoting CSR;
- Providing funding for companies that become certified to particular CSR standards; and
- Granting awards or special recognition for companies that are CSR leaders.

The establishment of the Committee on Investment with the Canada-Peru FTA to enhance cooperation on CSR is a clear example of such government involvement. Promoting CSR in this manner still maintains the flexibility necessary for ensuring continued business ingenuity. There may, however, be objections to promoting CSR in this way given the financial implications for supporting the promotional programmes.

Mandating CSR

Another approach to promoting sustainable development is to require companies to adhere to particular CSR principles and tools pursuant to a trade and investment agreement. As argued in a study by IISD, "[i]t is not unreasonable to demand, in exchange for the extraordinary protection provided by IIAs and their investor-state dispute mechanisms, that investors follow certain basic minimum standards of acceptable conduct, such as full disclosure of past practice, conduct of consultations and environmental impact assessments and other widely-practiced expressions of corporate social responsibility".[62]

61 This list was adapted from Paul Hohnen, Governmental Soft Power Options, 2007.

62 Cosbey, A, et al., "Investment and Sustainable Development: A Guide to the Use and Potential of International Investment Agreements," International Institute for Sustainable Development, p. iv (2004).

Such types of binding commitments could include:

- Compliance with a performance standard to attain permits, e.g. for mining companies;

- Mandatory impact assessments; and

- Mandatory sustainability reporting.

A number of governments are making legal requirements in social and environmental arenas. For example, the German and Belgian governments require pension funds to report on the environmental and social performance of their investments. Likewise, the French legislation requires certain publicly traded French companies to report on their social and environmental practices.[63]

The clear advantage of these binding norm approaches is that they create enforceable performance standards. However, these approaches may have the effect or purpose of limiting business ingenuity and profitability.

In addition, there is a risk that the mandated CSR policies are culturally biased. Different countries have different notions of CSR. While human rights are universal, different countries emphasize different issues and problems, sometimes for political reasons. Finally, requiring particular CSR tools may create significant trade barriers to developing country businesses that lack the financial and human resources to meet the specific standards. Given this, any binding norm approaches might require significant capacity building programmes before the requirements become effective.

B. Methods

When deciding which CSR concepts and tools to encourage, promote, or require, it is also important to identify the best method of incorporating CSR into the structure of a trade or investment agreement. The methods available to incorporate CSR are similar to the methods available to reflect environmental or social concerns in trade and investment agreements (see Box 8). As noted by the OECD, the choice of how a certain provision might be reflected will be primarily dictated "by the motivations of the agreement; by the levels of development of the respective parties; by the capacities of existing domestic institutions; by the level of political will; and by other considerations".[64]

With respect to environmental issues in RTAs, for instance, a 2008 OECD Working Paper identifies several options for incorporation. Environmental issues can form part of the body of the RTA, can take the shape of environmental side agreements, or can find their way both into the RTA and into a side agreement. Further, environmental commitments can be either legally binding or non-binding. A related question concerns options with respect to enforceability and dispute resolution devices.[65]

Addressing CSR in the Body of the Agreement

CSR provisions may be reflected at different points throughout an agreement, as in the case of the Canada-Peru FTA, or the provisions may occupy an entire chapter, including broad commitments and specific standards. For example, the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) devotes chapters to labour and environmental considerations (Chapters 16 and 17, respectively). The labour chapter requires domestic labour regulation to meet minimum international standards, and demands procedural safeguards. The environment chapter also requires fair judicial and procedural mechanisms for enforcement, and

63 The relevant legislative act is Loi n.2001-420 of 15 May 2001.

64 Environment and Regional Trade Agreements, OECD, p. 50 (2007). The OECD has also produced a useful checklist as guidance for countries wishing to reflect environmental issues in RTAs. See Checklist on Environment for Trade Negotiators, OECD, COM/TAD/ENV/JWPTE(2007)35/REV1 (2008).

65 Less C.T. and Kim J.A., in: Checklist for Negotiators of Environmental Provisions in Regional Trade Agreements, OECD Trade and Environment Working Paper No. 2008-02, p. 6.

Box 8: Considerations in drafting environmental goals into trade and investment agreements

Carry out no environmental assessment	⇔	Carry out an environmental (or sustainable development) assessment
No public participation in the negociation and implementation of the agreement	⇔	Public participation in the negotiation and implementation of the agreement
Deal with environmental issues during the negociation of the RTA	⇔	Deal with environmental issues separately
Deal with environment in the body of the agreement	⇔	Deal with environment in a side agreement
Use non-legally binding language for environmental commitments	⇔	Include legally binding environmental commitments (e.g. the commitment to effectively enforce environmental laws)
Assign responsibilities to existing institutions	⇔	Create new institutions
Make budget allocations subject to available funding	⇔	Allocate specific budgets

Source: OECD, *Environment and Regional Trade Agreements* (2007)

moreover encourages performance goals and environmental incentives.[66]

Moreover, DR-CAFTA calls for the creation of a Labor Affairs Council and of an Environmental Affairs Council, both composed of cabinet-level representatives, to oversee implementation and progress of the labour and environmental cooperation agreements, respectively. Thus the Environmental Affairs Council for instance promotes capacity building and sustainable development. It is possible to envision similar provisions devoted to the promotion of CSR.

Reflecting CSR issues in the body of a trade or investment agreement sends a clear statement as to its importance. Moreover, the act of negotiating CSR provisions at the same time as the trade and investment provisions helps to raise the profile of CSR, and sends a strong signal to participating nations and the public that CSR is central to the trade and investment activities. However, incorporating CSR into the body of a trade or investment agreement may slow the negotiation process as the details of CSR references are examined and debated.

Adopting Side Agreements

While a trade or investment agreement may focus on increasing trade and investment between parties, parallel side agreements can be adopted to address other important social and environmental concerns, including CSR objectives. The IISD Model International Agreement on Investment for Sustainable Development offers an approximate example of the form that a side agreement might take. Article 16 of the Agreement, on CSR, provides in the relevant part that “investors and their investments should strive to make the maximum feasible contributions to the

66 Article 16.2 places a duty on parties to enforce domestic labour laws, which the parties, under Article 16.1.1., must strive to align with the international standards defined in Article 16.8. These domestic laws shall, pursuant to Article 16.3, include procedural guarantees through a dispute settlement mechanism. The chapter on environment requires parties, under Article 17.5 to secure impartial tribunals and, under Article 17.3, to afford proper judicial procedures (or other mechanisms providing sanctions and remedies). Article 17.4 encourages parties to establish performance goals and environmental incentives.

sustainable development of the host state and local community through high levels of socially responsible practices".[67]

Reflecting these concerns in a side agreement has several advantages. One advantage of a side agreement is that it need not be completed at the same time as the trade or investment agreement. This allows parties more time to work out any concerns and misunderstandings, which may increase the likelihood that the CSR provisions will be implemented. The agreement may even take an initially broad approach. In its commentary on this Article, IISD notes that "[t]hrough reference to the two existing broad-based instruments on corporate responsibility for multinational companies, a broad-brush approach is established. By including reference to sectoral standards, it establishes the OECD and ILO texts as minimum standards for consideration by investor and investments".[68]

A CSR side agreement also makes it easier to adapt the CSR elements in a trade or investment agreement to the evolving public perception of CSR because side agreements or protocols often have more informal amendment processes. The side agreement itself may even address the evolving nature of CSR. Article 16, above, further provides that "[w]here standards of corporate social responsibility increase, investors should strive to apply and achieve the higher level standards".[69] However, utilizing a side agreement risks a loss of momentum or neglect if one party is less enthusiastic about implementing CSR concepts and tools. Once the central agreement is signed, the less interested party has fewer incentives to commit to CSR initiatives.

Although no side agreements focusing on CSR have been negotiated to date, a common side agreement used for environmental and social considerations is an agreement for co-operation. This type of side agreement establishes the desire of the parties to co-operate and lays out the framework for co-operation, often increasing transparency, accountability, procedural guarantees and public participation. For example, the North American Free Trade Agreement (NAFTA) utilizes an environmental side agreement, the North American Agreement on Environmental Cooperation (NAAEC), to secure environmental co-operation. To prevent the creation of competitive advantages from relaxed environmental standards or enforcement, this framework agreement requires parties to enforce their domestic environmental laws.[70] The NAFTA side agreement that addresses concerns surrounding workers' rights, working conditions and living standards, is the North American Agreement on Labor Cooperation (NAALC).

Creating a CSR Institution

Of course, CSR can simultaneously be reflected in the body of a trade or investment agreement and in a side agreement. The body of the agreement may reflect general principles and the intent of the parties while the side agreement addresses mechanisms, capacity building, and other processes necessary to achieve the CSR goals. It is common for environmental side agreements to create institutions focused on implementation as is, for instance, in part the case with DR-CAFTA.

Thus, another methodological decision for the parties is whether to develop a separate institution to oversee the agreement and its provisions. Like trade and investment agreements, CSR is most effective when accompanied by strategic planning, education and training. As parties work to build capacity in their trading and investment relationships and activities, there is a synergistic opportunity to tailor that capacity building to include CSR principles. The parties may create one institution to control the entire agreement or they may break out the CSR elements for specialized institutional oversight

The first question is whether the institution charged with implementing and administering the trade or investment agreement is capable of advancing the CSR commitments. If the institution is capable of CSR

67 IISD Model International Agreement on Investment for Sustainable Development, Article 16 (A).

68 See Mann, H. et al., IISD Model International Agreement on Investment for Sustainable Development – Negotiators' Handbook, IISD, p. 27-28 (2006).

69 IISD Model International Agreement on Investment for Sustainable Development, Article 16 (C).

70 OECD, International Investment Agreements: Survey of Environmental, Labour and Anti-Corruption Issues, 2007.

oversight, it may allow for the possible integration of CSR principles or tools and of trade and investment activities. Even if CSR is a specialized department in the institution, the department will be a part of the interaction and cooperation between parties and actors.

However, in some cases a separate institution that focuses exclusively on CSR commitments may be more desirable. If the parties elect to use a specialized institution they must decide whether to create a new institution for this purpose or to delegate the duties to an existing institution, such as a non-governmental organization, university or other body. Parties must also decide whether this CSR institution is responsible for settling disputes and ensuring compliance with outcomes (where enforceable) regarding the CSR provisions of an agreement.

C. Issues

There are a number of specific CSR issues that could be addressed in trade and investment agreements. These include, for instance, a number of potential environmental concerns, such as biodiversity, water quality, air quality, soil conservation, renewable energy, and forest preservation, which might be addressed through CSR tools and responses. Social issues include indigenous peoples' concerns, child labour, forced labour, discrimination, wages, freedom of association, health and safety, and corruption.

The particular CSR response will largely depend on the individual circumstances within the countries negotiating the trade and investment agreements. Given this, flexibility in considering various options will be essential. Annex I provides a possible framework for considering the various environmental and social issues in these agreements and provides a potential CSR response.

VI. Conclusion

Exploring the relationship between CSR and trade and investment agreements is a relatively recent area of research, and this study aims to contribute to future analysis and dialogue on the theme. The objective of incorporating CSR principles and tools in trade and investment agreements would ultimately be to strengthen the application and implementation of the principles and tools as a means of supporting sustainable development.

This study clearly identifies a number of these potential advantages. However, the success of linking CSR and trade and investment agreements greatly depends on the particular method used to reflect CSR within the agreements. There is an inherent tension between maintaining flexibility within CSR systems to ensure continued business innovation and reflecting CSR within a trade or investment agreement negotiated by governments that may serve to promote CSR but may quell its innovative nature.

The study has demonstrated that there are important lessons to be drawn from how environmental and labour considerations have been reflected in trade and investment agreements. In many cases, these provisions have been more aspirational than prescriptive in tone. Whether this is the optimal outcome in the case of CSR principles and tools will require further analysis. The study does, however, demonstrate the potential benefits to be derived from incorporating CSR within trade and investment agreements, justifying further analysis on this theme.

Annex I: Framework to Assess Specific Circumstances of a Country in Trade and Investment Negotiations

SOCIAL ISSUES: Formulating a Trade Response using CSR

Indigenous Peoples

General CSR Tools: Human Rights Impact Assessment, Human Rights Compliance Assessment

Specific Concerns	CSR Responses Via
Are there indigenous peoples?	Capacity Building
Does national legislation exist to protect rights?	Capacity Building
Are there national institutions to protect land rights?	Capacity Building
Are there relevant sector guidelines that address issue?	Sector Guidelines

Child Labour

General CSR Tools: Global Compact, OECD Guidelines, SA8000

Specific Concerns	CSR Responses Via
Does child labour occur?	Capacity Building
Does national legislation exist to protect rights?	Capacity Building
Are there national institutions to protect the rights of children?	Framework Agreements
Are there adequate schools at low cost?	Sector Guidelines, Partnerships

Forced Labour

General CSR Tools: Global Compact, OECD Guidelines, SA8000, Framework Agreements

Specific Concerns	CSR Responses Via
Is forced labour employed?	Sector Guidelines
Does national legislation exist to protect rights?	Capacity Building, “Dirty” Lists
Are there national inspectorates to verify?	Capacity Building

Discrimination

General CSR Tools: Global Compact, OECD Guidelines, SA8000, Framework Agreements, Millennium Development Goals

Specific Concerns	CSR Responses Via
Is there gender-based discrimination?	Equality Assessment, Training
Are there politically-based forms of discrimination?	Equality Assessment, Training
Is there racially-based discrimination?	Equality Assessment, Training
Is discrimination forbidden by national legislation?	Capacity Building
Do parties discriminated against have legal recourse?	Capacity Building
Are there labour inspectorates to verify?	Capacity Building

Wages and Working Hours

General CSR Tools: OECD Guidelines, SA8000, Framework Agreements

Specific Concerns	CSR Responses Via
Are wages adequate to meet basic needs?	Sector Guidelines
Do working hours conform to national legislation?	Capacity Building, Reporting
Do local inspectorates provide checks?	Capacity Building

Freedom of Association and Collective Bargaining

General CSR Tools: Global Compact, OECD Guidelines, SA8000, ILO Core Conventions

Specific Concerns	CSR Responses Via
Is the right to freedom of association protected?	Framework Agreements
Is the right to collective bargaining protected?	Framework Agreements

Health and Safety

General CSR Tools: SA8000, Framework Agreements

Specific Concerns	CSR Responses Via
Are there national plans for preparing for emergencies?	Sector Guidelines
Is there legislation on protective clothing?	Sector Guidelines

Corruption

General CSR Tools: OECD Convention on Combating Bribery, Business Principles for Combating Bribery, Framework Agreements

Specific Concerns	CSR Responses Via
Is corruption a serious problem?	Capacity Building
Is there legislation in place to combat bribery?	Capacity Building
Are national institutions capable to combat corruption?	Capacity Building

ENVIRONMENTAL ISSUES: Formulating a Trade Response using CSR

Biodiversity

General CSR Tools: Environmental Impact Assessments, Technology Transfers, Framework Agreements

Specific Concerns	CSR Responses Via
Is there significant biodiversity?	IUCN Red List Species Count
Does national legislation protect biodiversity?	Capacity Building
Are there institutions to protect biodiversity?	Capacity Building

Water Protection

General CSR Tools: Framework Agreements, Technology Transfers

Specific Concerns	CSR Responses Via
Are bodies of water at risk of pollution?	Water Quality Guidelines
Do protective environmental regulations exist?	Capacity Building
Are there national institutions with a protection mandate?	Capacity Building

Air Quality

General CSR Tools: Framework Agreements, Technology Transfer

Specific Concerns	CSR Responses Via
Are there mechanisms/databases for collecting data?	Capacity Building
Are emissions regulated?	Capacity Building
Are emissions limitations sufficient?	Sector and Health Standards
Are there national or local organizations regulating?	Training

Soil Conservation

General CSR Tools: Framework Agreements, Technology Transfer

Specific Concerns	CSR Responses Via
Are there procedures for assessing erosion?	Capacity Building
Are there procedures for assessing soil quality?	Capacity Building
Is there national regulation?	Capacity Building
Are national or local organizations regulating?	Capacity Building

Renewable Energy

General CSR Tools: Framework Agreements, Technology Transfer

Specific Concerns	CSR Responses Via
Is there a national plan to increase renewable energy?	Capacity Building
Is renewable energy used?	Capacity Building

Forest Preservation

General CSR Tools: Forest Stewardship Council, Framework Agreements

Specific Concerns	CSR Responses Via
Are there national regulations to conserve forests?	Capacity Building
Are there national policies to sustainably manage forests?	Sector Guidelines
Are there national or local oversight groups?	NGO Collaboration
Can illegal logging be prevented by the government or groups?	Framework Agreement

Annex II: CSR Instruments

This annex contains a description of each major CSR programme mentioned in the publication. Also included is a summary of the Model Investment Agreement for Sustainable Development and further descriptions of relevant trade agreements mentioned in the publication. Lastly, there is a brief section concerning how two Canadian RTAs deal with environmental and social issues.

CSR Programmes

Comprehensive CSR Programmes

UN Global Compact

Launched in 2000, the UN Global Compact is an initiative of former Secretary General Kofi Annan "to give a human face to globalization." The Global Compact includes ten principles that address environment, human rights, workers' rights, and combating corruption. Participating companies must report annually on the progress they have made in respect to the ten principles of the Global Compact.

The Compact differs from many of the other CSR initiatives in that it has a focus on development. It also benefits from the support of several UN agencies, including: the ILO, UNEP, UNDP, UNIDO, and the Office of the UN High Commissioner for Human Rights. The Compact has fostered the creation of partnerships, local networks for global action, learning fora, and policy dialogues for companies of all sizes and in all regions of the world.

A multinational company might refer to the Global Compact principles in developing its own code of conduct. Likewise a signatory to the Compact can use its annual report to the UN Global Compact as the basis for its sustainability report. www.unglobalcompact.org

OECD Guidelines for Multinational Enterprises

Adopted in 1976, the OECD Guidelines for MNEs include recommendations from governments to companies. The OECD Guidelines constitutes one of the most comprehensive of CSR tools available to companies and addresses all aspects of corporate behaviour, including issues such as taxation and science and technology. The Guidelines have been revised to specifically incorporate sustainable development and the core labour standards.

The OECD Guidelines provide a unique and valuable contribution to CSR and to the debate on trade and investment in that they include a focus on host countries. The OECD Guidelines include a useful network of National Contact Points (NCPs) which are appointed by governments to promote the Guidelines. The NCPs may bring disputes or problems to the OECD. The Guidelines also encourage companies to "observe standards of employment and industrial relations not less favourable that those observed by comparable employers in the host country."

Increasingly, the OECD Guidelines are being referenced by governments: the Dutch government requires companies seeking export credits to take notice of the Guidelines. www.oecd.org

Issue-based CSR Programmes

OECD Principles of Corporate Governance

In 1999, the OECD endorsed the OECD Principle of Corporate Governance, which are a set of non-binding principles that include both process and performance guidelines. The Principles represent minimum standards that address the following issues:

- The rights of shareholders
- The equitable treatment of shareholders
- The role of stakeholders
- Disclosure and transparency
- Responsibilities of the board of directors

The Principles apply to all companies and are written in such a way as to apply to a wide range of countries with different types of legal structures.
www.oecd.org

ISO Management standards

The International Organization for Standardisation (ISO) is the world's largest developer and publisher of international standards. ISO is a network of national standards institutions, with over 157 national standards bodies. Standards are generally developed at the national level, and then ISO works to harmonize the standards. ISO has published over 17,000 standards, covering a wide range of issues, from quality to environment.

Standards developed by ISO include:

- ISO 9000: focuses on quality management
- ISO 14001: focuses on environmental management

These standards provide guidance to companies on how to design management systems, such as training, control of suppliers, and maintaining records that can also be useful to developing CSR systems. The programmes include a protocol for certification to demonstrate that a company is in compliance with ISO standards. www.iso.org

ISO Social Responsibility Standard - ISO 26000

The ISO has also developed a voluntary set of guidelines, ISO 26000, on Social Responsibility, which were published in late 2010. While the guidelines do not include a protocol for certification, they provide guidance on certification. In addition to the Principles listed above, the ISO 26000 also provides guidance on core Social Responsibility issues, including:

- Organizational governance
- Environment
- Human rights (including civil, political, economic, and fundamental working rights)
- Labour practices
- Fair operating practices
- Consumer issues
- Community involvement and society development.

Companies will be able to use the ISO 26000 guidelines in several ways: first, the guidelines provide a common language and framework for companies. Second, companies will be able to adopt the guidelines or use them to orient their own policies. Third, companies can use the listing of issue areas to report on key topics.

The ISO 26000 guidelines are an evolving tool that could be introduced into T&I agreements or examined by nations or corporations for further information on CSR issues. In the process of developing the guidelines, ISO established National Mirror Committees which can be helpful in developing local expertise and contact points for regional and bilateral trade negotiations. National Standard Bodies have appointed a panel of experts, which could serve as a useful network. www.iso.org

Social Accountability 8000

Launched in 1997, Social Accountability 8000 is a standard to make working conditions more humane. SA8000 combines the core labour standards of the International Labour Organization with the management systems of ISO. Companies that meet the SA8000 standard are given a certificate once they pass an audit by a firm accredited by Social Accountability Accreditation Services (SAAS). There are 1416 facilities certified to SA8000 in over 67 sectors and 65 countries. More than 675,000 workers are employed in certified facilities.

SA8000 is both a process and performance standard. Thus, companies must adhere to management systems (training, control of suppliers, maintain records) while also meeting social performance criteria (no forced labour, no discrimination, etc).[71]

SA8000 is a multi-stakeholder standard, developed as such by a wide range of organizations, including trade unions leaders, NGOs, academics, and business from both the North and the South. Using this input, Social Accountability International (SAI) has developed a comprehensive series of training programmes on humane working conditions, offered to auditors, suppliers of large brands, managers, and workers. Some of these training programmes receive funding from the US government to support better working conditions in countries with which the US has signed a trade agreement.

Retailers and multinational companies in both Europe and the US often ask their suppliers to become certified to SA8000. Gucci, for example, has asked all of its Italian suppliers to become certified to SA8000. Likewise, companies in developing countries also seek certification to attract foreign and/or local clients. www.sa-intl.org

Performance Reporting - The Global Reporting Initiative

The mission of the Global Reporting Initiative (GRI) is to "elevate the quality of reporting to a higher level of comparability, consistency, and utility." The GRI launched the Sustainability Reporting Guidelines in 2000. In 2006, the GRI launched the G3, or the most recent version of the Guidelines. The GRI has also developed Sector Supplements and National Annexes. There are over 1,000 companies that reference the GRI Guidelines. In using the guidelines, companies commit themselves to reporting on:

- Actions taken to improve economic, environmental, and social performance
- The outcomes of such actions
- Future strategies for improvement

GRI is a multi-stakeholder initiative, and has consulted thousands of organizations around the world. In its first three years of its existence alone, it sent the GRI guidelines to more than 12,000 people in eight languages.

A multinational company can use the GRI guidelines to report on its activities in Latin America, to ensure that it has a coherent approach to reporting on its activities worldwide. Likewise, a company in a developing country can use GRI guidelines to ensure that its social reporting is understood by consumers in North America and Europe.
www.globalreporting.org

Assurance Standards - AA1000

The AA1000 series provides an evaluation method based on a set of principles and standards in the field of sustainability and corporate responsibility. The AA1000AS is the first non-proprietary, open-source Assurance Standard that covers the full range of an organization's disclosure and performance. In applying the AA1000 Assurance Standard (AA1000AS), the Assurance Provider evaluates the credibility of the sustainability report, and assesses the underlying systems and processes that deliver the relevant information and underpin the organization's performance.

Three principles are core to the assurance standard: completeness, materiality and responsiveness. AccountAbility has begun the revisions process for the AA1000AS and will publish the second edition in July 2008.

The AA1000 series includes:

- Core assurance principles
- Practice and quality standards and guidelines
- Guidelines for organizations
- Qualifications of assurance providers

AA1000 is compatible with GRI and SIGMA. In the AA1000, companies commit themselves to increasing levels of assurance over time. A company uses AA1000AS in selecting how to provide assurance for its CSR reporting. Likewise, a multinational company can use AA1000 to decide how to convene a stakeholder dialogue in a developing country.
www.accountability.org

71 Leipziger, D. SA8000: The Definitive Guide to the New Social Standard, Financial Times Prentice Hall, 2001.

Certification Standard - GlobalGAP

Formerly known as EurepGAP, GlobalGAP sets voluntary standards for certification of agricultural commodities. According to its website: "The GlobalGAP standard is primarily designed to reassure consumers about how food is produced on the farm by minimising detrimental impacts of farming operations, reducing the use of chemical inputs and ensuring a responsible approach to worker health and safety as well as animal welfare." GlobalGAP is a clearing house of information for complex supply chains in over 17 products areas, from fruits and vegetables to cotton and salmon.

The initiative involved producers, retailers, suppliers, journalists and consumers. In 80 countries, 100 certified bodies certify that companies are adhering to Good Agricultural Practice (GAP). Over 100,000 companies have been certified to GAP.

GlobalGAP is a useful model for governments negotiating trade agreements because it works to build capacity throughout the world by delivering training and a tool kit. It provides information on benchmarking and has developed a network throughout the world of National Technical Working Groups. The GlobalGAP is a local multi-stakeholder initiative. www.globalgap.org

Sector-based CSR Programmes

Sectoral initiatives provide a common framework for a sector. With over 40 sector-based initiatives, it will become necessary for NGOs and/or UN agencies to provide common procedures across the initiatives, in areas such as dispute resolution and advice on governance. Sector-based initiatives that deal with natural resources and agriculture include:

- The Forestry Stewardship Council
- The Marine Stewardship Council
- The Better Sugarcane Initiative
- Roundtable for Sustainable Palm Oil
- Common Code for the Coffee Community
- Roundtable on Sustainable Soy
- Initiative for Responsible Mining
- International Council on Mining and Metals

Forest Stewardship Council

As a multi-stakeholder initiative, the Forest Stewardship Council (FSC) includes a wide range of perspectives, from the timber trade and NGOs representing environmental and social concerns, to indigenous peoples and certifiers. Founded in 1993, the FSC promotes sustainable forestry by accrediting certifiers that audit wood producers to assure that those producers pass the *FSC Principles and Criteria.* Certified companies can display the FSC logo on their products and in their promotional materials.

In the 12 years since it was founded, over 82 million hectares of wood have been certified in over 82 countries, covering several thousand types of products. There are national initiatives in 41 countries. FSC works with companies, such as Ikea, Home Depot and B&Q, which have established buyer groups in several countries. The members of the buyers groups commit to selling only independently-certified products within three to five years. FSC-labelling is preferred by the buyer groups in the UK, Netherlands, Belgium, Austria, Switzerland, Germany, US, Brazil, and Japan.

The FSC is one of the most admired of the sector initiatives. Since it is one of the longest-running sector initiatives, it provides many lessons and examples for other sector initiatives. www.fsc.org

Marine Stewardship Council

The Marine Stewardship Council (MSC) aims at increasing the overall sustainability of the world's seafood supply and the percentage of the global seafood market certified to the MSC standard. In 1997, Unilever and the World Wildlife Fund for Nature (WWF) laid the groundwork for the MSC when they engaged in discussions on how to ensure the long-term sustainability of global fish stocks. In 1999 the MSC became an independent organization and opened an office in London, UK, which was followed by the establishment of additional offices in Seattle, USA, and Australia.

Certified suppliers are listed on the MSC website by species, region, and product. Currently, 22 fisheries worldwide are certified to the MSC environmental standard for well-managed and sustainable fisheries and almost 500 products with the MSC eco-label are available in 25 countries. ASDA, Marks & Spencer plc, Sainsburys plc, Unilever plc, Metro, Wal-Mart, and Whole Foods Market Inc. count among the companies offering MSC-labelled products. The MSC approach is based on the successful model developed by the FSC, which uses a market-based approach to deal with social and environmental issues.

The MSC has developed *Principles and Criteria for Sustainable Fishing* and has created an eco-label for certified companies that have passed an independent audit. A special handbook is available on the organization's website. "MyMSC" gives practical guidance for companies preparing for an audit. Thus far, there are two fisheries certified in developing countries. These numbers are likely to grow in the coming years, as the MSC runs a project designed to make access for small-scale and data-deficient fisheries easier, especially in developing countries. Grants are available to fisheries in developing countries seeking to become more sustainable.
www.msc.org

Equator Principles

The Equator Principles provide a benchmark for financial institutions on social and environmental issues for project financing. The Equator Principles are guidelines for financial institutions. Adopted in 2003, by ten international banks, the Equator Principles apply across all sectors and countries, addressing all project financing with capital costs over $10 million. Over 43 financial institutions in 16 countries have signed onto the Equator Principles, covering 80 percent of all global project lending.

Equator banks adopt policies and practices that embed the Principles into their operations. Borrowers must conduct a Social and Environmental Assessment of a proposed project. Projects are rated into three categories: "A", "B", and C, with "A" projects having the highest degree of social and environmental impact. For all projects designated as either "A" or "B" in non-OECD countries or non-high-income countries, borrowers must establish a Social and Environmental Management System. When there is a "significant adverse" impact on a community, consultation with affected parties is required and must be conducted in a "structured and culturally appropriate manner."

The Equator Principles contain measures for addressing grievance and require an independent review of all Category "A" projects, and, as appropriate, for Category "B" projects. Equator Banks report annually on their progress in meeting the Principles. The Principles state: "We will not provide loans to projects where the borrower will not or is unable to comply with our respective social and environmental policies and procedures that implement the Equator Principles."

In 2006, the Equator Principles Financial Institutions (EPFIs) met to revise the Principles to incorporate the lessons learned and feedback from key stakeholders. The Principles were also aligned with the International Finance Corporation's Performance Standards.
www.equator-principles.com

Principles for Responsible Investment

The Principles for Responsible Investment (PRI) provide a set of voluntary and aspirational principles to a wide range of institutional investors, ranging from the UN Joint Staff Pension Fund to national pension funds. In early 2005 the United Nations Secretary-General invited a group of the world's largest institutional investors to join a process to develop the Principles for Responsible Investment (PRI). The process was co-ordinated by UNEP Finance Initiative and the UN Global Compact and ultimately led to the launch of the PRI. According to the Principles, investors agree to incorporate environmental, social, and governance issues into investment decisions. PRI signatories currently account for approximately £13 trillion in assets under management.
www.unpri.org

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About the UNEP Division of Technology, Industry and Economics

The UNEP Division of Technology, Industry and Economics (DTIE) helps governments, local authorities and decision-makers in business and industry to develop and implement policies and practices focusing on sustainable development.

The Division works to promote:

> sustainable consumption and production
> the efficient use of renewable energy
> adequate management of chemicals,
> the integration of environmental costs in development policies

The Office of the Director, located in Paris, coordinates activities through:

> **The International Environmental Technology Centre** - IETC (Osaka), which implements integrated waste, water and disaster management programmes, focusing in particular on Asia.
> **Sustainable Consumption and Production** (Paris), which promotes sustainable consumption and production patterns as a contribution to human development through global markets.
> **Chemicals** (Geneva), which catalyses global actions to bring about the sound management of chemicals and the improvement of chemical safety worldwide.
> **Energy** (Paris and Nairobi), which fosters energy and transport policies for sustainable
development and encourages investment in renewable energy and energy efficiency.
> **OzonAction** (Paris), which supports the phase-out of ozone depleting substances in developing countries and countries with economies in transition to ensure implementation of the Montreal Protocol.
> **Economics and Trade** (Geneva), which helps countries to integrate environmental considerations into economic and trade policies, and works with the finance sector to incorporate sustainable development policies.

UNEP DTIE activities focus on raising awareness, improving the transfer of knowledge and information, fostering technological cooperation and partnerships and implementing international conventions and agreements.

For more information,
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The objective of the study is to explore the relationship between corporate social responsibility (CSR) and trade and investment agreements. The study begins with an introduction to core CSR principles and various CSR tools. Bilateral and regional trade and investment agreements are then introduced with a focus on how CSR and other environmental and social considerations have been reflected in these agreements to date. The study notes that CSR and trade and investment agreements share a number of common objectives. Trade and investment agreements forge bridges between countries by creating common legal frameworks that can greatly influence decision-making by companies. Likewise, CSR initiatives also aim to influence decision-making by companies through the promotion of better social and environmental business practices. Although the study identifies no legal barriers to reflecting CSR principles and tools in trade and investment agreements, the question of whether and how such principles and tools should be included in future agreements remains open to debate. The study concludes by exploring some of the pros and cons associated with various options and methods for implementing CSR considerations in trade and investment agreements. In addition, the study provides a framework for considering various environmental and social issues in trade and investment agreements and potential CSR responses to these issues.

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