

The Heinrich Böll Foundation  
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Claude Turmes (MEP) and  
Caroline Lucas (MEP),  
THE GREENS/ EFA

**Public Hearing**

# THE EU BETWEEN JO'BURG FOLLOW-UP AND CANCUN POLITICS : HOW TO SET THE RIGHT FRAMEWORK FOR INVESTMENT RULES

THURSDAY, MARCH 6, 2003  
EUROPEAN PARLIAMENT,  
BRUSSELS

A report by Andrea Peschel  
and Barbara Werschkun



## The EU between Joburg follow-up and Cancun politics: How to set the right framework for investment rules

Report by Andrea Peschel and Barbara Werschkun

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The views expressed in this publication are exclusively those of the speakers/participants and do not necessarily reflect the views of the Heinrich Böll Foundation

## ABOUT THE CO-ORGANIZERS:

The **Heinrich Böll Foundation**, a German non-profit organization, affiliated with the Green Party and represented in Belgium by the EU Regional Office Brussels, is a legally independent political foundation working in the spirit of intellectual openness. It was founded in 1997. The Foundation's primary objective is to promote democratic involvement, socio-political activism, and cross-cultural understanding. The Foundation also provides support for art and culture, science and research, and developmental co-operation. Its activities are guided by the fundamental political values of ecology, democracy, solidarity, and non-violence.

The **Green Group/EFA** is a European parliamentary group made up of Greens and representatives of stateless nations. Its project is: to build a society respectful of fundamental human rights and environment, to increase freedom within the world of work, to deepen democracy by decentralization and direct participation of people in decision-making, to build a European Union of free peoples based on the principle of subsidiarity and to re-orientate the European Union towards social, cultural and ecological values.

**Friends of the Earth** is the largest grassroots environmental network in the world, campaigning to protect the environment and create sustainable societies. Friends of the Earth Europe (FoEE) unites more than 30 national member organisations with thousands of local groups.

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## INTRODUCTION

The Public Hearing entitled “ The EU between Jo’burg follow-up and Cancun politics: How to set the right framework for investment rules” held on March 6th, 2003 in the European Parliament in Brussels was attended by more than 200 participants. Among them were Members of the European Parliament, officials from the European Commission as well as ministries of trade and development from member states, representatives from NGOs from all over the world, research institutes, universities, the business sector, the media and other stakeholders.

Linking the outcomes of the WSSD with the WTO-Ministerial in Cancun was one of the major objectives of the hearing, which was also reflected in the date of the event: The time we chose was exactly six months after the end of the WSSD and six months before the beginning of the WTO Ministerial Conference in Cancun. With the support of the Greens/EFA in the European Parliament and FoEE, we invited a broad range of international stakeholders to this hearing to assess the outcomes of the WSSD on globalization, trade, corporate accountability, and public-private partnerships in the field of water, to address some of the sustainable development-related aspects of the EU’s service liberalization and investment agenda in the WTO and to elaborate on possibilities for developing binding rules for corporations at the European and international level.

The overall aim of the Public Hearing was to provide political space for a dialogue among EU officials and civil society representatives from the North and the South. We aimed at raising public awareness among civil society representatives of the outcomes of Johannesburg and needed follow-up, and at sensitizing civil society as well as decision makers for the main issues that will be at stake in Cancun. Further objectives were to enhance NGOs’ constructive input to EU trade and investment policy making, to give a voice to NGOs and government representatives from the South and to facilitate a fruitful dialogue among officials and NGO representatives from different regions of the world.

With this publication, we are presenting summaries of the presentations, key statements and arguments delivered at the public hearing. None of the summarized statements are verbatim quotes. The authors of this report are solely responsible for any flaws and mistakes in the summarized presentations and lines of argumentation. Full scripts of the presentations by the speakers can be downloaded from our website.

Andrea Peschel

Brussels, May 2003

## BACKGROUND

The World Summit on Sustainable Development (WSSD) was held in Johannesburg from August 16 to September 4, 2002. A meaningful, visionary action plan for sustainability, with a concrete timetable and targets, could not be reached. Instead, negotiations were overshadowed by discussions of the WTO trade liberalisation agenda as pursued by the EU and US. In addition, a large number of public-private partnerships were launched, including one by the EU in the field of water and energy. Moreover, the imbalance between MEAs and WTO-rules could not be resolved, MEAs are still lacking effective enforcement mechanisms.

Nevertheless, under pressure from civil society groups around the world, one positive outcome was the agreement of governments to develop binding corporate accountability rules. While no clear follow-up is yet planned for these rules, the EU will need to play a lead role in their development.

Instead of pursuing binding rules for corporations, the EU is seeking a different agenda right now in preparation for the next WTO Ministerial Conference to be held in Cancun, Mexico in September 2003. In the framework of the General Agreement on Trade in Services (GATS) negotiations, the EU is aiming at securing greater market access for its big European water multinationals Vivendi, Suez, Thames Water/RWE. At the same time, energy corporations are pushing for commitments by the WTO. By the end of March 2003, countries had to submit their offers of service liberalisation to the EU.

In addition to services negotiations, the EU intends to launch negotiations for an investment agreement in the WTO, which would give greater rights, but no obligations, to multinational corporations. A decision will have to be made at the 5th WTO Ministerial in September 2003 in Cancun, Mexico. This agreement would complement the already existing service agreement with binding investment rules in the field of agriculture, fisheries, forests and industrial activities.

## PROGRAM

THURSDAY, MARCH 6, 2003 EUROPEAN PARLIAMENT, BRUSSELS

### 9:00 - 9:15 Welcome and Introduction

Claude Turmes, MEP, vice-president of the Green Group  
Barbara Unmüßig, co-president, Heinrich Böll Foundation

### 9:15 – 11:00 Session I

#### THE EU AND WSSD: RESULTS AND FOLLOW-UP

### 9:15 – 10:25 Session I / Part I

Chair: Barbara Unmüßig, co-president, Heinrich Böll Foundation  
Co-Chair: Claude Turmes, MEP, vice-president of the Green Group/EFA

Speakers: Shafqat Kakakhel, Deputy Executive Director, UNEP  
“ Strengthening Global Environmental Governance, the WSSD outcome and the role and future of UNEP in view of the relationship between MEAs and WTO rules”

Rolf Annerberg, Head of Cabinet, DG Environment, European Commission  
“ General overview of WSSD outcomes on globalisation, trade, corporate accountability and the hierarchy of multilateral environmental agreements vs. trade rules”

Million Belay, secretary General, African Civil Society Steering Committee  
“ Reflections on the process and results of WSSD”

Ronnie Hall, trade co-ordinator, FoEI  
“ How the Earth Summit became a trade summit: Results and future steps”

### 10.25 – 11.00 Session I / Part 2: Discussion

### 11.00 – 11.30 Coffee break

### 11 :30 – 13 :10 Session II

### 11 :30 – 12 :25 Session II / Part 1

## THE JO'BURG EU WATER INITIATIVE AND WATER LIBERALISATION IN THE WTO

Chair: Jörg Haas, Senior Officer Ecology and Sustainable Development, Heinrich Böll Foundation

Co-Chair: Caroline Lucas, MEP

Speakers: Antonio Garcia Fragío, Head of Unit, DG Development, European Commission

"Promoting sustainable water policies: The EU's water initiative and ongoing WTO negotiations"

Mike Muller, director general, South African Department of Water Affairs and Forestry

"Water and development and the GATS perspective: A developing country's view"

Erik Wesselius, Corporate Europe Observatory

"The EU Water Initiative – Some Critical Remarks"

■ 12 :25 – 13 :00 Session II / Part 2 : Discussion

■ 13:00– 14:00 Lunch Break

■ 14:00 – 16:00 Session III

■ 14.00-15.20 Session III/Part 1

## ON THE ROAD TO CANCUN: SERVICES AND INVESTMENT LIBERALISATION

Chair: Harlem Désir, MEP

Speakers: Commissioner Pascal Lamy, DG Trade, European Commission

"The EC's approach to service and investment liberalisation"

Clare Joy, World Development Movement, UK

"GATS: The first multinational investment agreement?"

Alejandro Villamar, RMALC, Mexico

"Learning lessons from NAFTA: Dangers of an investment agreement in the WTO"

Cecilia Oh, Third World Network

"Civil society strategies for Cancun"

■ 15.20-16.00 Session III / Part 2 : Discussion

■ 16:00 – 16:20 Coffee Break

■ 16:20 – 18:10 Session IV

■ 16 :20 – 17 :30 Session IV / Part 1

## BALANCING THE SYSTEM: GLOBAL RULES FOR GLOBAL PLAYERS

Chair: Alexander de Roo, MEP

Speakers: Pierre Defraigne, deputy director general, DG Trade, European Commission  
"The European approach to duties of corporations and rights of communities in a globalising economy"

Nnimmo Bassey, Friends of the Earth Nigeria, Environmental Rights Action  
"Towards binding global rules on corporations"

Alice Palmer, Foundation for International Environmental Law and Development, UK  
"The potential for European action on corporate accountability"

■ 17:30-18:10 Session IV / Part 2 : Discussion

■ 18:10 – 18:20 Conclusions & Thanks

Martin Rocholl, Director, Friends of the Earth Europe

Barbara Unmüßig, co-president, Heinrich Böll Foundation



## WELCOME AND INTRODUCTION

**CLAUDE TURMES**, Chair; MEP, Vice-President of the Green Group/EFA:

This event is designed to explore the EU position halfway between WSSD Johannesburg and the 5th WTO ministerial in Cancun and to test how far their commitment to sustainable development is likely to be compromised by their commitment to free trade.

We are on the edge of a new war. The US administration will go ahead. With their reverse domino theory they will go to Iraq because they also want a regime change in Syria and in Lebanon and they want to contain China. They want to dominate the world by going to war. Mr Bush has stated last week that 'past history has been partially written by others, but future history will be written by us'. And we see a diplomatic reaction: The new imperialism of the Bush administration has pushed an alliance at world level against the US. But there are two super powers in the world: One is the US and the second is World Civil Society.

That is the background for Cancun. This US administration is prepared to try to kill multilateralism. What will happen as reaction? Mr Lamy thinks that trade policy is one of the possibilities to keep a multilateral approach alive, and he wants no spill-over from the Iraq conflict to Cancun. That's something we have to discuss: What does that mean, concretely, no spill-over?

**BARBARA UNMÜSSIG**, Chair, Co-President of the Heinrich Böll Foundation:

Today's hearing reflects the Heinrich Böll Foundation's Johannesburg follow-up activities and our preparations for the WTO ministerial conference in September in Cancun. The main focus of our work during the last two and a half years was the facilitation of dialogue among key stakeholders and the support of international and national NGOs in order to ensure their voice be heard in the Johannesburg process. We encouraged and supported the elaboration of ideas, strategies and new approaches to global challenges. This work has been published as "The Johannesburg Memorandum".

The Johannesburg outcomes lack a meaningful visionary action plan for the implementation of social and ecological development. Governments failed to discuss the world's major challenge of how to limit the major negative social and ecological impact of

economic globalization. Johannesburg was a development summit. The plight of the poor was present everywhere in speeches and public discourse and the millennium development targets were repeated quite often. Given the actual state of the world's affairs and the policies of its most powerful nation this repetition may signify already a success. The best thing about Johannesburg is: It could have been much worse.

Among the very few WSSD outcomes that reached beyond the Rio commitment and the millennium goals are new targets in the water and energy sectors complemented by the launching of private-public partnerships. One of those new partnerships is the EU water initiative. The second session of today's hearing will analyse and critically review this initiative and measures to ensure access to clean water for all.

In today's third session, Commissioner Pascal Lamy will speak about the EU's approach to service and investment liberalization in view of the ongoing negotiations for the general agreement on trade and services (GATS). Some governments, including the EU, are pushing for a multilateral agreement that will be complementing the existing service agreements with binding investment rules, meaning greater rights for multinational corporations in the fields of industrial activities, forestry, fishery and agriculture. Many NGOs fear that GATS will be a threat to global sustainable development.

Thanks to the joint campaign by international NGOs that was initiated by Friends of the Earth, governments are now asked to develop legally binding rules for corporate accountability. Yet, in the EU, there seem to be no follow-up activities in sight. In today's last session, we tackle the European approach from the official and from Southern and Northern NGO perspective.

Today's first session will assess the WSSD outcome, especially in view of challenges within the global governance structure. The difficult relationship between WTO and existing Multilateral Environment Agreements (MEAs) urgently needs to be clarified. The potentially dangerous mandate given to the WTO in the Doha declaration from November 2001 to negotiate the relationship between existing WTO rules and specific trade regulations set out in MEAs is seen as a threat to the implementation of multilateral agreements and also, in its imbalance, as a threat to the principles of good governance. It threatens the institutional integrity and the political relevance of the UN as the primary international body addressing sustainable development.

## SESSION I.

### THE EU AND WSSD: RESULTS AND FOLLOW-UP

**SHAFQAT KAKAKHEL**, Deputy Executive Director, UNEP:

Being the principal inter-government organisation in the world for the protection and development of the environment, the relationship between the WTO rules and the MEAs is indeed a critical issue for UNEP. The question of trade and environment is a very complex and controversial one. The principal challenge is how to realise the full potential of trade to contribute to the economic development and poverty alleviation while at the same time achieve the environmental and resource management objectives necessary to ensure that trade is sustainable.

At the Johannesburg summit world leaders affirmed that trade is a central means of sustainable development but also that the bodies of international law contained within MEAs and the WTO are on an equal footing. To have not accepted the parity of these rules would have been to upset the delicate balance necessary for sustainable development. In developing countries the critical link between maintaining a healthy environment as the source of vital goods and services for economic development is sometimes far clearer than it is in the developed countries. Insights and interventions by countries like Ethiopia ultimately kept negotiations on the right track in Johannesburg.

Since 1997, UNEP has been working with the MEA and WTO Secretariats to reduce the potential tensions and wherever possible find synergies between their different provisions. The decision taken at the WTO ministerial in Doha in 2001 to focus on the legal relationship between the MEAs and the WTO is very significant for UNEP as many of these MEAs are administered by us. We therefore have a key role to play in helping the MEA Secretariats follow and make inputs to the negotiations. This will be facilitated by the fact that ad hoc observer status in the WTO negotiations has recently been given to UNEP and five MEAs: the Basel Convention on Hazardous Waste, the CITES (Trade in Endangered Species), the Convention on Biological Diversity, the Montreal protocol and the climate convention (UNFCCC).

UNEP will deliver substantive analysis, support the efforts of the MEA colleagues and facilitate the engagement of developing country environment officials in meetings and in the negotiations themselves. Before conferences of the parties of the MEAs, we invite negotiators of developing countries to discuss the implications of the elements that are being negotiated for their

socio-economic situation. Environmental policy makers must retain effective tools to conserve and sustainably manage our natural resources and the global environment. Trade measures are among those tools of the MEAs but these agreements are balanced packages of policy measures including the vital questions of technical and financial support to developing countries.

Liberalisation of trade in services in the WTO raises very genuine concerns in some quarters, particularly with respect to natural-resource based sectors such as water. It is vital that the outcome of WTO negotiations will allow countries to maintain the policies and retain the safeguards necessary for the sustainable management of this critical sector.

The specific negotiating item agreed at the WTO Ministerial in Doha on liberalising environmental goods and services raises complex issues, including very basic definitions. For example, will that definition cover only “end-of-the-pipe” pollution control technologies, or those necessary for cleaner and more resource-efficient production of goods? Will it cover trade products, which have less impact on the environment during their use and disposal, or will they also deal with those that have less impact on the environment during their production? Will the scope of the negotiations cover environmental goods and services in which developing countries have a comparative advantage, and thus open up significant market access opportunities for developing countries as well as for developed countries? The full range of policy-makers, experts and stakeholders need to contribute to these definitions and feed their analysis and views into the WTO negotiations. This creates a significant policy co-ordination challenge to national governments in the first place, in which a number of different ministries have important roles on environmental goods and services. There may also be a role for MEAs, since many of them have been established to ensure sustainable management of natural resources that amount to public environmental goods and services. WTO members should prepare carefully and inclusively for this negotiation to ensure an outcome that favours sustainable and not just liberalised trade.

Central to UNEP’s current mandate is the objective of integrating environmental considerations into macroeconomic policies, including trade. However, given the increasing recognition of sustainable development policies devoted to alleviating poverty and achieving more equitable living standards, UNEP is developing its work program to reflect these realities. From an environmental assessment of trade liberalisation we are now moving into an “integrated” assessment with a strong emphasis on the linkages between the economic, social and environmental pillars of sustainable development. Multi-disciplinary teams of experts, from both developed and developing countries, policy research institutes and relevant intergovernmental bodies and

NGOs draft the assessment methodologies. These are then tested and refined by local policy research institutes in developing countries, where we can learn what are the real constraints, needs and priorities. These national level assessments are guided by national stakeholder committees, which include NGOs and the private sector, as well as the government ministries. We have now begun projects in some countries (e.g. Argentina, China, Senegal and Uganda) in which governments are designing and implementing policies for sustainable development based on these integrated assessments.

The WTO Ministerial in Doha and the WSSD in Johannesburg in combination have posed a very complex array of environmental, social and economic challenges to the international community. We need to face these together, as countries and people, but also as intergovernmental institutions. The architecture of global governance, which has grown on a piecemeal, sector-by-sector basis over the last half century, needs to be adjusted. This exercise has to be based on partnership above all.

**ROLF ANNERBERG**, Head of Cabinet, DG Environment, European Commission:

At the world summit, the EU sought to agree on a positive agenda for globalisation, finance and trade and ensure that market liberalisation takes place within a broader regulatory framework that aims to spread the potential benefits of globalisation. The EU approach was to build upon the Doha Development Agenda and the Monterrey Consensus, and we identified eight priority actions: facilitating exports from developing countries and improving market access; enhancing corporate social and environmental responsibility; reforming trade-distorting subsidies; promoting sustainable and fair trade; increasing the funding for technical assistance and capacity building; encouraging export credits that are consistent with sustainable development; strengthening the sustainability dimension of bilateral and regional agreements; and promoting the use of sustainability impact assessment.

The Johannesburg plan of implementation emphasises that globalisation must be fully inclusive and equitable and that developing countries need to be assisted to respond effectively to both the challenges and the opportunities provided by globalisation. The overall outcome on globalisation is satisfactory. It supports the successful completion of the Doha Development Agenda but also includes actions outside the DDA: on corporate social and environmental responsibility, on bridging the digital divide, on trade-related technical assistance and capacity building and on the insertion of sustainable development in regional trade and co-operation agreements.

The key element for determining whether the Johannesburg summit was successful is implementation. The EU must take the

lead in the follow-up process by translating its political ambitions into concrete actions and by moving from words to deeds. The main priority is to stay actively committed to a successful and timely completion of the DDA, which can support global sustainable development by providing substantially greater market access opportunities for developing countries.

For the first time ever, the issue of trade and environment is on the negotiating agenda. In Johannesburg there was a lot of debate on trade and environment confirming the political importance and also the critical sensitivity of the WTO/MEA issue and its broader international governance implications. In pursuing the negotiations the EU can either a) seek a broad interpretation of the mandate addressing also implementing measures such as those which come under the Kyoto protocol or b) stick to the current narrow interpretation addressing only trade measures that are specifically mandated under an MEA. None of these options is risk-free. The NGOs favour a narrow interpretation of the mandate and I agree because stretching the interpretation of the Doha mandate we may end up with a negative overall outcome on the MEA/WTO relationship. The negotiations should contribute to consolidating the status of the MEAs as a basic tool to address global environmental problems. The EC attaches great importance to the basic governance principles articulated around the notion of mutual supportiveness, for example deference principle, integrated interpretation of MEAs and WTO agreements and avoidance of unnecessary disputes.

The Doha mandate provides for specific negotiations on the reduction and elimination of tariff and non-tariff barriers to environmental goods and services. Liberalisation of trade in environmental goods and services is an area with a clear win-win potential: It can favour environmental protection in developing countries by allowing them to purchase at lower prices the environmental goods and services they need. However, in the definition of such goods and services it is also important to strike the right balance and to include products and services from the developing countries.

In line with the paragraphs of the Doha ministerial declaration on the mainstreaming of sustainable development and environmental considerations into all areas of the negotiations, the current negotiations will preserve the regulatory power of countries to take appropriate measures for pursuing legitimate objects such as the protection of the environment. The negotiations should not result in additional and undue constraint on the domestic environmental and health policies of the WTO members. The Doha agenda provides that investment negotiations should be conducted with the view to establish a multilateral system to secure transparent, stable and predictable conditions for long-term cross-border investments. From an environmental perspective it is



important to ensure that these negotiations will not result in the lowering of domestic environmental standards to attract foreign direct investments. In order to help developing countries to maximise sustainability benefits of increased foreign investments technical assistance and capacity building will be necessary.

Among the actions outside the Doha Agenda the EU has identified five priorities: Enhance corporate social and environmental responsibility, which can play a crucial role in promoting more sustainable investments and more effective development co-operation and transfer of technology. The UN Compact, the OECD Guidelines for Multinational Enterprise and the work of the World Business Council for Sustainable Development provide a basis for progress; ensure that export credit agencies act in a way to support sustainable development; strengthen the sustainability dimension of bilateral and regional agreements; increase technical assistance and capacity building in developing countries; and finally ensure coherence in our own policies to prevent negative impacts on other countries. In the common agricultural and fishery policies we should aim at reducing subsidies that are incompatible with sustainable development.

At its next Spring meeting, the European Council will review the EU strategy for sustainable development and focus on putting into practice the commitments undertaken at the WSSD. Of course,

there is a risk that the prospect of a war in Iraq will interfere with the debate on issues such as sustainable development. But in the longer term the commitments that we agreed in Johannesburg are also crucial in order to achieve peace and stability in the world.

**MILLION BELAY**, Secretary General, African Civil Society Steering Committee:

In assessing the outcomes of WSSD, I would distinguish between the process and the result. The process, for us in Africa, has left many positive points.

The building up to the Summit created a huge civil dialogue. National agendas were refined and massive global consultations were organised. It opened the way for African civil societies to question the path of development that our governments and outside institutions forge for us. We linked up with other African and other Southern and Northern countries and started a dialogue with some Northern NGOs on future co-operation. Being part of the PrepComs was a very daunting experience for many of us. The language spoken was unheard of, the speed by which things were going was supersonic, and the division among nations, geography, and issues was very wide. It was educative to see how most Northern NGOs and very few southern NGOs know their issue, identify whom to lobby, create alliances around issues, follow

events and quickly respond to them and exchange information. One positive outcome of the WSSD for African Civil Society Groups was the recognition of the inter-linkage between culture and biodiversity. Africa is rich in both cultural and biological diversity and there is a concern that we are losing both. Globalisation is creating fresh desires in peoples of traditional societies and people all over the non-Westernised regions of the world appear to be imbibing values previously associated with Western culture. For some, especially the young, these new products and new ideas can be exhilarating. Change may mean escape from oppressive traditions. However, there is genuine cause for concern about the rate at which cultures are being undermined in a world that is bound together by ever-stronger economic ties. Today African culture is being decimated. Colonisation left the colonised in a state of cultural disorientation and consequently vulnerable to continuing cultural invasion. The cumulative effect is a crisis of cultural confidence, combined with the loss of biodiversity, erosion of traditional knowledge and increased economic uncertainty and crime. This creates problems for social solidarity at all levels: national, communal and in families.

During the WSSD, the Southern African Countries were being pressured by the US to accept genetically modified food aid. The Zambian government has resisted this on the grounds of precautionary principle, loss of trade with the EU, and health. The response from African civil society was swift, angry and uncompromising: In less than two hours more than 200 African civil society participants coming from 30 African countries signed a petition in support of the Zambian government for rejecting GMO aid. We do not want another colonisation, this time by transnational companies, which are not accountable for what they may cause to the health of the environment and the people. To most Africans the promise of GMOs to feed the African people is a marketing gimmick. Africa will feed itself only by sustainable agriculture. A quick-fix agriculture will only put Africa in more debt and dependency.

During the preparation for the WSSD we also looked closely at the politics of NEPAD, the supporters of which were very active throughout the whole process. NEPAD is alien to the African public and is not supported by the civil society. There was no effort among African heads of states to create a dialogue before or even after the document was produced. The rapid acceptance of NEPAD by the international business community, Bretton Wood institutions, and the G8 is bewildering. While other important documents from Africa are not accepted NEPAD is endorsed readily. Why the hurry? Africans should have time to debate on it and be part of a process that determines their destiny.

The NEPAD document is based on development mainly relying on

outside help. However, the promises of support to developing countries made in 1992, have not materialised. Will NEPAD fare better in 2002-2012? If allowed full expression, NEPAD could undermine the African Union (AU) and undo the good expected to come out of fostering self-reliance. Africa must unite if it is at all to be effectively self-reliant. However, NEPAD also challenged Africa scholars, development thinkers and civil society groups to come up with an alternative agenda for the economic, social and environmental improvement of the African continent. It established a peer group and gave us a window of opportunity to tie down our leaders to their promise of good and transparent governance.

As for the results of WSSD concerning trade, developing countries had hoped that industrialised countries would commit to phasing out trade distorting subsidies and providing better market access. These two measures would go a long way in ensuring that poor countries have a level playing field in international trade and become self-reliant. If Northern countries simply stopped subsidising their farmers and allowed fair competition for agricultural produce in world markets, the total benefit to poor countries would be far more than the flow of official development assistance.

If developing countries can claim any victories, it would be in the agreement to negotiate a global instrument to ensure 'benefit sharing' within the Convention of Biological Diversity (CBD). Such an agreement, where local communities get a share of the benefits if their biodiversity or traditional knowledge is used to develop a commercial product, would go a long way in protecting the rights of the poor. But as many countries strongly opposed making any such instrument legally binding, it is unlikely that the instrument will be very effective.

Africa was not adequately prepared for the WSSD. There was a lack of leadership both in the government and in the civil society. There was no effective co-ordination for the common interest of the African continent. The G77 were so divided and weak that the interest of Africa in the areas of trade and energy were not addressed. Work is needed both from inside and outside to create an environment for more interaction among African civil society groups. There is also an urgent need for interaction with the outside civil society groups and government bodies such as the EU.

The EU has shown interest to support the African civil society work and I am very grateful to the EU for supporting the participation of the African Civil Society at Johannesburg. The Heinrich Böll Foundation has supported the Ethiopian civil society consultations, the first Pan African Conference, the participation of African civil society leaders in the preparatory committee meetings and more. I hope others will follow suit.

**RONNIE HALL**, Trade Co-ordinator, Friends of the Earth International:

How did the earth summit become a trade summit? Who made it happen, and what are the details of what actually happened? How can we move forward and what needs to happen, both in the run-up to the Cancun ministerial and, most importantly, after the Cancun ministerial, as well?

Two significant things happened in Johannesburg in relation to the text, the first significant means and implementation text discussing trade liberalisation issues. Firstly, many governments were seeking to use that text to establish the reach of trade rules. Secondly, governments were transferring the WTO negotiations from Doha to Johannesburg and the focus shifted away from issues that the World Summit on Sustainable Development was supposed to be focussing on. This was very evident already at the PrepComm in Bali. Whenever there was any discussion about trade it had to be cut and paste from the Doha text as far as the EU and the US were concerned. This is very much the way it developed in Johannesburg, to the point where NGOs like Friends of the Earth along with groups like Oxfam and Greenpeace started to disengage from the process. It became apparent that nothing we said was going to make any difference and even though there were some mitigating factors I don't think anything changed in the end of the conference.

In looking at why this happened and who was involved I come to the conclusion that we actually never were going to be involved. The European Union sees trade and commercial globalisation as the solution that would promote sustainable development. They went to Johannesburg with 3 messages: to promote free access for exports from Least Developed Countries, which they had already agreed to do before the WSSD; to talk about the reform and back cut of subsidies, but there were no new agreements about dates when this will happen; and to promote sticking to the Doha time table, and that is exactly what we trade campaigners do not agree with. Basically, the EU was going to Johannesburg with no intention of making new commitments on trade issues.

The G77 were also a very fundamental part of the shaping of this trade agenda, being furious about the outcome of the negotiations in Doha without most of the concerns of the developing countries being properly reflected, however strenuously they objected to new issues including investment and competition. So they went to Johannesburg with the view of using the process to further their negotiations on trade and agricultural subsidies and trying to get extensive reviews of special differential treatment agreements in the WTO increased and agreed to by the EU and the US.

The US played a significant role to stop any legally binding agreements or any language that might lead to legally binding agreements. In the letter they produced at the end they stated that

as far as the agreement about benefit sharing and biodiversity was concerned, they interpret it as being an agreement but not legally binding. They insisted on transferring text word for word from the Doha agreement and went with watering down existing commitments and principles.

There were four key parts of the Johannesburg text that groups such as FoE were following: the general approach, a paragraph about WTO conformity, a text on MEAs, and a paragraph on globalisation.

In terms of the general approach the Johannesburg text is littered with references to the Doha agenda, public-private financing and world trade liberalisation. The very first sub-paragraphs about how to implement sustainable development is about implementing the Doha agenda. That is completely opposite of what FoE thinks is necessary to move forward on sustainable development. Even if there were mitigating factors later, this text is still there and it is highly unsatisfactory.

The big fight was about one paragraph, which was meant to be about the mutual supportiveness of trade and environment issues but repeated the language requiring WTO conformity. Ethiopia lead the way in a very intense battle to get rid of this language, and even the EU agreed that it would upset the hierarchy of international legislation. But my concern is that this will be temporary, if negotiations on issues such as MEAs continue in the WTO and nowhere else.

FoE has been pushing very hard at the WSSD to make sure that the objectives of MEAs are not overruled by trade rules, which is also reflected in the UNEP text at the PrepComms. However, the actual debates in Bali and Johannesburg seemed to be over language such as "coherence" or "complementary" and the outcome was that most language that was being discussed was just abandoned and a quite simplified text was included. The key point debated and something that the EU was pushing forward very hard was that the negotiations take place in the WTO and not the UN. As far as we are concerned that is quite unacceptable.

The EU and the UK worked hard to make sure that the general paragraph on globalisation was separated from the means and implementation text to underline its importance and there was quite a heated debate about whether there should be anything negative said about globalisation. The UK wanted that text deleted, maybe the EU too, but some of the text was eventually included against their wishes.

Where does that leave us? In my view, that leaves us back at square one, firmly in the WTO. There will no negotiations be happening anywhere else. But a few things have changed. Public opposition is growing very rapidly as is evident in developments in Latin America or in people's concern about the activities of corporations. The second point is that WTO negotiations are dead



marked: The EU and US agenda, becoming increasingly obvious, is very much resented by many of the governments in the WTO. There is a battle over investment between the EU and developing countries and there is a battle over special differential treatment between the US and developing countries. The EU's agenda on GATS negotiations on issues such as water and energy services is increasingly obvious. And the recent paper from the WTO on agriculture is very unsatisfactory, certainly, from a developing country's point of view. MEAs are moving on very, very slowly and there does not seem to be much hope for a positive outcome. If there is not fundamental, progressive and ultimate change of the world trade globalisation the whole system is going to implode. We really need to address this issue and the WSSD was the one single occasion where we could have done that. And if it did not work at the WSSD where can it work? There are no other occasions on the horizon. In the meantime, we have the Cancun Ministerial to prepare for, and the key point here must be to role back the scope and power of the WTO. To start off with, by ensuring that there is no expansion of the current trade system by the inclusion of new issues. And that there is nothing introduced in the agenda that would allow MEAs to be subordinated to trade rules. The EU has been a key driver in this process and it is essential that the EU changes its position, regardless of the US course. The US has no intention to change its current direction. It is up to the EU to make the first move.

## DISCUSSION

**MARTIN ROCHOLL**, FoE Europe:

WTO rules have enormously strong enforcement mechanisms while MEAs have a real problem with enforcement, specifically towards countries who are not part of the MEAs like the US who let us down on the Kyoto protocol. What are your practical proposals to make multi-lateral agreements more enforceable? One of the very soft ideas would be to collect money that all countries have to pay, for example by a Tobin tax or some other kind of tax on the global commons, and distribute it only to those countries that obey to MEAs, for example for investment and innovation technologies. The stronger approach would be trade sanctions. For example, if the US are not willing to reduce CO<sub>2</sub> emissions and therefore have a competitive advantage through cheap energy, why not put tariffs on energy-intensive products coming from the US? Without a practical way forward to see that MEAs finally get some teeth this whole talk on global environmental governance is just a nice talk.

**SHAFQAT KAKAKHEL**:

Theoretically, the parity between the WTO rules and the provisions of the MEAs has been established but in practical terms the fundamental question is of the enforcement of and compliance with the MEAs, which depend on the moral weight of the consensus depicted in them. UNEP has developed a set of guidelines for ensuring enforcement of MEAs but the work of the intergovernmental organisations is dependent on the consensus in the international community. And that is where the role of Civil Society comes in. Civil Society has to serve as the guardian of the moral interests such as environment. What we are missing is the political will. We must organise the political will.

**ROLF ANNERBERG:**

In Johannesburg some countries have announced that they are going to ratify the Kyoto protocol. The Russians said that they will eventually do so and since Johannesburg we have been engaging in different activities in order to make it possible for them to ratify the protocol before the end of this year. That contributes something to getting the Kyoto protocol ready because without the Russians we never even enter the state where we start to discuss the enforcement mechanisms. It is obvious that the US will not ratify the protocol. We are having a dialogue with them on some issues, mostly clean technology research and development, where they are keen to co-operate.

Whatever we say about Johannesburg – remember that this was a multilateral agreement in a world that is getting more and more bilateral. The US move more and more into bilateral negotiations and agreements. We believe that multilateralism is the only way forward and that is why we believe that Johannesburg was a success. There was an agreement on the political situation and it was multilateral. I see difficulties to get something similar in the years to come. The main problem is the implementation. We do not need more of those conferences, we need to do something.

**ALEXANDER DE ROO, MEP, Netherlands, Green Group:**

The Americans use their power. When it comes to genetically modified food, they simply threaten Europe with the WTO. The European Commission never does it the other way round. The EU has to be more self-confident and stand up for our environmental interests against the US.

**DUNCAN MCLAREN, FoE:**

Rolf Annerberg said that what we need for sustainable development is implementation, not big conferences. But the EU is not prepared to take the same line on the WTO where it sees a need for big conferences rather than implementation. Why is this different?

**ROLF ANNERBERG:**

It is wrong to say that we do not stand up against the US. We are the only ones who are doing that. There is an enormously long list of trade disputes between the US and the EU. But what is worrying me is more what is happening between the G77 and the US. There seems to be a growing alliance between them which will certainly diminish our influence. It seems, in the Kyoto protocol for example, that the US have come closer to the G77 agenda and are leaving us in a situation where we need to think about our own strategy. Because basically there is no reason for the G77 to co-operate with the US rather than Europe.

What I meant with big conferences is those conferences which have an

enormously wide agenda. We have to focus. In that context, the WTO is relatively small because it is focussed. We need to concentrate our effort there because that is where the action is going on. You may like it or dislike it but that is where we are.

**RONNIE HALL:**

I agree on the concern about the outcomes of huge intergovernmental conferences. At the same time, if there are conferences moving the trade agenda forward like the WTO we need to have some balance. You say we have only two options on MEAs and the WTO. But I would say that there is a third option and that is the idea of the EU calling forward a multinational and multistakeholder forum to get the support of civil society and the support of developing countries.

**CAROLINE LUCAS, MEP, UK, Green Group:**

If indeed the WTO is in your view the only battling ground, can you confirm that there will be a very large delegation from the DG Environment, including Commissioner Margot Wallström. As far as I know she was prevented from going to Doha, she was not there. We want to have a strong claim for environment at Cancun.

**ANNIE DAVIES, Development Information Network, Nigeria:**

There seems to be some agreement that free trade laws, if appropriately implemented, would enable Africa to move forward to development. But I see a wide gap in Africa's capacity in terms of technology transfer as well as productive capacity on the whole. If free trade is implemented and is allowed to go the way it is right now how would Africa be able to access the Western markets that are made open to them if they do not have the capacity to produce the goods? By the end of the day, it will just appear as if Africans are given an opportunity that they cannot take.

**ROLF ANNERBERG:**

In the Commission we take the principle of collegiality very serious. Every paper that the DG Trade wants to circulate needs the agreement of other services. We are very active on the trade agenda but before Doha, our advice to the Commissioner was that she should not go because the Union's negotiator is Pascal Lamy. We all had agreed on the mandate and the negotiation teams did not do anything that was on the outside of the mandate and was not confirmed either by the people that we had in Doha or in Brussels. Even though Commissioners often can make a contribution, in the case of trade it is Pascal Lamy who is the negotiator. We agree on the mandate and it is up to him to negotiate.

## SESSION II.

### THE JOHANNESBURG EU WATER INITIATIVE AND WATER LIBERALISATION IN THE WTO

**CHAIR: JÖRG HAAS**, Senior Officer Ecology and Sustainable Development, Heinrich Böll Foundation:

Access to clean, safe drinking water is a basic human right. But over 1 billion people lack this access and over 2.4 billion people do not have access to sanitation. Every year, 2.2 million people, mostly children, die from water-related diseases. With this background, the Johannesburg commitments to half the proportion of people lacking access to clean water and to sanitation by 2015 seems very modest. Nonetheless, how this target will be met remains very unclear. The EU water initiative was launched in Johannesburg with the aim to create strategic partnerships to achieve the Johannesburg goals on water and sanitation. A second theme in this session will be water liberalisation under the WTO.

**CO-CHAIR: CAROLINE LUCAS**, MEP, UK, Green Group:

The tension between sustainable development and free trade is nowhere more apparent than in the case of water. Because there are those who are setting out a very aggressively profit-driven future for water, undermining any idea that access to water is a basic human right. According to the World Bank, water will soon be moved around the world as oil is now. European water companies are enormously powerful players in this and it is unsurprising that the EU has put water services very high up on its list of demands in the ongoing negotiations on trade in services. As a result of this corporatisation of the water sector, access of poor people to vital water supplies is going to become much more difficult.

**ANTONIO GARCIA FRAGIO**, Head of Division, DG Development, European Commission:

Regarding water issues, the World Summit on Sustainable Development in Johannesburg can be considered a success. A particularly important step, with strong EU support, was the adoption of a new international target to halve by 2015 the number of people without access to sanitation, complementing the target on access to drinking water. The adoption of a new target to develop integrated water resources management plans is also a positive step forward. Meeting these three targets is a major challenge for the international community, which is critical for poverty eradication, sustainable development and even conflict prevention.

The primary responsibility for ensuring that equitable and sustainable water resource management receives a sufficiently high profile in national and regional strategies rests with governments in developing countries. But external support is also crucial, in particular to help mobilise additional finance through development assistance and other means. The EU is already the largest provider of water-related development aid. With the launch of a new EU Water Initiative at the WSSD, the EU signalled its intention to expand its role in the international effort to achieve the water and sanitation targets.

Progress in water policy means progress in all three pillars of sustainable development – social, economic and environmental. Building on EU policies and experience, the Water Initiative seeks to provide a catalyst for further action to achieve the internationally agreed goals. It aims at reinforcing political commitment towards action and raising the profile of water and sanitation; promoting better water governance arrangements, building on stronger partnerships between governments; improving co-ordination and co-operation, shifting towards sector wide approaches; encouraging regional and sub-regional co-operation on water management issues, using the integrated water management approach; and finally, catalysing additional funding through the development of innovative mechanisms.

Consistent with the integrated and demand-led nature of the Initiative, additional funding will be considered in response to requests from partner countries, within the context of their efforts to reduce poverty and promote sustainable development. Overall, the Initiative seeks to identify the right mix of financing options, both for capital finance and cost recovery programs that are sensitive to the needs of the poor. A central focus will be on showing how development aid can increasingly be used as a catalyst for triggering other sources of financing for water. The Initiative is being taken forward with the active involvement of EU Member States and the European Commission, the European Investment Bank, the private sector and civil society.

During WSSD, a joint declaration for a new Africa/EU strategic partnership on water affairs and sanitation was signed at highest political level. Partnerships between the EU and Eastern Europe, the Caucasus and Central Asia were also endorsed at ministerial level during WSSD. Mediterranean and Latin American components are being developed. Recognising the importance of strong local partnership for successful interventions, the EU has made it a first priority to engage with governments, the private sector and civil society. In Africa, in particular, the EU partners are working with the African Ministerial Council on Water, central and local governments, civil society, private stakeholders and multilateral agencies to contribute to the achievement of water-related Millennium Development Goals.

In order to achieve these goals, good governance, political and sectoral reforms are necessary. Awareness raising, institutional strengthening and capacity building activities are essential to support planning and decision-making. Partnerships between public, private

and civil society actors have to be promoted, ensuring that those partnerships remain equitable and transparent and allow free and reversible choice on water services. This policy emphasises that a shift in thinking is necessary, including recognition of the fact that water must be properly valued. Pricing of water services is important to ensure financial sustainability, although meeting the basic needs of poor and vulnerable groups requires the design of appropriate tariff structures and collection systems.

The question of private sector involvement refers to a larger one, that of the reform of state-owned enterprises. For some years developing countries have been under pressure, mainly from the Bretton Woods Institutions, to privatise state-owned enterprises that are riddled with heavy losses and economic inefficiency. But while recognising that public companies often provide inadequate services to only a fraction of the urban population, there is a growing awareness of the need to objectively examine all the options before selecting the most appropriate one, including private sector involvement. The main messages of the European Commission are to keep an open mind on these reform issues, put in place adequate regulatory frameworks and establish monitoring mechanisms to ensure the protection of public interest.

In the context of the current WTO/GATS Services negotiations, the EC has tabled requests to its trading partners for improved market access for European service suppliers. These requests are consistent

with the EC's overall policy on water. There is growing recognition that the private sector, together with government and civil society, needs to be involved in efforts to improve water and sanitation services and to strengthen investment and management capabilities, in particular in African countries. In view of the high capital demand for water infrastructure investment, it is necessary to mobilise private funding for water utilities, wastewater treatment, irrigation and other water-related programs and to make the sector a more attractive target for private investment.

Liberalisation of trade in water-related services in the context of WTO could be used as an instrument to facilitate infrastructure investments, strengthen water management capabilities and foster technological development. Private sector participation in the provision of these services does not imply privatisation of water resources. The EC requests in the GATS negotiations are not about cross-border trade of water, nor do they seek access to water resources. Any reform which involves the private sector needs to pay particular attention to ensuring equitable access to water through an appropriate regulatory framework. Our GATS requests do not undermine or reduce in anyway the host governments' ability and responsibility to regulate water management and allocation of water among users, to choose the most appropriate form of private participation and to impose equitable pricing policies and ensure affordability for the poor.



**MIKE MULLER**, Director General, Department of Water Affairs and Forestry, South Africa:

In South Africa we regarded the WSSD as a success in putting poverty back firmly on the agenda to ensure equitable and more sustainable development in a multilateral way. Although those who came with the focus on sustainability in the environmental dimension might have been disappointed, we think the balance was right. Turning to the subject of this session, I am not looking just at the GATS process but talking about water in the context of a broad development policy, in particular the Millennium Development Goals (MDGs), which represent a multilateral commitment to equitable and sustainable development. We sometimes refer to the "world in one country" experience in South Africa. What once has been a tourist slogan actually is a political statement. The society we inherited in 1994 was grossly unequal, about as unequal as the world is in terms of the number of poor people and the number of rich people. Our process of national reconstruction and development is trying to address the inequities of the past and to build what will be a more prosperous nation because it draws on the strengths of all our people instead of just protecting the affluent minority. The challenges we faced in water reflected the rest of the country. The majority of the poor were without basic services. One third of the population were without a safe water supply, a half without adequate sanitation.

As a middle-income developing country, we can fund our own programs to provide basic services. In 8 years, we have provided basic water supplies to 9 million people. We do not allow affordability to bar access to the basic services that are needed for health and dignity, and which are rights in terms of our Constitution. We fund local government to provide a free basic water supply, 25 litres per person per day. We also have an economy and a relatively affluent urban society to service. 70% of our sector's cash flow, about one billion Euro a year, is funded from user charges. We finance much of the development from our own internal capital markets. By using straightforward public finance approaches and institutional reforms, we are bridging the divides in our society and we hope that at least by 2008 we will have eliminated the water backlog and in 2010 the sanitation backlog.

The obvious question, what the GATS is about, is who provides the services? Putting infrastructure in the ground is only the first step in providing water services. Managing it efficiently is going to be the job of local governments. In terms of our legislation, communities, through their local governments, choose who provides services. Our experience is showing that there is a role for many partners, public and private, domestic and foreign, governments and civil society.

The choices are complex. They range from very small rural communities, where Community Based Organisations (CBOs) do the work on behalf of local governments to the opposite extreme where very large public utilities, the size of similar operations in Europe, provide for a number of local areas. The handful of private sector concessions,

which serve less than 2% of the population, have met with mixed success. The private sector dominates the traditional fields of design, construction as well as project management and we also use them extensively to do things like billing and collection of funds and to manage plants. And a very important role for the private sector, for the markets, is to provide the financing.

There are of course many challenges. We have been castigated by some parts of civil society for allowing water service providers to restrict water supply to households that refuse to pay for what they use above the basic minimum - despite the widespread evidence that when you start having a free-for-all in water services the first people to suffer are the poor. Because the rich buy pumps to suck water from the pipes and leave the poor the taps dry. Water services can only work effectively if there is sufficient consensus in the society to support their operation. Decisions about how services are provided have to be taken in a way which ensures the concurrence of users, whether it is on tariffs, or service levels, or the institutions responsible for running the services.

Turning to the global level: We have demonstrated that the water and sanitation goals can be met. There is certainly more than enough money to meet basic minimum needs in water and sanitation. In order to meet the MDGs an additional investment of perhaps 10 billion Euro annually would be sufficient. However, much of the backlog does not occur in middle income developing countries like South Africa. It occurs in poor countries. How do we mobilise the funds to meet the needs of the poor in poor countries? During the WSSD President Thabo Mbeki asked repeatedly, what are we going to do about "global apartheid"? And part of the question is, what is the global public finance equivalent to ending apartheid as we have done in South Africa?

The EU's constructive approach of budget support of the water sector in South Africa and elsewhere recognises that while operational management of water services is best decentralised, the funding of basic water supplies in poor communities has to be centralised because the poor cannot fund it. If we are to achieve the Millennium goals - which by definition means targeting the poor - it cannot be met with business as usual.

This brings us to the issue of GATS and the contentious role of the private sector. Contentious partly because there was an aggressive push for private sector engagement in developing country water markets all through the nineties and it came in the absence of a framework for meeting the needs of the poor. Advocates of private engagement in areas such as water must demonstrate that their recommendations are the product of rational institutional decisions designed to achieve public objectives. Two initiatives might help them: The first would be for donors and lending agencies to cease making private sector involvement a pre-condition for water sector support. They need to respect the commitment of most governments and communities to meet their water service needs and help them to make sound choices. If

there were programs in place which focused on meeting the basic water and sanitation needs of the poor, we believe it would be possible to design more appropriate – and far more successful - interventions by the private and public.

In the absence of arrangements to put the needs of the poor first, a second important initiative would be to take water services off the table in the GATS and related trade negotiations. This would emphasise that they are serious about achieving the global development objectives and are not just pursuing trade objectives under a benevolent guise. Acts of good faith are not usually included in the rules of trade negotiations. But if we are serious about the MDGs we need to be guided by more than the current rules of the game, rules which are necessarily skewed against the poorer and more dependent players. The importance of including an item in the GATS agreement is as much its symbolism for the investor community as its commercial substance. But there are other communities involved as well, the communities of the developing countries concerned, the communities of the poor, for whom the inclusion of water services in trade agreements is also hugely symbolic.

In a small way, the status of water services in GATS could well be seen as a test of commitment to the developmental nature of the Doha agenda, to the Monterrey decisions, to the Millennium Development Goals, all of which are interrelated. There is the challenge to make good on the bigger commitments and imbue our specialised international activities with the new spirit that is demanded if the Millennium Development Goals are to be achieved. Until that new spirit is evident in the recesses of the trade negotiations, we must forgive those who take the bold statements of commitment to the global good with some scepticism.

#### **ERIK WESSELIUS**, Corporate Europe Observatory:

In my presentation, I am relying to a large extent on the recent publications of Public Services International Research Unit (PSIRU), and I can recommend everybody to check out the Reports section on their website.

There is nothing wrong with the goal of the EU Water Initiative: contributing to the UN Millennium Development goal of halving the proportion of people who do not have access to safe drinking water and sanitation by the year 2015. The problems mainly derive from the proposed roadmap for how to reach those goals. The EU Water Initiative seems to start from the assumption that involvement of private capital is key to solving problems of access to safe water and sanitation in developing countries. The same assumption is used to justify the EU's controversial water requests in the GATS negotiations.

The central problem with private sector involvement was recently pointed out by a private sector panellists at a meeting organised by the Inter American Development Bank with the Camdessus panel: " For private investors the two main issues are and will remain: risk and re-

turn on investment. Risks must be reduced as much as possible to protect the investment and lower the cost of risk insurance. Return on investment must be realised." Here, you see what it goes down do: Companies want to make profit and they do not want a risk. But how can you make return on investment in water services for the poorest in the developing world?

Therefore, the focus of the EU Water Initiative should not be on facilitating the involvement of the private sector, but be shifted towards contributing directly to the provision of safe water and sanitation to the poor. The EU Water Initiative should be demand-driven and depart from the needs and wishes of people, non-governmental organisations and governments in developing countries.

Currently about three-quarters of EU spending on water in developing countries - 168.2 million Euro - go to support 'water resources policy and administration'. That is two and a half times as much as the amount spent on actual water projects, large and small. Given the Water Initiative's emphasis on governance reforms to promote private sector participation, much of this can be considered as funding the bureaucratic details of privatisation. Such a choice is questionable, for several reasons: Administrative overhead is huge and the spendings on restructuring the governance of the water sector have failed to leverage extra funds from the private sector. No distinction is being made between restructuring to facilitate privatisation and restructuring to improve capacity of the public sector. It is not considered if the capacity-building objectives could be achieved as easily, or better, by putting more emphasis on funding improvements and extensions in existing public water management systems.

Whom is the EU Water Initiative aiding? With private sector participation and market opening, water multinationals stand to benefit tremendously from EU aid in the framework of the Water Initiative. The global water industry is dominated by EU-based multinationals. Suez and Vivendi control two-thirds or more of the private market, and after the fall of Enron the second tier of international water companies is also dominated by European companies like RWE-Thames and SAUR. There could be many more appropriate recipients for European aid funds than the EU water multinationals, for example existing local public water operators from the developing countries. Economically and politically, the aid is tied to companies based in the donor countries.

After a decade of hailing privatisation as panacea for improving access to clean water in the cities of the South, it is now clear that the water TNCs have time after time failed to improve the situation of the poorest. In order to win contracts, they often promise major investments in new infrastructure, lowering prices and improving the service, with no real intention of delivering these promises. Once the corporation has taken over a city's waterworks, it often seeks renegotiations to allow socially disastrous price increases and the downscaling of the promised improvements. The water TNCs have shown an unfor-

tunate tendency to concentrate on supplying those consumers who can pay market prices while doing very little for the poorer neighbourhoods. These are the experiences in Buenos Aires, Manila, Jakarta and numerous other cities around the world.

Furthermore, the private sector is getting increasingly reluctant to invest because of the perceived risks. Last year, water TNCs started admitting their inability to supply drinking water in low-income areas. At a World Bank seminar, the CEO of Saur publicly questioned whether running privatised water systems in developing countries is "a good and attractive business" and warned, that "without government subsidies and soft loans, the TNCs would move out of the water business in developing countries." Later in 2002, Suez pulled out of both Manila and Buenos Aires, two cities often highlighted by the World Bank as examples of successful privatisation. Suez also announced a more general shift of investments towards more profitable markets in industrialised countries with investments in developing countries being focused on the most promising growth markets, such as China. Their self-proclaimed commitment to solving the water needs of the world's poorest only lasted as long as it served the company's expansion strategies.

Remarkably little attention is paid to the issue of corruption. Privatised water concessions or leases are valuable assets and create an environment which is very susceptible to corruption. Suez and Vivendi have both had executives of group companies convicted of obtaining water concessions by bribes in their home country France and in the case of Vivendi in Italy and the USA as well. There are many suggestions that they are engaging in similar practices in developing countries. In Indonesia, both Suez and Thames-RWE obtained water contracts which were awarded uncompetitively by the Suharto regime, in partnership with Suharto crony companies. The EU Water Initiative would benefit companies who have been convicted of corruption – and yet nothing specific is said on assisting developing countries to deal with the structural problem of corruption in the water industry.

In the EU itself, privatisation of water services is a highly controversial issue. Access to clean drinking water is a basic human need and a basic human right. Water cannot be defined as an economic commodity, the supply of which can be privatised and turned into profits. But what Europe does not want at home, it is asking abroad: increasing and facilitating private sector involvement in water services. If the EU is really serious about sustainable development and about achieving the Millennium Goals, it should withdraw its GATS requests on environmental services and fundamentally redesign the EU Water Initiative by getting rid of the current bias for private sector involvement and instead departing from the needs and wishes of the people in developing countries.

## DISCUSSION

**CLAUDE TURMES**, MEP, Luxembourg, Green Group:

How is the Commission answering to the conclusions we have just heard? Give us good arguments why we should leave water in GATS and why we should not redesign. Another question to Mr Muller: One of the most used arguments for GATS is that in multilateral agreements small players, which the developing countries are, are always better off than in bilateral. Why are you in favour of having more bilateral water approaches and not this multilateral one of the GATS?

**REPRESENTATIVE** from DG Environment, European Commission:

The water initiative, which was launched by the EU with the participation of all stakeholders, is not about serving an objective that means making water services private in all countries. To address the issues of water and sanitation you have to rely on partnerships. When we talk about public-private partnership it does not necessarily mean that all the developing countries have to build partnerships with multinational companies. You have to build partnerships with all the people involved - the governments, the clients of the services, the local private suppliers of water and the international suppliers. The investors from the international companies will not invest in a country when there is no good governance and no stable investment environment. We are not pushing that they invest in all countries to deliver the services. But if some companies have the technology, the equipment and instruments you have to rely on them. The governments can ask to provide those services as that was the case in South Africa. In the context of the GATS, we know that water is a very symbolic issue. Every government should have the choice to rely on some private companies to deliver some aspects of the service like billing or construction. What are the concerns about water distribution and water equipment being discussed in the context of the GATS?

**ANTONIO GARCIA FRAGIO**:

On GATS: It is on the table and my understanding is that it stays there. From the DG Development's perspective, the issue is not about withdrawing the GATS requests on water services. The issue is about driving the process towards contributing to the Millennium Goals. On the design of the initiative: The Commission has worked in the member states and with the stakeholders. There is a multistakeholder forum which meets regularly and which is driving the process of designing the initiative. Other people are welcome to participate. It is not something we have invented one day out of the blue but something which is in the process of being developed, something we discussed with our partners and with the African Water Council. This discussion about the EU water initiative being for the multinationals is biased. I challenge any of you to show any case where the EU commission in their development history over the last 30 years has ever supported a privatisation scheme in any of the developing countries.

**MIKE MULLER:**

When we came to office in 1994, it was at the peak of the privatisation drive. We had 20 missions a year trying to help us to the private sector. The pendulum has swung, but the consequences of that heavy push for privatisation carry on in a high degree of bias in the discussion. The PSIR that Erik mentioned is a trade union international, representing members who work in the public service and they have substantial interests. A lot of their information is frankly wrong. The debate has become so polarised that the developing countries' option to choose what is best for them is getting lost. In Kyoto later this month we will try and move further forward to balancing issues, allowing developing countries to make their own choices based on their own situation.

There was a question why I prefer bilateral agreements to multilaterals. On the contrary: I think it would be very useful if we had a multilateral commitment to allow countries to make choices appropriately. South Africa is in the very fortunate position that we can turn offers down if we do not like the conditions. One of the largest EU water programs goes to South Africa. And if we thought there was an unjustified promotion of private sector in there, we would invite them, like my Minister of Finance did to the World Bank, to leave and come back when they are ready to have a discussion. But in fact the EU program is substantially about building capacity of local government, building public capacity. It would really be a gross misrepresentation to say the current EU program is about supporting the private sector. There are many weaker countries that do not have the option of saying no to offers of funding because they may be their only source of budget revenue. This is why we do need multilateral positions which allow the weaker developing countries to take sensible decisions based on their public objectives.

**CLAUDE TURMES:**

What concretely are you proposing for a multilateral agreement?

**MIKE MULLER:**

Firstly, it is probably inappropriate at this stage to put the environmental and water services in the GATS. There are plenty of other forums, for instance the Monterrey Commitments which should be given some substance and actually deliver the money that was committed. In the same way the Millennium Goals provide a platform which should lead to a plan of action, to some substantive commitment, which must be multilateral, to funding the achievements of those goals. It is why in Johannesburg we tried to turn the WSSD into a people-focused development summit, equitable and sustainable, and not just sustainable.

**ERIK WESSELIUS:**

Of course, there are many elements in the EU water initiative but it should move away from the assumption that it is good to have the private sector involved and look creatively at other ways of how to raise

the money which will be necessary to get water to the poor people of the world. Using Tobin tax money, for example, would be a very good way of raising money to solve this problem and being not forced to work with private parties who have a purely commercial interest in going into such a deal. On the issue of bias: The EU policies on water services are clearly biased towards a corporate agenda. The EU water initiative is the soft face of this policy and the GATS requests are the hard face. The European Commission is very closely co-ordinating its requests and its strategy in the GATS negotiations with business. Companies are being asked very specific questions by the Commission about where they have trouble in other countries and where they want market access. The Commission is basing its requests upon this very detailed information from the corporations. This is clearly not a development agenda, but a corporate agenda. On what is wrong about water in GATS: Countries can privatise already, GATS is not needed to privatise. Why the companies want GATS is because it makes it very difficult for countries to retrace their steps and to go back to de-privatise. That is the main argument against water in GATS.

**JOHAN BOSMAN, Flamish Support for Indigenous Peoples:**

It has been said that private companies would not make large investments in corrupt countries. The major countries drawing investments in the water sector are Brazil, Indonesia, Laos. All of these countries are in the top 20 list of most corrupt countries in the world. My question: One of the major stakeholders in the whole water issue are indigenous peoples and I would like to know how they were involved in the consultations with stakeholders the Commission had.

**BRITA BASTOGI, International Consultancy:**

Could you specify, who exactly is sitting in this working group looking at the problem of increasing funding for partners, countries etc.? Secondly, it would be very interesting to hear some specific examples of where the private sector is not involved and where the EU has supported local government, local groups, civil society, on managing their own water.

**NNIMMO BASSEY, Environmental Rights Action, FoE Nigeria:**

In much of the tropical south where TNCs operates there is serious water hunger in the rural areas, mainly because the TNCs pollute the rivers and the streams that poor people depend on. These industries from the North have made it impossible for the people to use water from the natural springs. They are polluting the water ways, they are creating poverty, and they are also exporting corruption. If companies from the EU are corrupting governments in the South, obtaining contracts at gun point, what is the sanction for them? I would like to know from Mr Muller why deprived communities are being disconnected from water supplies even under the present government, which is not based on apartheid.

**ANTONIO GARCIA FRAGIO:**

The working group on financing meets regularly, the next meeting is taking place in London next week. The group is being led by a corporation department of the UK. The results of the work and the financing routes discussed are being regularly reported to the multistakeholder forum, which meets a couple of days every two months. So there is transparency.

On cases where we have not supported the private sector: all of them. Personally, I cannot recall a case where DG Development has supported the private sector in Africa in the water initiative. Cases where we have been supported non-private sector actors are the water supply and sanitation system in Addis Abeba and a program on water supply in the Sahara region. There are plenty of examples where we are working with local communities, for example in a large program supporting communities in Zimbabwe. There is a booklet of the initiative with more details about this. A lot of the money is taken up by helping governments in capacity building. This is the same with other activities in energy, transport and other things. Because we believe that development is something which concerns primarily the beneficiaries. They are the ones who have to decide which way they want to move forward and we respond to the demands.

**MIKE MULLER:**

With regard to the disconnection from water supply in South Africa: If people refuse to pay for water and therefore use as much as they can they are actually taking water from other people. There are many cases where whole communities run out of water because one community takes as much as it wants. We certainly do not encourage local governments to cut people off, we suggest restricting them to a minimum supply so that the other people down the line get water too. The figures you get on this from PSIR are one of my examples where PSIR goes wrong. The agency that did the research admitted that the figures are completely wrong because the methodology was completely wrong. You cannot rely on those figures. Turning to the responsibility of corporates for pollution: A country with relatively strong governance like South Africa uses domestic legal mechanisms. As a water manager in South Africa I spend a lot of time enforcing these. As for countries where governance is weak: My colleague from Ethiopia was commenting this morning on NEPAD. One of the key parts of NEPAD is to promote stronger and more effective governance to deal with these problems. There is surely a role for a transnational approach to controlling transnationals.

## SESSION III.

### ON THE ROAD TO CANCUN: SERVICES AND INVESTMENT LIBERALISATION

**CHAIR: HARLEM DÉSIR**, MEP, France, Green Group:

The GATS negotiations started with the request stage in June 2002 and have presently reached the end of the offer stage, following which full bilateral and multilateral negotiations will proceed until the end of December 2004. These negotiations are very controversial. On the issue of services and investment the whole problem of global regulation is at stake. How can we create right conditions for a fair trade system that are open, transparent and democratic? How do we promote an EU external trade policy, which reflects the Union's fundamental values and not only some private interests?

**COMMISSIONER PASCAL LAMY**, DG Trade, European Commission:

I have some problems with the title of this session: The EU agenda on services and investment cannot be resumed as a simple "liberalisa-

tion" agenda. What we are talking about is a combination of market access and rules-making. The two cannot be dissociated if we want to achieve the triple objective of the Doha round: promote global growth, make trade more development-friendly, and ensure that market opening respects the diverse collective preferences and values of our societies.

Services negotiations are in the interests of both developed and developing countries. An economy cannot be competitive without access to high-quality systems which can provide financing, insurance, accounting, tele-communications and transport. In Europe, services are the most dynamic sector of the economy, representing 2/3 of both GDP and of employment. In many developing countries, exporting capacity is limited by low productivity levels and lack of competition in the service sector. Developing countries are themselves fully aware of this, as shown by the fact that more than half the requests the EC has received so far are from developing countries - including Kenya, India, Mali, Gambia, Egypt, Mauritius, Brazil.

Of course, there is a large number of services which are, quite rightly, strictly regulated. Any incentives for trade in services must respect the regulatory framework established by the competent and sovereign public authorities. That is why the EU has chosen the WTO as the main framework for the opening of services markets. The WTO can serve, and should serve, as a necessary and effective bulwark against 'sav-



age' liberalisation. The negotiations concern trade in services, not the regulation of these services within individual countries.

Firstly, it is very important to understand that, unlike trade in goods, commitments in services are not reciprocal. A country can decide to open a sector to competition, without any other countries being obliged to follow suit. Secondly, public services that form part of key government functions are not subject to the agreement. And finally, even for public services that are covered by the GATS, several policy options are open to WTO members: maintain the service as a monopoly, public or private; open the service to competing suppliers, but restrict access to national companies; open the service to domestic and foreign suppliers, but make no GATS commitments on it; make GATS commitments covering the right of foreign companies to supply the service, in addition to national suppliers.

The requests the Commission addressed to WTO partners cover professional services, business services, telecom, postal services, distribution, construction and related engineering services, financial services, environmental services, tourism, news agency services and energy services. The barriers we are seeking to address are nationality and residency requirements, limits on foreign ownership or shareholding, limits on type of legal entity, entry subject to economic needs tests. No requests are being made on health services or audio-visual services. Requests on environmental services seek to capitalise on the experience and skills of European companies in tackling environmental problems. EU requests do not touch on the issue of access to resources, such as water, and in no way reduce governments' ability to regulate pricing, availability and affordability of water supplies as they choose.

The proposed offer that the Commission has tabled to the Council and to the European Parliament fully safeguards public services within the EC, and our ability to design and implement frameworks aimed at ensuring equitable access to essential services and competition. Thus no new commitments are being proposed in the areas of education, health or audio-visual services. The sectors concerned are financial services, computer services, telecoms, transport, distribution, postal and courier services, professional services, and tourism. To accommodate requests from developing countries, we propose to improve EU commitments on the temporary movement of persons, for instance for graduate training programs, contractual service providers and self-employed professionals. This draft offer is currently still confidential, in order to allow Member States to conduct their own consultations, and will be made public and communicated to the WTO when finalised.

On investment, we are still at an earlier stage. What we aim for is a coherent, basic framework of multilateral rules. The main elements proposed are: transparency; focus on foreign direct investment; treatment of existing FDI according to the basic principles of non-discrimination; admission of FDI following a GATS-style approach with each

government deciding for itself which sectors to open and which to restrict; special and differential treatment for developing countries; right to regulate domestic economic activity, including in development, environment and social policy; exceptions and balance of payment safeguards; State-to-State dispute settlement.

The current EU proposal thus differs very substantially from NAFTA and from the failed Multilateral Agreement on Investment of 1998: The negotiations would include all WTO members and not just those of the OECD. The coverage of the negotiations should be FDI, and not all assets such as short term capital movements. There will be no investor-to-state dispute settlement. Countries would take commitments sector-by-sector, allowing each government to decide its development policies and liberalisation to FDI.

The absence of clear rules is the real threat to the sovereignty of smaller and weaker countries. In the absence of rules FDI would not stop, but a balanced set of multilateral rules will provide increased transparency and predictability and reinforce the ability of developing countries in face-to-face relationships. They have to make their decision in these negotiations.

#### **CLARE JOY, World Development Movement, UK:**

As we move towards the Fifth WTO Ministerial in Cancun, Mexico, the issue of 'investment' is no longer only a GATS concern. There has never been a more important time to break through an ever-widening gap between the rhetoric from key GATS supporters and the reality of negotiating proposals.

The former WTO Director-General Renato Ruggerio described the GATS as far more powerful than the GATT, pointing out that, "the GATS provides guarantees over a much wider field of regulation and law than the GATT: the right of establishment and the obligation to treat foreign service suppliers fairly and objectively in all relevant areas of domestic regulation extend the reach of the Agreement into areas never before recognised as trade policy." GATS is an investment treaty as well as a trade treaty when it comes to services.

The development history of the industrialised world is characterised by active industrial policy, including the use of investment measures designed to set controls on investment and specifically control the activity and rights of investors. The same policies were used by the so-called Newly Industrialised Countries and also by the most successful developing countries of recent years. A key concern is the impact that a country's full GATS commitment will have on its ability to utilise such investment measures and regulate investment.

In what the GATS refers to as its 'specific commitments', Article XVII is dedicated to 'National Treatment'. The principle of this article is that foreign service suppliers are given the same treatment as domestic suppliers. Therefore, when WTO Members fully sign-up to this Article they effectively lose the ability to introduce policies designed to favour or support domestic industries. The kind of government mea-

asures that could be challenged may include: Providing research and development grants only to domestic institutions; providing contracts or concessions on a favourable basis to domestic companies; requiring foreign investors to employ and train local people; requiring foreign investors to use local suppliers; requiring foreign investors to transfer technology, production processes or other proprietary knowledge; requiring foreign investors to pay specific taxes or giving domestic firms tax breaks; export performance requirements. When a country signs up for a full GATS commitment in National Treatment they lose the automatic ability to implement this kind of policies.

Article XVI on Market Access requires signatories not to use a range of policy measures deemed to restrict market access. These include restrictions on legal entity e.g. Joint Venture requirements: Using joint venture requirements is not only seen as a way of developing and providing technical expertise to domestic companies. It is also seen as an important legal mechanism because a foreign company working with a local supplier is far more accessible to national legal mechanisms than a foreign supplier acting 100% under its own rule. Also, restrictions on the amount of equity that foreign companies can own in certain sectors are an obvious development policy because they guarantee that capital stays within the country where the company is investing. Finally, countries may want to limit the numbers of suppliers that operate in a certain sector based on the demand within that sector. When countries agree to fully apply these core GATS rules to their services, they are basically signing away an automatic right to impose limits, conditions or obligations on foreign companies investing in the service sectors concerned.

Another specific concern are the EU's priorities in the current round of negotiations. Leaked documents last week revealed a list of countries the EU is targeting, countries which reserved the right through the process of previous GATS negotiations to continue to impose these kind of measures on foreign investors coming into that country. The 109 countries targeted include: Bolivia, requiring foreign companies to establish subsidiaries if they want to trade on a regular basis; Brazil, restricting transfer of profits abroad by foreign companies; Cameroon, specifying that for every CFA 5 million (equivalent to US\$10,000) of foreign investment at least one job must be created; Chile; obliging investors to employ 85% of staff of Chilean nationality and requiring foreign investors to retain capital in the country for at least three years from the date of entry; Honduras, ensuring foreign investment is authorised based on an economic needs test. These policies that we see challenged in the current GATS negotiations are critical development tools. Countries have chosen to list these restrictions in previous GATS negotiations because they want to maintain the right to impose these kind of rules.

It has become a common argument of the GATS supporters that is a flexible treaty. However, firstly, the ability of countries to utilise the flexibility in GATS demands an enormous level of foresight and

knowledge about the domestic economy. What is making that even harder is the fact that there is still no assessment around what a sensible policy would look like in the services sector. Secondly, the aim of the GATS – and that is written into the agreement – is liberalisation. A sector kept out of the current round of negotiations will come up again and again, as we see in the 109 negotiating requests that have been tabled by the EC. Finally, the whole idea that GATS is a flexible agreement is based on the assumption that negotiations are taking place among equal players. Mr Lamy said that almost half of the requests that have come to the EU have come from developing countries. Three weeks ago there were 26 requests that have come into the EC. A half would mean 13. On the other side, the requests the EC is making themselves cover 109 countries, 94 of which will be considered developing countries or countries with economies in transition. This is not a level, equal negotiating field.

If we want to give serious consideration to some very serious concerns about the impact of GATS on countries' ability to regulate investment we first have to agree what we are talking about. Concerns raised about the deregulatory impact of GATS are very specific and are yet to receive a specific response. There is an urgent need to recognise that ever expanding market access opportunities for EU companies is not synonymous with lifting some of the world's poorest people out of poverty. We must stop calling this agenda a development agenda.

**ALEJANDRO VILLAMAR, RMALC, Mexico:**

The North American Free Trade Agreement (NAFTA) has become a paradigm for non-critical promoters of bilateral, regional or multi-lateral trade and investment agreements. With the experience generated during its 9 years of existence, NAFTA can offer us valuable lessons regarding Free Trade and Investment liberalisation. During this time, North American citizens have come to realise the gap between promises made in regard to development and the crude reality. Over the course of nine years, the Mexican government has lost important parts of its Constitutional Law powers and faculties to rule the country's development, putting it under the rules of NAFTA and in the hands of TNCs.

NAFTA's investor chapter contains provisions that allow foreign investors to sue national governments for actions "tantamount to expropriation" of their investments. This language is so broad that it establishes a right for private investors to seek compensation if any government action in any way reduces the investor's property value or expected profits. Already, these provisions have been used to attack a host of legitimate environmental, social or economical measures. In the last 9 years of NAFTA, with only a dozen and a half of cases filed, an astonishing US\$ 13 billions has been claimed from North American taxpayers by corporations in their initial filings.

In January 1997, the U.S. firm Metalclad challenged the decision of Mexican public authorities to refuse a construction permit for a toxic

waste dump and to declare an ecological zone. The NAFTA investors tribunal ordered Mexico to pay Metalclad \$15.6 million. In 1998, Canada was forced to settle a complaint filed by Virginia-based Ethyl Corporation over Canada's ban on MMT, a gasoline additive that can damage the nervous system. As a consequence of the settlement, Canada had to roll back the ban and pay \$13 million to the company. In 2000, a NAFTA investors tribunal ordered Canada to pay \$50 million to S.D. Myers, an Ohio-based toxic waste disposal company, which claims it was denied the right to import hazardous PCBs from Canada for incineration in the United States. In doing so, the tribunal undermined the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes. In 1999, Metanex Corporation of Canada filed a claim for nearly \$1 billion against the United States because California attempted to phase out MTBE, a cancer-causing gasoline additive that is polluting the state's water.

The investor protections in NAFTA are unprecedented in a multilateral trade agreement. Corporate investors have used these new privileges to challenge a variety of national, state and local policies on environment and public health as well as domestic judicial decisions as NAFTA violations. These privileges for foreign investors go significantly beyond the rights available to Canadian, U.S. or Mexican citizens or businesses in domestic law of any of the three countries.

If investors believe that government actions violate their new NAFTA rights, they can call on special Private Tribunals that function as resolution systems for "investor-to-state" disputes: ICSID and UNCITRAL (one operating under the auspices of the World Bank, the other operating under the auspices of the UN). Originally, these two arbitration bodies were set up to arbitrate private cases between contractual parties in narrow commercial disputes. Now, however, they are dealing with significant issues of public policy. There is no requirement that the public or Congresses be given notice that a NAFTA Chapter 11 case has been filed.

Cases in these private arbitration bodies seem to be accelerating under NAFTA and under various bilateral investment treaties. In its 35-year history, the World Bank's arbitral body has handled approximately 79 cases, half of which have been instigated in the past five years alone. The accelerating pace of complaints, coupled with the secretive, undemocratic nature of the arbitral bodies and the vast powers of the tribunal to compensate a corporation with unlimited amounts of taxpayer dollars are a significant threat to the public interest.

What has been gained by NAFTA? Articles that are meant to protect environmentally sensitive issues and avoid the possibility of reducing environmental standards to attract investors are only a permissive clause, not a mandatory one. Mexico received in the last 9 years 10 billion US\$ of FDI but most of these investments go to industries producing huge exports, most of which are previously imported and which have only 3% of content. No high technology transfer is part of this

FDI, nor does it provide well-paid jobs. Instead, NAFTA led to the loss of control over our domestic financial system. Today, there is only one small Mexican bank while 95% of the banking assets are under control of foreign investors. In consequence, there is practically no credit for the majority of the domestic productive activities. FDI under this kind of rules is not in favour of development. It is in favour of the revenues of the foreign investor.

The former Director General of the WTO, Renato Ruggiero, has compared the negotiation of the International Investment Agreement to 'writing a constitution of a single world economy'. Indeed, the investment rules of NAFTA and the proposed MAI are like constitutions that determine what government can and cannot do. To introduce this kind of constitution through the backdoor clearly is bankrupting democracy.

#### **CECILIA OH, Third World Network:**

My presentation addresses the following issues: the motivations behind the EC proposals for an investment agreement in the WTO; the problems with locating an investment agreement within the WTO system; facts about the Doha mandate on the investment issue; and the myths about foreign direct investment and its role for economic, social and environmental development.

The EC proposals for an investment agreement in the WTO are ostensibly based on the premise that investment rules ensure a stable and predictable framework, provide smaller countries with a better bargaining position, and increase the FDI flows into developing countries. However, when we look at the WTO system and the track record of both the WTO and the EC in providing a forum for the developmental interests of developing countries we find that there is a credibility problem. In a similar manner, the TRIPS agreement pursues the proclaimed aim of getting affordable medicines to developing countries. The problem is that the solutions proposed under the TRIPS agreement, as well as the Doha declaration, limit the abilities of governments to use and preserve their full rights. In the current negotiations problems of the developing countries have not been articulated well enough. But even if the intention and the motivation were true: What could be gained from an investment agreement in the WTO?

The WTO is a multilateral trading system and the basis of a trading organisation is a give and take, a mutual benefit for trading nations being able to trade as equal partners. In reality, there is no such thing as equal trading partners. There are smaller countries who are vulnerable even within the WTO system. We have to recognise the asymmetries, not just in the fact that there are different levels of development, but also in terms of the originators of FDI. FDI flows come from the industrialised countries into developing countries. If we look at a mutual benefit bargain in an investment agreement in the WTO we have to examine who would benefit more. In the issues that have been discussed, too much weight is given to the idea of investors rights as op-

posed to what would be their obligations and responsibilities. When we talk about an investment agreement in the WTO, we also talk about the application of core principles of the WTO, such as the principle of non-discrimination. An investment agreement will interfere with the right to regulate, with the ability to promote local industries, to give research and development grants to local businesses, for them to be able to contribute to economic development. Application of WTO principles will interfere with the policy autonomy of developing countries, the right to make policy decisions, the right to develop a policy framework on FDI.

The paragraphs 20-22 of the Doha declaration on investment contain very different emphases. A paragraph about capacity building and understanding the needs of developing countries to do policy analysis and to understand the impact of FDI is followed by a paragraph saying that negotiations for an investment agreement will be immediately agreed on at the Cancun ministerial. The working group on investment has been in the WTO since 1996. In the six years they have not yet come to a concrete conclusion about how FDI affects developing countries, developmental prospects and the actual link between trade and investment. So the two years given by the Doha declaration are a little too short for analysis, for the developing countries to come to a concrete solution to agree to negotiations starting in Cancun. The Doha mandate also states that negotiations will be started on the basis that first there must be explicit consensus on the modalities of the discussion. Such explicit consensus has yet to be reached. There are divergent opinions as to the scope, as to the definition of investment, as to the idea that investors rights as opposed to investors obligations should be emphasised. Perhaps a longer time will be needed to close these quite large gaps before we can achieve what we might call explicit consensus.

In the 1960s there was some suspicion about how FDI could bring problems in terms of the developmental process. This quickly changed and by the 1980s it was almost an orthodoxy to say that FDI guaranteed success. But this has not been the case. Investment liberalisation and financial liberalisation have pointed to some problems that we might face. If we look at some economic history, the successes in Korea and Japan show that you do not need a great deal of FDI flows into your country. Of course, there are other countries, which need FDI flows. The idea is to increase the capital stock in a country and channel it into developmental processes. In order to do that, we need a policy framework for investment, which will allow countries to harness and channel FDI. If this right is taken away, what happens to the developmental process? In the TRIMS agreement, there is an illustrated list of what countries could do or not do in terms of prohibitive measures taken for channelling and harnessing investment. A number of eight developing countries are now saying that they need more time to comply with the TRIMS obligations because they are causing implementation problems in terms of investment-related measures. The impli-

cation is that with an investment agreement these problems would be magnified.

The UN agencies have come up with numerous studies challenging the idea that unregulated FDI is good for developmental prospects. FDI can be good and bad, all we need is a comprehensive policy framework, which many developing countries do not feel able to do within the WTO system. Looking at the divergence of views and opinions now increasingly coming up within the international system the idea of rushing quickly into launching an investment agreement is certainly not a sensible one. There are also different issues that were brought up in the 1970s, for example investors rights and investors obligations and responsibilities. The UN Code of Conduct on TNCs or the Code on International Transfer of Technology both are related to the idea of regulating the behaviour of TNCs, looking at how FDI and its role can be harnessed for developmental prospects. Perhaps these should be revisited, and perhaps the WTO is not the best forum to be looking at these different rules. Perhaps we should think of another forum to do that.

## DISCUSSION

### **A CO-WORKER** of the Green Group in the EP:

Are there areas in which you think the GATS agreement itself needs revision, speaking in terms of the definition of public services? Secondly, about the issue of irreversibility in GATS: Would you accept that this is something that really causes concern amongst developing countries who are not yet that well placed for their resources and their ability to cope with GATS? Should they not be given more flexibility in that declaration?

### **ANNIE DAVIES**, DevNet, Nigeria:

I would like to know if consideration is taken of the fact that many of these governments who themselves go to ask for liberalisation of trade are not representative of their people, given the issues of corruption and the like. Are any moves made to ask other stakeholders, particularly civil society, their opinion before the requests that governments make are taken into consideration for responses?

### **A REPRESENTATIVE** from ATTAC, Germany:

Don't you think it is useful first to evaluate the process going on with the GATS negotiations and what happened already with the GATS process?

### **HARLEM DÉSIR**:

You say that states remain free to make commitments but it is not a negotiation between equal partners. When we ask especially the least developed countries to make commitments to open some service sectors it will be a negotiation in which we will condition an answer to their own demands. We are pushing them and is it not true that they

are really free to choose. Secondly, you say GATS negotiations are not based on reciprocity. When we are asking them for the opening of a sector we are not obliged to open the same sector. What is the justification for refusing to open some of our public service sectors and asking others to open it? You say we will not do offers on certain services, so we recognise that there is a problem with GATS, that when we do offers in such services we lose a part of our regulation ability. So why do we ask for opening in public services in developing countries if we think it's dangerous for us?

**PASCAL LAMY:**

First, to address some issues that were brought up by the other panelists: It is true that GATS is an investment agreement and this is why we believe that it is naturally to be located in the WTO. 70 % of FDI today is run under GATT, already, and this why an investment agreement has to be in the WTO: because it is already there. Another reason is the experience of MAI which was the wrong movement, the wrong organisation, and the wrong scope.

When you describe what full commitment under GATS can be you are right, but full commitment is not what we will have this time. Presently, there is a very narrow level of liberalisation of trade in services. Starting from where we are to full commitment might probably take a century. We do this - step by step - because we believe that a trade agreement in services is a win-win game.

These are trade negotiations, a give and take, and you do not have to be equal to enter into a give and take. Look at the EU-Mexico agreement: We don't take Mexico as an equal, we give more sooner and we ask Mexico less later. We should also remember that when the EU opens its market it is a huge opportunity for a number of other countries.

I basically have no disagreements with Alejandro Villamar, especially where he describes the NAFTA, which is not a model for us Europeans. We never entered a negotiation this way, not with African countries, not with the Mediterranean region, not with eastern Europe. Our concept of a trade agreement is totally different. Especially, we do not have this investor-to-state dispute settlement in the EU in any of our trade agreements.

A multilateral agreement on investment for us also has the big advantage of reducing the inherent inequalities which exist in bilateral trade agreements. If we want to promote FDI the big question is whether to do that with investment treaties or with a multilateral agreement. In investment as in services this does not prevent a country to regulate. As for rights and obligations for international companies: We are negotiating government to government. Obligations are taken by and rights are given to nations, to states. It is the same as in goods and services: We do not ask international obligations to goods exporters or to service providers. We may ask national obligations but I am not so fond of committing states to a common set of obligations in a multilateral framework. If you want to retain the ability to regulate you should

be coherent, and that does not work in the direction of multilaterally agreed obligations for investors.

In my view, definitions of public services should not be put into the GATS. We Europeans have the largest definition of public services in the world, and I am convinced that whichever negotiation we will enter to would result in a narrower list of public services than what we currently have.

There is an element of irreversibility in GATS as in any trade commitment. Not more, not less. When you bind the tariff in goods negotiations, there is a distinct element of irreversibility. That is the rule because the basic idea is that there is a level playing field and that little by little more and more is opened. It is no eternal irreversibility. For instance in goods we perfectly have the right to increase the barriers, to unbind tariffs, but the price has to be negotiated.

The fact that we negotiate with governments which may not be the representatives of their people is based on the international law that is also applied in the UN, in the council and in many international organisations. We are trying to involve other stakeholders. I myself try to consult with civil society representatives in whichever country I go.

I don't think it is necessary to have an evaluation of where we are for services. Firstly, because it is very difficult. Numbers on services are much less available than on goods for the simple reason that we don't have tariffs on services. Secondly, the level which we have does not have enough of an impact in terms of the liberalisation which the WTO is providing for.

It is normal that we ask others commitments in sectors where we do not offer because we care about things differently. We are different from one another. There are countries where public services are a monopoly, others where there is competition, sometimes there is a public ownership, in others not. Take water: Even within Europe, water sometimes is totally public and sometimes totally private. It is a question of diversity and we cannot ask total harmonisation on this.

**CLARE JOY:**

I am pleased to hear agreement from Mr Lamy when it comes to the way in which the agreement works or what the agreement potentially covers. But I was sorry not to hear the acceptance of some of the impact concerns that have been raised in discussions about GATS. Mr Lamy talked about a win-win situation. There is currently absolutely no evidence that service liberalisation leads to poverty reduction. Even the World Bank says the quantification of service sectors, trade barriers and other forms of protection in the services sector is still more art than science. We are asking governments to make binding commitments on service liberalisation when there is still no evidence that these commitments are going to bring essential poverty reduction in those countries



**CECILIA OH:**

On the inherent inequality of a bilateral agreement, I wonder whether that refers to the inequalities that would be a disadvantage of the developing countries or the inequalities that perhaps the EC might see with the fact that they haven't been as quick or as proliferate as the US in getting their bilateral agreements on investment. So perhaps a multilateral forum is the one way of catching up with the US as quickly as possible. As for the question of rights and obligations for TNCs, you say that it is not appropriate to have obligations put on them. But it is alright to give them rights, which is what the investment agreement tries to do. If we are talking about state-to-state agreements, then let us talk about obligations in home countries, about how they are responsible for the behaviour of their TNCs, which affect development in developing countries. If that is not done, there is obviously no consensus on how the investment framework should proceed in the WTO.

## SESSION IV.

### BALANCING THE SYSTEM: GLOBAL RULES FOR GLOBAL PLAYERS

**CHAIR: ALEXANDER DE ROO**, MEP, Netherlands, Green Group:

This session is of high importance as it will cover a debate which has to lead to political decision making in the next three or four years. We are talking about balancing the system: Global rules for global players.

**PIERRE DEFRAIGNE**, Deputy Director General, DG Trade, European Commission:

The acceleration of the globalisation process increases three imbalances of the market economy: Firstly, the imbalance between the ever increasing pace of market liberalisation and the time necessary to elaborate the international regulatory framework. Secondly, the imbalance between the advanced governance systems in industrialised countries and the lack of such governance in developing countries or at international level. And finally, the imbalance between the highly developed economic pillars of global governance and the almost embryonic state of the normative pillars, in particular the social and environmental ones.

We recognise the key contribution of the global firms to world economic growth as well as to the integration of emerging economies especially in South East Asia. But difficulties arise when companies, under the pressure of ever more exacting financial markets, place host countries in competition regarding the localisation -or de-localisation of their investments and economic activities. Trusting the market to balance and conciliate interests of the private sectors and the ones of public development without some guidance is not realistic.

One way to contribute to such a guidance would be through the voluntary commitment of companies to social and environmental practices which go beyond existing legal obligations - Corporate Social Responsibility (CSR), which can play a useful role in filling the governance gap of global markets in a creative and innovative way. Does this tie in with the quest of competitiveness? After all, ethics bear a cost for a company and it is not sure that internalising this cost pays off on the market place. Yet, in the long term there can be a positive link between social and environmental behaviour of a company and its competitive performances.

Apprehending this CSR concept is not an easy task as it is at the crossroad of two different traditions of Governance: the one that emerged in countries of Common law, where an important space is left to self-regulating initiatives and soft law, and the continental heritage of written Constitutions and their subsequent laws and regulations to ensure the common good in the system of market economy that is led by private interests.

CSR is not a substitute, but a complement to hard law. As such it must



not be detrimental to public authorities' task to establish binding rules, at domestic and/or at international level, for certain minimum social and environmental standards. But in the pursuance of this objective, CSR should be seen as an experimental space where best practices develop in the areas covered by it.

The need to ensure a level playing field, not only among global firms but with their local competitors, should lead in the long term to a process of mutual upgrading, the results of which might be translated into binding laws and regulations at the national or international levels.

The main concerns of the CSR stakeholders - private companies, host countries and civil society – must be taken into account. Host countries demand the legitimate and necessary preservation of their sovereignty to regulate social and environmental development in their territory. They should be encouraged, as a first step, to include CSR principles in their own domestic policies and legislation. Giving CSR greater visibility and credibility and stronger accountability may also help to convince those countries, mainly developing countries, who are still reluctant to admit investment negotiations in the WTO framework as agreed in Doha. By endorsing CSR practices especially when they operate in developing countries, companies can play a major role in confidence building.

In conclusion, I quote Montaigne, the French 16th Century humanist: " Ce n'est pas le chemin qui est difficile, mais 'difficile' qui est Le Chemin – It is not the way which is difficult, but the difficulty which is the way". CSR is a useful tool on the road leading to an Equitable and Sustainable Development; but it does not constitute the objective in itself. This road is riddled with challenges, but Europe is best placed to pave the way toward a more balanced economic, social and environmental development not only for the North but for the South, not only for a rich minority but for the vast poor majority.

#### **NNIMMO BASSEY, Environmental Rights Action, FoE Nigeria:**

The poverty and environmental degradation evidenced in the South today is not accidental. It is the result of organised practices and processes driven by well-protected and guided systems of controls popularly called imperialism which means " trade at gun point". And trade at gun point does not follow rules or codes, except those defined by its operators for their own good. The path of governments today is directed by transnational corporations. What is it about in Iraq, today? It is not about democracy, it is about the oil fields. The only loyalty of transnational corporations is profit maximisation. When TNCs operate in Nigeria or other tropical nations deals are only made with governments, not with people, no matter of what kind of legality the governments are. And once the deal is made with the governments the company can do what it likes.

To quote from a publication by FoE Sweden " The Green Capitalist": The sovereignty of less powerful states has always been considered

old-fashioned by the great powers... The remaining obstacles used by Southern countries to protect their national economies are gradually being phased out. The poor countries are forbidden to support their farmers, even though the US and EU can retain their national agricultural subsidy regimes and continue dumping their surpluses on the market. We can see that now, as a nation like Zambia is forced to accept food that George Bush would not eat.

Do we need binding rules? Of course, the answer is yes. It has become very popular to push for voluntary regulations and rules. But voluntary rules are voluntary. If the TNCs draw up a code to control themselves that would be according to their own pleasure.

Curacao, a little island in the Caribbean, is a semi-colony of the Netherlands. In 1918, Shell built the world's biggest petroleum refinery on that island and they made a lot of money during World War II. They also created so much pollution that the waste from their processes formed an acid lake of 40,000 m<sup>3</sup> and an asphalt lake of 500,000 m<sup>3</sup>. By 1983, the Netherlands Municipal Environmental Service recommended that Shell should reduce the extent of pollution on Curacao, which was estimated to cost about 400 million US\$. But spending that kind of money would have been against the loyalty of transnational profit. So Shell sold the refinery to the Curacao government, which is a puppet of the Netherlands, for one Dutch Guilder, which is less than 1 US\$. By that deal, Shell made 400 million US\$ profit by not spending it on environment.

An example from Nigeria: Shell has a chemical – eposand – which they use in the course of their processing. And they have very clear regulations about how people should deal with that chemical. They have to be trained to use it and have full protective gear, including gloves, boots, face shield, forehead protection, full face respiratory mechanisms and all that. But in Nigeria, the workers handle this chemical with nothing more than plastic gloves and plastic boots. There are three particular men who worked with this chemical between 1990 and 2000, and now they are sick and cannot walk anymore and doctors affirm that their livers have been destroyed. When they went to Shell for rehabilitation, Shell refused. When they went to the local legislation, Shell pressurised this legislation to throw them out. Instead, the workers were advised to go to court. If you go to court in Nigeria, it will take you a whole lifetime to get judgement, and TNCs can afford to go to appeal after appeal.

What they cannot do in America, what they cannot do so blatantly in Europe – they are taking it to the South. And we are saying that what is not good for the North is not good for the South. And what is good for the North is equally good for the South. If TNCs cannot act in a responsible manner, they should be held liable. The demand for corporate liability and accountability is more in the South than in the North. TNCs must not continue like this in the South because the Earth is not inexhaustible.

TNCs do not engage in global activities because of a desire for global

quest for prosperity and happiness. They are on a quest that goes beyond economic dominance. They are controlling political power at all levels: local communities, states, countries, continents. In the South, TNCs are so much more powerful than governments that they dictate what is to be done. In November 1999, the Nigerian government destroyed a whole community because of the interests of oil corporations.

There must be clear rules for full disclosure. Our people have the right to know what is happening in their environment. They have to know what is killing and they have the right to control who does what and where. We talk of minimum acceptable standards. These transnational transgressors can only be kept in check by binding rules set by the people. If wild animals can be tamed, transnational corporations can also be tamed. The EU and the UN must rise above the rigs of TNCs and act now. And all of us, whether politicians or activists, community-based organisations or people of conscience, must raise our voices and say: we cannot go on like this!

**ALICE PALMER**, Foundation for International Environmental Law and Development, UK:

To put this in the context of today's meeting, perhaps few of you know that the EU Council reaffirmed the language that came out of WSSD on corporate accountability in its Conclusions of September last year, where it said the EU is committed "to corporate accountability and corporate responsibility including full development and implementation of intergovernmental agreements and measures". And it is very important that they talk about corporate accountability and corporate responsibility.

'Corporate responsibility' is about the voluntary efforts of corporations over and above existing obligations in law. It can also extend to the encouragement by governments of corporations to act in a socially and environmentally responsible manner. There has been a prolific amount of work done on CSR in the EU. For example, the Green Paper on Corporate Social Responsibility, that was followed by a Consultation, which was then followed up with the Communication, and out of the Communication came the establishment of the EU's Multistakeholder Forum on CSR. All of these initiatives and discussions going on in the Commission had the full support of the Parliament and of the Council and have been reiterated in a number of resolutions by these institutions.

What then is going on in corporate accountability? By "corporate accountability" I am referring to the rights of communities, the duties and obligations of corporations and the enforcement mechanisms that are required to back up those rights and obligations.

There is of course national regulation in many of the EU member states that regulate health and safety standards and environmental standards of corporations. There also are some efforts at the regional level that regulate corporations. And internationally we do have some

agreements that deal with corporate behaviour, either directly or through the national governments. A good example in this regard is the Aarhus Convention, which is the articulation of the rights of communities for access to information, access to decision making and access to justice. This ensures rights with respect to environmental matters to communities that will enable them to hold corporations to account for their environmental behaviour.

But when we compare what the EU is doing with respect to corporate responsibility on the one hand and what they have done on corporate accountability on the other it has to be said that corporate accountability is very fragmented. It is broken up into various bits and pieces throughout the EU institutions, in line with EU competencies either within the Commission or between the Commission and the Ministers. And this piecemeal approach means that we have pockets of regulation here and there but it is very difficult to get a sense of the big picture, to see what the 'sum total' of EU action on corporate accountability has been to date. Despite of this they continue to say that it is both corporate accountability and corporate responsibility that they wish to support.

Where then is the potential for EU action on corporate accountability? And that can be addressed in terms of process on the one hand and then in terms of substance, regionally and internationally.

In terms of process, they must redress this imbalance between their approaches to accountability and responsibility. They cannot continue to have the energy and interest that goes into CSR without giving similar energy and interest to corporate accountability. They need to develop a concerted and comprehensive approach and agenda to review the status of the current efforts, review the progress and also to identify the regulatory gaps that need to be addressed.

CSR can be thought of as being the tip of the iceberg. It is visible, it is attractive, it is very accessible. But underneath the surface there should be a body of corporate regulation and a body of rights and obligations that support the tip of the iceberg. Because without that, the tip of the iceberg will break apart.

The substance matters that the EU can focus on regionally have already been identified in a number of Parliamentary Resolutions in the context of CSR. There is a Resolution on a Code of Conduct for European Enterprises and one of the proposals is to develop an independent monetary and enforcement mechanism to back up that Code. And by introducing the enforcement mechanism that might be a way of being a measure of accountability. There is also discussion on what is called triple bottom line reporting, meaning to add to the obligations on financial reporting environmental and social disclosure. They have also talked about a legally binding framework with sanctions for companies that contribute to conflicts. And then of course we have had a number of developments at the national level which could be reviewed and considered in a regional context and could also lead to a binding regime.

As for the international level, it is of course not just European companies that are committing the types of abuses that have been described but it is multinationals generally. And there are political, legal and financial obstacles to ensuring that these multinational corporations are held accountable for their behaviour in developing countries. We need an international approach that is aimed on the one hand at strengthening the national mechanisms but also to provide a backstop that will ensure that where the national system fails the international framework can step in and give communities who are harmed some ability to bring their claims for redress to an international forum.

The EU will have to make good on its commitment to corporate accountability expressed both at WSSD and in its own Conclusions. It could consider the revival of the UN Centre on TNCs, which developed the draft Code on TNCs through the 1970s up to the '90s, or think about the ratification of the Draft Norms for TNCs that have been developed by the sub-commission of the Human Rights Commission. There is also the international Right to Know campaign which is seeking to ensure that all corporations are required to report on their environmental and social behaviour in addition to their financial requirements. Liability regimes will also be negotiated in the context of MEAs, notably the Biosafety Code dealing with genetically modified organisms. The EU could have some input in examining the way in which that mechanism could apply directly to corporations or examine the way in which people could have certain rights extended to them under that regime. Finally, they need to give support and assistance to developing countries to enable them to develop their own binding mechanisms to hold the corporations to account.

Where might the forum for this discussion be? This discussion is very fragmented because of the various competencies within the Commission and the respective member states. But we could see the Convention on the future of the EU as a possible vehicle for promoting a concerted and focussed approach to corporate accountability.

## DISCUSSION

### **DUNCAN MCLAREN**, FoE:

The multistakeholder forum on CSR in Europe has already proved that CSR cannot deal with corporate abuses because it starts from a position of the rights of companies rather than the rights of the communities. What steps do you see as necessary for the development of binding law? How do you expect the Commission to respond to the proposal from India, China and other developing countries to introduce binding home country regulations and obligations on social and environmental performance of TNCs and foreign direct investment? And how do you think that the Commission should take forward its commitment to paragraph 49 of the Johannesburg agreement to help develop an international regime on corporate accountability?

### **PIERRE DEFRAIGNE**:

In Seattle we were in the best possible framework to reconcile trade and social rights, but eventually it proved impossible to achieve a consensus. Developing countries were complaining about the risk of using corporate standards as a way to protect our markets. We already have existing international law, which imposes obligations on the states to implement certain rights but we do not have any means to enforce this. It is all very well to say the North should control the way their companies behave across the planet but the difficulty I see for the time being is where are the means to force a country to apply laws and obligations that exist? It seems to me extremely difficult that the EU as such should take legal initiative for controlling companies if the developing countries, on their side, do not participate fully in implementing their own obligations with regard to their international commitments. In the North-South debate, we have to take the blame for many things but there should be a portion of the blame to all members of the international community. The most important thing is to find a way to enforce existing international law.

### **ALEXANDER DE ROO**:

The Commission has proposed that companies have to disclose financial information to their shareholders, why isn't there also a proposal from the Commission that the same companies have to disclose environmental information and how they behave in Nigeria, in Lesotho or wherever?

### **PIERRE DEFRAIGNE**:

Of the 400 or 500 million companies, two thirds are American or Japanese. In Europe, we do not have that many large companies. So the question is: Are we going to enact a legislation of our own just to control a minority of those global actors, possibly putting them at disadvantage with their competitors in the US and Japan? There is a question of level playing field. As long as there is no common rule which would apply in the same fashion to all global firms and not only to the Europeans, CSR might be a practical, experimental way to push them into issuing that sort of reporting based on voluntary commitments.

### **JEAN LAMBERT**, MEP, UK, Green Group:

First, what do you see as the role of developing a set of rules or criteria around export credit guarantees? Because quite a number of the companies which operate overseas in questionable ways are often backed by their own governments in terms of underrating potential risks. Secondly, I am interested in that argument that companies in the EU who comply with certain forms of reporting are not competitive when one of the arguments given in the debate on social responsibility in the Parliament was that this form of behaviour was going to increase because it would add competitive value. I see a contradiction here.

**PIERRE DEFRAIGNE:**

On the first point, export credits: unfortunately, we compete with many states on export markets that do not belong to the EU governance. It is a matter for global governance, not for the EU. We have been fighting for this for a long time. On the second point: It might be that in some cases the cost of internalising ethical behaviour might be off-set by the benefit you can gain through a better image on the market place but it is not always the case and this is the problem. Therefore, we need binding rules for everyone so as not to create a competition distortion.

**ALICE PALMER:**

The issue of export credit agencies is one example where experience from some of the member states could be examined in a single forum in the EU for consideration or encouragement of other member states to also implement such measures. The single forum that I am advocating would give the EU the opportunity to examine these issues as a big picture approach. I am amazed when I hear that certain things are optimistic or idealistic when there has been no attempt to examine these issues, to examine the current state and what we may have in the future. International law binds states and the states then implement law at the national level that will bind people and corporations. When multinationals are subject to a number of different national laws, a

gap is created and they will move their assets out of those countries that would like to enforce their laws. We could deal with the problem of corporate accountability in the same way that we apply international law to individuals in the context of human rights. Until there is an effort made to think about the issues creatively and give them some genuine reflection we can't be making assumptions that CSR is the only option for some real effort by the EU.

At this point, Mr Defraigne had to leave the discussion and his place was taken by another representative from his department.

**NNIMMO BASSEY:**

The fact that TNCs appear to be in control does not mean that they are going to be in control forever. There are different models or structures being proposed and we may just be at the threshold of a major shift. This would depend on how all the different organisations respond to each other. There are many declarations right now, but there are some things we can do. To start with, TNCs no matter where they operate in the world should be subject to the laws in their home countries. What they are not allowed to do at home, they should not do anywhere. If that simple principle is enforced, there will be a lot of cheques and balances. Secondly, where there is a proven case of criminal action or abuse by a TNC the head of the organisation should be held personally



liable. Instead of saying the organisation is guilty, there should be some human beings held accountable. And finally, I believe that where the EU cannot help, and the national governments cannot help, the municipal governments can help. You can take little actions at community levels and they will eventually amount to a change, globally.

**DANIEL GRAYMORE**, Christian Aid, UK:

France developed reporting legislation recently and also Australia, which actually includes possible prison sentences. And in California a state law on corporations has just been amended to the existing legislation on the responsibilities of directors stating that the actions of a company should not contribute to any damage to environment, to the abuse of human rights, to damage to communities and to undermining the public good. And part of this legislation in California is that if they engage in any such actions to cut costs, a penalty would be enforced which might be three times of what they might have saved. So there are countries or states that are to various degrees enacting seemingly stronger legislation.

**A REPRESENTATIVE** from DG Trade, European Commission: One problem is the question of extraterritoriality. How do you make EU-based transnational corporations accountable when they operate in non-EU territory? Only a very, very low proportion of EU law is about extraterritorial measures, for instance sexual tourism. This is not yet transferred to liabilities that could be applied to companies. The debate is moving forward now. When you look at the global OECD

governance, it is a basic standard reference check list. For instance, the OECD convention on corruption and the work in the UN is moving forward. Another example is consumer protection, where things are being developed. And when you look at what is the proportion of such things that are already a norm or that are only voluntary, in the EU, and you look at the rest of the world, even OECD countries, they do not have the same proportion. Accountability is certainly something difficult, particularly the problem of extraterritorial legislation. Ultimately, it is on the country's jurisdiction where companies operate and not on our own right to regulate.

**ALEXANDER DE ROO**:

But the OECD code is voluntary. Simply because the majority of the member states do not want anything mandatory the Commission does not dare to propose it. Even in the European Parliament it is difficult to get majorities for having mandatory reporting. We need to organise more pressure and push the Commission to do something. For a lot of companies CSR is just public relation. As soon as you start something that is binding you find none of them really wanting to go forward, not even the ones like Volkswagen who use the same European environmental standards, whether they invest in Germany, or whether they invest in Brazil. Even those companies which already made some steps in the right direction are not asking to do the same for companies in the same business. If ever they want to cut back, they have the chance to cut back.

## CONCLUSION

**MARTIN ROCHOLL**, Director, Friends of the Earth Europe:

The NGO community has been fighting against neo-liberal globalisation for a very long time. This fight will continue, but we are also going to see ourselves engaged in another fight which will have to address the unilateralism coming from a small elite that currently holds the power in the US. We will see them not bothering about multilateral agreements, or about the WTO, or about free trade, as long as it is in their own interest. This is something we need to anticipate in our strategic plan for the future. Another important thing to keep in mind for our future strategies concerns the European Commission. Throughout the day, we have seen a split Commission: We see parts of the European Commission fighting very strongly for MEAs and for sustainable development, and having very good intentions with the Doha Development Agenda. At the same time, we have other parts of the European Commission very aggressively promoting a free trade agenda with very different interests, even though they sometimes use exactly the same arguments.

On the first panel, I have seen no answer to the question how to resolve the imbalance between MEAs and other sustainable development agreements on one side and the strong and strict enforcement rules of the WTO on the other. Neither UNEP, nor the EU put forward any practical proposals. But it is also a challenge to the NGO community to think more about how we can actually achieve that, instead of just demanding it. How can we strengthen the UN to have enforcement mechanisms for MEAs and other sustainability agreements? This connects to what I said about the US: We have to start a vigorous fight for multilateralism.

On the second panel, on the EU water initiative, we could again see the split in the European Commission between those who have a very positive agenda and others who misuse that positive agenda to push another agenda at GATS. If we want hundreds of millions of the poorest people to have access to clean and safe water, this will cost money. Where will the money come from? Will there be new sources from governments, or will sources from governments that were used for something else be shifted, or can we really use private funds? I doubt that very much because private funds will want to have a return and from the poorest people in the world they won't get that return. Our colleague from South Africa has pointed out that private investment, in limited and controlled form, might increase efficiency. It might also be possible to charge rich people for putting water in their swimming

pools with a private company, but it does not help to serve the needs of the poor.

Regarding GATS, we heard good examples of what the dangers of further liberalisation of services and investments are. As Mr Lamy said, each country can choose how much to liberalise. The key issue is how far countries will be able to resist and how far they are going to be bulldozed in a certain direction by rich countries. Mr Lamy said it is a give and take and with that the whole argument of GATS being a win-win situation crumbled. Liberalisation of trade in services as such is apparently not beneficial enough for the developing countries and therefore the EU has to give them something in return. If the EU has to give something to get that liberalisation, it is obviously something bad for the developing countries.

Finally, on binding mechanisms for corporate accountability, we as the NGO community again have to ask ourselves where we place this. Have we strengthened the UN institutions enough to be able to enforce a binding mechanism on corporate accountability? We have to think very hard about how to install global multilateral mechanisms that work against the trend that is led by the US as I have described before. I wish very much that the EU would not use its political and economic power to bulldoze people into more free trade, but use it to bulldoze the global community into more multilateral agreements. These are difficult structural questions that can get a little frustrating and therefore I want to conclude by reminding ourselves of our own strength. Somebody said there are two big super powers in the world in the moment: the US and the world's civil society. On the issue of corporate accountability we are prepared to take a few example TNCs head on with a campaign and show them the strength of the biggest super power in the world, and that is world civil society.

**BARBARA UNMÜSSIG**, Co-President, Heinrich Böll Foundation:

It was a timely event today for the preparation in the run-up for Cancun. The Heinrich Böll Foundation will be very present in Cancun. We will, as we did today, help and enable dialogue between civil society, decision makers and - to a certain extent - the business community. Renate Künast has already accepted the invitation to have a true dialogue with people working on agricultural and consumers issues in Cancun and we will let you know in time what else we are planning to do in Cancun itself. After this whole day of discussions I learned, specifically from the panel on the GATS issues, that political pressure is needed to have more transparent and more democratic observation and input. Therefore, I am happy that many NGOs and specifically AT-TAC are now leading the campaign in Europe and I am sure that we will have a real public debate on what is going on with the GATS negotiations.

I would very much like to thank the organizers and co-organizers of this event for the effort they have made to set up this very interesting and fruitful day of discussions.

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