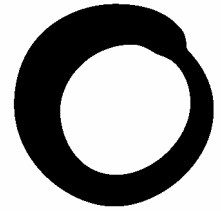


September 2003



**Friends of
the Earth**

Briefing

UKplc in Latin America

Big business, foreign direct investment and the WTO – is anyone accountable?

The EU, backed heavily by the UK, continues to push hard for a new agreement on investment in the World Trade Organisation. Meanwhile British multinationals like Anglo American, Rio Tinto, BHP Billiton and Shell plough on with the kind of investment such an agreement would promote. They variously:

- propose to remove millions of litres of underground water from a poor, dry area in southwest Bolivia to use in mines over the border in Chile - a project that will ruin thousands of livelihoods as the desert spreads;
- propose to develop a gigantic new gas facility in a delicate marine eco-system in Mexico – threatening not only the breeding habits of the area's grey whales, but also the work of thousands in the thriving local tourist industry; and,
- continue to attempt to evade complying with Supreme Court ruling ordering restoration of an entire village razed to make way for mine expansion.

Friends of the Earth exposes the plans, demands the accountability of those responsible and ultimately profiting from the violence, and shows up the WTO investment agreement myth.

Friends of the Earth inspires solutions to environmental problems, which make life better for people.

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- the most extensive environmental network in the world, with almost one million supporters across five continents and over 60 national organisations worldwide
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Introduction – why here, why now

On the eve of the Fifth World Trade Organisation (WTO) Ministerial in Cancun, Mexico (10-14 September 2003), Friends of the Earth is highlighting these examples of what the WTO calls Foreign Direct Investment (FDI) because of the current UK-backed EU drive to secure a new WTO agreement on investment. The World Trade Organisation is the intergovernmental body that oversees all aspects of international trade. Its website states, *“The [WTO’s] goal is to help producers of goods and services, exporters, and importers conduct their business.”*¹ People and the environment don’t get much of a look in.

Friends of the Earth opposes a WTO investment agreement because it would make projects like those in this briefing easier for multinational companies and even harder for local people to fight. The proposals for an agreement already on the table say nothing at all about the need to keep a close eye on trans-national companies (TNCs) to ensure that they meet minimum acceptable standards of behaviour. While big business is increasingly vocal about their need for greater access to markets and more rights to conduct their kind of business, it is unacceptable that they are permitted to do so without also being brought under a complementary set of new obligations to local communities and others about the way that business gets done.

These cases show why.

Case One – Anglo American and BHP Billiton in Colombia: Violence clears the way for profit

*“These multinationals in Colombia are a factor feeding the violent conflict and human rights violations, as they did in South Africa.”*²

- **Francisco Ramirez**, President of Sintraminercol, the Colombian mineworker’s union

The problem – violent displacement of villagers

Emilio Ramon Perez Diaz is one of more than 3 million people internally displaced in Colombia. Of these 68 per cent come from areas in which oil or mining companies operate or plan to operate. In the last 7 years, some 437 massacres have killed more than 3,000 people.³

Tabaco was a community of 1,100 inhabitants, mostly Afro-Colombian, living together and farming on the land adjacent to the El Cerrejon mine. They had been self-sufficient for decades. The planned expansion of the mine required forcing them off their land. Compensation was offered, but at a paltry US\$700-1000 it was certainly not enough to buy new land elsewhere and begin again. For those who would not accept the mining companies’ terms for leaving their land and livelihoods, the company and the police joined forces using violence to forcibly remove them. The story of Tabaco is only one example repeated across Colombia.

Multinationals are in a scramble to control the natural resources of Colombia as foreign investment in the country increases, and people are often forced off their land to accommodate mine expansions. Coal is Colombia’s third largest legal export, with 71 per

cent shipped to Europe and 28 per cent to the United States.⁴ The development of large-scale mining projects in Colombia has usually been preceded by paramilitary operations on behalf of the government for the purpose of “guaranteeing” foreign investment.

The problems caused in Colombia by this kind of foreign investment are clearly demonstrated in the case of the El Cerrejon Norte coal mine, now part owned by Anglo-American and BHP Billiton. Thirty miles long and five miles wide, it is already one of the largest open pit mines in the world. Its continuing expansion, as with many mines in Colombia, has wreaked havoc on local communities.

Human rights violations



Tabaco residents stand among the remains of their bulldozed village/ Colombia Solidarity Movement

“One of the women said that a man’s head was badly wounded by a wooden club and his daughter, who was trying to help her father, was also attacked by the police, who beat her leg with wooden clubs.”⁵

Tabaco doesn’t exist anymore. It was demolished in three sessions beginning in August 2001 by mine managers Intercor (wholly owned by ExxonMobile, Anglo American’s and BHP Billiton’s partner in the mine at the time) along with members of the Colombian police. They arrived in Tobaco and bulldozed 29 houses, confiscated possessions and beat villagers who resisted with wooden clubs. **Emilio Ramon Perez Diaz**, a local resident, described the kind of treatment villagers received at the hands of the police:

“The police beat me and broke my head in four places and took me out of the house. I was unconscious in the hospital for 20 days. They destroyed my house without letting me take my things.”⁶

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Tabaco's residents had only their lawyer, **Armando Perez**, and local journalists to defend them against several hundred strong group of armed personnel.

By January 2002 Tabaco, including the village school, clinic and cemetery containing ancestral remains, had been razed to the ground. The way was now clear for the mine expansion plans to move forward.

Social impact – loss of livelihood and community with extra added poverty

The former residents of Tabaco are now widely scattered in different villages, unable to buy land or homes with their meagre compensation. They are struggling to make a living, as over 95 per cent are now unemployed. The education of the children is suffering as many of the families have to keep moving from village to village to stay for a time with friends or relatives.⁷

Environmental impact – fertile farms reduced to a dust bowl

Like most open pit coal mining, El Cerrejon Norte has caused wide-spread destruction of the surrounding agricultural land. The area around Tabaco is particularly fertile and will also be destroyed as mining goes ahead. There will be the short term problem of coal dust causing air pollution and respiratory problems but also long term destruction of water courses, streams and small rivers. The land can recover from such effects, but at the current rate of damage it will already take about 450 years for the land around Tabaco to be rehabilitated.⁸ Further expansion of the mine will only make things worse.

Who's to blame?

At the time of the first bulldozing stage in August 2001, ownership of El Cerrejon Norte was split 50/50 between energy giant ExxonMobil and a consortium of Anglo-American, BHP Billiton and Glencore. All of these companies took their slice of the profit facilitated by human rights abuses. In February 2002, one month after the final destruction of the village, ExxonMobil sold its share to the consortium leaving the mine wholly owned by the Anglo-American/BHP Billiton/Glencore consortium. Anglo American and BHP Billiton each now have a 33 per cent share in the mine.

Anglo American and BHP Billiton continue to make massive profits from the mine, which will undoubtedly continue to expand to other populated areas in the search for new coal deposits. In the circumstances, it is difficult to see how Anglo American is honouring either the letter or the spirit of its assertions that it, "*respect(s) human dignity and the rights of individuals and of the communities associated with [their] operations.*" Neither is it clear how this operation meets BHP Billiton's claims that it is "*working with communities to assess local needs and respond with sustainable solutions.*"

Furthermore the Colombian government is responsible for apparently allowing its police to be used as the private army of the mining companies. They have a duty to protect the human rights of their citizens, not turn a blind eye at the behest of big business.

Case Two – Rio Tinto and BHP Billiton in Bolivia: Undermining water

“This is a water war. If this project goes on... in an area where it only rains less than 100mm per year, it means it is going to dry the whole earth.”⁹

- **Pablo Solon**, head of a Bolivian non-governmental organisation the Solon Foundation

The problem – not a drop to drink, or mine with, or farm with...

Bolivian environmental campaigner **Pablo Solon** is fighting for the survival of an entire community against mine expansion in another country.

The Escondida mine, one of the largest in Chile, is located in the Atacama Desert at an elevation of 3,000m above sea level.¹⁰ Part owned by Rio Tinto and BHP Billiton, the mine began production in 1990 and has expanded in phases to its current capacity producing nearly a quarter of Chile's copper - nearly 10 per cent of global copper production.^{11 12} Phase 4 of its expansion was announced in November 2000: for 5 years from 2003 approximately 1.2 million tonnes of copper will be produced each year, an increase of some 50 per cent.¹³

Expanding the mine's production means massively increasing its water consumption. The Chilean government does not allow underground water to be used for mining because of the environmental damage it has already caused. Desalination plants would work, but are expensive. So the companies are trying a considerably cheaper option: pumping and importing water from Bolivia.

Potosi, the area chosen to donate this water, is already chronically dry – the people trying to make a living on the land there simply haven't got spare water to lose. Nevertheless, the Bolivian Water Resources Corporation (COBOREH), an independent private company, plans to export 800 litres of water per second to several Chilean mining operations if the deal is cut and the project is approved by the Bolivian government.¹⁴ This will rise to 3,000 litres per second at the end of the third year.¹⁵

The residents of Potosi have joined forces with **Pablo Solon** to fight the plan and save their livelihoods. The Bolivian government has already tried, and failed, to pass a law allowing the water to be exported. They are now attempting to include water in a Free Trade Agreement between Chile and Bolivia. The threat of serious environmental and social impacts is apparently not a consideration for them or the companies concerned.

Human rights violations – water is a RIGHT

On 27 November 2002 the Economic, Social and Cultural Rights Committee of the United Nations declared water and access to it a fundamental human right and a social and cultural good, not merely an economic commodity. Chile and Bolivia are both parties to the International Covenant on Economic, Social and Cultural Rights.¹⁶ As such, both governments have a fundamental responsibility to ensure that their citizens are able to fully exercise their right to clean, accessible water. The attempts by the two governments to remove water from an already arid agricultural area to another country for industrial purposes certainly appears to interfere with this right. The fact that they seek to do it over the strong, public objections of the local population only makes matters worse.

Environmental impact – just deserts

Extracting Potosi's water would lower water levels in the lakes, rivers and streams of the surrounding area.¹⁷ It would take hundreds of years to replace.

No proper environmental or social impacts assessments have been conducted in planning for the removal of the Bolivian water. Recent events in Cochabamba, Bolivia (where the US giant Bechtel attempted to privatise water) have shown that changes to water legislation must take everyone's concerns into account and not just the profit interests of the few.¹⁸ These lessons have apparently not been learned.

In Chile, the environmental impact of water extraction for mining can already be seen. **Pablo Solon** says;

*“In the north part of Chile, underground water has already been taken, so we can see the impact – the land is dry and the rivers are dry. Now the Chilean government doesn't allow anymore underground extraction”*¹⁹

The effects of this are stark: where in the past 5-10 per cent of land in Chile was used for agriculture, now it is considerably less than 5 per cent.²⁰ The situation is sufficiently extreme for the National Corporation of Indigenous Development to call for this region to be declared a protected area due to ecological deterioration.²¹



Pablo Solon/Solon Foundation

Removing underground water from neighbouring Potosi, Bolivia will only enlarge the area of destruction. The Consortium for Sustainable Development of the Andean Ecoregion reports that the available fresh water in the area has already more than halved due to rapid snow loss in the mountain ranges of Bolivia over the past 24 years.²² Potosi already suffers from low rainfall.

This is not sustainable development through foreign investment.

Economic and Social impact - bleeding people dry

The destruction of so much agricultural land in northern Chile due to the water being used for mining leaves many farmers without a livelihood.²³ The poverty of the area has increased and subsequently so too has the migration to cities in the search for work. The people of Potosi fear a similar fate if water is removed from their land for use in Chilean mines. Potosi is already a poor region, with high levels of urban migration, and its 59,000 people are mostly dependent on fishing and farming.²⁴ They need whatever water is there to support themselves.

The project won't bring in sufficient income to justify the destruction, either. It is estimated that the maximum income from the project will be US\$10 million per year, but that is not enough to make a real difference to the area (for example, to build a new road to improve access to the area would require around US\$300million).²⁵

Who's to blame?

Rio Tinto, a notorious member of UKplc, has a 30 per cent share in the Escondida mine, and BHP Billiton 57 per cent. As major shareholders, they take a large slice of the profit but are failing to conduct their business with any consideration for its impacts. Other options are available. For example, desalination plants could be built to recover water for use in the mines, but as the price in cash is higher than removing Bolivian water, Rio Tinto and BHP Billiton do not consider this a viable alternative. The price other people will have to pay in loss of livelihood and community seems an acceptable one to Rio Tinto, BHP Billiton and their partners.

It is difficult to see how Rio Tinto's water removal plan in any way conforms to its claims that they, *"work as closely as possible with our hosts, respecting laws and customs, minimising adverse impacts and ensuring transfer of benefits and enhancement of opportunities."* Nor is it at all clear how BHP Billiton is honouring its statement that it works *"with communities to assess local needs and respond with sustainable solutions."*

The governments of Chile and Bolivia do not escape blame themselves. They have a duty to uphold the fundamental rights of their citizens, and they appear to be utterly failing to do so here.

Case Three – Shell in Mexico: Grey whales and locals aren't so sure of Shell

"Some of the world's biggest energy companies are lining up to turn Baja California's rocky Pacific coast into a major receiving port for imported natural gas. Aiming to serve US consumers without riling US environmentalists, investors are betting Mexico can be their open back door to energy-challenged California."

- Joel Millman, *Oil Groups See Baja as Door to California*, Wall Street Journal, March 2002

The problem – targeting pristine coastline

Environmental lawyer **Carla Garcia Zendejas** is fighting the clock to prevent Shell knowingly destroying the breeding grounds of grey whales and the businesses that also occupy Costa Azul. In 2002 Shell Gas and Power (a unit of Royal Dutch/Shell Group) formally announced a US\$500 million plan to develop a gigantic Liquefied Natural Gas (LNG) facility in Costa Azul, the pristine coastline in Baja California, Mexico (just across the border from the US state of California). The project aims to build a receiving terminal and re-gasification facility, a port and pipelines (one of which will be 200km long) north of Ensenada near the Bajamar tourist resort. The project, expected to begin operations after completion in 2006, is expected to produce 1.3billion cubic feet per day (bcnfpd) of natural gas, enough to power about 15 medium-sized electric power plants. Most of the gas is expected to be exported to power hungry California via gas pipelines.²⁶

The announcement heightened competition among energy companies, like BP, also seeking to build similar projects in Baja California. Several companies believe that the Baja California area is a prime location for an LNG terminal because it would allow LNG to be provided to

the West Coast of the US while avoiding the regulatory complications such a project would quite rightly encounter in the US.²⁷ Many local people are worried that the area is being offered up for sale to anyone who claims to further economic development.

What is LNG?

Natural gas is liquefied through refrigeration and compression to ease its transport. This is how huge quantities of natural gas, much of it extracted from deep-water wells in the Pacific Ocean, is moved to European, Asian and increasingly North American customers. It is then off-loaded and converted back to a true gas in re-gasification facilities. In the US, LNG is projected to be the fastest-growing means of supplying natural gas, with imports rising from 0.2 per cent of the nation's supply this year to 11 per cent by 2025.²⁸

Perhaps stung by the stunning defeat in the Metalclad case in 2000 (see below), the Mexican government has already issued the environmental permit (one of three required) to build Shell's massive plant.²⁹

Environmental impact – threat to grey whales

Costa Azul is one of the last untouched spots of wilderness on the coastline of Baja California – an area renowned for its unique flora and fauna, as well as for hosting a population of grey whales, who swim to the warm waters of the Gulf of California from Alaska to calve. It has been compared to the Galapagos Islands in its diversity of plants, birds and marine life. By choosing this site for an LNG plant, Shell risks not only obstructing the path of the whales with tankers and breakwaters for the new receiving ports, but also creates the danger of collisions between whales and ships.³⁰



Carla Garcia Zendejas/ Maggi Keenan

Carla Garcia Zendejas, an environmental lawyer working alongside local communities, says:

“This whole species of grey whales is threatened. Scientists believe that when the whales migrate, they hug the coast by 2 km, and that is because they use the coast as a map. With obstructions, they could either get lost or not reach their destination in order to breed. That would severely affect the numbers.”³¹

The LNG plant would also be the beginning of a 200km pipeline to power plants in Mexicali that would cut across areas of natural beauty. There would always, of course, be the risk of accidents and pollution, not unknown to Shell's operations around the world.

Social and economic impact – wipe out

Around 5000 local people work in the thriving tourist industry up and down the coast of Baja California. Costa Azul is an isolated beach area on this coast. An LNG plant a stone's throw from the resorts threatens to wipe out a whole industry.

Roberto Valdes is the president of a local resort, Bajamar Real Estate Service, and is

strongly opposed to this development:

“An industrial development near a tourist resort is just not compatible. It will affect me very severely; my livelihood is at stake. Shell has not offered any compensation. These companies are very powerful so it’s very difficult to argue with them. The Mexican government see \$500m being invested, but politicians forget about what’s going to happen to the local people... There’ll be hardly any job creation – perhaps only 70 or 80 new jobs.”³²

Roberto Valdes is not alone. No compensation has yet been offered by Shell to anyone who will be affected by their proposed plant.³³

Health impact

Apart from the environmental damage, lawyer **Carla Garcia Zendejas** is also concerned about the impact LNG plants would have on the health of the local population:

“LNGs will attract heavy industry; the Mexican government want to turn Baja California into an industrial area. But no proper health and safety standards will be in place – we’re talking about a generation of people who will have health problems such as respiratory problems, liver disease, etc.”³⁴

Who’s to blame?

Reflecting on Shell’s plans for Costa Azul, it is difficult to understand what Shell Chairman Sir Philip Watts means by “sustainable development”, as an LNG plant in that area can hardly be called sustainable. His assurances that he “does not approve” projects unless they are sustainable ring entirely hollow.

There are alternatives, but Shell refuses to consider them. If the LNG plant is built off-shore, **Bill Powers**, from local NGO Border Power Plant Working Group, believes much of the damage could be avoided:

“Going off-shore is no more costly or difficult to being on-shore – Shell has a very old school style – they design a project in a vacuum and don’t care what the locals think. But what they’ve got is a polished delivery; appearance is all.”³⁵

Carla Garcia Zendejas believes that going off shore could be a solution if the plants are built about 25km out, where they would be sufficiently out of the whale’s migratory path to prevent upsetting their calving. She also believes an off-shore solution would alleviate much of the impact on the coast and certainly the tourist industry.³⁶

Mexican President Vicente Fox sees LNG plants as a positive source of income from foreign investment – a point demonstrated by the fact that a permit to build has already been granted to Shell. How he can tally this with the apparent total failure to figure in the needs of the local people and their environment remains to be seen. What is known is that President Fox, a former Coca Cola executive, is also the mastermind of the hugely controversial Plan Puebla Panama, a continental sized project to turn the entire area between Puebla, Mexico to Panama into a free trade zone of factories, cheap labour and other industrial infrastructure that is being called the paving of Central America by critics.

Both Shell and the Mexican government must be persuaded to alter the plans if not drop the

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project altogether.

The companies

Company profile: Anglo American plc

UK Headquarters: 20 Carlton House Terrace, London, SW1Y 5AN

Chief Executive: Tony Trahar **Tel:** 020 7698 8888 **Website:** www.angloamerican.co.uk

Company Overview: Anglo-American plc was formed in May 1999 with the merger of Anglo American Corporation of South Africa (AACSA) and Minorco. It has its primary listing on the London Stock Exchange and is majority owned by UK institutions. The company started its operations in South Africa in 1917 by Sir Ernest Oppenheimer, under whom it forged ahead with gold mining developments. It now operates in over 40 countries worldwide, primarily mining gold, platinum, copper, coal and the like.³⁷ Profits for the year 2002 were US\$1.76 billion up from US\$1.68 billion in 2001³⁸

Anglo American is working hard to create an image of social responsibility. Their recently published guide *GOOD CITIZENSHIP: Our Business Principles* says:

*"We respect human dignity and the rights of individuals and of the communities associated with our operations... We aim to promote strong relationships with, and enhance the capacities of, the communities of which we are a part. We will seek regular engagement about issues which may affect them."*³⁹

Yet underneath the image the company wishes to portray is a different story. Anglo American is currently facing a multi-billion dollar lawsuit claiming that it profited from collaborating with apartheid-era South Africa. They are alleged to have exploited black workers, seized property and stripped the country of natural resources in the 1970s and 80s. The legal claim follows a report by South Africa's Truth and Reconciliation Commission which singled out Anglo American as a beneficiary of apartheid.⁴⁰ Similar criticisms have been levelled against them in Colombia, where they appear to be replaying the same game plan.

Company profile: BHP Billiton

UK Headquarters: Neathouse Place, Victoria, London SW1V 1BH

Chairman: Don Argus **Tel:** 020 78024000 **Website:** www.bhpbilliton.com

Company Overview: BHP Ltd and Billiton plc merged in June 2001 to become one of the world's largest mining and mineral companies extracting resources including coal, iron ore, aluminium and diamonds. The company also has major interests in oil and gas. BHP Billiton has offices in both London and Melbourne and listings on the Australian and London Stock Exchanges. They employ around 38,000 people in about 100 operations worldwide. In 2002, their earnings before interest and tax were US\$3.2billion.⁴¹

They claim: *"Our approach to community development now focuses on working with communities to assess local needs and respond with sustainable solutions."*⁴²

Company profile: Rio Tinto plc

UK Headquarters: 6 St James' Square, London SW1Y 4LD

Executive Chairman: Sir Robert Wilson **Tel:** 020 7930 2399 **Website:** www.riotinto.com

Company Overview: British-owned multinational Rio Tinto is one of the world's largest mining companies. Rio Tinto plc (then The Rio Tinto-Zinc Corporation) was formed in 1962 by the merger of two British companies, The Rio Tinto Company and The Consolidated Zinc Corporation. Dealing in mineral resources including coal, gold, uranium, diamond and copper, Rio Tinto today employs 36,000 people worldwide and owns operating assets of US\$13billion.⁴³

They are also one of the 40 companies that signed up to the UN Secretary General's Global Compact in July 2000 – this calls for the industry to stick to a set of principles of best practice in the areas of human rights, environmental and labour standards. Rio Tinto says: "Wherever we operate, we work as closely as possible with our hosts, respecting laws and customs, minimising adverse impacts and ensuring transfer of benefits and enhancement of opportunities"⁴⁴

Company profile: Shell plc

UK Headquarters: Shell Centre, London SE1 7NA

Chairman: Sir Philip Watts **Tel:** 020 7934 1234 **Website:** www.shell.com

Sir Philip Watts was recently awarded Knight Commander Order of St Michael and St George in recognition of services to British business and to the World Business Council for Sustainable Development. He is also currently Chairman of the Executive Council for Sustainable Development and of the UK chapter of the International Chamber of Commerce.

Company overview: Sir Philip Watts presides over a corporate empire that stretches over 143 countries with more than 90,000 employees. In 2001 the global sales of this multinational were US\$150 billion – more than the Gross National Product (GNP) of most countries⁴⁵. Its fourth-quarter net profits, announced in February 2003, were up almost 50 per cent on the previous year, reaching US\$2.78 billion. Profit for the year 2002 was US\$9.2 billion.⁴⁶

Shell is attempting to cultivate an image of a company that takes the environment seriously. In recent years Shell has successfully reinvented itself as one of the more progressive companies in the energy sector and has worked hard to convince us of its social and environmental credentials. The company publicly committed itself to sustainable development in 1995 and withdrew from the Global Climate Coalition corporate lobby group in 1998. Shell supports the International Labour Organisation's Declaration of Principles and Rights at Work, and its business principles now include a commitment to sustainable development and human rights.⁴⁷ Shell Chairman Sir Philip Watts goes as far as to say,

*"I do not approve new investments unless they address the key sustainable development aspects of the project."*⁴⁸

This has not yet, however, been translated into action on the ground. Shell has not scaled down its exploration or production activities. On the contrary, it is expanding wherever possible. Behind the glossy brochures and inspiring sound bites about working with people and for the environment, Shell continues with many of its old ways.

THE WAY FORWARD

For the community of Tabaco

Some Tabaco residents refused to accept the terms of the compensation they were offered for the destruction of their village. They want the mining companies to relocate them to suitable land of their choice so that they can resettle and function as a community again.⁴⁹

In May 2002, the Supreme Court ordered the municipality of Hatonuevo, where Tabaco used to be, to reconstruct the village in another location. This has not been done.

The lawyer acting for the Tabaco residents, **Armando Perez**, reported on 16 June 2003 that the community had still not been made an appropriate offer in compliance with this order.⁵⁰ As of 16 July some 57 hectares had been offered, but part of that land is already an Indian reservation and 22 hectares of it is privately owned, so it free to be given.

Apparently the authorities do not feel the need to comply with the Supreme Court ruling in this case. The community continues to pursue justice.

For the community of Potosi

The people of Potosi are not taking Rio Tinto's and BHP Billiton's callous disregard for their welfare lying down. The Federal Regional Unity Workers of South Highlands, representing farmers in the Potosi area, is protesting to build pressure against the government's attempts to do a deal direct with the Chilean government. Along with farmers' groups, the Solon Foundation is also attempting to stop the new Free Trade Agreement (FTA). They held a public demonstration on 6 June this year and are trying to get access to the draft FTA to help build their case.

Pablo Solon says, "*What we need is a Universal Statement of Water as there is a Universal Statement of Human Rights. We have to advance toward an International Treaty of Water.*"⁵¹

For the community of Costa Azul

The residents of Costa Azul are fighting the clock to preserve their jobs and environment. They support an off-shore option and are pressing Shell to adopt this alternative.

In July 2003 residents of Ensenada filed with Mexico's Federal Court for an *amparo* (similar to an injunction) to void the environmental permit the Mexican government issued for Shell's plant. The highly unusual move cites the environmental damage the plant would do as grounds for an injunction. Unbowed by the increased pressure, Julio Ledesma, director of Shell's Costa Azul LNG project, questions the "legitimate interest" of the complainants in challenging the legality of the plans.⁵²

On another front, **Carla Garcia Zendejas** is fighting to prevent the authorities of Ensenada issuing a land use permit to Shell.

For the future

Multinationals must be held accountable for the social and environmental problems they create everywhere they operate. They must genuinely work with communities in developing

their plans rather than merely quoting corporate greenwash in the developed world and continuing with business as usual elsewhere. The fact that in many cases they enjoy the apparent complicity of the security forces in their activities increases the gravity of the situation and presents real problems for tackling it and seeing justice done.

Even if they wanted to, due to the scope and power of international trade (including investment) agreements, particularly through the WTO, it is increasingly impossible for countries to set up and implement appropriate laws to make companies operate to reasonable standards. The problem is of course amplified for developing countries like Colombia since they fear that big business will simply pack up and take their trade elsewhere. The problem will be made worse, not better, if a new investment agreement is introduced. There is a growing fear among critics around the world that standards will be pushed even further down, rather than improved, in a foreign investment 'race to the bottom'.

For example, Malaysia has recently announced that it will reverse 30 years of policy and allow manufacturing operations to be wholly owned by foreigners. The former policy, requiring Malay interests to hold a minimum 30 per cent stake in such businesses, sought to ease racial tensions between ethnic Malays and ethnic Chinese, who dominated business. The government claims that it did raise living standards for Malays. Some speculate that in a climate of falling investment the Malaysian government is changing its policy to "improve relations with the US, Malaysia's biggest trading partner and foreign investor, in the wake of Prime Minister Mahathir's blistering criticism of Washington for the war in Iraq."⁵³ The impact this will actually have on investment remains to be seen, but the mere fact that countries feel obliged to trade off their economic policies against their political opinions in unrelated areas is clearly inappropriate.

And the WTO...?

A new WTO investment agreement would involve measures to "protect" the investments of multinational companies. For example, the Colombian Government would not be able to put conditions on Anglo American or BHP Billiton to ensure some of the profits stay in the local economy rather than be repatriated to shareholders. Under such an agreement, the claim for damages by the villagers of Tabaco could be considered "expropriation" of the TNCs' investment, and perversely they could be the ones seeking compensation.

In Mexico the results of liberalised investment have already been seen. A new WTO investment agreement would involve measures to "protect" the investments of multinational companies, something Mexico has already seen. In August 2000 Mexico lost the now infamous Metalclad case under the North American Free Trade Area (NAFTA) agreement. Mexico denied the permits required for a toxic waste dump to open in Guadalcazar, but dumping carried on. Metalclad bought and sought to reopen the dump without consulting local residents and against their express wishes. Frustration at the authorities apparent inability to uphold it's own closure forced residents to turn up with machetes to try to enforce it themselves.⁵⁴ In January 1997 Metalclad filed a complaint against the Mexican government for "expropriating" their business. The NAFTA tribunal upheld the complaint, awarded Metalclad US\$16.7 million and gave Mexico 45 days to begin making payments. The case gives an ominous warning about how clashes between big business and the environment are likely to be treated in any WTO investment agreement – a "nightmare" according to the Sierra Club.⁵⁵ If Mexico tries to stop Shell now, perversely Shell could be the ones seeking

compensation.

Essentially the liberalisation experiment and the proposed new agreements undermine whatever laws already exist in countries to protect their economies and regulate the activities of big business within their borders. The WTO and the trade system it promotes are intrinsically flawed because the WTO is based on outdated, flawed economic theory, abuses the democratic process and disregards the environment.

Friends of the Earth is concerned that under a new WTO investment agreement, interfering with progress of an FDI project by questioning the environmental and social impacts may be considered an unlawful barrier to trade. In particular these cases illustrate how:

FDI is not delivering for the world's poor: These cases clearly show that even when business grows in a country, generally cited as a good in itself, the reality of the people affected can worsen considerably when that money flows to foreign big business that puts profit ahead of all other considerations. The proposed new investment agreement will not fix this.

FDI threatens the environment and increases environmental injustice: The examples here are excellent examples of how massive FDI projects operate to standards all their own. They took no account of the needs of the environment or the local populations, nor did the relevant governments seem to mind, given that security forces have been involved in some and permits have been issued in others. These cases also show how FDI puts pressure on environmental limits and reinforces the unfair imbalance of consumption of southern resources by northerners.

By taking power and control away from local people in this way, unregulated FDI can destroy livelihoods and shorten futures – precisely the opposite of what it claims to do. The proposed new investment agreement will not fix this.

FDI can lead to human rights abuses: The destruction of Tabaco was a direct result of the desire to expand the mining operation in the area, making this a clear example of the kinds of human rights abuses that pave the way for many FDI projects. This will be equally true if the water extraction plans in Chile and Bolivia go ahead. The participation of the security forces in such activities, with apparent impunity, makes the situation all the more alarming. The proposed new investment agreement will not fix this.

A WTO agreement on investment would not lead to better behaviour by big business: A WTO investment agreement would tightly restrict the ability of governments to curb projects like these. Under the proposed new investment agreement, FDI becomes a goal in itself rather than a way to seek the best, most sustainable solutions to development, including here in the North. It would also lock in governments to today's standards indefinitely regardless of the economic or environmental circumstances of the future.

Policing a WTO investment agreement would favour strong countries and big business: Under a WTO investment agreement, complaints about projects like these would be heard by the controversial Disputes Resolution Mechanism – renowned for putting profit before people and the planet and riddled with democratic deficiencies.

The sad fact is that these cases would almost certainly never reach the mechanism as at present only countries may bring complaints, and the governments concerned here seem

unlikely to complain. Current proposals suggest permitting investing companies to complain directly to the WTO if a government attempts to interfere with a project. The proposals offer no balancing rights for those who would be affected.

A WTO investment agreement would give the WTO too much power and undermine democracy: A new WTO investment agreement would seriously impede the ability of decision makers, from local to national, to respond to such situations by dictating strict limits on the actions government may take in defence of their people or environment. It would also consolidate the power of the WTO itself, transforming it from a trade organisation to one with authority over large swathes of all countries' economies. Bearing in mind the WTO's woeful record on human rights and environment, such a consolidation might well usher in an era of unbridled pursuit of wealth and consumption by the wealthy for the wealthy.

Real responsibility

It is important to remember that FDI is not in itself necessarily the problem – it can be used for good or ill. However the bottom line is that an investment agreement in the WTO would give big business more rights and remove protections for people and the environment. Rather than fix the kind of problems these cases show, it will make them considerably worse.

These stories are sadly good examples of why we cannot leave big business to voluntarily regulate itself. Time and again, on a host of social and environmental issues, the voluntary “corporate social responsibility” approach fails miserably. According to the Organisation for Economic Cooperation and Development (OECD), voluntary schemes “aimed at achieving environmental objectives are neutral at best and potentially harmful.”⁵⁶ It is to their great shame that many of these tragedies, and others like Union Carbide in Bhopal to, occur because multinational companies feel they can operate with impunity in other countries at standards that would never be acceptable in their home countries.

Friends of the Earth opposes the current proposals for an investment agreement, and opposes outright such an agreement being sought at the WTO. If any investment agreement is to be discussed outside the WTO, it must deliver:

In home countries: The activities of TNCs shown here, and the authorities' inability to protect and serve their citizens, demonstrate admirably why binding corporate accountability legislation is needed in a multinationals' home country that places legal duties on directors to minimise the negative impacts of their business operations. Directors should not be able to claim they did were unaware of damaging activities in order evade accountability to those affected.

At the time of writing the UK government had recently completed the most comprehensive review of company law in 150 years. A new Company Law Bill was expected in Parliament within the next couple of years. This represents a unique opportunity to create a legal framework to ensure UK companies behave in a way that delivers truly sustainable development. These measures have been proposed in the Corporate Responsibility (CORE) Bill, which already has the support of over 300 cross-party Members of Parliament. The situation is changing, and Friends of the Earth is working with the CORE coalition to ensure that the provisions of this Bill or a similar one are enacted as soon as possible.

In host countries: Such home country legislation is part of the solution, but is unlikely to be

able to do the job alone. Countries hosting multinationals must protect their citizens from the excesses of their guests. Strict legislation and *active implementation* are required around the world to ensure that decent standards of corporate behaviour are required and delivered everywhere. Friends of the Earth is working around the world to help secure such legislation.

What you can do

Decision makers

Politicians and other opinion formers have a crucial role to play in securing the kind of measures needed to prevent such situations arising in future, as well as to address the injustices already occurring. Those at local and regional level may have a particular interest in the way international negotiations and decisions will impact on or override policies at their level, including those arrived at democratically. Among the concrete actions you can take are:

- exposing and/or voicing opposition to such behaviour in any appropriate forum, including publications, debates, briefings, etc;
- actively supporting initiatives like the CORE Bill and those who propose real action to curb the excesses of big business;
- voicing opposition to authorities like the DTI who oppose binding solutions to these problems in favour of voluntary initiatives favoured by big business.

Members of the public

There are a number of easy, concrete things you can do to join the chorus of voices around the world challenging the growing power of the WTO and its free trade doctrine. These include:

- taking part in the web-based actions Friends of the Earth is conducting in the run-up to and during the Cancun ministerial and beyond – see www.foe.co.uk for advice and information;
- joining the corporate_action and/or sustainable trade email activists lists and receive the latest information and actions straight to your computer;
- writing to Prime Minister Tony Blair and/or European Commission head Pascal Lamy urging them to ensure that the interests of people and the environment come before those of big business, that neither the UK nor the EU continues to support a new investment agreement or other New Issues in the WTO, and that new laws be brought about to ensure proper corporate accountability both nationally and internationally;
- shopping thoughtfully – buying anything from a pension to a mortgage to your daily newspaper and food often makes a statement about what you consider to be acceptable behaviour by big business. Make sure your opinions about what is right and wrong translate into where you put your money. See the Friends of the Earth website for loads of ideas and advice.

Links and further reading

Global Trade Resources page from Friends of the Earth website:

http://www.foe.co.uk/campaigns/global_trade/resource/campaigners.html

Global Trade Press for Change page from Friends of the Earth website:

http://www.foe.co.uk/campaigns/global_trade/press_for_change/index.html

The Corporate Responsibility Coalition website:

www.corporate-responsibility.org

Investment watch:

<http://www.investmentwatch.org/>

WTO watch (now merged with the IATP Trade Observatory):

<http://www.tradeobservatory.org/>

Our World Is Not For Sale:

<http://www.ourworldisnotforsale.org/global.asp>

¹ http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm

² FOE interview with Francisco Ramirez, London 13 May 2003

³ <http://www.minesandcommunities.org/Sintraminercol> (Colombian mineworkers union)

⁴ <http://www.minesandcommunities.org> (28% exported to US, 71% exported to Europe)

⁵ Notes by Richard Solly, Mines and Communities Network to Tabaco, Oct 2001

⁶ Interview of Emilio Perez by journalist Garry Leech, Colombia Report, 11 Nov 2002 (published by the Information Network of the Americas (INOTA) a non-profit organisation)

⁷ Ibid

⁸ Interview by Richard Solly, Colombia Solidarity, with Prof Martin Lopez Gonzalez, University of La Guajira 18th December 2002

⁹ Friends of the Earth interview with Pablo Solon, Solon Foundation, 11 June 2003

¹⁰ Robertson GeoConsultants Inc, <http://www.robertsongeoconsultants.com>

¹¹ Other main shareholders include JECO (10 per cent) and International Finance Corporation (2.5 per cent)

¹² An Mbendi Profile - *Chile mining: copper mining overview 2003* (<http://www.mbendi.co.za>)

¹³ <http://www.riotinto.com>

¹⁴ Chile holds about 30% of known copper reserves and is the world's largest copper producer. Most is shipped to the US, the UK, France, Italy and Asia. Business is growing fast. (Larox Solutions: Larox PF 60-144, and Mbendi Chile - Copper Mining. An overview. www.mbendi.co.za)

¹⁵ "Bolivia Permits Bulk Export of Water to Chile", by Dr. William M. Turner - www.waterbank.com

¹⁶ <http://www.unhchr.ch/pdf/report.pdf>

¹⁷ *La Exportacion De Aguas Del Sudoeste De Bolivia a Chile*, Consortium for Sustainable Development of Andean Ecoregion (<http://www.aguabolivia.org>)

¹⁸ In Cochabamba Bechtel, one of the world's largest corporations, bought the public water system through its subsidiary Aguas del Tunari. They promptly announced the doubling of water prices, putting

the price of water for Bolivians above the cost of food. In 2000 after public campaigns and street protests, Bechtel was forced water returned to public ownership.

¹⁹ FOE Interview with Pablo Solon, 27 May 2003

²⁰ Ibid

²¹ Consortium for Sustainable Development of Andean Ecoregion, op cit

²² Ibid

²³ FOE interview with Pablo Solon, Solon Foundation, 27 May 2003

²⁴ Ibid

²⁵ Ibid

²⁶ Carla Garcia Zendejas, Interview with Friends of the Earth, 16 June 2003

²⁷ "LNG activity heats up in Mexico", Energy Markets, Issue Nov 2002 (www.energy-markets.com)

²⁸ "World LNG march could bypass bay area", by Alan Doyle, East Bay Business Times, 13 January 2003

²⁹ Carla Garcia Zendejas, Interview with Friends of the Earth, 30 May 2003

³⁰ Ibid

³¹ Ibid

³² Robert Valdes, Interview with Friends of the Earth, 28 May 2003

³³ Ibid

³⁴ Ibid

³⁵ Bill Powers, Friends of the Earth interview, 28 May 2003

³⁶ Carla Garcia Zendejas, 16 June 2003, op cit

³⁷ <http://www.angloamerican.co.uk>

³⁸ Communications office, Anglo American plc

³⁹ <http://www.angloamerican.co.uk>

⁴⁰ "Anglo in slaves charge", The Observer (newspaper), March 2003, Conan Walsh

⁴¹ <http://www.BHPBilliton.com>

⁴² Ibid

⁴³ <http://www.riotinto.com>

⁴⁴ Ibid

⁴⁵ *Riding the Dragon*, Jack Doyle, The Environmental Health Fund, 2001, Boston

⁴⁶ Friends of the Earth Shell Report, 2003.

⁴⁷ The Shell Report 2001, *People, planet and profits* (www.shell.com)

⁴⁸ Ibid

⁴⁹ FOE interview with Richard Solly, Colombia Solidarity Campaign , 13 June 2003

⁵⁰ Ibid

⁵¹ "The water war in Bolivia", speech by Pablo Solon, 2002 www1m.mesh.ne.jp

⁵² *San Diego Union Tribune*, "Action filed in Baja to avoid Sempra, Shell LNG permits", 16 July 2003.

⁵³ "Malaysia to allow foreigners full ownership in manufacturing ", *Financial Times*, 24 June 2003

⁵⁴ Andrew Wheat for Multinational Monitor, "Toxic Shock in a Mexican Village", October 1995.

⁵⁵ www.oneworld.org/ips2/aug00/22_32_076.html and www.wtwatch.org/News/index.cfm?ID=2963

⁵⁵ 'Green voluntary agreements "found ineffective"', Environment Daily 1468, 23 June 2003

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