



Legislating Corporate Social Responsibility

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A law making its way through the halls of Congress would enforce CSR programs with heavy fines and civil lawsuits. In other words, Michael Levine writes, the time has come for companies to walk the walk, before they make you walk the plank.

If you are reading this, your company may already be voluntarily implementing substantial corporate social responsibility and corporate citizenship programs. If not, take note: legislators are attempting to pass a bill that would, in effect, require corporations to affirmatively engage in CSR efforts.

In this climate, corporations need to review their existing CSR efforts and consider whether they are at risk of being sued or subjected to governmental oversight. Corporations should consider the extent to which they wish to become part of the legislative process. Otherwise, they may find themselves subject to compulsory CSR guidelines and left with no say or meaningful input into their own CSR programs.

What CSR and supply chain professionals need to know is that the pending legislation would expose those companies importing or selling products made in "sweatshops" to litigation, monetary penalties and governmental investigation. In a related vein: several free trade agreements (such as those negotiated with Peru, Colombia and Panama, and those sought with Korea and Malaysia), may not receive congressional approval unless they incorporate more stringent mechanisms to ensure compliance with certain labor rights and standards.

Though the bill and agreements discussed below may not become law, or may be drafted in a different manner, companies still need to be concerned. The drafting of such legislation --- with bi-partisan support --- signals that legislators on both sides of the aisle may believe that the current system of voluntary CSR monitoring is not working.

This suggests that some on Capitol Hill may believe that corporations will address CSR issues only if they are mandatory and only if they face substantial monetary or other penalties. (The bill in question provides for monetary damages, injunctive relief and attorney's fees, as well as for companies to be subjected to investigation by the Federal Trade Commission, which will publish the names of violators and the information about the violations in the Federal Register.)

More about the legislation: S. 367, titled the "Decent Working Conditions and Fair Competition Act," has been sponsored by Sen. Byron Dorgan, a Democrat, and by Sen. Lindsey Graham, a Republican. In sum, this bill allows private plaintiffs, including retailers' competitors, to sue

corporations that have engaged in unfair competition and deceptive trade practices by having obtained merchandise from "sweatshops," which are, in substance, companies that violate "core labor standards" (i.e., the laws of the countries in which companies that made the merchandise are located) or international human and labor rights standards.

The bill also prohibits such goods from being imported into or sold within the United States. Corporations that violate the act: 1) Must pay a minimum of \$10,000 for each violation of the Act, or the "fair market value of the goods," whichever is greater, with willful or knowing violators being required to pay more; 2) Must pay a prevailing plaintiff's litigation costs, including their "reasonable" attorneys' fees; 3) May be subject to injunctive relief (which conceivably could take the form of a court order requiring them to refrain immediately from future violations). Under the bill, the Federal Trade Commission is charged with investigating complaints from workers of violations of the Act.

At a Senate Commerce, Science and Transportation Committee hearing on Feb. 14, 2007, interested parties testified about the bill. First, former workers of foreign companies that allegedly violated labor and other rights spoke. Others that testified included Charles Kernaghan, Executive Director of the National Labor Committee, an NGO that investigates and reports about labor and trade issues; James English, International Secretary-Treasurer of the United Steelworkers; and Steven Jesseph, President and Chief Executive of the Worldwide Responsible Apparel Production (WRAP) program.

Kernaghan spoke of the continued existence of substandard work conditions and illegal practices of foreign manufacturers under the current system in which CSR efforts are voluntary. Kernaghan also testified that workers in China who made furniture products had suffered maimed hands and broken fingers because of unsafe working conditions and practices.

It is far from certain that CSR efforts will become mandatory under this bill, or future variants of it. In the free trade agreement context, efforts to forge a compromise are underway. On the table at a Feb. 14 hearing of the House Ways and Means Committee, for example: whether (as Democrats insist) tougher labor protections and enforcement mechanisms are necessary parts of future trade agreements with Central American countries. Also of concern: balancing the need for free trade with the danger of lost U.S. jobs.

In the meantime, here are some takeaways: corporations must seriously and regularly review their CSR programs, taking steps such as analyzing whether related supply-chain monitoring and information processing are functioning effectively. Given that CSR is not something to be taken lightly in the current climate, governments of countries seeking to enter into free trade agreements with the United States also have a strong incentive to proactively address CSR issues as a means of attracting and retaining business.

Retailers participating in joint-CSR initiatives must consider whether the information they share in those efforts could be used by a competitor to sue them. Finally, corporations should ensure that their concerns about compulsory CSR are presented in the legislative process. For example, motivating competitors to sue each other could result in decreased incentives to participate in joint-CSR initiatives and reduced transparency and disclosure of CSR efforts.

Should this occur, the losers would be the workers who might be at risk if protections are decreased, as well as the stakeholders, who stand to learn less about how companies address their CSR challenges. After all, why reveal one's program, "warts and all," if it provides a roadmap for your competitors to sue you?

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