

Right corporate wrongs – New laws for trade justice

Trade and multinational corporations

Two thirds of global trade is carried out by multinational companies.¹ Done well, trade has enormous potential benefits. It can empower individuals and entire communities by enabling them to earn an income, become self-reliant, and lift themselves out of poverty. But unfair trade rules and the poor behaviour of some multinational corporations mean that international trade has all too often caused harm to poor communities, workers and the environment.

The Corporate Responsibility (CORE) Coalition and the Trade Justice Movement (TJM) are campaigning for these international rules to be changed in favour of the poor but we also need the rules, which govern the way companies operate, to be amended, to drive better corporate behaviour and to hold them accountable for their actions when they cause harm. That is why we are now focusing our campaigning on the current Company Law Reform Bill before Parliament.

Why focus on Company Law?

Company Law sets out the basic legal requirements companies and their directors must comply with when making business decisions. It affects **all** UK companies in **all** their activities. The UK Government has been in the process of modernising company law since 1997 and the Company Law Reform Bill is going through Parliament from Nov 2005-July 2006.

CORE and TJM believe we have an historic opportunity to truly 'modernise' the law so that UK companies can be held responsible for their impact on stakeholders such as local communities, employees, suppliers and the environment.

Company Law: the situation now

In UK law, companies are regarded as "separate legal persons". They enjoy significant privileges such as limited liability and tax advantages. But they have very few responsibilities to balance their rights, especially in developing countries. We believe that the Government should use Company Law to balance corporate rights with corporate responsibility.

Maximise profit: it's the law!

Under current company law the primary legal duty of company directors is to maximise profits for shareholders i.e. drive down costs such as wages and prices paid to suppliers and increase profit margins. There is no *general* legal requirement on companies or their directors to consider the impact of their business activities on the environment, people or society. For many companies, there is no commercial or financial incentive to consider such issues, especially if such considerations may directly conflict with their legal obligation to promote the financial success of the company. Company law for the 21st century needs to create a framework, which encourages companies, to be both, profitable, as well as ethical and sustainable.

Go on then, sue me!

If a company breaks the law the penalty is financial - either a fine or payment of damages. This may not provide a sufficient deterrent, especially for large and/or wealthy companies. If the cost of complying with legal obligations exceeds the likely cost of any breach, the company may choose to ignore the law. Furthermore, the laws in many developing countries are often too weak, as their need for foreign investment may outweigh their need to consider strong protection for things like the environment. If individual directors are not legally required to consider environmental and social matters, and are not personally held accountable when they fail to do so, these issues may well be overlooked and ignored.

¹ UNCTAD 2001. "Foreign Direct Investment Soars, But Will Decline This Year: M&A boom to flatten out"
UNCTAD Press Releases September 18th 2001

Case studies: Profits before people

Tesco:

One of the 6 largest retailers in the world
Profits in 2004: £1.9 billion
30% share of the UK grocery retail market²

Tesco's dominant position and mission to deliver "unbeatable value" for shoppers has pushed prices down so far that thousands of workers in developing countries are being exploited and some UK farmers are on the brink of bankruptcy³. For example, women workers growing fruit on farms accredited by Tesco in South Africa are exposed to hazardous pesticides, suffer insecure employment with long hours, and are often paid below the minimum wage⁴.

Company Law: what we are calling for

CORE⁵ and TJM are campaigning for UK company law to be updated. We believe companies can be a force for good in poor countries. And we are not against companies making a profit. But we also believe it shouldn't be a matter of choice whether a company behaves ethically or not.

We're calling for the Company Law Reform Bill to be amended so directors must take into account the social and environmental impacts of their company's activities. In particular directors must;

- be aware of the social and environmental impacts of their decisions
- take into account the interests of 'stakeholders' (e.g. employees, the environment, suppliers and communities) when making decisions
- report on the social and environmental performance of their business decisions and take steps to reduce negative impacts

What the Government is proposing: CORE and TJM's response**Corporate Social Responsibility (CSR)**

The Government is proposing a continuation of the voluntary approach. Companies are encouraged but not legally required to take environmental and social considerations into account. When companies have the option to choose whether to adopt socially responsible practices or not, a substantial proportion will continue to put profits before people. And CSR can often just be another form of PR, which delivers no real change in practice on the ground.⁶

Regulation would ensure that all companies compete on a level playing field. Presently, those companies that take their social responsibilities seriously often face a competitive disadvantage when compared to businesses that simply act with regard to the financial bottom line.

Enlightened Shareholder Value (ESV)

As part of the Company Law Reform Bill the Government is proposing that the concerns of shareholders should still be the number one priority for directors but that it may sometimes be in shareholders' interests to have regard to social and environmental factors.

² <http://en.wikipedia.org/wiki/Tesco>

³ <http://www.tescopoly.org>

⁴ "Rotten Fruit: Tesco profits as women workers pay a high price" Action Aid, March 2005

⁵ The CORE campaign is a coalition of 130+ charities and campaigning organisations including ActionAid, Amnesty International UK, CAFOD, Christian Aid, Friends of the Earth, Oxfam, Save the Children, Traidcraft, War on Want and WWF UK.

⁶ "Behind the Mask: The real face of corporate social responsibility" Christian Aid, January 2004

ESV has major limitations:

- ESV relies on the false premise that companies must consider social and environmental issues in order to achieve financial success; in reality, the exact opposite is true for most companies.
- The additional duties to consider employees, environment, suppliers, communities and customers are subservient to the overriding duty to maximise profits.
- There is no requirement for directors to proactively inform themselves about their company's negative environmental or social impacts, to report on those impacts or to take any steps to minimise them.

The Bill as it stands is unlikely to lead to any change in corporate behaviour. The draft provisions are vague and do not legally require directors to take sufficient account of the social and environmental impact of their decisions. Directors may claim superficial compliance with the proposed duties even where scant or no regard has been paid to the interests of communities, employees or the environment.

Why current laws aren't enough

In addition to the existing UK Company Law, successive UK Governments have enacted some single-issue laws, which affect what companies can and can't do such as employment law, health and safety standards and environmental protection. In some cases the Government has recognised that for these laws to have any teeth, directors must be held personally liable if their company breaks the law. So asking directors to take responsibility for their company's actions is not new.

But:

- UK companies do not have to obey these laws when they operate overseas
- some developing countries do not have similar minimum standards in place and where they do, they are often poorly implemented
- there is no law requiring businesses to abide by internationally accepted human rights standards, such as the Universal Declaration of Human Rights.

All this means companies often have a free rein when they operate overseas.

What can supporters of CORE and TJM do?

- 1. Send a letter to your MP asking them to sign EDM 697 'Modernising Company Law', ensure they are clear that it is EDM 697 and not EDM 679, which many of them will have already signed.**
- 2. Ask your MP to raise CORE and TJM concerns with the Minister for Trade and Industry, Rt. Hon Alun Michael MP.**
- 3. Meet with your MP face to face in March, April or May this year. Look out for further information on the TJM site shortly.**