

Not my cup of tea

Is free trade undermining corporate social responsibility?

Public debate 09-11-2005

De Balie, Amsterdam

Introduction

On the 9th of November 2005 the Dutch MVO Platform (CSR Platform) organized a public debate about the future of CSR in trade and investment agreements. The tea industry in India served as an example to find answers to the following questions: what obligations do companies have referring to social and environmental conditions in the supply chain? Which policy adjustments should be made to centralize poverty reduction in trade and investment agreements and in CSR policy of the Dutch government? And which international agreements should be made about the responsibilities of companies? These issues were discussed on three levels:

- production level
- trade level
- consumer level

On each level two experts gave their recommendations for corporations and governments, panel, members of parliament and the audience could react to these recommendations.

Panel:

Richard van Rijssen, director of trade policy ministry of economic affairs
Shatadru Chattopadhyay, programme manager, Partners in Change
Brian MacAuley, head of Unilever European Tea Supply

Experts:

Sander van Bennekom, Novib (Oxfam Netherlands)
Myriam vander Stichele, SOMO (Centre for Research on Multinational Corporations)

Members of parliament:

Kris Douma (PvdA)
Corien Jonker (CDA)

Also special thanks to the contribution of:

Melanie Peters, Consumentenbond (Consumers Union)

Level 1: The production of tea

Production of tea in India, Shatadru Chattopadhyay:

India is one of the biggest producers as well as one of the largest consumers of tea. The tea industry is the second largest employer, employing mainly women. Tea is produced on estates and by smallholders. 80% of the tea comes from estates; the remaining 20% comes from small growers. In recent years the number of plantations has been decreasing, while the number of small growers is steadily growing.

The estates are subject to the Plantation Labour Act, according to which a plantation is any land used or intended to be used for growing of tea, coffee, rubber, cinchona or cardamom which measures 5 hectares or more and on which fifteen or more persons are employed or were employed on any day of

the preceding twelve months. Smallholdings don't get covered by legal acts, and workers therefore are not protected by any laws.

Since 1988 the tea industry is going through a crisis. Prices have been falling because supply exceeds demand. Because of this fall of prices many plantations in India had to shut down. Workers (mostly migrant workers) depend on the plantation for food, education, health, electricity, water etc. When the plantation closes they lose everything. Since the late 1990s, at least 60,000 workers have lost their jobs as tea prices have fallen and plantations have closed down. Tens of thousands of workers are threatened by further closures. On the plantations that remain open, workers are suffering wage cuts, tougher picking demands, increasing short-term, insecure contracts and appalling living and working conditions

Because of the crisis a restructuring process of India's tea industry is ongoing whereby the big companies buy more and more from small growers (mostly via auctions). Small growers can produce at a lower cost because they are not subject to social laws etc. subsequently working conditions are harsh and the quality of the tea is often less than that of the big plantations.

Comments and recommendations

Myriam vander Stichele & Sander van Bennekom:

- ❑ There's no balance between rights and obligations of investors in bilateral investment agreements:
 - BITs protect investors without distinction of their socio-economic and environmental record
 - BITs give investors rights to withdraw their investment freely
 - BITs do not require foreign investors to report about the social and environmental impact of their investment
- ❑ WTO increases competition for the lowest price worldwide. WTO members include countries with low labour and environmental standards such as China.
- ❑ WTO allows products to be traded without guarantees about social and environmental responsible production

Recommendations

- ❑ tea companies should invest in small farmers to raise social, environmental and quality standards, including guarantees to buy
- ❑ India-Dutch investment agreement should include mechanisms to improve social and environmental standards by investors ("first enable before you require")
- ❑ freedom in investment agreements to divest and transfer investment capital out of the country should be linked to the obligation to take social and environmental consequences of such divestments into account

Recommendation 1:

Brian MacAuley responds to the first recommendation by stating that Unilever is already investing in small growers (in Kenya) and that they have different programmes to promote sustainable production within the small grower sector. He says having in mind the overproduction of tea and the quality of tea, that it is very important to have some understanding from the producers' side. The producer needs to produce the right type of tea: the tea that the consumer wants.

The main concern is the price and the guarantee to buy. Prices are affected by global supply and demand scenarios. He adds that social responsibility is all the way down the supply chain and that Unilever thus feels responsible for the small growers in India.

Unilever is part of the Ethical Tea Partnership (ETP). The ETP wants to ensure that tea is ethically and socially responsibly sourced.

Shatadru Chattopadhyay: If the big companies don't engage with the small growers the quality of tea goes down because small growers pluck anything to survive. In India most big companies don't engage with small growers. To improve things companies and small growers have to work together.

Recommendation 2:

Richard van Rijssen thinks the Dutch government should not impose something on Indian legislation. According to him the Bilateral Investment Treaty is not the place for this kind of discussions, these things should better be discussed in economic development programmes." We should help developing countries to apply the standards that they do apply in a certain number of sectors to all the sectors. Private investment helps developing countries on the world market. We should work to more private investment. The problem is if you say to the company you can put your money there but when it's not profitable anymore you cannot go anywhere else, the drive to invest will dry up."

Myriam vander Stichele responds that it is not a matter of 'imposing' things; it's about a mechanism to discuss things. There are a lot of mechanisms to ask for compensation but when investors cause damage there's not much to be done.

Richard van Rijssen responds that there are local laws and of course the OECD guidelines that cover these issues.

Q: Will you make sure that Unilever adheres to the OECD Guidelines?

Richard van Rijssen: "I'm quite sure Unilever does because they know if they don't they will get a question from the NCP. Then we will investigate and come up with remark that this was improper behaviour under the OECD Guidelines for Multinational Enterprises."

"India is not a party to the OECD nor did India undersign the OECD Guidelines so the Dutch or British NCP will look into that", he adds.

Recommendation 3:

Richard van Rijssen: this 'imbalance' is not in the scope of such agreements claims after disinvestments are not unjustified.

Investment and disinvestments are on an equal level. They are both investments. If you have invested and you disinvest and you are in breach of social clauses of the OECD guidelines, that is an act linked to your investment and anyone can ask a question to the NCP. In BITs there's no such clause because local law applies. It is a sovereignty issue. Lobbying is fine but you should not use undue influence to change local law.

Q: With the restructuring process where companies stop investing in plantations and buy more from small farmers the OECD Guidelines become less and less applicable, isn't that a loss for CSR?

Kris Douma (PvdA): "yes that's a loss and we should look at measures to repair that there is a debate about the OECD Guidelines whether they only apply to investment or also to trade. I think that we have to arrange that they don't only apply to investment only but also further down the supply chain, subcontractors and trade. Secondly, it is also the responsibility of some of the home countries to make their home laws more inline with international agreements. India should meet Multinational Companies halfway and make their home laws better."

Q: Is it possible to look at the supply chain?

Richard van Rijssen: It is not only about pure investment. Investment is also any relation that is more than just buying. Dutch government is working to get that accepted by other countries in the OECD We should develop an international standard, which could be a company standard, just like the ISO standard.

Level 2: Trade

- ❑ On world level four companies dominate the tea trade: Unilever, Van Rees, James Finlay and Tetley/ Stansand
- ❑ 90 % of Western trade is in hands of seven multinationals

- ❑ Bulk of the globally produced tea is traded at auctions
- ❑ Each auction centre is dominated by a few (international) brokers
- ❑ Report by the Tea Board of India has shown that there are cartels in tea auctions involving the big players

The Auction system, Brian Macauley:

Unilever is moving away from the auction system to take out the middle man. Also, with the auction system tea was being produced without taking into account what the consumer wants. The auction system is a cost. Producers get a better price when they sell directly to the company. This way the company can talk to the producer about what type of tea he should produce. But Unilever will not completely stop with buying from auctions because the producers decide to sell to the auctions. "If we dropped out the auction system we would be accused of undermining the local infrastructure." Governments are often unwilling to let the auction system go because they then they will lose part control of the system.

Shatadry Chattopadhyay: There are good and bad things about auctions. Small growers often don't have another choice than selling to the auctions. Producers have to sell their leaves to a Bought Leaf Factory (BLF) within 6-7 hours after plucking. The BLF then sells it to the auction. Furthermore they (the small growers) rather have the auction as a back up because companies don't give them guarantees to buy. Direct buying is also influenced by the auction, because the benchmark price is set at the auction. So the small grower doesn't have the guarantee of a fair price by selling directly to a company.

Brian Macauley: In Argentina Unilever works with a 'cost plus' system. When the farmer guarantees Unilever the product that they want, Unilever will pay a 'cost plus' price (costprice + fee)

Q: should principles of fair pricing mechanisms be included in either mandatory OECD guidelines mechanisms or WTO?

Richard van Rijssen: we should be very reluctant by saying 'this is the fair price'. A fair price for one is not a fair price for another. We have seen that governments deciding what a fair price should be (for agricultural products) have driven farmers in other countries out of business.

Comments and recommendations

Myriam vander Stichele & Sander van Bennekom:

- ❑ WTO rules do not allow governments to discriminate between companies and products according to their social standards of production
- ❑ BITs do not allow governments to discriminate between investors who behave responsibly and those who don't.
- ❑ WTO negotiations are aiming at further lowering of tariffs; corporations are lobbying hard for it.
- ❑ OECD Guidelines on social and environmental responsibility are not applicable to trade and traded products: governments cannot have a policy of compulsory supply chain responsibility.

Recommendations:

- ❑ Dutch government should make OECD Guidelines be made applicable to trade and supply chain relations
- ❑ tea companies should extend their supply chain responsibility up to the production level, beyond the first tier supplier
- ❑ WTO negotiations should not reduce tea tariffs of developing countries because there are only a few international tea traders

Recommendation 1:

This recommendation was already discussed in the first session.

Recommendation 2:

Brian Macauley: the whole industry is our responsibility, from the producer to the consumer. At the moment far too much tea is being produced, Unilever is very concerned about this because the people who produce the overproduction suffer from it. Small producers do not have the means themselves to change production, it would be better if they could work in co operations.

Myriam vander Stichele: Overproduction has to do with the trade system; the big companies manipulate the price. You cannot speak of a free market when there are only four main players.

Recommendation 3:

Richard van Rijssen: we don't ask the poorest countries to reduce their tariffs. The problem is that emerging markets (like India) don't open their markets for their poorer neighbours. Developing countries will have the possibility to appoint special products, for which they can use special tariffs. India could make tea a special product.

Level 3: the consumer

Supermarkets:

- ❑ Supermarket power increases because they increasingly dominate outlet to consumers
- ❑ Supermarkets are introducing private labels and put pressure on whole chain to reduce prices
- ❑ The demand for high volumes with high standards at low prices makes it more difficult for small companies to supply supermarkets

Consumer:

- ❑ The customer has little information about the way tea is produced. Consumers do not know about the Ethical Tea Partnership (ETP)
- ❑ In case of labels, auditing is not clear nor multistakeholder based

Comments and Recommendations:

Myriam vander Stichele & Sander van Bennekom:

- ❑ WTO rules are not clear on what social and environmental labelling is allowed: this undermines labelling and governmental policy to introduce labels
- ❑ Tariffs are higher for packed tea than bulk tea
- ❑ WTO creates a free world market without necessary competition policy to prevent concentration of tea trade in hands of a few

Recommendations:

- ❑ WTO members should adopt an interpretation of WTO rules that allows governments to introduce and monitor fair social and environmental labelling.
- ❑ Unilever should involve stakeholders including NGOs in their CSR standard setting and be more transparent about its performance
- ❑ Governments are unreasonable to expect from consumers that they will make an ethical choice on the basis of the relatively low level of information currently provided.

Recommendation 1:

Richard van Rijssen offers the suggestion that companies start working together on labelling. According to him this should be a voluntary process, "when it's mandatory you can never check the implementation of it". "There should be worked toward a system that if you say that something is fair trade you can also prove that. If you require certain information you run the risk that countries run to the WTO and say that this a trade barrier."

Recommendation 2:

Brian Macauley: in a reaction to a question from the audience whether Unilever could produce a report about their performance on CSR issues he says this won't succeed in one or two years but Unilever is working on it. According to him Unilever should engage better with the whole supply chain.

Recommendation 3:

Brian Macauley: Consumers are ill informed about what fair tea is, educating consumers about what fair tea is is very important.

Overproduction is a big problem for Unilever something has to be done about it. The people who produce the overproduction suffer from it.

Richard van Rijssen: producers do not have the means to change production. We should promote cooperative ways of production.

Reactions from parliamentarians on the debate:

Corien Jonker, CDA: the main goal of corporations is to make a profit; they need this to ensure continuity and to invest in CSR. MNCs can't be made responsible for everything; they are not responsible for overproduction and local laws.

The problem about labelling by the WTO is that the WTO is a trade organisation which is not responsible for environmental and social policy. There are the ILO and the UNEP who are responsible for these issues. The WTO should work together with these institutions. She believes that government regulation should be restricted to a minimum level.

Transparency and consumer information should be improved.

Kris Douma, PvdA, after listening to the debate has three things to say:

- ❑ the scope of the OECD Guidelines should be broadened and they should be made more binding.
- ❑ Governments of developing countries should be asked to make their own laws more in line with international agreements
- ❑ WTO rules should be made more consistent with other agreements reached in international forums.