

Global Compliance Readiness – Law Firms

CSR And Sustainability: Local Impacts Of Global Supply Chains

Michael A. Levine

EPSTEIN BECKER & GREEN, P.C.

Every time you see the news, it seems that another foreign-made product has been recalled – from toothpaste to tires to toys with lead paint. Offshore production allows manufacturers to keep prices down and consumers happy. But ironically, lower costs may come at a high price. Brands and manufacturers face legal, human rights, environmental, and product safety problems. Risks are present at every level of the supply chain: from component suppliers to assemblers/producers (“manufacturers”), from the manufacturers’ customers, importers, retailers and distributors, to consumers, and to shareholders of companies. To address supply chain problems, companies have implemented supply-chain Corporate Social Responsibility and Sustainability (“CSR”) programs. Programs vary, but most incorporate legal, human rights, and environmental principles, describe compliance expectations and supplier compliance obligations, feature inspections to assess compliance, and some explain these efforts to stakeholders.

Recent developments in CSR in the United States have occurred in three main areas: in the private sector (voluntary efforts by companies), in the legislative sector, and in the environmental realm. Companies have privately and voluntarily made efforts to tackle their CSR problems, legislators have taken an interest in and become more active in the CSR arena, and increased attention has been focused on environmental concerns. Recently, companies are pushing for legislation to clarify the scope of their obligations, and possibly, to narrow the scope of liability. This article will summarize developments in the U.S. private, legislative, and environmental realms, and will briefly address CSR trends across the globe.

First, a brief synopsis of recent developments in the U.S. private sector: at this point, the burden of developing and executing CSR programs appears to rest on brands. Brands, licensors and private labelers can be held legally accountable, or face expensive, reputation damaging litigation, activist campaigns, and consumer boycotts. At risk is much of their market value, which may consist of intangibles, such as their brands, trademarks, and other intellectual property. Budgets can be drained by defending against such attacks. For example, a number of imported toys have recently

Michael A. Levine is a Member of the Firm of Epstein Becker & Green, P.C., and chairs the firm’s Corporate Social Responsibility/Sustainability practice (CSR). He is Vice-Chair of the ABA’s CSR Committee, and is a member of the I.S.O. 26000 U.S. TAG (a global CSR guidance initiative). EBG counsels clients on corporate compliance with labor, employment, human rights and product safety standards, and assists them with food, drug and medical device law.



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been found to have lead paint, and have been recalled. Accordingly, brands such as Disney and Mattel have recently announced that they will conduct widespread product testing. Mattel’s C.E.O. went so far as to state that every single batch of paint used on its toys will be tested. And China’s government has just announced a ban on the use of lead paint on toys.

Some feel that voluntary CSR programs and existing consumer protection laws have neither motivated necessary corporate behavior nor adequately protected consumers. So, in response to the recent spate of recalls, media reports, and consumer panic, legislators have jumped into the fray. Federal lawmakers have submitted bills to increase the liability of importers of unsafe products, and expand the roles and responsibilities of the Consumer Product Safety Commission (“CPSC”), the agency charged with protecting the public against unreasonable health and safety risks from the consumer products under its jurisdiction. Toy manufacturers, among others, are reportedly lobbying for legislation that would clearly define ties, and preempt an array of differing and possibly more burdensome state regulations. Consumer advocates fear corporate lobbying that may result in the adoption of minimal standards, and insufficient governmental enforcement capacity. Brands, licensors, and private labelers of manufactured products have significant interests at stake. In the event of negative media reports, or recalls, they will face the music. It may be difficult for them to sue their suppliers as they may not be subject to jurisdiction. And any judgments obtained against them may be unenforceable.

In a related vein, several recently introduced/pending bills in the Senate relate to product safety and import issues. These include:

S. 1776, introduced by U.S. Senators Richard Durbin and Sherrod Brown, “would amend the Federal Food, Drug, and Cosmetic Act to establish a user fee program to ensure food safety, and for other purposes.” The Bill contrasts the dramatic increases in “... the value of food imports from 2003 to the present...” with a decrease “...from 2003 to 2007” of “... the number of full time ...

Food and Drug Administration employees conducting inspections ...” S. 1776 also directs that research be conducted on testing techniques for food safety inspections of imported food. Finally, S. 1776 would establish a food import certification system under which foreign governments or foreign food establishments would have to apply for certification that imported food “... has met standards for consumer protection that are at least equivalent to standards applicable to food produced in the United States.” Onsite inspections of such firms would be a prerequisite of such certification; consumer advocates are concerned that private, not government, enforcement may be inadequate.

S. 1833, introduced by Senators Durbin and Bill Nelson, seeks to “... amend the Consumer Product Safety Act to require third-party verification of compliance [testing by independent, third-party inspectors] of children’s products with consumer product safety standards promulgated by the Consumer Product Safety Commission ...” In order to prevent “the introduction of dangerous toys and other products used by children” third-party testing firms would have to test them for, and certify their compliance with, “consumer product safety standards and rules” before they could be imported. S. 1833 would apply to “[e]very manufacturer of a children’s product (and the private labeler of such product if it bears a private label) ... subject to a consumer product safety standard under this Act or a rule under any other Act administered by the Commission” (emphasis added). Significantly, too, the bill would require Third-Party support for compliance certifications: “In the case of any children’s product, any test or testing program on the basis of which a certificate is issued ... (as noted above), shall be conducted by a nongovernmental independent third party qualified to perform such tests or testing programs.” Finally, the Bill defines “Independent Third Party” in part, as an “... independent testing entity ... physically separate from any manufacturer or private labeler whose product will be tested by such entity, and is not owned, managed, controlled, or directed by such manufacturer or private labeler.”

Two other related bills are PRISM, the “Product Recall, Information, and Safety Modernization” Act, and S. 1847 (a bill “to reauthorize the Consumer Product Safety Act”) (also by Senators Durbin and Nelson). PRISM would change recall procedures; raise civil penalties on firms that failed to report hazardous products; and require disclosure by retailers/distributors of related product suppliers. S. 1847 would increase CPSC funding; repeal a quorum requirement for CPSC action; and decrease firms’ time to respond to CPSC information releases.

As we have seen, there are business reasons for companies to address CSR concerns. But, how far should they go? Does their responsibility end at the four walls of their corporate headquarters? Does it extend to their supply chain’s last link, and the environment in which that

is located? Increased pressure from consumers, lawmakers, the media, and others has resulted in increased internal environmentally friendly activity. That is, some corporations have implemented “green” (environmental) initiatives to make their corporate operations more environmentally friendly. More and more companies may examine the global environmental impacts of their supply chains as information becomes public and media scrutiny intensifies. For example, an article in an internationally recognized financial publication recently featured a front page story on an environmental compliance issue in the textile sector concerning a mill in China that polluted local waters. The article noted that firms engaging in voluntary CSR programs have had to make choices about the scope of the supply chain they encompass, and that some stakeholders believe that the scope must be expanded to include non-production supply chain links in order to address their local environmental impacts.

In the article described above, it was argued that the risks are not just to a company’s good will; brands/importers, and ultimately consumers, may soon have to pay for environmental savings they allegedly realize from costs borne by production locales: brands may have to increase inspections and face enhanced local legal enforcement activity. Additionally, voluntary monitoring of brands’ supply-chains for environmental compliance with local (foreign) laws may become as important as monitoring for compliance with laws concerning worker treatment; workplace safety; the third-party suppliers’ (the production workers’ employers) compliance with legal responsibilities as employers; and “green,” or sustainability, programs (such as energy saving, recycling, and other initiatives) that occur within the corporations themselves.

Clearly, CSR is an important issue for U.S. producers and brands, but what about for others across the globe? Several countries, such as Indonesia, Thailand, and the Philippines, have recently enacted laws requiring corporations in certain sectors, or in certain circumstances, to engage in CSR, or corporate philanthropy. Here in the U.S., Senators Byron Dorgan and Lindsey Graham, have introduced S. 367, titled the “Decent Working Conditions and Fair Competition Act.” In substance, S. 367 would enable a retailer to sue a competitor that sold “sweatshop” merchandise, with a potential award of \$10,000 for each violation of the Act, plus attorney’s fees.

In short, CSR is a local, national, and global issue. What happens “over there” can hit a company where it lives and does business. Knowledge of emerging supply chain risks, the turbulent and changing domestic and international legal and legislative climates, and how to incorporate these factors into effective CSR and product safety inspection programs, enables companies to compete successfully, and hopefully, to sustain their businesses.

Please email the author at mlevine@ebglaw.com with questions about this article.