



THE UNIVERSITY *of* EDINBURGH

Edinburgh Research Explorer

Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? Clarifications, Exceptions and Implications

Citation for published version:

Amaeshi, K, Nnodim, P & Osuji, O 2008, 'Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? Clarifications, Exceptions and Implications' *Journal of Business Ethics*, vol 81, no. 1, pp. 223-234. DOI: 10.1007/s10551-007-9490-5

Digital Object Identifier (DOI):

[10.1007/s10551-007-9490-5](https://doi.org/10.1007/s10551-007-9490-5)

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Peer reviewed version

Published In:

Journal of Business Ethics

Publisher Rights Statement:

© Amaeshi, K., Osuji, O.K., & Nnodim, P. (2008). *Journal of Business Ethics* 81(1), 223-234. DOI:10.1007/s10551-007-9490-5. The final publication is available at <http://link.springer.com/article/10.1007%2Fs10551-007-9490-5#>

General rights

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact openaccess@ed.ac.uk providing details, and we will remove access to the work immediately and investigate your claim.



Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? *Clarifications, exceptions and implications*

Kenneth Amaeshi¹

Onyeka Kingsley Osuji²

Paul Nnodim³

All correspondence to:

Kenneth Amaeshi
Warwick Business School
The University of Warwick
Coventry, CV4 7AL
United Kingdom

Email: kenneth.amaeshi@wbs.ac.uk

¹ Research Fellow, Warwick Business School, The University of Warwick, Coventry, United Kingdom

² Doctoral Student, School of Law, The University of Manchester, United Kingdom, and Barrister and Solicitor (Nigeria); Solicitor (England and Wales); Email: onyeka.osuji@postgrad.manchester.ac.uk; kojosuji@gmail.com.

³ Assistant Professor, Massachusetts College of Liberal Arts, USA

Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? *Clarifications, exceptions and implications*

Kenneth Amaeshi (Warwick Business School, United Kingdom),

Onyeka Kingsley Osuji (School of Law, The University of Manchester, United Kingdom)

Paul Nnodim (Massachusetts College of Liberal Arts, USA)

Abstract

Corporate social responsibility (CSR) is increasingly becoming a popular business concept in developed economies. As typical of other business concepts, it is on its way to globalization through practices and structures of the globalized capitalist world order, typified in Multinational Corporations (MNCs). However, CSR often sits uncomfortably in this capitalist world order, as MNCs are often challenged by the global reach of their supply chains and the possible irresponsible practices inherent along these chains. The possibility of irresponsible practices puts global firms under pressure to protect their brands even if it means assuming responsibilities for the practices of their suppliers. Pressure groups understand this burden on firms and try to take advantage of the situation. This paper seeks to challenge the often taken-for-granted-assumption that firms should be accountable for the practices of their suppliers by espousing the moral (and sometimes legal) underpinnings of the concept of responsibility. Except where corporate control and or corporate grouping exist, it identifies the use of power as a critical factor to be considered in allocating responsibility in firm-supplier relationship; and suggests that the more powerful in this relationship has a responsibility to exert some moral influence on the weaker party. The paper highlights the use of code of conducts, corporate culture, anti-pressure group campaigns, personnel training and value reorientation as possible sources of wielding positive moral influence along supply chains.

Key words: Responsibility, firm-supplier relationship, purchasing ethics, responsible supply chain management, corporate control and corporate group

Introduction

The stakeholder theory of corporate social responsibility (CSR) emphasises a much broader set of social responsibilities for business. Stakeholders, as used in this theory, refer to those individuals or groups who may affect or be affected by the organisation (Freeman, 1984 and 1994; Clarkson, 1995). They include a wide variety of interests, and as suggested by Mullins (2002), may be grouped under six main headings: employees, shareholders, consumers, government, community and the environment, as well as groups such as suppliers, trade unions, business associates and even competitors. In this regard, CSR can be broadly defined as an organisation's commitment to operate in an economically and environmentally sustainable manner while recognising the interests of its stakeholders¹.

In line with this broader definition of CSR, global brands like Nike, GAP, Adidas and McDonalds are often under intense pressure from groups working for responsible supply chain management. Much of this pressure is channelled through the supply chain, since the pressure groups sometimes find it difficult to reach the global brands directly. To this end, they rely on indirect tactics such as targeting the sourcing activities of these brands and their seeming exploitation of cheap labour conditions in developing countries. These attacks, which have been quite successful in recent times, hack on the reputation of these firms (e.g. Nike's case²). They engender negative public sentiments and invariably resentments towards the global brands following "irresponsible" behaviours along their supply chain. These negative perceptions of firms persist, irrespective of the locus of the "guilty" suppliers on the supply chain spectrum of the primary purchasing firm. This image tends to put firms under pressure to bear indefinite responsibilities for their wide and long supplier networks. Firms, therefore, do everything possible to protect their brands – including accounting for the seeming irresponsible behaviours of their suppliers, as shown in the current wave of social reports across industries.

There seems to be widespread agreement on some form of corporate responsibility for social issues. Nevertheless, the critical question is how to define or limit the scope of such responsibility within the context of the operations of MNCs. The enormity of corporate multinational power makes this an urgent and important task. The general conception of corporate social responsibility is extra-legal (McWilliams and Siegel 2001). Apart from corporate social responsibility reports, firms including MNCs now appear to adhere to one

¹ http://www.cbsr.bc.ca/what_is_csr/index.cfm visited on April 8, 2003

² Nike and its subcontractors are often accused of inhumane labour and business practices in Asian factories where Nike products are made. See: Kasky v. Nike and its Implications for CSR http://www.csrpolicies.org/CSRResources/CSRBriefs/csrbriefs_nike.html visited May 26, 2004

code of conduct or the other. These codes are usually voluntary initiatives by the firms, either alone or in association with other firms in the same or similar industry. Sometimes, other participants such as pressure groups and civil societies make input to the contents of such codes. However, most corporate codes of conduct have not properly addressed the issue of defining the limit of corporate responsibility for the activities of another corporation. For instance, The Apparel Industry Code of Conduct for US-based clothing and accessories corporations imposes a “duty” on such enterprises to ensure compliance with the code by their contractors, sub-contractors, suppliers and licensees.³ This is clearly a nebulous obligation. Does this “duty” extend to all the levels and actors in the supply chain, irrespective of proximity or remoteness from the firm or MNC? Can the “duty” be applied to a situation where the MNC is not even in a position to control or influence a “member” of the supply chain? Is unlimited exposure to social responsibility a good idea for the business environment? How does social responsibility fit in with the concepts of corporate legal personality and independent existence of corporations? Is reconciliation possible?

One of the negative consequences of this pressure approach towards CSR adopted by pressure groups is the tendency to (inadvertently) promote the false notion that CSR practice is restricted only to global big firms and brands. Since most of the firms along the supply chains are likely to be SMEs, this approach also exhibits the tendency of giving an inaccurate impression that SMEs are somehow shielded from engaging in CSR practices, which runs against the ethos of the CSR movement. In the contrary, there is a rising call for SMEs to participate in both CSR discourse and practice as well (Petts, 1998; Spence, 1999; Sarbutts, 2003). This is where and why we think that arguing for and highlighting the limits of CSR practices along supply chains of global brands could be a way to curtail the excesses of pressure groups and their antics, as well as extend the reach of the call for SMEs to be equally socially responsible.

This paper, therefore, examines if firms should be responsible for the practices of their suppliers, the extent of this responsibility and how they could effectively translate such responsibilities, if any, into practice. The paper starts by situating firm-supplier relationships within the broader context of firm buying behaviour; and from that context evaluates the responsibilities of firms as ‘customers’ to their suppliers – often times, this point that purchasing firms are customers is ignored in debates around responsible supply chain management. The paper does not focus on such ethical issues in purchasing as: deception, bribery, price rigging, unsafe products and public safety (Wood, 1996:185) since these are

³ Code of Labour Practices for the Apparel Industry including Footwear, available at: <http://www.cleanclothes.org/codes/ccccode.htm> [visited August 8, 2006]

likely to arise from the internal environment of the purchasing firm and not necessarily from its relationship with the suppliers. In addition, it does not consider the intricacies of the economic dynamics characteristic of firm-supplier relationships. It focuses solely on espousing the moral (and sometimes legal) connotations of the concept of responsibility and what it means to be held responsible while relating these to firm-supplier relationships. In the main, the paper attempts to set limits to responsibility in a supplier relationship by introducing the concepts of corporate control and corporate grouping as critical factors.

Responsibility as accountability: meaning, clarifications and exceptions

From ancient times, philosophers have struggled to unravel the wealth of meanings embedded in the term 'responsibility' or the expression 'to be held responsible'. The term and the expression are both associated with the concept of morality. This is not surprising, since the claim of morally responsible agents is one of the distinguishing characteristics of human rationality (Eshleman, 2002). A comprehensive account of the philosophy of responsibility, thus, encapsulates nuances of moral responsibility, the status of a moral agent and the conditions under which the actions of a moral agent may be considered responsible or irresponsible.

In the history of western philosophy, substantive reflections on the notion of moral responsibility date back to the ancient Greek philosophers, especially Aristotle. In *Nicomachean Ethics* (BKIII), Aristotle assumes the criteria for moral agency to include the capacity for rational choice and deliberation. A responsible act is a voluntary act. Therefore, an agent is praiseworthy or blameworthy depending on his or her voluntary acts and disposition of character traits. For an act to qualify as a voluntary act, the agent must be both in full control of his or her action and must be rationally cognizant of the consequences of his or her action. Involuntary acts are thus those acts for which the agent should not be held responsible, either because they are executed out of ignorance, external coercion or to avoid a greater evil (Cahn 2002). However, contemporary western moral philosophy embodies varying and often conflicting notions of moral responsibility. While the neo-Kantian variants are deontological in nature, utilitarian offshoots of the ethics of moral responsibility are often consequentialist.

The Kantian idea of moral responsibility also stems from the conception of person as a moral agent. A moral agent or person is not only rational or capable of rational choice, but is one

whose action is informed by a sense of duty. The sense of duty is codified in universal law principles, which Kant referred to as categorical imperatives. Therefore, a responsible or right action is not necessarily one that maximizes utility, but one that follows moral principles, which are capable of becoming universal moral laws (Cahn 2002:752). Hence, for neo-Kantians and some other deontologists a responsible or good moral agent ought to act in accordance with good moral principles, irrespective of the consequences of such actions. The assumption here is that good moral principles lead to actions that invariably bring about good consequences. For consequentialists, however, a good or responsible action is one that brings about good consequences or maximizes utility (in the case of utilitarianism). Hence, the morality of an act is not dependent on moral principles prior to the action, but on the actual outcome of a particular act.

In another sense, to be responsible may involve some sort of cause and effect relationship (e.g. gravity responsible for the fall of objects in space) or carry some sort of duties and obligations which could be legal and moral (e.g. an *employed* school teacher's responsibility to teach). Since "...to be morally [and legally] responsible for something, say an action, is to be worthy of a particular kind of reaction – praise, blame [punishment] or something akin to these – for having performed it" (Eshleman, 2002:1), the latter applies more to our arguments in this paper than the former. Dwelling on the meaning of responsibility, the philosopher John Lucas (1993) wrote:

Etymologically, to be responsible is to be answerable—it comes from the Latin *respondeo*, I answer, or the French *répondre*, as in RSVP. I can equally well say that I am answerable for an action or accountable for it. And if I am to answer, I must answer a question; the question is 'Why did you do it?' and in answering that question, I give an account [...] of my action. So the central core of the concept of responsibility is that I can be asked the question 'Why did you do it?' and be obliged to give an answer.

In a similar effort, Craig (2000) defines 'responsibility' as follows:

To be responsible for something is to be answerable for it. We have prospective responsibilities, things it is up to us to attend to: these may attach to particular roles (the responsibilities of, for instance, parents or doctors), or the responsibilities we have as moral agents, or as human beings. We have retrospective responsibilities, for what we have done or failed to do, for the effects of our actions or omissions. Such responsibilities are often (but not always) moral or legal responsibilities.

However, can one be answerable for an action that lies beyond one's control? What if one's psychological and physical conditions do not permit one to give an account of one's actions, who should be accountable in this case? These questions raise the fundamental challenges

of fatalism and determinism in relation to the concept of “responsibility” and are beyond the scope of this paper.

Responsibility in the sense used in this paper is closely related to the concept of accountability. Drawing from the works of other academics (e.g. Gray et al. 1987; Williams 1987; Roberts and Scapens, 1985), Swift (2001:17) characterizes accountability in both broad and narrow sense. Broadly speaking, he describes accountability as "... the requirement or duty to provide an account or justification for one's actions to whomever one is answerable". In a narrow sense, Swift talks of accountability as "... being pertinent to contractual arrangements only,... where accountability is not contractually bound there can be no act of accountability". Furthermore, borrowing from a later work of Gray et al (1997), Swift notes that "... essentially accountability is about the provision of information between two parties where the one is accountable, explains or justifies actions to the one to whom the account is owed". This form of accountability underlies principal-agent relationship, which is central to the firm as an economic and legal entity. Despite the presence of semantic variations within the notion of accountability, the *duty to account* appears to convey a central meaning. The *duty to account* connotes institution of rights and obligations and as such, should be able to hurt if violated (Owen et al., 2000).

In the same line of thought, Gray et al. (1988) explain that a firm's accountability to the wider society is inherent in a social contract between the society and the business group. The appropriation of the social contract theory here stems from the hypothesis that business derives its existence from the society. Although traditional social contract theories are hypothetical constructs, nevertheless, they are normative reference points in the justification of the legal use of coercive state or societal power on individual citizens and corporations. This idea of accountability inherent in the social contract is realized when market forces punish or reward corporate behaviour (Swift, 2001; Donaldson and Preston, 1995). In this regard, Korten (2004) argues that the market by necessity needs information to be effective. Hence, corporations have the moral duty to produce necessary and complete information needed by the market to mete out punishment or dispense reward. This will constitute accountability to the market, which cannot be achieved through self-regulation.

The increasing demand for accountability from firms also extends to the activities within their supply chain (Mamic, 2005). This extension of responsibility, in itself, is questionable: Is the supply chain of a firm *intrinsically* part of the firm? If it is, what becomes of the independence of the individual firms operating within a primary firm's supply chain? If it is not, is it appropriate to expect firms to account for actions outside their legal boundaries, thereby

exposing them to “unlimited” responsibility for their supply chains? Why should one firm bear responsibilities for the practices of another firm? Are ‘consumers’ responsible for the practices of the firms (e.g. supermarkets) they buy from? Are suppliers (in our case the supermarkets) not pressured to be responsible and ethical to the consumers at the micro-level (individual buying behaviour)? These questions assume more challenging postures, especially in cases where relationships between firms and the suppliers are fundamentally economic and at arms length (Sako, 1992). As such, we see the apparent ascription of unlimited responsibility to account for suppliers’ practices on the purchasing firms as inappropriate because it undermines corporate autonomy and independence.

In most legal systems, a corporation is recognised as a legal person. The principle of independent legal existence of a corporation recognises that a corporation is distinct from its members or shareholders. A corporation is regarded as neither an arm nor an extension of its members or shareholders. In *Dartmouth College v Woodward* a corporation was described as “an artificial being, invisible, intangible, and existing only in contemplation of law”. Corporate personality is now an established principle in most legal systems. Various decisions of the United States Supreme Court, for instance, *Santa Clara County v Southern P.R. Co* (1886), *First National Bank v Belotti* (1978), consistently confirmed the legal personality of corporations. Furthermore, the twin principles of corporate personality and separate legal existence of a corporation are the “...cornerstone of English company law [and] a fundamental rule” (McGee et al., 2005:99). An important component of these twin principles is the principle of limited liability under which the liability of the shareholders or members of a corporation is limited only to the value of their shareholding (*Salomon v Salomon & Co.*: 1897). In other words, it could be argued that the supply chain is not an extension of the firm and as such, the purchasing firm should not bear any responsibilities for the practices of its suppliers. Suppliers, as firms, should bear responsibility for their actions. However, these are the general legal rules. In practice, there are exceptions to the general rules - for example, where there are some sorts of integrations – i.e. vertical or horizontal and even network – between the purchasing and supplying firms. To substantiate our argument for these exceptions, we draw insights from two related concepts in law – (a) control as limitation of corporate liability and (b) corporate group. These two concepts are, practically, exceptions to the twin principles of corporate legal personality and separate existence of a corporation.

Control

Relevant statutes usually contain their definitions of control (e.g. section 231 of the UK Employment Rights Act, 1996). Corporate control may exist in various forms. For example, where the management of one corporation can be appointed or removed by the management of another corporation, control appears to be in existence. In a situation, where a corporation has no assets at all or has no assets within its area of operation and relies on the assets of the other corporation to do business, or where a corporation engaged in a “risky” venture sells its assets to a corporation in the same group (as happened in *Patrick Case*: Spender, 2000: 38-43), corporate control may exist here too. The Australian *Patrick Case* illustrates this point. In that case, four members of a stevedoring group sold their business and other assets to another member of the group. The only asset left in each of the selling companies was a contract to supply labour to an upstream company in the same group. The upstream company later terminated this contract for supply of labour. The termination of that contract directly resulted in the insolvency of the four companies.

However, prior to the group restructuring, each member of the group employed its own workers, owned and operated its own stevedoring business. It was later pointed out that the main reason for the restructuring exercise was to “facilitate the termination of the employees’ employment” (*Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia* (1998): 673; Spender, 2000:40). One other important result of the restructuring was that that same individual became the sole director of each of the four labour-supply companies. The applicable Australian Corporation Law, s.221 permitted sole directorship (Spender, 2000: 40). The overall effect was that “[a]lthough the legal entities who contracted with the employees did not change, the nature of the business and the viability of those companies had changed fundamentally” (Spender, 2000: 41). The workers’ union instituted an action against the corporate group (*Maritime Union of Australia v Patrick Stevedores Operations No. 1 Pty Ltd* (1998); *Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia* (1998)). An interlocutory injunction was granted against the members of the corporate group by both the court of first instance and the appellate court compelling the companies to treat the four labour-supply companies as their sole suppliers of labour. The companies were also required to treat the labour supply agreements as subsisting and valid (Spender, 2000: 55). However, the litigation ended at the interlocutory stage when the parties reached settlement. The terms of settlement included the winding-up of the four labour-supply companies; the transfer of the workers’ employment to the group holding company; and the termination of the labour supply contracts (Spender: 55). In England today, it would not be possible for the kind of restructuring carried out by the Patrick group to dispense with the services of the employees of the four associated companies. The introduction of the concept of “associated employer” by section 231 of the Employment

Rights Act 1996 prevents such actions (Milman, 1999: 237). According to that statutory provision, two employers are associated if “one is a company of which the other (directly or indirectly) has control, or both are companies of which a third person (directly or indirectly) has control”. This statutory provision is a clear case of disregard of the principle of independent existence of corporations.

Examples of such control may also exist where the businesses belong to the same corporate group or there is a parent-subsidary relationship. In *Bowoto v Chevron* the claimants sued Chevron (now ChevronTexaco) for human rights abuses and for issuing false and misleading information on its practices in Nigeria under a military regime. In March 2004, the US (federal) District Court in San Francisco, California, rejected Chevron’s arguments that (1) Nigeria is the proper forum for the trial of the case, (2) the alleged human rights abuses did not violate international law, and (3) Chevron could not be held responsible for the actions of its Nigerian subsidiary. In effect, in *Bowoto v Chevron* the court ruled that separate personality of a subsidiary corporation does not constitute a bar to holding a corporation accountable for the actions of their overseas subsidiaries. The relevant control may also exist where, as in *Cape Industries v Adams (1990)*, the corporation knew of the “risks” but took steps to establish an asset-free undertaking for the “risky” business. In 1968, Cape Industries closed its main UK factory as a result of the concerns for and the prevalence of asbestos related disease, although its South African operations continued in such unsafe environment until 1979 (Meeran, 2000: 263). The relevant South African and Namibian labour compensation laws provided only “a system of paltry compensation” and also precluded “claims against the employer” (Meeran, 2000: 252).

Limitation of corporate liability is an issue of “compelling theoretical interest and practical importance” (Hohfeld, 1909: 320). The exception to our general proposition of limiting responsibility to direct suppliers is where there is evidence of actual control by one corporation over another in the supply-chain irrespective of their positions on the chain. Control may mean either “checking and supervising” or “determining-the-outcome” (Vagts, 1980: 324). The first is control at the lower level while the second is a higher-level control. In this paper, we adopt the higher level of control as the relevant factor. First, the level of “determining-the-outcome” requires less inquiry of details than “checking” or “supervising”. Secondly, the usual relationship of firms is at that higher level, although it is possible for a firm to be involved in the details of the operations of another firm.

“Determining-the-outcome” is connected to the setting and monitoring of a general policy framework. Being in a position to set or monitor such policies is as good as actually setting

or monitoring them. Where this control exists, the indication is that the relationship between the corporations is not a normal “arms-length” business relationship. Using control as the relevant factor for imposing responsibility has the distinct advantage of ensuring that a corporation does not avoid responsibility where such responsibility should be assumed. Otherwise, ‘careful’ supply-chain organisation may be capable of completely defeating the aims of CSR. Nothing prevents a corporation from establishing a supply-chain relationship, which ensures that the “risky” venture is carried out by an enterprise even lower than the direct supplier.

Corporate Groups

Corporations are generally permitted to own shares in other corporations. Corporate groups exist as a result of the ownership of shares by corporations in other corporations. The allocation of responsibility is one of the most controversial aspects of the law relating to corporate groups (Milma, 1999: 224). There is a growing trend towards a departure from the strict application of the principles of corporate personality and separate corporate existence in the context of corporate groups. This approach appears to have influenced some English statutory provisions on corporate groups (*Littlewoods Mail Order Stores v Inland Revenue Commissioners* (1969): 1241) such as consolidated accounts (Companies Act, 1985, s.227), disclosure requirements (Companies Act, 1985, ss.231, 232) and business report (Companies Act 1985 s.234 (as amended by Part 1 of Company (Audit Investigations and Community Enterprise) Act 2004)). Why should this legal approach not be extended to corporate social responsibility?

We advocate a single enterprise view of corporate groups. Single enterprise is an approach that treats the members of a corporate group as the same corporation. This approach reflects the actual and commercial reality of and in the operations of corporate groups. A suggestion has rightly been made for responsibility where “there is sufficient involvement in, control over and knowledge of the subsidiary operations” (Meeran, 2000: 261). It appears that the trend is for corporations to be willing to argue in favour of separate companies as constituting a single economic unit whenever this may confer a perceived benefit, including right of action (an argument that was rejected by the court in *The Albazero* (1977)), profit or tax or other fiscal incentives (for instance, in *ICI v Colmer* (1998) and *Bosal Holding BV* (2003)). However, there appears to be a change in corporate attitude when social responsibility is in issue. For instance, in *Bhopal Case* (1986, 1987), the defendant parent company disputed the argument of both the Indian government and the claimants that the

parent was liable for the environmental disaster in issue regardless of the apparent legal separation between the parent and its Indian subsidiary.

It is important to recognize corporate groups as “a form of business organisation *sui generis*” (Milman, 2000: 219). One should not be oblivious of the fact that some corporations are “mere instrumentalities” (*Amoco Cadiz* (1984): 338) of other enterprises. There is no need to insist on the separate legal existence of the individual corporations in a corporate group. Such insistence on independent existence of the individual companies is certainly “not a true reflection of the economic reality [since] very often such groups are so intertwined with each other’s affairs as to amount to little more than departments of one organisation or entity” (McGee, Williams and Scanlan, 2005: 105). Artificialities are encouraged where the legal principle of separate existence is applied to corporate groups. For example, it is definitely not “the most honest way” of doing business where there is “the creation or purchase of a subsidiary with minimal liability which will operate with the parent’s funds and on the parent’s directions but not expose the parent to liability” (*Atlas Maritime Co. v Avalon Maritime Ltd* (No 1), (1991): 779). In most cases of parent-subsidiary relationship, evidence shows that “subsidiaries are bound hand and foot to the parent company and must do just what the parent company says” (*DHN Food Distributors Ltd v London Borough of Tower Hamlets*, (1976): 860). The fact is that most historical accounts, (for instance, Hovekamp, 1991: 49-54) of the principle of separate existence of corporations strongly indicate that the principle was designed for the protection and encouragement of the individual shareholder, and not the corporate shareholder. In our view, therefore, firms in a dominant or controlling position in a corporate group should also be responsible for the activities of other firms in the group.

Power and Influence

A further probing into the different scenarios presented above resonate with what comes across as a common assumption that the more powerful in an economic relationship should bear the responsibilities of the weaker party (Reed, 1999). On one hand, firms are readily perceived as more powerful than their suppliers, and consequently expected to assume responsibility for the practices of their suppliers. On the other hand, it is very plausible to conjecture that firms may also exert undue pressures on their suppliers thereby forcing them to conform to their low cost targets at the expense of responsible business practices. As such, a firm’s exercise of power over the supplier may have either a deontological or consequentialist outlook. Firms that enforce principles of responsible business practice from

the standpoint of moral duty do so from a deontological perspective, while those that implement such principles in order to maximize profit do so from a consequentialist viewpoint. Using the example of the suppliers of UK clothing retailers, Jones and Pollitt (1998) show that an opportunistic abuse of power by retailers can lead to reductions in quality, lack of investment, lack of innovation, and even job losses and industry decline (Crane and Matten, 2004).

Considering the enormity of corporate multinational power, encouraging responsible practices within their business networks would still count as a moral minimum. Since firms (especially multinational corporations) wield a lot of power – given the vast resources available at their disposal, it is morally justifiable and more sensible to expect them to use their powers in a way that encourages suppliers to adhere to some reasonable standards of responsible practices. However, the *responsible use of power* applies to both the firm and the supplier given their relative power positions in the market (i.e. the powerful supplier – monopoly; and the powerful buyer - monopsony). But this influence, we suggest, should be limited to the interface between the firms and their immediate suppliers. Our primary assumption here is that through ripple effects, the influence of the powerful firm will filter down the entire spectrum of the supply chain.

Translating responsibility in supply chains into practice: some managerial suggestions

The translation of responsibility in supply chains into practice will involve some sort of change management – as the *status quo* will be altered. Covey (1992) in his seminal book: *The 7 Habits of Highly Effective People* suggests that it is essential to make the distinction between circle of control and circle of influence in any change management initiative. The circle of control relates to things we have complete control over, while circle of influence relates to things we can seek to influence, but do not have total control over. Following our position that purchasing firms should not bear responsibilities for the actions of the suppliers and that firms in position of power should seek to positively influence the practices of their suppliers, it implies that firms can only act within their circle of influence while dealing with their suppliers. Some of the possible ways of exerting this influence may include amongst

others: corporate codes of conduct/standards, corporate culture, anti-pressure group campaigns⁴ and personnel development.

The **codes of conduct/ standards** will state in clear terms the value orientation of the purchasing firm and its expectations from the suppliers. This can be mapped out in consultation with the direct suppliers or as an agreement between firms and new suppliers at the point of engagement. This form of consultation should be free from any form of stakeholder imperialism - a relationship whereby the stakeholders are only accorded instrumental values, solely for economic gains. Stakeholder imperialism does not give a voice to stakeholders and is characterised by unilateral communication (Crane and Livesey, 2003) and unequal balance of power. It is not genuine; it is selfish and firms involve in it because "... it makes good business sense ... (and)... helps companies to mitigate risk, protect corporate brand, and gain competitive advantage... (Deloitte Touche Tohmatsu, 2002:2 cited in Brown and Fraser, 2004). Rather the consultation should be characterised by *genuine intentions*, dialogue, engagement, trust and fairness (Phillips, 1997; Swift, 2001). Firms engaging in this form of consultation understand that stakeholder-ship entails some form of intrinsic value. They enter into such a relationship for some ends that transcend the mere calculation and maximization of profits. It will then be the responsibilities of these immediate suppliers to pass on to their subsequent suppliers down the supply chain, the culture of responsible business practice.

The principal purchasing firm can as well institute a process that asks for periodic submission of ethical audit reports from the suppliers as part of the engagement and ensure that any supplier found guilty either by the auditors and or the public would be named and shamed, which might even lead to the severance of relationship. In the same line of thought, purchasing firms can set up some sort of rewards for suppliers that continually meet the standards. Commenting on the relevance of the code of conduct in socially responsible supply chain management, Graafland (2002:283) gives an account of how it is used in C&A:

The code requires that suppliers respect the ethical standards of C&A in the context of their particular culture. Suppliers should have fair and honest dealings with all others with whom they do business, including employees, sub-contractors and other third parties. In addition to this general requirement, the code specifies detailed requirements related to employment conditions. For example, the use of child labour is absolutely unacceptable. Workers must not be younger than the legal minimum age and not less than 14 years. Wages must be comparable with local norms

⁴ The anti-pressure group campaign option is basically geared towards the global firms reclaiming power from the pressure groups and shifting public attention to the responsibilities of firms within their supply chains and the need for them to be held accountable for their practices as independent firms with legal and moral rights/duties.

and comply with local laws. Furthermore, the code requires that suppliers make full disclosure to C&A of all facts concerning production and the use of sub-contractors. The suppliers are obliged to authorise [the auditors] to make un-announced inspections of the manufacturing facility.

According to Graafland, C&A (in the above example) severed relationships with suppliers that did not conform to the code.

Another possible way for a powerful firm to positively influence less powerful firms in its network is to serve as **a role model** to others through its ethical organisational culture. According to McIntyre (1984), virtue is lived and not acted since one does not offer what one does not possess (*nemo dat quod non habet*). In this regard, Drumwright (1994) asserts that the success of socially responsible buying is to a large extent dependent on the organisational context within which the policies are made. In other words, to be able to influence the suppliers effectively the purchasing firm should exhibit high level of ethical orientation that is permeated in its culture. Culture is to an organisation what personality is to an individual. It is that distinctive formation of beliefs, values, work styles, and relationships (visible/invisible, said/unsaid) that distinguish one organisation from another (Schein, 1985:9). But as there is abnormal personality there is also supposed to be bad organisational culture. But what determines a good or bad culture? In our opinion, a good organisational culture is one that embodies these ethical dimensions of virtue, rights, justice, and utilitarianism. The presence or absence of these ethical dimensions determines the organisation's ability to base its decisions, policies, systems and processes on what is good and what is right (what ought to be) for its own sake (i.e. for the good of the society at large). This way, the purchasing firm will effectively serve as a role model to supplying firms for others to mimic. And theory confirms that firms have very high tendency to mimic each other, especially successful ones (Powell and DiMaggio, 1991).

A possible third option for a powerful firm to influence its supply chain is through **personal training and value orientation**. Crane and Matten (2004) distinguished two sets of ethical issues that arise in business-supplier relationship, viz. organisational level issues and individual level issues. At the organisational level are such issues as misuse of power, the question of loyalty, conflicts of interests and preferential treatments. At the individual levels are such issues as bribery, unethical negotiation and other personal factors. While some of the organisational issues can be addressed through the organisational culture, the individual level issues can be influenced through personnel training in ethics and values. The purchasing firm can go a step further to extend this sort of training programmes to the staff of their suppliers to in order to minimise the rate of value frictions at the point of transaction.

That way, both firm and suppliers will enjoy more lasting relationship and earn higher social capital base.

Conclusion

With the emergence of post-nation state's economic ideologies in the West under the auspices of globalization, the multinational dream of a deregulated global, economic space is becoming a reality. Hence, MNCs rival existing nation-states in the control of economic resources in the world. In this sense, MNCs are legitimate agents of justice and injustice, and hence liable to the same international principles governing economic and social corporations among states. However, multinational corporations often operate under intricate economic, social and legal conditions within the territories of their subsidiary firms. Complex business laws and business structures differ from country to country, undermining the applicability of any emergent universal, moral-economic principles. These prevalent conditions, critics say, often allow multinationals the free moral space to maximize profits and trump existing ethical obligations.

We acknowledge that the aim of the paper, as demonstrated, raises some moral issues. Some pertinent questions that keep resonating beyond our collective academic exercise, are: why limit the scope of responsibility of MNCs? Does limiting their scope of responsibility make CSR more effective along the supply chain or does it create a larger, free moral space for MNCs to perpetrate irresponsible acts? While these questions are important, it is not surprising that the global firms are currently under pressure more than ever to rescue their brands from cannibalisation due to possible irresponsible practices along their supply chain. The pressure groups understand this pressure and try to make the best use of it. It may not be surprising, also, to learn that sometimes, the pressure groups use these opportunities to promote their agenda (e.g. the case of Shell and Greenpeace is well documented in the business ethics literature⁵ .

Although Emmelhainz and Adams (1999) argue that the shift towards global supply and competition comes with extended chain of responsibility on the part of individual firms, it will be theoretically inappropriate to hold any particular firm responsible for the practice of another firm; unless it is established that the action of one firm *consequentially* leads to the action of another particularly where the relationship is not at arms-length (e.g. through the

⁵ For example see: Bowie and Dunfee (2002) and Zyglidopoulos (2002).

concepts of control and corporate grouping as earlier discussed in the paper). However, since firms are rational and free entities, this consequential link of actions and responsibilities will be more sensible where there is an obvious misuse of power on either of the parties involved. If not, it is our opinion that each firm should bear responsibilities for its actions, albeit those in position of power have the *deontological* duty use power responsibly and the obligation to positively influence the weaker parties possibly by setting standards, serving as role models, anti-pressure group campaigns and through personnel training and value orientation.

References

- Bowie, N. E. and Dunfee, T. W. (2002). Confronting morality in markets. *Journal of Business Ethics*, 38(4):381-393
- Brown, J. and Fraser, M. (2004). Competing discourses in social and environmental accounting: An overview of the conceptual landscape. *VUW Working Paper Series*
- Cahn, S. M. (2002). *Classics of Political and Moral Philosophy*. Oxford: Oxford Univ. Press p. 196-202
- Clarkson, M. B. E. (1995). A stakeholder framework for analyzing and evaluating corporate social performance. *Academy of Management Review* 20: 92 – 117
- Collins, H. "Ascription of Legal Responsibility to Groups in Complex Patterns of Economic Integration" (1990) 53 *M.L.R.* 731 at p.739ff.
- Covey, S. R. (1992). *The 7 habits of highly effective people: restoring the character ethic*. London: Simon & Schuster
- Craig, E. (2000). Prospective and retrospective responsibility. *The Concise Routledge Encyclopedia of Philosophy*, Routledge, London, 2000, p768 (under 'responsibility') quoted by Farnell, D. (2004). Responsibility without Answerability: *Disentangling the two forms of moral responsibility*. http://www.derrickfarnell.org/articles/Responsibility_without_Answerability.htm#2craig 1s visited May 24, 2004
- Crane, A.; Livesey, S. (2003). "Are You Talking to Me? Stakeholder Communication and the Risks and Rewards of Dialogue", in Andriof, J, Waddock, S, Rahman S, and Husted, B (ed) *Unfolding Stakeholder Thinking vol II: Relationships, communication, reporting and performance*, pp.39-52, Sheffield, Greenleaf.
- Crane, A.; Matten, D. (2004), *Business Ethics: A European Perspective - Managing Corporate Citizenship and Sustainability in the Age of Globalization*, Oxford, Oxford University Press.

- Deloitte Touche Tohmatsu (now Deloitte). (2002). *Sustainability Reporting and Assurance – Trends, Challenges and Perspectives*. Deloitte & Touche: Denmark. Quoted in Brown and Fraser (2004)
- Detlev F. Vagts, Detlev F., "Disclosure and the Multinational Enterprise: The Costs of Illumination" in Norbert Horn (ed.) *Legal Problems of Codes of Conduct for Multinational Enterprises Vol 1* (Antwerp: Kluwer, 1980) 315.
- Donaldson, T., & Preston, L. E. (1995). The stakeholder theory of the corporation: Concepts, evidence and implications. *Academy of management review*, 20:65-91
- Drumwright, M. (1994). Socially responsible organizational buying. *Journal of Marketing*, 58:1-19
- Emmelhainz, M. A., and Adams, R. J. (1999). The apparel industry response to "sweatshop" concerns: a review and analysis of codes of conduct. *Journal of Supply Chain Management*, summer: 51-7
- Eshleman, A. (2002). Moral responsibility. *The Stanford Encyclopedia of Philosophy* (summer edition), Edward N. Zalta (ed.), <<http://plato.stanford.edu/archives/sum2002/entries/moral-responsibility/>> visited May 23, 2004
- Evan, W. and Freeman, R. E. (1998). A stakeholder theory for the modern corporation: Kantian capitalism. In: T. Beauchamp and N. Bowie (Eds). *Ethical theory and business*. Englewood cliffs: Prentice Hall. Quoted in Crane and Livesey (2003)
- Freeman, R. E. (1984). *Strategic management: A stakeholder approach*. Boston: Pitman
- Freeman, R. E. (1994). The politics of stakeholder theory: Some future directions. *Business Ethics Quarterly* 4(4): 409 – 421
- Graafland, J.J., (2002). Sourcing ethics in the textile sector: the case of C&A. *Business Ethics: A European Review*, 11(3):282-294
- Gray, R., Dey, C., Owen, D., Evans, R. and Zadek, S. (1997). Struggling with the praxis of social accounting. *Accounting, Auditing and Accountability Journal*, 10(3):325-364
- Gray, R., Owen, D. L. and Maunders, K. (1987). *Corporate social reporting: accounting and accountability*. Hemel Hempstead, Herts, Prentice-Hall International
- Herbert Hovekamp, Herbert, *Enterprise and American Law 1836-1937* (Cambridge, Massachusetts; London, England: Harvard University Press, 1991).
- Hohfeld, W. N. (1909). Nature of Stockholders' Individual Liability for Corporate Debts. 9 *Colum. L.Rev.* 285.
- Jones, I. W., and Pollitt, M. G. (1998). Ethical and unethical competition: establishing the rules of engagement. *Long Range Planning*, 31(5):703-10
- Korten, D. C (2004). The responsibility of business to the whole <http://www.flora.org/library/mai/responsibility.html> visited May 10, 2004

- Korten, D. C. The responsibility of business to the whole
<http://www.flora.org/library/mai/responsibility.html> visited May 10, 2004
- Lucas, J.R. (1993), *Responsibility*, Oxford University Press, Oxford, 1993, p5 quoted by Farnell, D. (2004). Responsibility without Answerability: *Disentangling the two forms of moral responsibility*.
http://www.derrickfarnell.org/articles/Responsibility_without_Answerability.htm#2craig1s visited May 24, 2004
- MacIntyre, A. (1984). *After Virtue: A study in moral theory* (2nd ed), Notre Dame, Ind.: University of Notre Dame Press. Quoted in Crane and Matten (2004)
- Maignan, I., Ferrell, O. C. and Hult, G.T.M. (1999). Corporate citizenship: cultural antecedents and business benefits. *Journal of the Academy of Marketing Science*, 27(4):455-469
- Mamic, I. (2005). Managing Global Supply Chain: The Sports Footwear, Apparel and Retail Sectors. *Journal of Business Ethics*, 59(1-2):81-100
- McGee, A., Williams, C. and Scanlan, G. (2005). *The Law of Business Organisations* (Exeter: Law Matters, 2005)
- McWilliams, A. & Siegel, D. (2001). Corporate social responsibility: A theory of the firm perspective. *Academy of Management Review*, 26(1):7-127
- Meeran, Richard, "Liability of Multinational Corporations: A Critical Stage in the UK" in Menno T. Kamminga and Saman Zia-Zarifi (eds.) *Liability of Multinational Corporations Under International Law* (The Hague; London; Boston, Kluwer Law International, 2000) 251.
- Milman, David "Regulation of Business Organisations Into the Millennium" in David Milman (ed.) *Regulating Enterprise: Law and Business Organisations in the UK* (Oxford, and Portland, Oregon: Hart Publishing, 1999) 1.
- Mullins, L. J. (2002). *Management and organisational behaviour*, 6th ed. London: Financial Times Prentice Hall
- Owen, D. L., Swift, T. A., Humphrey, C. and Bowerman, M. C. (2000). The new social audits: accountability, managerial capture or the agenda of social champions? *European Accounting Review*, 9(1):81-98
- Petts, J. (1998). Environmental Responsiveness, Individuals and Organizational Learning: SME Experience. *Journal of Environmental Planning and Management*, 41(6):711-730
- Powell, W. W. and DiMaggio, P. J. (1991). *The new institutionalism in organizational analysis*. IL: University of Chicago Press
- Reed, D. (1999). Three realms of corporate responsibility: distinguishing legitimacy, morality and ethics. *Journal of Business Ethics*, 21(1):23-35

- Roberts, J. and Scapens, R. (1985). Accounting systems and systems of accountability: understanding accounting practices in their organizational contexts. *Accounting, Organizations and Society*, 10(4):443-456
- Sako, M. (1992). *Prices, Quality and Trust: How Japanese and British Companies Manage Buyer Supplier Relations*. Cambridge University Press, Cambridge
- Sarbutts, N. (2003). Can SMEs “do” CSR? A practitioner’s view of the ways small- and medium-sized enterprises are able to manage reputation through corporate social responsibility. *Journal of Communication Management*, 7(4):340-347
- Schein, E. H. (1985). *Organizational Culture and Leadership*, Jossey-Bass, San Francisco.
- Spence, L. J. (1999). Does size matter? The state of the art in small business ethics. *Business Ethics A European Review*, 8(3):163-174
- Spender, P. Scenes from a Wharf: Containing the Morality of Corporate Law. In Fiona Macmillan (ed.) *International Corporate Law vol. 1* (Oxford; Portland, Oregon: Oxford University Press, 2000) 37.
- Swift, T. (2001). Trust, reputation and corporate accountability to stakeholders. *Business Ethics: A European Review* 10(1):16-26
- Williams, P. F. (1987). The legitimate concern with fairness. *Accounting, Organizations and Society*, 12(2):169-1
- Wood, G. (1996). ‘Ethical issues in purchasing.’ In A. Kitson and R. Campbell (eds.). *The Ethical Organisation*. Basingstoke: Macmillan.
- Zyglidopoulos, S. C. (2002). The Social and Environmental Responsibilities of Multinationals: Evidence from the Brent Spar Case. *Journal of Business Ethics*, 36(1-2):141-151

Cases

- Amoco Cadiz* [1984] 2 Lloyds Rep. 304.
- Atlas Maritime Co. v Avalon Maritime Ltd* (No 1) [1991] 4 All ER 769 (Staughton LJ).
- Bosal Holding BV* [2003] STC 1483.
- Bowoto v Chevron* No. C99-2506 CAL (ND Calif.).
- Cape Industries v Adams* [1990] Ch 433.
- Dartmouth College v Woodward* (1819) 4 Wheaton (U.S.) 518, 4 L.Ed. 629 at p.636.
- DHN Food Distributors Ltd v London Borough of Tower Hamlets* [1976] 1 WLR 852 (Lord Denning).
- First National Bank v Belotti* (1978) 435 U.S. 765.
- ICI v Colmer* [1998] STC 874.
- Littlewoods Mail Order Stores v Inland Revenue Commissioners* [1969] 1 W.L.R. 1241 at 1254; [1969] 3 All ER 855 at 860 (Lord Denning).

Maritime Union of Australia v Patrick Stevedores Operations No. 1 Pty Ltd [1998] 153 ALR 602 (North J.).

Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia [1998] 153 ALR 643.

Re Union Carbide Gas Plant Disaster at Bhopal India 634 F.Supp. 842 (SYDY 1986), 25 ILM 771 (1986); affirmed as modified 809 F.2nd 195 (2nd Cir. 1987), 26 ILM 1008 (1987); Cert.den. 108 S.Ct. 199 (1987).

Salomon v Salomon & Co. [1897] A.C. 22.

Santa Clara County v Southern P.R. Co.(1886) 188 U.S. 394.

The Albazero [1977] A.C. 774.

Websites

http://www.derrickfarnell.org/articles/Responsibility_without_Answerability.htm

http://www3.baylor.edu/American_Jewish/resources/jphil_articles/Levinas-violence.pdf

http://www3.baylor.edu/American_Jewish/resources/jphil_articles/levinas.htm

<http://www.lamp.ac.uk/philosophy/Part%20Two%20Courses/modules/far.html>

http://www.derrickfarnell.org/articles/Responsibility_without_Answerability.htm

<http://www.cleanclothes.org/codes/ccccode.htm>

<http://www.opsi.gov.uk/acts/acts1996/96018-ah.htm#231>

http://www.via3.net/pooled/articles/BF_DOCART/view.asp?Q=BF_DOCART_110951

[\[humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/ChevronlawsuitreNigeria\]\(http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/ChevronlawsuitreNigeria\)](http://www.business-</p></div><div data-bbox=)