

# Corporate Social Responsibility in China: Current Issues and Their Relevance for Implementation of Law

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## Abstract

Following an introduction to the issue of Corporate Social Responsibility (CSR) and recent developments that indicate a growing interest with CSR in China, this paper discusses some of the issues concerning law in China, in particular effectiveness of labour law and its implementation at local level. The indications are that CSR may have relevance as a modality for strengthening the implementation of law in China. Examples are given of how some CSR-conscious foreign companies that work in or supply from China handle social and environmental responsibility, and tentative perspectives of CSR in China are suggested, with regard to a possible impact on the implementation of law.\*

**Keywords:** Corporate Social Responsibility, implementation of law in China, labour rights, human rights, environmental sustainability, compliance.

## Introduction

Over the last few years, it has become increasingly common to address corporate responsibility for environmental and social responsibility as Corporate Social Responsibility (often referred to by the acronym CSR, or increasingly simply CR, i.e. Corporate Responsibility). Broadly, CSR covers concern with the external environment, occupational health and safety, other social issues and human rights both inside a corporation and with external stakeholders. Recent surveys indicate a growing concern with environmental and social responsibility in foreign as well as some domestic companies in China.<sup>1</sup> Furthermore, increased outsourcing of production from Western countries to low-wage countries in Asia, with China as a major recipient, has raised discussions of the social conditions of workers. Meanwhile China's growth in industrial production has turned the world's attention to the consequences for the external environment in China. It is no surprise therefore that recent global conferences and meetings, as well as corporate action, indicate

a growing interest by the foreign business community in CSR and its implications for operation in China.

This article takes this as its point of departure what this may mean for implementation of law in China, from both a short- and longer-term perspective. This issue is new to the discourse on CSR as well as to discussions on implementation of law in China. The approach adopted here is based in legal science, in a discussion focused less on traditional sources of law than on societal developments as drivers for legal developments, especially the effective implementation of labour and environmental law. Implementation of law is often highlighted as a particular problem in China, impeding the effective realization of the objectives behind the past two decades of law reform in relation to economic development, general social development and sustainable poverty reduction.

As indicated, the past two decades have seen impressive reforms of law in China in terms of the number of new or revised legal documents. Many law reform initiatives have been initiated in response to China's obligations upon becoming a member of the World Trade Organization (WTO), in order to attract foreign investment and commerce in general. These are partly a response to a growing concern both inside and outside China with respect to environmental protection, occupational health and safety issues, other workers' rights, in addition to human rights. However, if legislation is formally in place but not implemented, or not implemented according to its intention, it obviously will not have the intended effects. Similarly, if the law is not enforced by authorities when broken by individuals, corporations or other organisations, intended effects of the legislation are not realised. In line with efforts being made to redress these deficiencies in the legal system in China, it is relevant to consider whether the growing interest in CSR may have a potential impact with respect to implementation (and, implied in this, enforcement) of law in China. This is particularly pertinent given China's somewhat problematic record in human and labour rights and environmental protection. Indeed this issue is a significant concern to corporations today, as they seek to avoid investment risks and any loss of professional reputation that might be levelled at them with respect to environmental damage or violations of human or labour rights arising from business dealings in or with China.

As discussed below, there is as yet, no single definition of CSR, but the term is generally understood to be for a corporation to do more than what is required by law. Consequently, corporate CSR commitments im-

plicitly suggest that the corporation strives, as an initial step, to observe law. There is nothing new in this to the extent that as societal actors and legal persons, corporations should always observe the law. However, given indications that in some countries, weak implementation of law is due not so much to lacking or imperfect legislation, but to lax and imperfect respect for and enforcement of the law, the implication that CSR-conscious corporations must do more than required by law takes on an interesting potential. The effectiveness of a legal system is recognized to be a significant factor in a country's business development, including its potential to attract foreign investment.<sup>2</sup> The effectiveness of a legal system partly depends on the degree to which law that is formally in place is also respected and enforced. As discussed below, China is a country where lax respect and ineffective enforcement of the law is argued to be a major reason for weaknesses in the legal system with respect to environmental, labour law and to some extent social issues.

This paper poses the question whether increasing attention on CSR by the corporate sector, the government and other actors may hold potential for improved implementation of law in China. There follows a general introduction to the concept of CSR, then an overview of current CSR issues in a Chinese context. Case studies are provided to demonstrate the approach of a selection of corporations that have operations in, or deal with, China. The focus then turns to examine what potential these developments may hold for implementation of law in China. Finally, the conclusion sets out some perspectives for future CSR engagement in the context of China.

The approach taken is explorative and aims at providing suggestions rather than conclusive findings. There are a number of reasons for this: the newness of CSR as an area of academic research; the scarcity of research on CSR in relation to China as well as from an angle of legal science; and the consequent scarcity of theory related to CSR and China and on the relationship between CSR and issues of law.<sup>3</sup> Although CSR has been discussed widely in the past few years, most of this analysis has taken place from a business perspective, rather than from an academic research viewpoint. Where CSR has entered the academic debate, the focus has generally been on business issues, such as social responsibility as a marketing tool or competition parameter, CSR communication or CSR reporting. However, CSR as an academic field is growing, drawing increasing interest from the global business community. There is increasing acknowledgement of China not simply as a trading partner and major global economic power but also as a country in which the

effective implementation of law remains problematic due to lax respect and enforcement. This suggests that the issue of CSR and its possible role for implementation of law in China may have relevance to the business community, to those interested in the development of China as a state, as well as to research on the role of CSR in a globalizing world.<sup>4</sup>

This paper does not purport to forward a theory on the relationship between CSR and law, including the implementation of law in China. However, it seeks to contribute in a small way to a growing body of theory on CSR, especially in the context of China. It draws on information from corporations that have declared themselves to be active in CSR in relation to law implementation in China. In this respect, these companies are front-runners rather than a representative sample of foreign corporations with a presence in China. This is in correspondence with the aim of the article, which does not pretend to make specific conclusions on the relationship between CSR and the implementation of law in China, but simply to make suggestions on such a relationship. One such suggestion – that corporate action based on demands for CSR or CSR-informed corporate values may in some cases have a positive effect for implementation of law in China – does not imply that all corporate action related to CSR will have a similar effect. It is hoped however that such suggestions may inform further research as well as actions by corporations or Chinese government bodies.

## Corporate Social Responsibility

### Concept

CSR as a topic is still in the process of being constructed and defined. Partly for this reason, there is no one general definition of what CSR is. However, a consensus has emerged among academics and practitioners that CSR refers to corporations taking action to limit the negative impact of their operations on the human and natural world (also referred to as social and environmental issues).<sup>5</sup> CSR may entail economic and competitive advantages for companies, but at the outset is based on the concept that the resources of enterprises may be directed towards sustainable human and environmental development (Morsing and Thyssen 2003a: 9).

Although CSR strictly speaking only refers to socially responsible action (Corporate *Social* Responsibility), *environmentally* responsible action is most often assumed to be part of CSR. The World Business Council for Sustainable Development defines CSR as 'business' com-

mitment to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life'.<sup>6</sup> In its 2001 Green Paper on CSR, the EU Commission defines CSR as 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis' (European Commission 2001). The World Bank defines CSR as 'The commitment of business to contribute to sustainable economic development working with employees, their families, the local community, and society at large to improve their quality of life, in ways that are both good for business and good for development' (World Bank Group 2003: 1). The United Nations (UN) Global Compact does not specifically refer to CSR but brings companies together to support ten principles in the areas of human rights, labour, the environment and anti-corruption.<sup>7</sup> In this article, CSR is understood to refer to responsibility for social and environmental issues, including human and labour rights.

Since the mid to late 1990s multinational corporations (MNCs), in addition to small and medium sized companies, have experienced increasing demands by various stakeholder groups to assume a greater degree of social responsibility.<sup>8</sup> With increasing outsourcing to, and buying of supplies from China and other low-wage countries in East Asia and elsewhere, CSR demands are increasingly felt in these countries too.<sup>9</sup> Two main reasons account for this. First is the increased focus on corporate values as issues to be considered by corporations in their strategies and in their relations with their customers and other stakeholders. Second is the sheer development in size and influence of MNCs over the past decades. Some companies, especially MNCs, now number among the world's financially strongest actors. In states with weak government or in areas with weak government influence, corporations may be more influential than the state. In relation to the particular challenges confronting China, the strength and influence of corporations is a vital factor in any consideration of the potential role of CSR for the implementation of law.

Although CSR is generally understood to be voluntary action (i.e. not simply compliance with law but acting beyond what the company is required to do by law),<sup>10</sup> it cannot be separated from law.<sup>11</sup> It was indicated in the introduction that to do more than the law requires, a company needs first to observe the law. Consequently, although business actors and many of the international groupings that deal with CSR stress the voluntary nature of CSR, knowledge of applicable law and compliance

with it are a *sine qua non*. This means that a CSR-conscious company is expected to make an effort to comply with law, and government bodies that want to attract such corporations or investors need to pay attention to effective implementation of law.

In terms of normative expectations, CSR transcends the boundaries of countries and regions. For example, EC policy on CSR is of relevance not just within the boundaries of the EU but also for EU corporations that operate within China or elsewhere in the developing world. In its 2002 communiqué, the Commission states that CSR is 'intrinsically linked to the concept of sustainable development: businesses need to integrate the economic, social and environmental impact in their operations' (European Commission 2002: 7). The Commission recognizes that globalization has created new opportunities for enterprises, but the increasing extension of business activities abroad has led to new responsibilities on a global scale, particularly in developing countries. Consumers and NGOs now demand information about the conditions in which products and services are generated and, through their behaviour, tend to reward socially and environmentally responsible firms (*ibid.*: 8). Since the communiqué was published, developments in the investment sector, particularly with such institutional investors as pension funds, have placed socially responsible investment (SRI) centre-stage in the promotion of CSR.<sup>12</sup>

### **Actors and Drivers**

The development of the concept of CSR has been influenced by a number of actors. NGOs active in consumer and environmental issues, human rights, labour rights and 'fair trade', backed by the media, played an important part in first setting CSR on the global corporate agenda in the 1990s. Naturally, business itself is a significant actor in CSR; partly due to the increased focus on values as a management tool, partly in response to pressure and arguments from other stakeholders. Today, the UN and the EU have become major actors on this issue, and so too have various bodies in their member states, such as ministries or departments of overseas trade and development cooperation as well as agencies concerned with domestic issues like immigration, employment and social integration.

With the increased focus on CSR in risk management, so pension funds and other institutional investors are increasing their demands for Socially Responsible Investment (SRI).<sup>13</sup> Actors on the CSR stage include numerous other groups comprised by the 'stakeholder' term: current employees, future employees (who may prefer to work for a



corporation whose values mirror their own), local communities (which may be affected by current or potential production sites), buyers (such as corporations that make CSR demands on lower levels in the supply chain), consumers, private investors and politicians.

Research indicates that the mere risk of loss of corporate reputation (for example, by being seen as supporting a regime with poor human rights, labour rights or environmental record or simply by being active in such a state) is an important driver for corporations to consider adopting CSR in their actions.<sup>14</sup> This despite the fact that research has yet to fully quantify the degree to which consumers or large investors pay heed to CSR in their investment or buying decisions.<sup>15</sup> So far, in the research literature more attention has been paid to CSR in Europe, Australia/New Zealand and North America than elsewhere. However, with the growing outsourcing from these regions to low-wage countries, especially in Asia, actors in the latter states may be expected to pay increasing attention to CSR for market and investment reasons as well as other reasons.<sup>16</sup>

### **Sources and Standards**

Various studies indicate that norms on CSR derive from two main sources: morals/ethics and law. The former may be internal as well as external to the corporation, in part related to the growth of values in corporate management and strategy, in part to values underpinning expectations by external stakeholders such as NGOs, media and politicians. Both are often related to wider societal morals, such as how one should treat others, especially those who are affected by, or depend on a corporation where one may be part of the management. Ethical values have been a prime driver of CSR not only since the concept of CSR was formally conceptualized in the late 1990s, but long before corporate socially and environmentally responsible action was termed CSR.<sup>17</sup>

Norms and standards of a legal character make up the other major source of CSR. In keeping with the environmental or social topics of the triple bottom line (People, Planet, Profit), human rights standards<sup>18</sup> and labour law standards based on UN and International Labour Organization (ILO) instruments<sup>19</sup> are prime among these. This is reflected in reports and information from companies, CSR reporting instruments and the principles of the UN Global Compact.

With respect to human rights and some labour rights issues (especially forced labour), developments in both external stakeholders' expectations and corporate behaviour indicate that CSR pertains not only to observance of human and labour rights inside the company or in its direct

actions, but also to the observance of rights and indirect consequences of corporate action for such rights. For example, corporations that are present in, or supply from, states with poor rights records have been met with arguments that through their indirect support (financial and moral through presence) to the government, they act in a way that is not socially responsible.<sup>20</sup>

In the internal relationship between on the one hand, morals/ethics, and on the other, legal instruments and standards, the latter appear to underpin the former. This may look like a reversal of the ordinary, as many instruments or standards on human rights can be argued to derive from ideas on ethics. However, within CSR ideas on what constitutes corporate ethics are argued with reference to human rights as codified in instruments of international law. Since CSR issues were put on the agenda by NGOs and the media in the 1990s, this has frequently been done with reference to requirements or stakeholder expectations of corporate ethics, substantiated by referring to international human rights and labour law which corporations are expected to observe. Although standards of international human rights and labour law formally bind states and not corporations, this legal(-istic) argument has not played a substantial role in the discourse. Today, corporations – especially the CSR-conscious segment but to some extent also those that lay low and keep quiet as to CSR – seem to accept that the values contained in, at least, the Universal Declaration of Human Rights, are relevant to their actions and bind them beyond simple guidance.

A growing number of corporate Codes of Conduct bear witness to the way in which international human rights and labour law inform the operationalization of CSR-related values with respect to implementation internally in companies and demands on suppliers. Similarly, some of the most widely used tools for non-financial reporting (e.g. GRI21 and SA800022) and management (e.g. AA100023) draw on international human rights and labour law for indicators or benchmarks on CSR issues.

## **CSR Issues in China and Corporate Response**

### **Social Issues and Environment**

China's recent and current human rights, labour rights and environmental records and the attention that such issues have received in the media and among some NGOs in Europe, North America and Australia mean that companies doing business in China or dealing in goods wholly or partly produced in China may be susceptible to criticism that could



damage their CSR reputation. Past incidents indicate that such criticism may have considerable negative effects for a company's relations with consumers and investors.

Interviews with representatives of NGOs and corporations active in China indicate that over the past few years, CSR has grown considerably as a topic of government and business attention. Environmental strains, child labour and poor working conditions are expected to continue to draw attention not just in the business community itself and in relation to suppliers, but also from the government and local authorities. As of late 2003, around 50 Chinese companies had been approved as meeting the SA8000 standard, a globally used voluntary labour standard based on core ILO and UN instruments. This cover, for example, workers' health and safety conditions, minimum age, working hours and compensation (*Beijing Times*, 16 August 2004).<sup>24</sup>

In mid-2004, the Chinese press reported on various government and business initiatives to improve workplace conditions, such as targeting compliance with minimum wages, employment opportunities for people suffering from Hepatitis B and otherwise suffering from discrimination in relation to public employment, occupational health and safety conditions, medical care and medical insurance for migrant workers (*China Daily Online*, 26 July and 11 August 2004).<sup>25</sup> A report prepared by the United Nations Development Programme in China in consultation with the government on China's progress towards the UN Millennium Development Goals (MDGs) points to three particular challenges for the country: (a) ensuring environmental sustainability, in particular to ensure access to safe drinking water, (b) combating HIV/AIDS and TB, and (c) ensuring gender equality in primary and secondary education.<sup>26</sup>

The launch in early 2004 of the China Business Council for Sustainable Development (CBCSD) testifies to the growing attention on CSR-related issues in China.<sup>27</sup> The CBCSD is a coalition of Chinese and international companies with a shared commitment to maintain and promote sustainable development through 'environmental protection, corporate responsibility, economic growth and social equity'.<sup>28</sup>

Environmental issues that may concern stakeholders, investors or buyers in the EU and the US include the following: environmental damage due to rapid industrialization or the agricultural policies of the latter half of the twentieth century (such as the growth of desert conditions close to Beijing and increasing lack of fresh water); lack of technology to prevent or mitigate degradation; environmental effects of infrastruc-

ture projects such as the Three Gorges Dam; and resettlement of local population groups in connection with such infrastructure projects. Such associations may deter stakeholders from involvement or investment in a company that has production facilities in China or supplies coming from China, unless the corporation is able to demonstrate that it has taken appropriate action to prevent and mitigate environmental or human damage.

The Chinese government has made environmental protection an issue of priority, and corporate environmental responsibility is the subject of some legislation and enactment of other regulations.<sup>29</sup> During the 10th Five-Year Plan period (2001-05), China plans to invest US\$ 85 billion in the environment protection industry (*China Daily Online*, 2 August 2004). The National Development and Reform Commission has declared that the development of a recycling economy is to be accelerated and included in 11th Five-Year Plan. Furthermore the State Environmental Protection Administration (SEPA) has announced a decision to cooperate with the corporate sector in this regard to achieve better economic and environmental management of resources.<sup>30</sup> Growing strains on the environment, such as water shortage largely connected with industrial energy consumption, and desertification and pollution from coal-fired power plants, are receiving attention in industry reports and in the press and are recognized as potential risks for corporate investment in Chinese industry (Chan and Welford 2004).<sup>31</sup> Environmental protection in relation to the 2008 Olympic Games and the 2010 Expo Shanghai is also receiving attention in a bid to attract foreign business.<sup>32</sup>

Corporate action to protect the environment will thus not only be in accordance with general ideas on CSR, but also in accordance with official government policies and law. The problem facing realization of politically established goals of environmental protection is not so much one of non-existing regulation as one of non-effective implementation. Some cases of corporate response in addressing environmental and social issues are cited below as indications of how CSR may influence a corporation's approach to law. This includes consideration of which standards to apply in the event that international or domestic law provides better stakeholder protection than does Chinese law. Environmental assessments and action are referred to by corporations in relation to CSR in China more often than assessments and action on issues squarely within human rights. However, as many environmental problems (and their prevention or mitigation) have a considerable impact on human rights (especially social and economic) of the populations in the affected

areas, often it is not possible or necessary to establish a clear boundary between environmental issues and human rights.

One company, Shell China, is involved in operations that present risks both for the environment (for example, when new areas are prepared for oil extraction) and for the indigenous populations. In an attempt to predict and prevent such risks, this company conducts environmental and social impact assessments to identify possible damage to the environment and human population before a new industrial initiative is launched.<sup>33</sup> A programme that required resettlement of 8,000 people away from their villages provides an example of a project to mitigate negative impact, touching also on human rights: In cooperation with the local government (which provided land and infrastructure), village people were moved to a newly built town to make room for extraction. Projects were designed to create employment in or close to the new town after resettlement. Employment was possible, for example, in building bicycle lanes or putting up traffic lights.<sup>34</sup> This is an example of corporate action that contributes to implementation of human rights to ensure an adequate living, shelter and employment for the target populations. Through a procedure based on interviews with affected population groups on the perceived effects of the pipeline and resettlement, the project also facilitates the population's human right of participation.

An enzyme-producing company, Novozymes China, works with local government to develop environmental protection projects. The company works with the local government to ensure that production and new projects are in accordance with pertinent legislation administered by the relevant local authorities.<sup>35</sup> Through the formulation of ideas and procedures for partnerships that may be useful for other corporations, the company provides a potential model for other regions or companies.<sup>36</sup> With initiatives that come close to corporate philanthropy, some companies, for instance Novozymes China and mining company Lafarge, support wildlife projects under the Chinese section of the World Wildlife Foundation (WWF), partly in response to growing expectations from the Chinese government.<sup>37</sup> Such partnerships indicate a priority of supporting government legal and policy objectives of environmental protection.

Human rights issues, such as the use of the death penalty, minority rights, the one-child policy, the Tibet issue, use of forms of detention, restrictions on the freedoms of association, expression and information and other communicative and political rights are among those that many stakeholders may associate with China. Some may also be aware of poor

labour conditions in factories, social rights problems that confront migrant workers and redundant workers, or lack of protection of property rights in connection with expropriation, for example for industry or infrastructure development. Such issues too are likely to influence the conditions of companies present in or buying from China with respect to their reputation.<sup>38</sup> Even though the company itself may not be directly involved in any actions or omissions related to human rights issues, by operating within the country or trading with Chinese suppliers, it may be perceived by some (primarily external) stakeholders to support a government with a problematic human rights record.

Human rights issues addressed by companies in relation to CSR seem to be limited to social and economic rights, often bordering on labour rights but at other times targeting health issues that can be said to fall within human rights. For example, one company, Intel China, undertakes activities to improve the health conditions of its employees by offering guidance workshops on how to avoid HIV/AIDS and has carried out information campaigns on SARS. As an example of how legal requirements inform the work that the corporation associates with CSR, it conducts environmental and social assessments to identify possible negative impact of its operations and ensure compliance with legal requirements.<sup>39</sup>

The ban on trade unions not associated with the official union, the All China Federation of Trade Unions (ACFTU), may pose CSR reputational problems in the West for many companies associated with China. Trade union freedom can be addressed as a human rights issue as well as a labour rights issue. The labour law and the trade union law permit workers to participate and organize trade unions, but the trade union law establishes that trade unions are part of the ACFTU. This affects the situation inside a company directly, as corporations must respect domestic legislation, i.e. the ban on free trade unions. In doing so, however, they come into conflict with international human and labour rights standards on freedom of association and organization. Some foreign companies attempt to respect and provide for a degree of freedom of association and organization internally on their sites. Some companies, for example Novozymes China, solve the issue by involving union representatives in various decision-making processes within the limits of Chinese law.<sup>40</sup> A balance is attempted to be struck between the (human and labour) right of freedom of association and negotiation and national law.

Labour rights issues also include a number of other topics that affect a company directly because they relate to recruitment and treatment of employees. Health and safety conditions of workers, including the number of working hours and payment rates, including overtime pay, confront corporations operating in or with China. Chinese labour legislation contains a number of health and safety regulations and stipulates the minimum age for work. As with environmental protection, the problem is not so much inadequate regulation as inadequate interpretation and enforcement. In some cases, local authorities are reported to interpret the legislation 'flexibly' in order to attract foreign investment and industry.<sup>41</sup>

The labour law provides for regulation of working hours, wages and health and safety. Legislation on occupational health and safety and product safety makes provision to identify responsibility for work-related illness and accidents and sets out penalties for violations of the law. Some provincial and local governments have established work safety agencies. Despite these legislative and organizational steps, dangerous working conditions and restrictive working practices in factories continue to be reported.<sup>42</sup> Enforcement of national health and safety standards as areas of responsibility of governments below the national level is weak,<sup>43</sup> and supervisory authorities sometimes lack the means to hand out serious punishments for violations.<sup>44</sup> Even senior health and safety officials have expressed concern at the lack of enforcement of occupational health and safety legislation.<sup>45</sup>

China has no national minimum wage. The labour law allows local governments to determine their own standards for minimum wage.<sup>46</sup> Official corruption and efforts of local officials to attract and keep jobs and employment-creating enterprises are reported to undermine efforts to raise minimum wages and to enforce existing minimum levels, although wages also go up in some sectors, occupations and geographical locations (US Department of State 2004). Part of this problem is that some foreign buyers put pressure on local manufacturers which, coupled with weak enforcement of the labour law, leads to excessive overtime demands on employees without the legally required overtime pay.<sup>47</sup> It has been reported that central government and some local authorities are intending to intensify efforts to ensure that companies comply with existing rules.<sup>48</sup>

The labour law mandates a 40-hour standard working week, excluding overtime, and a 24-hour weekly rest period. It prohibits overtime work that exceeds 3 hours per day or 36 hours per month. It requires

a percentage of additional pay for overtime work. These standards are reported to be repeatedly violated, especially in the private sector, and to be subjected to lax enforcement.<sup>49</sup>

As mentioned, the labour law permits collective bargaining for workers in all types of enterprises. However, in practice, genuine collective bargaining is reported to be very limited, if practised at all (US Department of State 2004). The law prohibits forced or bonded labour, although forced labour is reported to be a problem in penal institutions (*ibid.*). The labour law prohibits the employment of children under the age of 16 and specifies fines and revocation of business licences for companies that illegally hire minors. China has ratified core ILO conventions prohibiting child labour, including the worst forms of child labour, and discrimination in remuneration for male and female workers. In terms of corporate response, evidence suggests that national (host and home) country law as well as international law informs the decisions of some CSR-conscious corporations and their understanding of what is a basic requirement for CSR. One company attempts compliance with the highest standard where Chinese and home country law do not prescribe similar standards.<sup>50</sup> An activity is only allowed if it conforms not only with local law but also with internationally prescribed standards. Chinese law is considered together with international law and best practice.<sup>51</sup>

Companies that are signatories to the UN Global Compact subscribe to principles on human rights, labour standards and environmental protection, based in international law. For one company, Novozymes China, this means that support for the Universal Declaration of Human Rights has been integrated into the company's overall corporate vision (Novozymes 2004a: 9). A position on human rights is further explicated in the company's Social Responsibility Policy, which states that the company must respect and promote human rights internally. Furthermore it strives to collaborate with suppliers, contractors and other partners in this area (Novozymes 2004b). A global standard on human rights has been established as part of the company's Quality Management Strategy, consisting of a set of minimum labour and human rights standards. The minimum standards include the right to freedom of association and collective bargaining, and prohibit forced labour, discrimination of any kind and employment of children under the age of 15 (*ibid.*). Where national legislation prescribes a higher minimum employment age, as in China, the national standard is complied with.<sup>52</sup> The minimum standards form part of a corporate policy to help promote awareness of basic human



rights and labour standards through external communications and participation in networks, and to promote labour standards through dialogue with suppliers and through local projects where partnerships are entered into with authorities and other partners.

The above case studies indicate that for a CSR-conscious company working in China, both national and international laws on human and labour rights and environmental protection need to be addressed as the basis for their actions. Such corporations strive to apply the higher standards where this can be done in accordance with national law. Where international or home country law provides the higher standard and is used as the legal source, such law supplements national law but also entails the corporation acting beyond what is required by national (Chinese) law. Where China has acceded to or ratified the applicable instrument of international law (for example an ILO convention or the Convention on Economic, Social and Cultural Rights), such action at the same time contributes to implementation of that instrument domestically in China and demonstrates to Chinese authorities how this can be done.

### **Outsourcing and Supply Chain Management**

Economic development and improved education and training in some low-wage countries have led to a considerable increase since 2000 in outsourcing from regions with a relatively large presence of CSR-conscious actors to low-wage countries in Asia, including China. Outsourcing to China is expected to continue to rise in the years to come.<sup>53</sup> Companies outside China also increasingly buy products from suppliers in China, a trend which is also expected to continue in the future.<sup>54</sup> Outsourcing to or supplying from China presents raises a number of questions of relevance to CSR-conscious foreign corporations, such as:

- Should a company pay its staff in China less than it pays staff in the home country?
- Given that a main reason for outsourcing is lower wages in host countries, how large a wage differential is acceptable, and how should the level for acceptability be set?
- Should a company accept health and safety standards in plants or facilities in China below those of its home country, or allow longer working hours, less overtime, or generally worse working conditions for staff than in its home country?
- Should an outsourcing company allow itself to exploit the external environment in a way that its management would not find acceptable in the home country?

- Should a buyer company demand that a supplier observe applicable national and local law?
- Should a company accept less stringent observance of health and safety regulations than the law demands in its home country?

On the one hand, supplies may be bought in China because production costs are low. On the other hand, the corporation may be faced with an ethical boundary as to the conditions for workers that are acceptable in order for the corporation to maximize its economic output. If a buyer decides to shift to a different supplier that observes applicable law, should the buyer take responsibility for workers who may lose their job with the previous supplier?

To solve these dilemmas and to find a common denominator between home country legal demands and the formal or actual legal demands in China, companies sometimes find it useful to resort to standards or recommendations of international law. The company British Telecoms (BT), which buys a large number of components from suppliers in China and has a particular focus on labour standards, demands that its suppliers comply with Chinese labour law as well as applicable ILO standards. In this company's experience, compliance with these standards results in significant benefits for the supplier, such as increased staff retention, maintaining existing business (with CSR-conscious buyers) and ability to attract new business (particularly from other CSR-conscious foreign buyers).<sup>55</sup> Similar results are supported by other evidence.<sup>56</sup>

This case demonstrates again that observance of national and international law is often invoked by foreign corporations in relation to CSR. It indicates that buyers' demands on Chinese suppliers to observe national and international law hold an important potential for the implementation of law in China. With growing awareness of CSR in the supply chain, the possibility that more buyers will demand and support (for example through funds and technical assistance) suppliers' observance of national and international labour, human rights and environmental law, may turn out to be a significant step towards implementation of law in China.

Various sources indicate that monitoring in the supply chain is often ineffective or unreliable, partly because many buyers do not use independent audits to verify their statements, and because too little time is allowed for thorough audits.<sup>57</sup> CSR audits and their effect on observance of labour legislation would benefit from more buyers honouring principles of independence in their selection of auditors and allowing audit time to match the size of a producer.

## Potential for the Implementation of Law

### Problems and Challenges

Much has been written elsewhere about general issues confronting the implementation of law in China.<sup>58</sup> Consequently, this section will only outline some main issues. Implementation of law here refers to implementation of national legislation, i.e. laws, by-laws and other forms of public regulation that have been put in place by the relevant law-making bodies, together with international law that China is bound by. As Chinese legal theory holds that in case of a conflict between domestic law and an obligation of international treaty law binding on China, the treaty obligation is thought to prevail, international law binding on China is not without importance in domestic law, even when it has not been transformed into Chinese law.<sup>59</sup>

This is, at least, the point of departure, backed by provisions in certain statutory provisions enacted by the Chinese legislature, including the PRC Civil Procedure Code. This means that where Chinese law does not (yet) provide regulation on environmental protection or human rights corresponding to, for example, treaty obligations arising from the Rio Declaration and acceded to by China, or the UN Covenant on Economic, Social and Cultural Rights that entered into force with respect to China in 2001, the treaty provisions apply.<sup>60</sup> However, such provisions may meet with even greater problems concerning implementation than domestic legislation, simply because of a lack of knowledge at local administrative levels concerning the provisions and obligations of international law.

Given that in terms of CSR legislation, labour law is the most developed in China in comparison with issues of human rights or environmental protection, this section will focus on labour law as an example of issues confronting implementation of law, and the possible impact of CSR for implementation. As indicated above, severe obstacles impede the effective implementation of Chinese labour law at the local level.

As also indicated, Chinese labour law is reasonably detailed with respect to a relatively high level of protection concerning working hours, overtime regulations and overtime pay, health and safety. It also contains provisions on collective bargaining, the minimum age for employment and prohibition of child labour and forced and bonded labour. There are reports of severe problems concerning enforcement by relevant bodies of labour law standards, and with general respect of the standards among employers. As we saw above, these problems may be due to a number of factors: the multi-layered character of Chi-

nese law; flexibility or differences in implementation across legislative levels or geographical regions; public servants or authorities neglecting enforcement in the interest of attracting or holding on to job-generating industry; and corruption. The general level of development of the legal sector in China, combined with a traditional dislike of the use of the legal system to enforce rights (for example by employees) may be added to the list of explanations.

Some of the problems confronting the effective implementation of labour law in China are similar to those encountered in other areas of law. These include: weak enforcement and lack of respect for the law; differences in implementation across regions; a weak court system; lack of a tradition to go to the courts to assert workers' rights; and the fact that regulation of important issues (such as minimum wages) is left by central legislation to be decided by local governments. The latter often results in no or insufficient action and enforcement because of other local considerations, such as attracting foreign investment or employment-generating industry.

Structural issues in the Chinese labour market are another reason impeding the effective implementation of labour law: The vast number of migrant workers from rural areas and the limited social security system for those that are unemployed, result in a labour force whose primary concern may be simply having a job, even if it means working excessive hours at low pay and keeping a low profile concerning rights at work. Retaining their job whatever the working conditions then becomes far more important than confronting employers to assert rights.<sup>61</sup> It is likely that the absence of free labour unions to give voice to concerns of employees in a concerted way and legally to represent illiterate workers also contributes to weak labour law implementation.

It was stated above that CSR is generally understood as a company doing more than the law requires. It appears to be widely accepted in the CSR community that where national law is absent or insufficient in comparison with relevant international law, a company that assumes obligations set by international law will be acting 'ethically' or 'in accordance with CSR', i.e. doing more than required by (applicable, national) law.<sup>62</sup> This is probably because international law formally poses obligations on states and not on legal persons such as corporations. It seems to be accepted that in a country where domestic law offers lower standards or less protection than the relevant standard of international law, a company will be acting in accordance with CSR if it observes domestic regulation and takes the international standard as

guidance for further implementation. As the company cases cited above demonstrate, CSR in China can mean compliance with the law but also action beyond what is required by law. This is indicated by the above corporations' mentioning, as CSR, environmental and social assessments to ensure compliance with law, cooperation with local authorities to ensure compliance with the law, and company policies on compliance with national legislation.

General issues concerning bribery, corruption and the rule of law in China may also affect the company with respect to its CSR reputation. Like environmental protection and labour rights implementation, control of corruption and respect for the rule of law are influenced by a weak regulatory environment and weak enforcement of legislation. In combination with elements of Chinese business culture that favour cooperation with relations and the like (*guanxi*), this presents another important challenge to companies that operate in China.

These observations indicate that acting in a socially and environmentally responsible way in China does not simply mean observing the law but also making an effort to ensure that it is effectively implemented, i.e. by addressing issues of corruption or bad governance that may impede the effectiveness of the law in the actions of the corporation and where it makes its presence felt. Although this is not strictly speaking doing more than the law requires, it is a logical and necessary step in states or regions with weak legal systems.<sup>63</sup> In other words, CSR in China means not just doing more than complying with the law, it also means ensuring that the law is observed. There is little doubt that this applies inside a company, i.e. in its facilities and in its direct relations with staff and authorities. How far it applies to a company's external relations is so far an open question.

Even though absence of bribery and corruption is not yet fully incorporated into the concept of CSR, there is little doubt that such practices are not in accordance with CSR.<sup>64</sup> Corruption and bribery in dealings with public authorities, for example to obtain permits or land use or influence public inspections, distorts equality of treatment and for this reason alone contravenes the human right to equality before the law. The use of corruption and bribery to avoid for example an inspection visit by an authority to check on a facility's observance of health and safety regulations or to influence enforcement of the law in case of an alleged breach of the law may result in market advantages and is not likely to be deemed in accordance with CSR by outside observers. Taking advantage of a weak legal system or of a culture of weak governance

to gain a corporate advantage that may disadvantage humans or the environment is not simply legally questionable; more importantly in this context, it is not ethical. By the standards used in the community of external CSR stakeholders, such actions may be judged even more harshly by the latter standard than by the former. The significance of this in relation to CSR in China is that whereas local authorities may not react to a company's use of bribery or corruption (as a breach of law), CSR stakeholders like NGOs, the media, consumers and some investors will (as a breach of ethics).

### **Impact on Implementation of Law through Corporate Action**

The contribution that CSR-conscious companies may make to the implementation of law in China is therefore to take action to ensure that applicable national as well as relevant international law is known and observed by the management and relevant staff, in sites and in a relevant (if still undefined) sphere of operations and influence outside of the site. Moreover, companies can take action to make it clear to authorities and other stakeholders that corruption and bribery are not acceptable, and that the company will not make use of such practices even though this may mean the loss of some direct market or industrial advantages.

Companies may contribute to the implementation of international law in China by ensuring that relevant standards of international human rights, labour and environmental law that have not yet been made into applicable national or local law be known and observed. Companies may face a challenge in areas where domestic legislation and international law are in contravention with each other. A possible response to this is provided by those companies that deal with the ban on free trade unions by setting up internal modalities for organization and negotiations on work conditions, wages etc. that allow workers some representation towards management, or to apply the higher standard. As elsewhere with weak social security systems, or with regional weaknesses in their systems of health care and educational services, socially responsible corporations may provide pension schemes, set up healthcare services for employees and their families, daycare centres for children (partly to avoid them being involved in work), and provide education for adults and young workers. They may also ensure that contracts provide short-term employees with reasonable conditions of notice and schemes for social security benefits. Such action also has the potential of serving as an example to other companies and demonstrating to authorities how standards of international law can be implemented at the local level.



China is not a member of the OECD, although it has expressed an interest in the OECD Guidelines for Multinational Enterprises.<sup>65</sup> The Guidelines deal with social progress, human rights, labour rights (including the freedom to organize), occupational health and safety, protection of the external environment, and bribery. By following the Guidelines, corporations may also provide examples to others and be instrumental in demonstrating how the pertinent underlying standards can be implemented. At its launch, the CBCSD announced that it would work towards

reaching its aims through encouraging enterprises to take a leadership role in promoting sustainable development, provide inputs to the government to assist in policy development, and nurture closer co-operation, dialogue and exchange between business, government and all other organizations concerned with environment and sustainable development.<sup>66</sup>

The CBCSD has until now paid particular attention to issues of resettlement, occupational health and safety, and educational programmes to raise knowledge and awareness of CSR. Depending on its effectiveness, the CBCSD and involved corporations may come to provide a focal point for experience sharing on how corporations may address CSR issues and how they may work with governments and authorities at different levels to promote environmentally and socially responsible action, including the implementation of law.

## **Conclusion**

Issues concerning the environment, human rights and labour rights present challenges to CSR-conscious companies everywhere. However, in China they are exacerbated by several factors, notably the problems of environmental degradation already present and threatening to grow, and the attention that has for decades been paid to workers' rights and human rights issues by NGOs, media and consumers in the West. The latter in particular is likely to have an impact on investors' assessments of investment risks. The particularities of Chinese legislation and especially weaknesses in implementation, including enforcement, pose an additional challenge to corporations that care about their reputation in relation to CSR topics. The particularities of Chinese legislation and especially weaknesses in implementation, including enforcement, pose an additional challenge to corporations that care about their reputation in relation to CSR topics. However, CSR is not just compliance with the law; ideally it goes beyond that.

Environmentally and socially responsible business in China may require action to identify unintended imperfections or conflicts in existing

legislation and to ensure compliance with intentions that may not have been spelt out in the relevant piece of local law. Foreign companies may have resources to conduct the relevant research that local companies do not possess. They often have incentives in terms of market, investment and risk management opportunities to enter into dialogue with local governments and other decision makers and stakeholders to discuss substance of law and additional action, and to ensure compliance and enforcement.

In an effort to act in an environmentally and socially responsible manner, foreign companies may ask the government of China at the appropriate level to assist in implementing legal standards that are important for their success and for attracting foreign investment. If raised by foreign governments, issues such as enactment and implementation of labour standards and regulation of environmental protection may be considered political topics by the government of China. However, if similar issues are raised by corporations as pertaining to economic cooperation or investment, they may be received more positively.

There are economic advantages for the government to work at central and local levels to implement such standards in cooperation with the corporate sector: Low respect for CSR is increasingly recognized as a risk for corporate investment and reputation. Possibilities for attracting (foreign) investment increase with the level of observance of CSR in the corporate sector and with the commitment that local authorities demonstrate for CSR, as well as with implementation and respect of pertinent legislation. With the growth of foreign companies in China and in Chinese companies supplying to foreign companies, the spill-over effect to other corporations as well as on the general knowledge and enforcement of these standards may be considerable.

For the government, the advantages of working with corporations to ensure that regulations on labour, human rights and environment are implemented and respected are not just economic. There is also the potential of better social conditions, through increased (foreign) investment, increased trade, and spill-over of activities that corporations undertake to address social issues. Ultimately, cooperation between the Chinese government and corporations on issues of CSR should result in a more socially and economically sustainable development of China.

To a large number of small and medium sized Chinese companies, CSR in the sense of doing more than simply complying with law may seem an indulgence they cannot afford. Even simple compliance may be deemed costly. For example, a company's compliance with the legal

working and overtime hours may mean that workers move to another factory where they can earn more by working more hours than the legal maximum. Many foreign companies have the resources to pay workers comparatively well and allow general working conditions that will attract workers. Such companies often have the resources and market position that allow them to set examples not just in compliance but also in exceeding compliance. Companies should pay sufficient for supplies to allow producers to pay acceptable salaries and invest in occupational health and safety protection measures.

Given its emphasis on cooperation with stakeholders, CSR may also be a factor in increased dialogue with Chinese civil society. Such dialogue can be undertaken by governments at different levels as well as by companies.

By demonstrating absolute respect for Chinese law, companies can play a role in effective implementation of much of the legislation that is formally in force in China but is not properly respected or enforced. Through their own actions and dialogue with stakeholders in government and other decision-making bodies, corporations can help to raise standards in the community in which they work, not just for their own employees, but by setting examples indirectly for others. In a longer-term perspective, corporations may be able to make a considerable contribution to the implementation of national and international law on environmental protection, human rights (especially social and economic rights) and labour rights in China by informing their staff about its substance and making sure it is observed in all internal as well as external relations. The larger the number of CSR-conscious corporations in China, the greater the prospective influence on the implementation of law.

However, there are also caveats. In particular, it is important that the current attention on CSR does not lead to a race to the bottom. This could be the case if companies or investors set the lowest standards of either national or international law as the benchmarks to be satisfied. Furthermore, observers should not be blinded by the information that companies, such as those providing cases in this article, offer on what they do for CSR. It is necessary to speculate and ask for information also on issues they are less forthcoming about.

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## NOTES

- <sup>1</sup> For example, the Economic Observer and Hill & Knowlton (2004), IVAM Research and Consultancy (2004), Welford (2004) and numerous reports and newspaper articles accessible through the China pages of *Asian Labour News*, <[http://www.asianlabour.org/archives/cat\\_china.php](http://www.asianlabour.org/archives/cat_china.php)> (accessed 7 February 2005).
- <sup>2</sup> See for example Burns and Riechmann (2004) and Saleh (2004).
- <sup>3</sup> Among research that does discuss issues of law in relation to CSR, there is a tendency to focus on issues related to legal obligations of management or to corporate governance or possible human rights obligations of corporations. See for example Hopt and Teubner (1985), Addo (1999), Thorsen (2003) and Weissbrodt and Kruger (2003).
- <sup>4</sup> See for example discussion summaries from the World Economic Forum 2005 on China ('Update 2005: China', 26 January 2005, at <[http://www.weforum.org/site/knowledgenavigator.nsf/Content/\\_S13526?open&event\\_id=1204&year\\_id=2005](http://www.weforum.org/site/knowledgenavigator.nsf/Content/_S13526?open&event_id=1204&year_id=2005)> (accessed 4 February 2005), 'Update 2005: World Trade', 26 January 2005, at <[http://www.weforum.org/site/knowledgenavigator.nsf/Content/\\_S12504?open&event\\_id=1204&year\\_id=2005](http://www.weforum.org/site/knowledgenavigator.nsf/Content/_S12504?open&event_id=1204&year_id=2005)> (accessed 4 February 2005), and 'Still Dreaming of 1.3 Billion Chinese Consumers', 28 January 2005, at <[http://www.weforum.org/site/knowledgenavigator.nsf/Content/\\_S13033?open&event\\_id=1204&year\\_id=2005](http://www.weforum.org/site/knowledgenavigator.nsf/Content/_S13033?open&event_id=1204&year_id=2005)> (accessed 4 February 2005), and also on the relationship between business and implementation of law ('The Best Places to do Business', 27 January 2005, at <[http://www.weforum.org/site/knowledgenavigator.nsf/Content/\\_S12848?open&event\\_id=1204&year\\_id=2005](http://www.weforum.org/site/knowledgenavigator.nsf/Content/_S12848?open&event_id=1204&year_id=2005)> (accessed 4 February 2005), 'Partnering against Corruption', 28 January 2005, at <[http://www.weforum.org/site/knowledgenavigator.nsf/Content/\\_S13060?open&event\\_id=1204&year\\_id=2005](http://www.weforum.org/site/knowledgenavigator.nsf/Content/_S13060?open&event_id=1204&year_id=2005)> (accessed 4 February 2005).
- <sup>5</sup> See for example Sjöström (2004).
- <sup>6</sup> World Business Council for Sustainable Development homepage.
- <sup>7</sup> See UN Global Compact homepage. The Global Compact's operational phase was launched at UN Headquarters in New York on 26 July 2000.
- <sup>8</sup> Corporate responsibility is by no means a new phenomenon. It has existed probably as long as business has been a profession. However, the specific characteristics of CSR in relation to, inter alia, sustainability, third world issues, and the role that stakeholders have been awarded, justifies dating the topic to the late 1990s.
- <sup>9</sup> Morsing and Thyssen (2003b: 12).
- <sup>10</sup> This is reflected inter alia in the accession, by foreign companies in China and Chinese suppliers, to certification programmes like SA8000 (Social Accountability 8000). See for example *Asian Labour News* on 21 September 2004 with reference to *People's Daily*, 13 September 2004.
- <sup>11</sup> For example, the European Commission's July 2002 communiqué sums up a general understanding of CSR to be 'behaviour by businesses *over and above legal requirement, voluntarily adopted* because businesses deem it to be in their long term interest'. The UN Global Compact also focuses on voluntary corporate action (see <[http://www.unglobalcompact.org/Portal/?NavigationTarget=/roles/portal\\_user/about-TheGC/nf/nf/theNinePrinciples](http://www.unglobalcompact.org/Portal/?NavigationTarget=/roles/portal_user/about-TheGC/nf/nf/theNinePrinciples)>).
- <sup>12</sup> For a more detailed discussion on the relationship between CSR and law and the extent to which law informs CSR, reference is made to Buhmann 2006 (forthcoming).
- <sup>13</sup> See for example Sjöström (2004) and Zadek *et al.* (2005).
- <sup>14</sup> This role is especially due to stewardship-driven investment strategies and the role that institutional investors are expected to play in many societies over the coming decades due to aging populations and changes in welfare societies. See Zadek *et al.* (2005).

- <sup>15</sup> For example, CSR Europe, Deloitte and Euronext (2003), Mackenzie (n.d.), Laing (2004).
- <sup>16</sup> Zadek *et al.* (2005), Vallentin (2003), Mackenzie (n.d.), Laing (2004). Nordisk Råd (2001).
- <sup>17</sup> Indeed, this may already be happening. A 2004 survey indicates that Chinese companies are paying attention to corporate social responsibility (along with corporate governance) because they believe it increases brand recognition. The Economic Observer and Hill & Knowlton (2004).
- <sup>18</sup> These moral or ethical norms concern the behaviour of companies, requiring companies to avoid dealing in or with harmful products (such as weapons or armaments, tobacco, alcohol, gaming or pornography, environmentally harmful [or possibly harmful] substances or processes) or treating employees in immoral ways, such as using slavery-like practices or paying extremely low salaries.
- <sup>19</sup> Especially the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child. Among labour standards instruments, the ILO Declaration on Fundamental Principles and Rights at Work and ILO conventions on non-discrimination, minimum age and protection of children against the most harmful forms of work, forced labour, and occupational health and safety (particularly ILO Conventions Nos 29, 87, 98, 100, 105, 111, 138, 155 and 182.) are among those most often referred to. With respect to the environment, the Rio Declaration on Environment and Development is the most prominent legal source for CSR, while references to other instruments or specific standards concerning behaviour with respect to the external environment appear to be less common.
- <sup>20</sup> Instrument in this context refers to a legal text, such as a treaty (convention or covenant), declaration or recommendation of international or regional law, or a statute or other form of regulation of national law.
- <sup>21</sup> The situation in Burma in 1996 when there was much focus on corporate financial support to the military dictatorship is an example of this. The focus on Burma in 1996 led to many pensions funds selling stocks in companies that were found to present a CSR risk through their financial support to the Burmese government (see for example Sjöström 2004). Another example is turmoil concerning corporate presence in or dealings with China that arose in Denmark after the 1989 Tiananmen incident and again in 1997 when the Chinese government reacted to Denmark's tabling (on behalf of the EU) a China-critical resolution at the UN Human Rights Commission. See also *The Human Rights and Business Project*, a joint project the Danish Confederation of Industries, The Industrialization Fund for Developing Countries and the Danish Institute for Human Rights, at <[http://www.humanrightsbusiness.org/compliance\\_assessment.htm](http://www.humanrightsbusiness.org/compliance_assessment.htm)> (accessed on 7 February 2005).
- <sup>22</sup> Global Reporting Initiative 2002.
- <sup>23</sup> SA8000 is a standard and verification system developed by Social Accountability International, based on international workplace norms in ILO Conventions, The Universal Declaration of Human Rights and the UN Convention on the Rights of the Child. Details available at <<http://www.sa-intl.org>>.
- <sup>24</sup> AccountAbility (1999) and Hansen *et al.* (2002: 199-241).
- <sup>25</sup> SA8000; see note 22.
- <sup>26</sup> <<http://www.csr-asia.com>> 26 July 2004, 4 August 2004, 8 August 2004.
- <sup>27</sup> Office of the United Nations Resident Coordinator in China 2004.
- <sup>28</sup> The CBCSD was launched in Beijing on 16 January 2004 with the signing of a Memorandum of Understanding with the China Enterprise Confederation and the World Business Council for Sustainable Development (WBCSD). The CBCSD was

- approved in October 2003 by the Ministry for Civil Affairs.
- <sup>29</sup> China Business Council for Sustainable Development 2004. An idea of the CBCSD membership is provided by the 11 member organizations represented on the CBCSD board: Sinopec Corp, Shanghai Baosteel Group Corp, First Auto Works, China Ocean Shipping (Group) Company (COSCO), China International Maritime Container Group, China Enterprise Confederation, Shell Companies in China, BP China, BASF East Asia Regional Headquarters Ltd., Novozymes China, and Lafarge China. The president of the China Enterprise Confederation is honorary president of CBCSD.
- <sup>30</sup> As of mid 2003, 24 specific statutes, around 60 State Council regulations, around 100 ministerial regulations and over 1000 local regulations. Information provided by DaeYoung Park, Environmental Policy Centre, Brussels and Washington, <<http://www.enhesa.com>>. See also van Rooij (2002).
- <sup>31</sup> *People's Daily Online*, 27 July 2004, *China Daily Online*, 3 August 2004.
- <sup>32</sup> <<http://www.asianews.it>> and *AFP* 29 July 2004, <<http://www.csr-asia.com>> 26 July 2004, 29 July 2004 and 30 July 2004 with references, *National Geographic Magazine*, March 2004.
- <sup>33</sup> <<http://www.csr-asia.com>>, 2 August 2004.
- <sup>34</sup> As a member of the Shell Group, Shell China is committed to Shell's General Business Principles which provide, inter alia, that Shell companies have a responsibility to observe the laws of the countries in which they operate, to give proper regard to health, safety and the environment, to express support for fundamental human rights, and to respect the human rights of their employees and provide them with good and safe conditions of work (extracted and shortened from Royal Dutch/Shell Group of Companies: Statement of General Business Principles, Principle 2.)
- <sup>35</sup> Shell China 2003: 17, <<http://www.cnocshell.com>> and information from Nick Wood, External Affairs Director, Shell China.
- <sup>36</sup> Information from Novozymes China. March 2004, and Pia Carlé Bayer, Sustainability Officer, Novozymes Head Office, Copenhagen, August 2004.
- <sup>37</sup> *Ibid.*
- <sup>38</sup> Novozymes China 2003: 8, information by Lafarge and WWF, March 2004.
- <sup>39</sup> See for example Raagaard (2004), a report released by the Danish Consumers' Council in December 2004, based on a survey conducted in cooperation with the European test cooperation ICRT, documenting excessive overtime hours and lack of overtime payment in the Chinese toy industry, that led the Council to ask consumers not to buy the products and the Minister of Consumer and Family Affairs to say that she expected importers to make CSR demands on producers.
- <sup>40</sup> Information from Sue Adams, Worldwide Occupational Health Manager, Intel, March 2004.
- <sup>41</sup> Information from Weiming Jiang, Site President, Novozymes China, and Pia Carlé Bayer, Sustainability Officer, Novozymes Head Offices, Denmark.
- <sup>42</sup> *Ethical Corporation Magazine*. Internet edition, 11 March 2004a. See also Potter (2002: 10-12).
- <sup>43</sup> See for example from the toy industry, International Centre for Corporate Accountability, *Audit Report: Mattel, Inc., Guan Yao, ChangAn, Mattel Die Cast, Hua Tai Plants Company Operated Plants in China*, Zicklin School of Business, Baruch College, CUNY, New York, 29 March 2004.
- <sup>44</sup> Pringle and Frost (2003); US Department of State (2004); Amnesty International (2004); *Ethical Corporation Magazine*, internet edition, 11 March 2004.
- <sup>45</sup> *Renmin Wan* [People's Daily Online] 7 September 2004, reported by *Asian Labour News*, 8 September 2004.
- <sup>46</sup> *Ibid.*



- <sup>47</sup> China's 31 provinces, autonomous regions and municipalities have set up a minimum wage system and (except the Tibet Autonomous Region) have declared a minimum wage.
- <sup>48</sup> See for example International Centre for Corporate Accountability (2004).
- <sup>49</sup> <<http://www.csr-asia.com>> 26 July 2004, 8 August 2004.
- <sup>50</sup> *Ethical Corporation Magazine*, internet edition 11 March 2004, US Department of State (2004).
- <sup>51</sup> JP Morgan. Home country law in this case is US law.
- <sup>52</sup> Information from Wilfred J. Chow, Chief Regional Counsel, JP Morgan, March 2004.
- <sup>53</sup> Information from Pia Carlé Bayer, Sustainability Officer, Novozymes Head Office, Copenhagen, August 2004.
- <sup>54</sup> *Børsen*, 31 March 2004, *Morgenavisen Jyllands-Posten*, 13 April 2004 (several articles), *Morgenavisen Jyllands-Posten*, 16 April 2004.
- <sup>55</sup> *Børsen*, 29 January 2004, *Morgenavisen Jyllands-Posten*, 5 April 2004, *Børsen*, 15 April 2004.
- <sup>56</sup> Information from Rowena Wright, Ethical Trading Manager, BT.
- <sup>57</sup> See for example 'China: SA8000 requires positive attitude'. *China Economic Net*, 16 August 2004 and Berger (2004).
- <sup>58</sup> For example, according to information from Stephen Frost of *Asian Labour News* and City University of Hong Kong, six hours are reported to be becoming a norm for audits even of large factories with several thousand workers.
- <sup>59</sup> See for example Pringle and Frost (2003), Potter (2002), Chen *et al.* (2002) and Buhmann (2001: 314-25) and the references quoted on these pages.
- <sup>60</sup> See references quoted in Buhmann (2001: 317-18).
- <sup>61</sup> *Ibid.*
- <sup>62</sup> However, this is not so everywhere. In August 2004, the *South China Morning Post* reported a rising number of labour disputes in Shenzhen, with migrant workers complaining about not being paid and forced to work long hours. <<http://www.csr-asia.com>>, 15 August 2004.
- <sup>63</sup> This way of thinking is displayed for example in the questionnaires used by the Danish CSR Scorecard for companies to state their position and action on CSR, available at <<http://www.csr-scorecard.org>>.
- <sup>64</sup> Viewed from the opposite perspective, taking advantage of a weak legal system to obtain a market advantage, for example by not observing health and safety standards or overtime regulations, would hardly be deemed to be socially responsible. Nor would it be deemed environmentally responsible to take advantage of lax observance or enforcement by local authorities of environmental protection regulations in order to achieve a competitive advantage or access to production facilities that would otherwise not be allowed. There is little doubt that powerful stakeholders such as the media and NGOs concerned with sustainability would not consider such action to be in accordance with CSR.
- <sup>65</sup> In this respect, CSR and corporate governance tend to overlap. Following the adoption of the UN Convention against Bribery in the autumn of 2003, the UN Global Compact has decided to add absence of corruption as a tenth principle under the Global Compact <<http://www.unglobalcompact.org>>.
- <sup>66</sup> OECD Guidelines for Multinational Enterprises (2002). See <<http://www.oecd.org/pdf/M000015000/M00015419.pdf>>.
- <sup>67</sup> China Business Council for Sustainable Development (2004).

## REFERENCES

- AccountAbility 1999. *AccountAbility 1000 (AA1000) Framework: Standard, Guidelines and Professional Qualification*. London: The Institute of Social and Ethical Accountability. See also <<http://www.accountability.org>>.
- Addo, M. K. (ed.) 1999. *Human Rights Standards and the Responsibility of Transnational Corporations*. The Hague: Kluwer Law International.
- Amnesty International 2004. *Amnesty International Report 2003: China*. Internet edition.
- Asian Labour News*, 21 September 2004 .
- Beijing Times*, 16 August 2004
- Berger, Oscar 2004. *Balance is the Name of the Game*. Field study. Department of Political Science, Lund University.
- Buhmann, Karin 2001. *Implementing Human Rights through Administrative Law Reforms: The Potential in China and Vietnam*. Copenhagen: Djoef Publishing.
- 2006. 'Corporate Social Responsibility – What Role for Law?' *Corporate Governance: The International Journal of Business in Society*, vol. 6 (forthcoming).
- Burns, P. and Christoph Riechmann 2004. *Regulatory Instruments and their Effects on Investment Behavior*. World Bank Research Working Paper 3292. Washington: World Bank (22 April).
- Børsen*, 29 January 2004, 31 March 2004 and 15 April 2004.
- Chan, Jason Chi-hin and Richard Welford 2004. *Assessing Corporate Environmental Risk in China: An Evaluation of Reporting Activities of Hong Kong Listed Enterprises*. Corporate Environmental Governance Programme, Project Report 14. Hong Kong: The University of Hong Kong.
- Chen, Jianfu, Yuwen Li and Jan Michiel Otto 2002. *Implementation of Law in the People's Republic of China*. The Hague: Kluwer.
- China Business Council for Sustainable Development (CBCSD) 2004. Press release, Beijing, 16 January.
- China Daily Online*, 26 July, 2 August, 3 August and 11 August 2004.
- China Economic Net*, 16 August 2004.
- CSR Asia. See <<http://www.csr-asia.com>>.
- CSR Europe, Deloitte and Euronext 2003. *Investing in Responsible Business: The 2003 Survey of European Fund Managers, Financial Analysts and Investor Relations Officers*. Brussels: CRS Europe, Deloitte and Euronext.
- The Economic Observer and Hill & Knowlton 2004. *Corporate Reputation (China) Survey Report*. American Chamber of Commerce in Shanghai, June.
- Ethical Corporation Magazine*. Internet edition 2004a. Alex Blyth: 'Corporate Responsibility in China – a Cross Section of Business Issues and Practices'. 11 March.
- Internet edition 2004b. Nicola Macbean: 'Analysis: Tackling the Big Five Human Rights Issues for Business Operating in China'. 11 March.
- European Commission 2001. *Promoting a European Framework for Corporate Social Responsibility*. Green Book. Luxembourg: EU Commission Publication COM.
- 2002. *Corporate Social Responsibility: A Business Contribution to Sustainable Development*. Luxembourg: Office for Official Publications of the European Communities (July).
- Global Reporting Initiative 2002. *Sustainability Reporting Guidelines 2002*. Available at <<http://www.globalreporting.org>>.
- Hansen, Jesper Lau 2005. 'CSR og Corporate Governance fra en juridisk synsvinkel.' In Karin Buhmann and Jacob Dahl Rendtorff (eds), *Corporate Governance and Corporate Social Responsibility*. Copenhagen: Djoef Publishing.
- Hansen, Jørgen Valther et al. 2002. *Ikke-finansiell regnskabspraksis 2002: Krav, vejledninger og eksempler*. Copenhagen: Ernst & Young and Forlaget Thomson.

- Hopt, Klaus, J. Hopt and Gunther Teubner (eds) 1985. *Corporate Governance and Directors' Liabilities*, European University Institute. Berlin and New York: Walter de Gruyter.
- Human Rights and Business Project. Available at [http://www.humanrightsbusiness.org/compliance\\_assessment.htm](http://www.humanrightsbusiness.org/compliance_assessment.htm).
- International Centre for Corporate Accountability 2004. *Audit Report: Mattel, Inc., Guan Yao, ChangAn, Mattel Die Cast, Hwa Tai Plants Company Operated Plants in China*. New York: Zicklin School of Business, Baruch College, CUNY.
- IVAM Research and Consultancy 2004. *What's the Difference between a Dragon and a Lion?* (Survey on Dutch multinational corporations in China). Amsterdam: IVAM.
- Laing, Sefton 2004. *Consuming for Good? The Role of Consumers in Driving Responsible Business*. Edinburgh: Agenda.
- Mackenzie, Craig (n.d.). *Defining Global Business Principles*. London: Insight Investment.
- Morgenavisen Jyllands-Posten*, 5 April, 13 April and 16 April 2004.
- Morsing, Mette and Christina Thyssen 2003a: Foreword. In M. Morsing and C. Thyssen (eds), *Corporate Values and Responsibility*. Copenhagen: Samfundslitteratur.
- 2003b. 'The Case of Denmark'. In M. Morsing and C. Thyssen (eds), *Corporate Values and Responsibility*. Copenhagen: Samfundslitteratur.
- National Geographic Magazine*, Internet edition, March 2004. Available at <http://magma.nationalgeographic.com/ngm/0403/feature4/index.htm>.
- Nordisk Råd 2001. *Forbrugernes fornemmelse for etik*. Temanord 2001:583. Copenhagen: Nordisk Råd (Nordic Council).
- Novozymes 2004a. *Novozymes Report 2003*. Bagsværd: Novozymes 2004.
- 2004b. *Novozymes Report 2003: Global Compact Report*. (CD rom with Novozymes 2004a).
- Novozymes China 2003. *Novozymes in China 2002*. Beijing: Novozymes 2003.
- OECD 2002. *OECD Guidelines for Multinational Enterprises*. Available at <http://www.oecd.org/pdf/M000015000/M00015419.pdf>.
- Office of the United Nations Resident Coordinator in China 2004. *Millenium Development Goals: China's Progress*. Beijing.
- People's Daily Online*, 27 July 2004 and 13 September 2004.
- Potter, Pitman B. 2002. *The Chinese Legal System: Globalization and Local Legal Culture*. London/New York: Routledge.
- Pringle, Tim E. and Stephen D. Frost 2003. 'The Absence of Rigor and the Failure of Implementation': Occupational Health and Safety in China. *International Journal of Occupational and Environmental Health* 2003 (9): 309-16.
- Raagaard, Torsten 2004. 'Legetøjsfirmaer uden etik.' *Tænk og Test*, vol. 50. Copenhagen: Forbrugerrådet.
- Rooij, Benjamin van 2002. 'Implementing Chinese Environmental Law'. In Jianfu Chen, Yuwen Li and Jan Michiel Otto (eds), *Implementation of Law in the People's Republic of China*. The Hague: Kluwer.
- Royal Dutch/Shell Group of Companies: *Statement of General Business Principles, Principle 2*. Available at <http://www.shell.com>.
- Saleh, Jahangir 2004. *Property Rights Institutions and Investment*. World Bank Research Working Paper no. 3311. Washington: World Bank.
- Shell China 2003. *Report 2003*. Beijing (April).
- Sjöström, Emma 2004. *Investment Stewardship: Actors and Methods for Socially and Environmentally Responsible Investments*. Copenhagen: The Nordic Partnership.
- Thorsen, Sune S. 2003. 'Menneskerettigheder og erhvervslivet – med fokus på de oversete rettigheder'. In J. D. Rendtorff (ed.), *Værdier, etik og socialt ansvar i virksomheder*

- *Brudflader og konvergens*. Roskilde: Center for Values and Organisations, Roskilde University: 202-17.
- UN Global Compact homepage. <<http://www.unglobalcompact.org/Portal>>.
- US Department of State 2004. *Country Reports on Human Rights Practices 2003: China*. February 25.
- Vallentin, Steen 2003. 'Socially Responsible Investing – Approaches and Perspectives'. In M. Morsing and C. Thyssen (eds), *Corporate Values and Responsibility*. Copenhagen: Samfundslitteratur: 257-70.
- Weissbrodt, D. and M. Kruger 2003. 'Current Developments: Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights'. *American Journal of International Law* 47.
- Welford, Richard 2004. *Corporate Social Responsibility in Europe, North America and Asia: 2004 Survey Results*. The Corporate Environmental Governance Programme of the Centre of Urban Planning and Environmental Management. Hong Kong: The University of Hong Kong.
- World Bank Group 2003. *Corporate Social Responsibility Practice: Strengthening Implementation of Corporate Social Responsibility in Global Supply Chains*. Washington DC: World Bank (October).
- World Business Council for Sustainable Development homepage. Available at: <<http://www.wbcsd.ch/templates/TemplateWBCSD1/layout.asp?type=p&MenuId=MzI3&doOpen=1&ClickMenu=LeftMenu>>.
- Zadek, Simon, Mira Merme and Richard Samans 2005. *Mainstreaming Responsible Investment*, World Economic Forum Global Corporate Citizen Initiative in Cooperation with Accountability (January).