

# The Lack of Consistency between Corporate Lobbying and CSR policies

Working Paper (not for quotation)

## 1. Introduction

Although many multinational corporations have developed comprehensive CSR policies in the past ten years, most of these companies do not refer to ethical aspects of corporate lobbying in their business principles or codes of conduct. Political donations (OECD 2000) and policy influence to support human rights (Holme and Watts 2000) are sometimes recognized as CSR issues. However, efforts to systematically align corporate lobbying in general with CSR principles are often lacking (Blowfield 2005).

Furthermore, many systems have been created to report on CSR policies and implementation, such as the Global Reporting Initiative (GRI). Some of these reporting systems do provide guidelines for companies on how to report about lobbying strategies and activities, but generally do not make companies report on their lobbying activities through business associations and chambers of commerce. The GRI G3 Guidelines, for example, include guidance to report on participation in public policy development and lobbying, but many companies do not use this society performance indicator. It is safe to say that apart from a few exceptions, multinational corporations do not provide comprehensive information to stakeholders on their corporate lobbying strategies and activities (SustainAbility and WWF-UK 2005, Blueprint et al. 2007).

Various cases of corporate lobbying affecting developing countries in a negative way have been documented (e.g. Blowfield 2004, Dharanajan 2005, Utting 2000). Therefore the current lack of coherent policies and disclosure is worrying.

## 2. Outline

Most academic research on corporate lobbying focuses on refining lobbying strategies and how lobbying can have a positive impact on a corporation's bottom line. Moreover, many researchers seek to analyse lobbying in high-income countries and in international policymaking, such as the WTO negotiations. Academic studies on corporate lobbying in developing countries are virtually nonexistent (Utting 2007).

The aim of this paper is to provide a more detailed analysis on whether and how companies integrate lobbying in their CSR policies, with a focus on issues affecting developing countries, and to provide recommendations for improvement.

The focus will be on the influence on legislation and government policies in developing countries and on international policy and agreements affecting developing countries.

The following issues will be discussed in this paper:

- ❑ How can issues related to corporate lobbying be included in CSR initiatives, such as international guidelines, government regulation and codes of conduct?
- ❑ How can companies, governments, civil society organisations and other stakeholders verify if corporate lobby strategies and activities are consistent with CSR policies?
- ❑ What differences exist for the above questions with regard to different targets and channels of corporate lobby?

In particular, the following two hypotheses are being tested:

- ❑ Effective systems to avoid inconsistencies between direct corporate lobbying activities and CSR policy are relatively easy to develop, but addressing indirect corporate channels is both more difficult and more important.
- ❑ Current disclosure practices are insufficient to hold companies to account for their lobbying activities, especially regarding indirect lobbying efforts.

### 3. Targets of policy influence

In recent years, companies have been actively extending their spheres of influence. Lobbying usually refers to the practise of trying to influence one or more of the various branches of government. Much lobbying practises centre on attempts to influence the legislature and the framing of laws, but effort is also expended on the executive and the judiciary (Henriques 2007).

According to Henriques, the classic function of lobbying is to influence specific legislation or regulation. In addition, lobbying may continue with efforts to influence the way the judiciary will interpret legislation when or before it is finally in force. Donations to political parties can also be considered part of lobbying, although there is less control over the specific policies which may be supported as a result.

Besides practising these “conventional” forms of lobbying, companies also try to influence other stakeholders than the legislative authorities. Perhaps the most significant of companies’ lobby efforts towards other stakeholders are customers, other companies, the media, NGOs and other civil society organisations (Henriques, 2007).

The main methods used to influence the decisions of customers are the usual activities of advertising and promotion, with brand management as their fullest expression. To influence NGOs and public opinion generally, one of the main tools companies use is to publish reports. Many companies publish a “CSR report” or “sustainability report”. Ironically, these reports were originally conceived as mechanisms for companies to demonstrate that they were being influenced by other stakeholders, rather than vehicles for the opposite (Henriques 2007). The most effective route to influence NGOs and professionals is probably a research report. One of the problems of CSR reports is that the NGO audience likes to see a “research report” on the company, whereas the company wants to convey a public relations message. It is difficult to reconcile these two aims (Henriques 2007).

This paper focuses mainly on corporate lobbying towards legislative authorities. A distinction is made between corporate lobbying directly related to CSR, for instance against binding regulation on CSR, and lobbying practices related to other relevant and adjacent themes, such as trade and investment agreements, government contracts, public procurement regulation, regulation of business incentives, advertising, subsidies for public private partnerships etc. This paper provides examples of both types of lobbying.

### Case study 1 | Shell: lobby against the UN Norms for business

In 2003 Shell embarked on a lobbying campaign against efforts by the United Nations (UN) to define the human rights responsibilities of companies. This initiative, known as the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, is widely supported by international nongovernmental organisations (NGOs) and has also received the support of some corporations.

Shell has led the opposition to the UN Norms, which includes the International Chamber of Commerce, the International Organisation of Employers, the US Council of International Business, and the UK Confederation of Business and Industry. Shell asserts that the UN Norms seek to impose responsibilities on Businesses that are not appropriate for them.

Shell argued that human rights standards should be voluntary for businesses, and not mandated by law. The company further asserted that it was already implementing human rights standards, so that the UN Norms offered little value (Global Policy Forum, 2004). Shell's reputation suffered in the debate on the UN Norms, with a senior executive, Robin Aram, taking a public position against the Norms in his role a representative of the International Chamber of Commerce (Webb, 2004).

### Case study 2 | Lobby for the liberalisation of financial services

Industry lobby for liberalisation of financial services under the General Agreement on Trade in Services (GATS) provides a good illustration of policy influence that is not directly related to CSR standards, but nonetheless has consequences for responsible business in developing countries. Large banks, insurance companies and other financial service providers from the US and the EU have had a large influence on GATS negotiations. Their lobbying efforts were closely coordinated by the Financial Leaders Group (FLG), which was established for this purpose in 1996, and highly effective. The EU Trade Commissioner even called business lobbyists during the negotiations to consult them directly on the issues at stake (Vander Stichele et al. 2006).

The resulting EU negotiation positions are relatively well-documented due to a series of leaked bilateral liberalisation requests. To many developing countries, the EU requested to remove all limitations on commercial presence of foreign companies for a range of financial services, including the removal of limitations on full foreign ownership. In some cases, the EU also requested to end specific government requirements intended to enhance financial stability or to stimulate access to financial services for poorer clients and smaller companies (Vander Stichele 2005). The resulting market liberalisation has contributed to the domination of foreign financial companies in developing countries and increased competition for the most profitable high end market segments. Critics point out that this may in turn reduce access to financial services for the poor (Vander Stichele 2005), which contradicts the CSR policies of many financial companies. In addition, in some countries market liberalisation may have increased financial instability (Bird and Rajan 2001).

## 4. Channels of policy influence

For the analysis of the different channels of policy influence, the model developed by Hillman and Hitt (1999) provides a useful framework. The model distinguishes the approach to political strategy, the participation level, and the type of political strategy.

The approach can be transactional, aimed at specific issues, or relational, aimed at building lasting relationships. Revolving doors practices are an important example of a relational approach. These practices refer to past government officials, staff of international organisations or members of parliament becoming professional lobbyists, or the other way around, company executives joining government bodies. Apart from revolving doors, the focus of this paper is mainly on transactional aspects, because relationship building facilitates policy influence in general, but concrete acts of policy influence always involve a transactional approach as well.

Revolving doors is hardly ever identified as an explicit lobbying strategy in academic literature, but has been a central issue in several analyses by civil society organisations (Public Citizen 2005). The specific nature of revolving doors practices is most apparent when previous company executives become employed as policy advisors by the government. A past chairman of Pfizer, the world's largest pharmaceutical company, was appointed as a special representative to the US Trade Representative, for example (Oxfam 2001).

### Case Study 3 | Cisco, the US government and its revolving doors

Cisco has a special department for lobbying. Cisco Worldwide Government Affairs seeks to “drive public policies that grow and protect the use of technology through traditional means and by using the Internet.” According to CISCO, the company's top worldwide policy issues are: increasing broadband deployment, promoting wireless technology, supporting VOIP services, improving Internet security and advocating better education through technology. In the US, Cisco employs at least two in-house lobbyists for this purpose, besides contracted private lobby firms. In the first half of 2007, Cisco spent US\$ 680,000 on lobbying on various issues in the Senate, the House of Representatives and other sections of the US federal government (US Senate Office of Public Records 2007).

Cisco seems to have particularly good relations with the Bush administration. Some of Cisco's ex-employees have become important government officials. For instance Bruce Mehlman, originally a lobbyist for Cisco, was appointed assistant secretary of commerce for the US Department of Commerce during the first George W. Bush administration (Brown 2001). In 2004, when President Bush got re-elected, Mehlman resigned and immediately started lobbying for the Technology CEO Council, then a new organization founded by nine leaders in the high-tech industry. Mehlman is a strong advocate for free trade and global offshore outsourcing (McCullagh 2004). The client list of Mehlman's company is a mix of high-tech firms, health care companies and general business, including Wal-Mart and the Business Roundtable. Its income jumped to \$7.3 million in 2006 from \$1.3 million in 2004. Mehlman maintains his close ties to Cisco (Cummings 2007).

In 2006, Cisco's sales to the US federal government grew at a slower rate as compared to the fiscal year of 2005. Cisco stated that its sales to the US federal government remained subject to a possible realignment of government spending priorities and timing of budget rollouts, which could adversely affect these sales in future periods (Murphy 2005). In 2004, net product sales to the United States federal government had increased by approximately 20 percent due to higher program capital spending in the defence sector. Security, the only billion-dollar business of Cisco's six “advanced technology” growth markets, took a hit in 2005 due to a realignment of funds by the US government. In 2005, President George Bush proposed a seven percent increase in technology spending a day after Cisco announced disappointing results with its second-quarter sales (Slob, 2007). Was this a coincidence?

The participation level of Hillman and Hitt's model refers to individual lobbying versus collective action by a group of companies. The former may involve competition between companies, but may also occur if companies with a shared policy objective do not coordinate their activities. The latter requires cooperation between companies, for example via industry associations and chambers of commerce. Political strategies can be classified into informational strategies, financial incentives, and constituency building (Hillman and Hilt 1999). This third dimension will be examined in more detail.

Informational strategies are intended to inform and persuade decision makers by providing research reports (Kolk and Pinske 2007) and other specific data, analysis and opinions. This can be done by business executives themselves or by professional lobbyists. Such information is usually welcomed to some extent, because of limitations to the expertise and resources of government departments and international organisations.

Leaving apart the case of illegal payments, financial incentives often take the form of political donations. However, these incentives may be interpreted more broadly to include, for example, charitable donations in support of specific social goals. These are not necessarily confined to transactional strategies. It has been observed that there is a melding between corporate political activity and corporate social performance. As Hillman et al. (2004) explains, “a firm with a history of sponsoring community projects most likely realizes easier access to and a better hearing from local politician”. Alternatively, companies sometimes hint that they will link decisions about the location of production sites that generate jobs and government revenues to public policy outcomes. This may even involve speculative threats to relocate production or suspend new investments in order to put pressure on a government, while in reality a company may not implement such strategies even in the case of unfavourable policy changes.

Constituency building refers to the encouragement of company stakeholders, such as employees, suppliers, clients, consumers, and community members, to voice the public policy concerns of the company (Lord 2000). Other examples of this type of political strategy are the funding of think tanks, research programmes, and interest organisations that, knowingly or unknowingly, support the lobbying efforts of a company. A more aggressive strategy is to set up front groups that appear not to be linked to the company, but whose sole purpose is to promote its policy goals. Constituency building is sometimes referred to as grassroots campaigning because it involves the mobilisation of non-business actors. The strategy is more indirect, and therefore often less visible, than other types.

At a more basic level, political strategies may also be thought of as either information-oriented or pressure-oriented (Getz 1997). In this case, the latter category includes financial incentives and constituency building as well as more direct forms of public campaigning such as public advertising.

Bonardi and Keim (2005) argue that widely salient issues, which receive a lot of public scrutiny, require different types of strategies than those mentioned above. If a company wants to influence policy makers in a way that goes against the public opinion, it may employ yet more subtle strategies. In early stages of policy formulation, it could be more effective to influence experts, opinion leaders and reporters than to influence policy makers directly. In later stages, self-regulation is suggested as the most appropriate strategy (Bonardi and Keim 2005). However, self-regulation can be part of a corporate political strategy only for specific types of policies. In the context of CSR, self-regulation is usually employed to pre-empt the tightening of legal regulation of corporate behaviour. Influencing experts, on the other hand, can also be used to lobby for policy changes that are the opposite of tightening legislation or that are not directly related to CSR, such as market liberalisation.

The table below combines and summarises the elements of the model that are most important for the purpose of this paper. The first column distinguishes relational and transactional approaches. As explained above, the focus is on transactional approaches, which are sub-divided into mainly information-oriented and mainly pressure-oriented strategies. Thus, the first column combines the first and second dimension of Hillman and Hitt's model. The second column identifies main direct target groups, and as policy makers are always the ultimate target group, it also indicates which strategy types are indirect in nature. The third column lists the different types of lobbying strategies discussed above. The last two columns mention the alternative participation levels of different strategy types, adding the third dimension of Hillman and Hitt's model. As some strategy types are relatively uncommon at the individual or collective level, a few cells in the table have been left blank.

**Table 1 – Corporate lobbying model**

Approach and orientation	Main direct target group	Type of lobbying strategy	Participation level	
			Individual	Collective
Relational approach	Policy makers	Revolving doors	Government officials becoming company executives or lobbyists and vice versa	Government officials becoming representatives or lobbyists of associations and vice versa
Transactional approach, mainly information-oriented	Policy makers	Direct lobbying	Lobbying by company executives and lobbyists hired by companies	Lobbying by representatives of associations and lobbyists hired by associations
	Experts and opinion leaders	Influencing experts and opinion leaders	Lobbying by company executives and lobbyists hired by companies	Lobbying by representatives of associations and lobbyists hired by associations
Transactional approach, mainly pressure-oriented	Policy makers	Political donations, charity	Donations and charity by companies	
		Promises and threats	Linking company investment decisions to policy outcomes	
		Self-regulation		Industry initiative to pre-empt stricter legal regulation
	Stakeholders and grassroots organisations	Constituency building	Mobilisation and funding by companies	
	General public	Advocacy advertising	Campaigns sponsored by companies	Campaigns sponsored by associations

Although the overview above is largely based on analyses of corporations based in high-income countries lobbying international institutions and the governments of EU countries and the US, the lobbying strategies employed in emerging economies are probably similar. A study on corporate political activity in China finds that government relations usually fall under the responsibility of the country manager. Most large multinationals also have government affairs staff in China and a representative office in Beijing for lobbying purposes. In addition, when executives from the global corporate headquarters visit China, they usually meet with senior government officials. Relational strategies, aimed at trust building, are an essential part of corporate lobbying in China. Similar to revolving doors practices in the US and EU, multinationals often hire former officials of the Chinese government to lobby the department where they were previously employed. Companies use the services of global public relations and lobbying firms as well, several of which have substantial operations in China. Furthermore, multinationals act both individually and collectively through business associations.

Finally, when domestic strategies are inadequate, foreign companies request their home governments to put pressure on China on their behalf (Kennedy 2007). This adds an additional channel to the international lobbying of multinational corporations. Probably this channel is more powerful when lobbying developing country governments, because the power imbalance between the home and host countries is usually larger if the latter is a developing country.

The overview of different lobbying channels will be used to identify policy requirements that could make corporate lobbying activities more accountable and consistent with CSR policies. This will be the subject of the next section. First, it will be briefly reviewed which strategies are most important.

Lord (2000) conducted a large survey among corporate executives and congressional aides to assess what types of lobbying strategies were most successful in influencing US federal legislation. Constituency building was identified as the most effective strategy to get a proposed law passed or defeated. To influence the content of legislation, in contrast, lobbying by business executives or hired professionals was considered most effective. Advocacy advertising and political donations were perceived to be much less effective (Lord 2000). Another study finds that PAC contributions in the US are dwarfed by corporate lobbying expenses and charitable donations (Milyo et al. 2000).

Furthermore, when multinational companies lobby for regulatory changes in developing countries, they often do so via international trade and investment agreements. The US government and the European Commission are the main channels of corporate political pressure to influence such agreements. This is indicated, for example, by the huge numbers of professional lobbyists operating in Washington and Brussels.

Many of the world's largest companies have policies on transparency about political donations, and some do so in very much detail. However, no major company discloses the amount of money they pay to professional lobbyists (Sustainability and WWF-UK 2005). This means that CSR policies on lobbying so far only cover the least important aspects.

#### **Case study 4 | Lobby through US and EU Chambers of Commerce on Chinese labour law reform**

In early 2006, the Chinese government published a draft version of the new labour law and invited comments through a broad consultation procedure. According to trade unions, one of the main improvements of the proposed labour law is that all employment relations shall be on the basis of contracts. In case no contract is signed, a standard contract will automatically apply. This would offer protection for workers without a contract, which include millions of migrant workers. So far, many court cases of violations of labour laws were rejected because of the non-existence of an employment contract.

Several companies and business associations have actively lobbied for changes to the proposal or outright against the new law. The lobbying of US-based companies has been especially strong, going far beyond invited comments through the consultation procedure, and it has heavily criticised. Some firms have directly addressed Chinese policy makers. Most of the lobbying was conducted at the collective level, though, and the individual actions appear to form part of a concerted effort as well. The American Chamber of Commerce in Shanghai and US-China Business Council have been leading actors in the opposition to the new law (Global Labor Strategies, 2007, 2006). As far as the improvements in contractual labour rights are concerned, such a lobby would go against any corporate CSR policy.

Whereas the EU Chamber of Commerce in China in general took a more moderate position, some perceived that it still opposed the new law. In its letter submitted in the public consultation procedure, for example, the Chamber encouraged the Chinese government *'to focus its efforts on improving the implementation of existing regulations (...) before passing additional laws'*. Reportedly, the Chamber has also said that the new law will increase production costs in China and will *'force foreign companies to reconsider new investment or continuing with their*



*activities in China*' (Buckley 2006). Thus, the lobbying strategy involved threats about the withdrawal of investments as well.

The Dutch multinational Philips is a member of the EU Chamber of Commerce in China. However, in a research conducted by SOMO, Philips and the EU Chamber of Commerce deny that they would have lobbied against the law or against improvement of Chinese labour conditions in general, such as mandatory contracts (Weyzig and Schipper 2007). This illustrates that a multinational may not wish to be engaged in policy influence inconsistent with its own CSR principles, including at the collective level, but may find it difficult to implement this in practice and fully prevent apparent inconsistencies.

#### **Case study 5 | ExxonMobil: influencing policies on climate change by funding think tanks and researchers**

ExxonMobil has long been involved in creating confusion regarding global warming and the creation and funding of global warming sceptics. According to the US Union of Concerned Scientists, ExxonMobil funded 29 climate change denial groups in 2004 alone. Since 1990, the company has spent more than US\$ 19 millions on financial resources for groups that promote the company's views through publications and websites. Research undertaken by the Royal Society in the UK indicates that Exxon Mobil in 2005 provided more than US\$ 2.9 million to organizations in the US which misinformed the public about climate change (Ward, 2006).

In the same year, the Guardian revealed that U.S. State Department paper showed that the U.S. government's conservative position on climate change partly resulted from input from the Global Climate Coalition, of which ExxonMobil was a prominent member (Vidal, 2005; Kolk and Pinske, 2007).

In October 2006, two US Senators wrote to ExxonMobil's chairman and CEO, asking that it "end any further financial assistance" to groups "whose public advocacy has contributed to the small but unfortunately effective climate change denial myth." The Senators singled out the Competitive Enterprise Institute and Tech Central Station as such groups. They wrote that they were convinced that ExxonMobil's long-standing support of a small cadre of global climate change sceptics, and those sceptics' access to and influence on government policymakers, had made it increasingly difficult for the United States to demonstrate the moral clarity it needs across all facets of its diplomacy (Sandell, 2006).

#### **Case study 6 | US agribusiness multinationals lobby for in-kind food aid**

The lobby of US agribusiness multinationals in defence of in-kind food aid by donor countries provides an illustration of direct lobby by business executives. In-kind food aid is a form of tied aid and may harm farming livelihoods in developing countries because it has a similar effect as dumping of agricultural products (Eagleton 2006). However, a few major US companies have large business interests in continuing the practice. In the negotiations preceding the WTO ministerial meeting in Hong Kong, 2005, the US Trade Representative organised a series of meetings in Geneva with developing country representatives and lobbyists of individual companies. Usually such meetings take place between governments only (Eagleton 2006). Thus, company representatives were directly involved in trade negotiations between the US and developing countries. Similar to the financial industry lobby for market liberalisation of financial services, the lobbyists had privileged access to policy makers. This increases the opportunities for large corporations to promote their business interests, including where these conflict with the interests of poor communities in developing countries.

## **5. Government regulation with regard to corporate lobbying**

Lobbying is central to the democratic process. According to Chari and Murphy (2007), only four political systems have lobbying regulations: the United States, Canada, Germany and the EU (most particularly, the European Parliament).

There are several types of policies set by governments to regulate corporate lobbying:

- ❑ Disclosure of political donations
- ❑ Disclosure of lobbying positions
- ❑ Registration of lobbyists,
- ❑ Disclosure of payments to lobby firms
- ❑ Government revolving door regulation

Remarkably, the US appears to be the country with most disclosure laws in place. Political donations by corporations have been the subject of considerable scrutiny and reform in the US. In November 2002, the US Congress enacted legislation (the McCain-Feingold Act) that prohibited national political parties from soliciting and receiving 'soft money' contributions. As a result, since 2002 soft money has often been channelled into organisations which have no direct legal link to political parties themselves. These include trade associations and non-profit issue advocacy organisations known as '527 organisations' (after the tax code section regulating them). The 527s have become an important political force in the US. 527s may not directly advocate the election or defeat of any federal candidate, although they may support other political activities, including issue advocacy. As 527s are not election associations, they are not regulated by the Federal Elections Commission and only report income to the Internal Revenue Service, a much less detailed and rigorous procedure. Although 527s existed before 2002, more and more corporate money is now channelled in this way (SustainAbility 2005).

In March 2007, the European Commission announced its conclusions from two years of discussion on regulating EU lobbying in the context of the European Transparency Initiative (ETI). The Commission announced that it would break with the status quo, primarily by introducing an online transparency register for all types of lobbyists working to influence EU decision-making, including corporate lobby groups, think tanks, consultancies, law firms, and NGOs. The register, which should be launched in spring of 2008, is voluntary for lobbyists to join. The Commission's choice to start with a voluntary register has disappointed many civil society organisations. These organisations believe that such registers are unlikely to be effective (Corporate Europe Observatory 2007).

According to the framework developed by Chari and Murphy (2007), the systems in place at the American and Canadian federal levels can be classified as intermediately regulated, while Germany and the European Parliament can be deemed to have lowly regulated lobbying systems. Only in the US at state level there are examples of highly regulated systems with 25 of the 49 states that have lobbying legislation coming into this category; the other 24 states are deemed to be intermediately regulated. In Canada, Chari and Murphy consider the five provinces that have lobbying legislation to be intermediately regulated (Chari & Murphy, 2007). The table below explains the characteristics of the different levels of lobbying regulation.

**Table 2 - The different types of regulations schemes**

	<b>Lowly regulated systems</b>	<b>Medium regulated systems</b>	<b>Highly regulated systems</b>
<b>Registration regulations</b>	Rules on individual registration, but few details required	Rules on individual registration, more details required	Rules on individual registration are extremely rigorous
<b>Spending disclosure</b>	No rules on individual spending disclosure, or employer spending disclosure	Some regulations on individual spending disclosure; none on employer spending disclosure	Tight regulations on individual spending disclosure, and employer spending disclosure
<b>Electronic filing</b>	Weak on-line registration and paperwork required	Robust system for on-line registration, no paperwork necessary	Robust system for on-line registration, no paperwork necessary
<b>Public access</b>	List of lobbyists available, but not detailed, or updated frequently	List of lobbyists available, detailed, and updated frequently	List of lobbyists and their spending disclosures available, detailed, and updated frequently
<b>Enforcement</b>	Little enforcement capabilities invested in state agency	In theory state agency possesses enforcement capabilities, though infrequently used	State agency can, and does, conduct mandatory reviews /audits
<b>Revolving door provision</b>	No cooling off period before former legislators can register as lobbyists	There is a cooling off period before former legislators can register as lobbyists	There is a cooling off period before former legislators can register as lobbyists

Source: Chari, R. & Murphy, G. (2007). Examining and Assessing the Regulation of Lobbyists in Canada, the USA, the EU institutions, and Germany: A Report for the Department of the Environment, Heritage and Local Government.

## 6. Voluntary initiatives with regard to corporate lobbying

Most companies do not report voluntarily on their lobbying practises. Some multinational companies do disclose information about their lobbying practises and try to see to it that these are not in contradiction with their CSR policies. According to research undertaken by SustainAbility and WWF in 2005, about half of the world's largest companies provide at least some degree of transparency around their lobbying activities. None of the researched companies, however, had made an explicit link between corporate values and principles, core business decision-making (including corporate governance) processes and the company's approach to public policy (SustainAbility and WWF-UK 2005). More recently, a few companies have adopted a more integrated approach to reporting about public affairs. Some of the leading companies are now disclosing their support or opposition to specific regulations that are material to their business. However, only very few companies explain how these positions relate to their CSR policies or to broader and longer-term business objectives (Blueprint et al. 2007).

In an attempt of self regulation, some multinational companies have set up initiatives for consistent and "responsible" lobbying. According to MacGillivray et al. (2005), the definition of responsible lobbying is twofold:

- ❑ It is consistent with an organization's stated policies, commitments to stakeholders, and core strategy and actions.
- ❑ It advances the implementation of universal principles and values in business practice (MacGillivray 2005).

Although few companies have fully developed policies in all these areas, there is a growing awareness in business of the need for well-grounded principles to support political activity.

In many sectoral or multistakeholder CSR initiatives, the issue of lobbying is of growing importance. In its reporting framework, the Global Reporting Initiative (GRI) has included a core indicator and an additional indicator on the aspect of lobbying:

- ❑ Core performance indicator (S05): Public policy positions and participation in public policy development and lobbying.
- ❑ Additional performance indicator (S06): Total value of financial and in-kind contributions to political parties, politicians, and related institutions by country (GRI 2006).

This means companies that use the GRI framework can choose to disclose information about how they influence public policies. Hewlett Packard, an electronics company, uses GRI's core indicator on lobbying. On its website, HP provides some detailed information about its lobbying efforts:

*"[...] HP works to minimize the environmental impact of our products, services and operations. We support policies that promote energy efficient technologies and producer responsibility for electronic recycling.*

- Supported the European Union (EU) adoption of the Imaging Equipment criteria for Energy Star and continuation of the Energy Star Program with the United States for the next five years.
- Continued to work with EU institutions and member state governments to ensure successful implementation of the RoHS and WEEE Directives.
- Representatives of local government participated with HP in announcing the launch of HP's Planet Partners Program for LaserJet cartridges in Chile and Peru. (HP 2007)"

Although this statement provides some useful information, it does not really tell readers what the position of the company actually was in the negotiations about the RoHS (Restriction of Hazardous Substances) and WEEE (Waste Electrical and Electronic Equipment) Directives. It just tells us that HP has lobbied in relation to these EU directives.

Lascelles (2005) has found that there is a growing awareness in business of the need for well-grounded principles to support political activity, although few companies have fully developed policies regarding lobbying. He provides the following recommendations to companies:

- ❑ Companies should have clear, openly-stated and enforceable policies on the objectives and practice of their political involvement.
- ❑ If companies want to make political donations, they should obtain shareholder approval for the policy as well as for their donations budget. They should also explain how and why political donation decisions are made.
- ❑ Companies should give, in annual reports, details of all political donations made, and evaluate their worth.

- ❑ Lobbying is an activity which needs to have its own set of company policies and standards, rather than a patchwork assembled from general principles. Companies should provide these.
- ❑ In lobbying, companies should be open about their objectives, and make position papers publicly available to demonstrate consistency.
- ❑ Companies' lobbying activities should be proportionate to the issues involved, non-partisan and governed by appropriate policies and standards.
- ❑ Companies should ensure that the trade associations and pressure groups to which they belong, operate to the same high standards. Membership of such organisations should be disclosed.

### Case study 7 | The pharmaceutical industry and its influence on intellectual property rights

Lobbying by the pharmaceutical industry is of particular relevance to developing countries because of its influence on intellectual property rights, which affects the availability of cheap generic drugs in developing countries. Over the past years, the US has concluded various bilateral trade agreements with developing countries that require them to provide stronger protection of intellectual property than required by World Trade Organisation (WTO) agreement on Trade Related aspects of Intellectual Property rights (TRIPS), for example. This is often referred to as TRIPS-plus legislation. It extends market exclusivity for branded drug companies, many of which are US-based, but goes against the interests of developing countries.

In late 2005 and early 2006, SOMO (Centre for Research on Multinational Corporations) analysed the CSR policies and practices of 20 large pharmaceutical companies. The analysis included lobbying positions and corporate policies on the conduct of lobby as well as a scan on controversial practices. Data were collected from company reports, company websites, press databases, and civil society organisations. Some companies also provided additional information via a questionnaire, email correspondence and/or telephone interviews. The research was commissioned by a consumers' organisation and the full report is not publicly available.

The results show that many pharmaceutical companies have a policy on political donations and publish the amount of contributions. Some companies also list to which industry associations they are affiliated. However, the relatively high transparency on these issues is in stark contrast with the general non-disclosure of the policy positions that companies seek to advocate (Weyzig et al. 2006). This is similar to the findings of the Sustainability survey among the S&P Global 100 companies in 2005 (Sustainability and WWF-UK 2005).

Out of the twenty companies, only GlaxoSmithKline (GSK) and Novartis have stated that they were not lobbying developed country governments to press for so-called TRIPS-plus legislation in their bilateral negotiations with developing countries (Oxfam et al. 2002). GSK later questioned the concept of TRIPS-plus, though, and Novartis has been criticised for starting a lawsuit in 2005 to force Argentina to adopt TRIPS-plus legislation (Weyzig et al. 2006). Thus, even when pharmaceutical companies do have explicit CSR policies on lobbying positions, the value of such statements may be limited.

It was found that various companies had lobbied developing country governments to take actions that were inconsistent with their own corporate CSR policies on patent flexibility. Whereas several companies indicated where the responsibility for lobbying efforts lies within the company, only GSK stated that it also has a system in place to align lobbying activities with its access to medicines policy. This CSR policy of GSK does however not extend to the lobby undertaken on its behalf by pharmaceutical industry associations (Weyzig et al. 2006). That is an important limitation (Sustainability and WWF-UK 2005), because these associations are a main channel for the pharmaceutical industry to influence government policies in developing countries.

To summarise, some pharmaceutical companies have CSR policies on specific types or lobby conduct, notably political donations, and a few have made CSR statements about lobbying positions as well. However, it must be concluded that these policies are far from sufficient to ensure that all lobbying efforts are consistent with a company's own access to medicines position (if existing). Especially addressing political influence via industry associations that is contradictory to the CSR commitments of individual companies remains a major challenge. This may be surprising, because the pressure of the pharmaceutical industry for strong intellectual property rights in developing countries has been heavily criticised for many years.

## 7. Summary of findings and recommendations

First of all, it can be concluded that consistency between corporate lobbying practices and CSR principles is often lacking. Empirical findings from previous research, supplemented with several case studies, have demonstrated that powerful multinationals support lobbying efforts that are not in line with their own public policy statements or CSR policies. Moreover, most companies do not disclose public policy positions at all and lack a comprehensive system to align lobbying practices with CSR policies. As a consequence, inconsistency is not prevented and therefore a normal outcome. This can have important negative impacts for developing countries, including when the direct target of corporate lobbying is not the legislation in a developing country itself, but for example an international trade agreement.

Although lobbying has rarely been integrated into corporate CSR policies and management systems, some companies do provide transparency on specific aspects of lobbying. Disclosure of political donations seems to be the most advanced aspect of CSR practice with regard to lobbying. Unfortunately, the review of lobbying channels in this paper shows that this is probably one of the least important ways of influencing public policy. The hypothesis that current disclosure practices are insufficient to hold companies to account for their lobbying activities can therefore be confirmed. Direct lobbying and constituency building by individual companies as well as various collective strategies tend to have a much larger influence and account for a far greater share of lobbying budgets. Especially direct lobbying by corporate executives and lobbying strategies at the collective level remain a black box, the former because the lobbying itself can remain completely hidden and the latter because the role and involvement of individual companies can be impossible to determine.

These channels of policy influence can never be fully regulated through national legislation. Several governments of high-income countries have attempted to regulate some aspects of corporate lobbying, such as registration of professional lobbyists and payments to lobby firms, revolving doors practices, and political donations. If more governments adopt such regulation, this could enhance transparency and reduce some forms of undue influence. However, none of these approaches requires multinationals to disclose their policy positions. This severely limits corporate accountability on lobbying practices. Moreover, enforcement of lobbying regulations may be very difficult because violations can be difficult to detect. Common self-regulation initiatives and individual company policies are therefore important as well to improve consistency between CSR policies and lobbying practices. These could include the disclosure of lobbying positions, funding of civil society organisations and academics, and reporting on a company's input in business associations. However, it still needs to be demonstrated whether this will be effective to avoid inconsistencies.

## 8. References

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