

Speech by René van Hell

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Subject: How can market actors work to achieve fairer outcomes for workers? Do such strategies yield more productive workers? How do they affect market share and profits?

Today I would like to address how Dutch/EU trade policy is designed to achieve fairer outcomes for workers. Then I will focus on how the Dutch government links trade and CSR initiatives and how the governments tries to promote responsible business behaviour. Let me stress our CSR efforts are a work in progress; but we are determined to ensure that Dutch companies respect, promote and enhance human rights through their economic activities.

First, as you know, the Dutch government does not make trade or investment policy—the EC does.... But we have recently revamped our model trade agreement and BIT model to be more supportive of labor rights and human rights. Here’s how....

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While the Dutch government alone can not MAKE trade policy, our domestic policies are increasingly designed to promote CSR. What we do has an important influence on corporate behaviour around the world. Here’s why.

- The government of the Netherlands and the Dutch people view (CSR) as an important instrument to help our companies contribute to positive global outcomes of trade. CSR is not only righteous; it’s also the right thing to do from a company perspective.
- Although the Netherlands is a small country in Europe, with only 6 million? People, , we are a huge player in global trade. We are the sixth largest exporter and the 6th largest recipient and outsourcer of foreign direct investment.
- In the current global economy company activities have long expanded beyond territorial borders. Concerns about companies’ involvement in unacceptable violations in weaker governance zones have become increasingly common.
- Helping our companies to combat irresponsible business activity has therefore become a public task. (for which agencies?)
- But, this has not always been the case. I need to be honest here and tell you we have been moved by the tide of time and coincidence, more than intent. Like our companies, we just began.
- Our policy consisted of letting a thousand flowers bloom. But as we were focused at one flower at a time, we would not have even noticed if we were standing in a self-created field filled with weed nor did we know why we stood there.

- Two cabinet vision policy papers on CSR along the road, we enter into a different phase. Now we need to fill in the meaning of our words, to see the field where we are standing in clearly - know what we want to create and why.

We in the Netherlands are motivated by the need to increase trust in our society and social organizations.

What’s the why of CSR? – Government perspective: CSR as a driver of trust in our companies

- The difficulty of CSR is that it seems to fall outside the core activities of government? organisations. For companies, but also for policy makers. For a long time we did not consider ourselves in the business of making CSR policy.
- The driver for CSR, is not just political attention or public interest, but is the necessity of trust in our companies. Trust is fundamental for our economy, but fragile, as demonstrated by the financial crisis. Thus, policy on CSR is vital.
- A survey by *Globescan* showed that non-CSR related factors such as brand quality reputation and economic management only account for 45% of factors which determine the image of companies in G20 countries, where as CSR related factors as demonstrated responsibility to broader society and business ethics account for 49%. CSR has become a core determinant for the perception of companies and thereby a determinant for the collective trust in the companies which are the drivers of our economy.
- Breaching this trust shakes our economies. And that is exactly what incidents like Bhopal, Brent Spar, and Enron do. As governments we guard economic stability, for which trust is a precondition. With globalisation moving company activities outside our territorial view, trust in our companies is viewed as a leap of faith.
- Outsourcing increases concerns on risk of involvement in unacceptable violations that damage the image of the company, lowers investment value, lowers trust of shareholders and demands substantial legal and personnel capacity.
- In the Netherlands our cabinet just fell, lowering trust in politics which was already balancing on a fine thread. Disruption of the trust in companies could tip the balance even further. In the midst of an economic and financial crisis, this is the last thing we need.

CSR – company perspective: nip it in the bud

- In the USA, a consumer survey showed that 66% of investors will be strongly influenced by a company’s CSR track record for their decision to invest in a company.
- What the Special Advisor to the UN for Business and Human Rights, Prof. John Ruggie found after speaking to many companies all over the world, is that corporate related conflicts often start out small, but escalate because these dilemmas are not well understood or effectively addressed either by governments or executives.
- His advice: nip it in the bud. You avoid disrupting the local environment, upheaval in your company, costly legal procedures and you can learn from what does not work well in an early stage.

- But this is no news to the business representatives in the room today. USA companies are active drivers for CSR. Just this week I read that Apple has enforced their suppliers’ code of conduct by checking 102 facilities for child labour and engaged actively with suppliers to remediate the situation. When that failed in one case, they saw no other possibility than breaking their business relationship with that supplier.

Shape of CSR policy

- With our CSR instruments we try to enhance an investment and trade culture in which our companies respect human, social and environmental rights. What does that mean?

1. Clear expectations for companies: don’t violate rights of others

- Firstly, it means that we need to be clear about what we expect of companies. For a long time, philanthropy and preventing harm done to others fell into the same CSR category. This brings tension in policy. Government interference in philanthropy should not be the focus; these flowers are grown by companies themselves. More and more our efforts are focussed on the “do no harm” side, where the UN Special Advisor for Business and Human Rights has helpfully created a conceptual division between responsibilities of states and companies. Companies are expected not to violate rights of others.
- European countries consider the OECD Guidelines for Multinational Enterprises (which are about to be updated) the most useful normative framework to clarify which expectations we hold. An important factor for this is that every adherent country has to create a National Contact Point (in short, NCP) to provide guidance and consider potential breaches of the guidelines. The NCP can provide a low-threshold, no cost, impartial, non-judicial grievance mechanism. Such grievance mechanisms can contribute to providing remedies to victims of corporate related abuses as well as helping companies to remediate. That’s also if you may call it one of them main flaws of Global Compact: no grievance mechanism and prone to green washing.
- Interestingly, the use of OECD Guidelines and its National Contact Points seems to be a road less travelled in your country. CSR in the USA seems to be driven by a high level of engagement of the business sector, more than by public sector engagement in soft law approaches.
- For example, the NGO OECD Watch indicated that the OECD Guidelines are of low priority to the US Government.
- What interests me is the question if the different approaches produce different CSR results? Maybe an intelligent scholar here today could help us answer this question.

2. Voluntary, but with consequences

- Failing to follow the OECD Guidelines has consequences.

- Next to putting in place an independent NCP, we use one of our closest control mechanisms: financial support to companies. Putting government money where our mouth is.
- This means that for:
 - Export credit financing: our export credit agencies only offer loans if an applicant complies with IFC standards and the OECD guidelines. This is a prerequisite to financing.
 - State owned enterprises: we have come to a mutual agreement with the CEOs of State owned enterprises that they will comply with GRI from next year onwards.
 - Public procurement: in November 2008 our government announced that public procurement would be 100% sustainable in 2010. This was a major promise: total government purchases exceed € 50 bln annually, accounting for 16% of our GDP. It took courage to overcome legal questions, liability risks, administrative burden arguments, enforcement issues.
 - Investment: companies that apply for investment subsidies or funding of infrastructure projects in upcoming markets and developing countries are expected to comply with the OECD Guidelines. Suppliers to the project are also required to comply explicitly with core labour standards (no child or forced labour). If irregularities are detected in the project which is funded by the government, we have the possibility of withdrawing the funding and in future in sanctioning the applicant with an administrative fine.
- The sensibility of connecting social and environmental requirements to government financing is not limited to the Netherlands’ approach. The American Office of Investment Policy (OIP) does not provide investment assistance unless the investor complies with statutory requirements regarding worker rights and human rights.

3. Challenge ahead: competitive environment

- The reality is that these measures put our companies in a different position from their competitors, who may not abide by the same CSR rules. This is a challenge in a globalised market with players from all around the world.
- Our companies agree with us that CSR is necessary to prevent violations and avoid conflicts, but find the competition a fierce challenge.
- A recent study which we commissioned showed that companies can be held liable for failing their duty of care under CSR and could be summoned to pay damages caused by company violation of rights. As you have the Alien Torts Claim Act, this might not come as a shock to you. But in the Netherlands, this is a controversial subject. We emphasise that companies are not defenceless against this. A duty of care is not strict liability. If a company undertakes due diligence to establish risk of violations and adjusts its activities to minimise that risk, a strong defence can be held and help to strengthen the trust we place in them. So, companies might use the social and environmental requirements on government investments as a guidance to setting up due diligence which might even prove to be a good defence in court.

CONCLUSION

Principles and responsibility sound like lofty liberal concepts that don't pay off. However trust is vital for our economies, especially in heavy weather as we are facing now. Trust in our companies should not be viewed as a leap of faith but the outcome of a strong mutual understanding that our companies contribute to a fairer global outcome of trade and investments.

Gemiddelde spreesnelheid: 100 woorden per minuut

Totaal aantal woorden: 1656 (= 17 minuten)

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