Traidcraft Exchange’s response to the government’s Reforming Regulation consultation

In June 2020 the UK government consulted on the Reforming Regulation Initiative. This describes its aims as follows:

Good regulation is essential to successful business. The Government strives to achieve the right regulatory balance between supporting excellent business practice and protecting workers, consumers and the environment.

Traidcraft Exchange’s response to this consultant is to highlight the urgent need for regulation that ensures that holds UK businesses responsible for a failure to respect the human rights of the workers and farmers in their international supply chains.

Human Rights Due Diligence legislation
The UK government should introduce a law that does two things:

• Requires UK companies to conduct due diligence on their human rights and environmental risks
• Holds companies accountable in the courts if they abuse human rights or the environment

International trade can bring many benefits when it comes to creating the employment and economic opportunities that help to tackle global poverty. However, UK companies operating internationally are too frequently able to act with impunity—abusing workers, destroying the environment and dodging tax. The UK, in common with many other countries, has made little progress in prosecuting cross-border crimes. Meanwhile, companies accrue profits in UK bank accounts and benefit from UK markets, and the business advantages of being registered in the UK.

In March 2020 Traidcraft Exchange published a report highlighting the conduct of Equatorial Palm Oil a UK company that had stolen land from communities in rural Liberia and were complicit in violence and intimidation. Communities were pushed from the land that they had owned and farmed for generations. They were left without livelihoods, and the promised benefits—such as new roads and good schools—never materialised.

Equatorial Palm Oil should have been obliged to assess the potential impact of a large-scale land acquisition on communities in rural post-conflict Liberia and make a plan to mitigate those risks. Instead, they pushed ahead in pursuit of quick profits. Conflict with the communities was a predictable, and therefore preventable, consequence.

If companies are making money by breaching human rights overseas they should be tried in the UK. Failure to do so leaves responsible businesses operating in the UK market at a competitive disadvantage and communities such as those whose rights were infringed by Equatorial Palm Oil without a means of accessing justice.
Corporations can already be held legally accountable for other types of ‘cross-border’ crime such as bribery or tax evasion. A law clarifying the responsibility of a UK-linked company to respect human rights in its international operations would make it much easier to bring cases to the UK courts. Equatorial Palm Oil enjoys the economic and legal stability and access to investment and financial services that comes with being registered in the United Kingdom. This should come with a responsibility to protect human rights and the environment.

This is just one of a range of shocking examples demonstrating the need for a new law in the UK that can hold companies to account when they abuse human rights or the environment. Failure to do so undermines the UK’s global reputation.

It is hardly a radical idea. It’s in keeping with the UN Guiding Principles on Business and Human Rights, and is already in legislation in France: the Devoir de Vigilance law, passed in 2017, requires large companies to properly assess the human rights risks in their supply chains, and take measures to address them. Similar proposals are under discussion in Germany, Finland and Switzerland, whilst the European Commission has also announced its intention to introduce a due diligence law at EU level.

The proposed law enjoys majority support amongst business leaders in the UK. A 2015 poll found that 89% of UK business leaders agreed with the statement ‘British companies operating in developing countries should have adequate systems in place to prevent any harm being caused to workers or local communities by their operations in those countries’. Furthermore 69% agreed that ‘British companies operating in developing countries should be held accountable in the UK for any harm they cause to workers or local communities in the developing countries’.

And the public mood is also shifting in favour – in 2020 just 35% of the British public trusted British companies operating in developing countries to treat workers and local communities fairly. This compares to 62% when Populus asked the same question in August 2014.

The UK government should urgently respond to the clear need for improved corporate regulation around human rights, the public support for such regulation, and the international trend towards due diligence laws.

**Additional suggestions**

**Prompt Payment Code**

The government should place the Prompt Payment Code on a statutory footing, making it obligatory and equipping the Small Business Commissioner with the power to sanction non-compliance.

The dynamics of international supply chains are such that many of the goods that we consume in the UK are produced by farmers or factory workers in other countries. The product reaches the UK market via complex supply chains that very often involve a powerful retailer or brand.

Failing to pay invoices on time is a widespread way in which large buyers can use their power over their suppliers to dominate their competitors. It is essentially using suppliers as a source of interest-free credit. Meanwhile, suppliers are left out of pocket and will be less able to invest in everything from growing their business to paying living wages to their workers.
The COVID-19 crisis has exposed the scale of power imbalances in the garment sector, which leads to the widespread tendency of powerful buyers to delay payment of invoices. High street brands in the UK have payment terms that allow them to pay invoices 180 days after receipt.

The government introduced the Prompt Payment Code, overseen by the Small Business Commissioner at the direction of BEIS, in recognition that delayed payments are a problem experienced by suppliers. The code is entirely voluntary, and there is no sanction for those companies that sign up and are subsequently found in breach of the Code. At the time of writing, companies including Unilever, Diageo and Shell were listed as having been suspended from the Code; that such international giants clearly see so little financial or reputational risk from reneging on their commitment to the Code indicates that it is entirely lacking the necessary teeth. Meanwhile, the FSB reports that 83% of small businesses have to deal with late payments.

If the government is serious about supporting suppliers, including SMEs, it should:

a) bring forward plans to oblige companies to sign up to the Prompt Payment Code and ensure that the Small Business Commissioner has the powers to fine non-compliance. Voluntary approaches have clearly been insufficient.

b) Publicise the Prompt Payment Code amongst overseas suppliers. While signatories to the Prompt Payment Code theoretically pay all suppliers on time regardless of geographical location, in practice the Small Business Commissioner is focused on UK suppliers.

**Regulation in the agri-food sector**

The government should regulate to protect food producers from unfair purchasing practices.

The Groceries Code Adjudicator (GCA) was introduced in 2013 in recognition that the imbalances of power within different stages of the food supply chain created a situation in which unfair purchasing practices were commonplace. These unfair practices include last-minute cancellation of orders, late payment of invoices or unilateral variation of contracts. The GCA’s remit covers the relationship between the UK’s largest supermarkets and their direct suppliers, and it has made impressive progress in curbing the worst practices of the retailers.

However, the remit is too narrow. It excludes the vast majority of primary agricultural producers selling into supermarkets, whose products may reach the shelves via an intermediary or processor. These producers, often small businesses based on family farms or larger labour-intensive farms in poorer countries exporting to the UK, have no regulatory protection when they are subjected to unfair purchasing practices.

UK government should establish new regulation to protect the farmers who produce our food, whether in the UK or overseas, from unfair trading practices. A model for such a regulation is the 2019 Unfair Trading Practices Directive, which obliges EU Member States to legislate to tackle unfair purchasing along the whole of agricultural supply chains, from farmgate to retailer. We strongly recommend that the UK government chooses to comply with the Directive regardless of EU membership, ensuring that UK farmers are being offered the same levels of support and protection under UK law as they will as third-country exporters to the EU.

**Regulation of unfair trading practices in the garment sector**

The government should regulate purchasing practices in garment supply chains to prevent the unfair transfer of risks and costs onto suppliers.
The Groceries Code Adjudicator has made some progress in tackling unfair purchasing practices in certain agricultural supply chains. However, the Groceries Supply Code of Practice, the 2009 law that the GCA enforces, does not enforce fair dealing on supermarkets’ purchasing of garments. This is despite the fact that garment retailers (including supermarkets and high street shops) exhibit many of the same abusive purchasing practices in their garment supply chain relationships as are seen in the agri-food sector.

This has been demonstrated by the current COVID-19 crisis, in which major UK brands Primark, Edinburgh Woolen Mill and Matalan responded to the disruption by collectively cancelling £1.4bn of orders. Asda has acted in similar ways, requiring suppliers to its ‘George’ clothing brand to accept significant discounts despite the fact that Asda stores have remained open and profitable throughout the crisis.

It is extremely instructive that the first instincts of so many powerful brands and retailers is to cancel, ignore all contractual responsibilities, and rely on their relative power and the suppliers’ vulnerability to be able to force their suppliers to accept unilateral changes. These practices leave their suppliers in the lurch, unable to pay bank loans on raw materials purchased according to the retailer’s specification or pay workers’ wages for work already completed.

The government should urgently propose a means through which garment suppliers can enjoy the support of a regulator comparable in power and status to the GCA when they are subjected to unfair purchasing practices.

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