



## Laying down the law

### Backing up green claims

With the European Commission set on tightening the rules governing products' environmental assertions, **Ross Fairley** advises companies to scrutinise their supply chains



**W**ith a number of sustainability scandals hitting the headlines in 2013 – from the collapse of the Rana Plaza garment factory in Bangladesh to problems enforcing good labour standards in electronics factories throughout South Asia – the whole area of the supply chain and product responsibility has gained further impetus.

It is no surprise that supply chain issues have increased in importance to companies in parallel with globalisation. Supply chains can account for between 15% and 70% of a manufacturing firm's total costs, so companies have always had a keen eye on reducing wastage; recognising that any price adjustment can have a considerable effect on profits. However, the past 10 years have also seen the concept of green procurement rise up the corporate agenda.

There are a number of drivers for this, including increased legal regulation, but arguably it is now brand management that transcends all other things and gains the most attention from senior management. It is becoming essential for businesses to preserve the "green" status of their brand and often the most serious threats to this arise from the supply chain.

#### Mixture of regulation

Supply-chain regulation and compliance has become a legal specialism in its own right. International, European and national standards all have to be assimilated when you have a global supply chain. In the EU alone, there is a vast amount of legislation that can apply to products, including directives on: waste electrical and electronic equipment (WEEE, recast 2012/19/EU); the restriction of hazardous substances

in electrical and electronic equipment (RoHS, recast 2011/65/EU); ecodesign (2009/125/EC); and energy labelling (2010/30/EU). EU regulations, which apply directly in member states, such as REACH (1907/2006), ecolabelling (66/2010) and biocidal products (528/2012), also impact supply chains.

Many large corporations have realised that to manage these risks and properly regulate and report on their supply chain, they have to adapt. This area is no longer the preserve of just the environment and health and safety compliance officer in the business. Understanding your product chain and what product regulation means requires a multidisciplinary approach, encompassing technical, legal, product design and procurement teams.

Unfortunately for many, the diverse range of legislation and standards found in different countries shows no sign of converging. A classic example is the difference between the chemicals regulations applying, for example in the US (Toxic Substances Control Act), the EU (REACH), China (environmental administration of new chemical substances), Turkey (inventory and control of chemicals) and Japan (chemical substances control law). This challenge needs to be addressed, and a legal understanding of the differences in enforcement in jurisdictions and in the way that regulations apply is vital.

Businesses hoping for breathing space in terms of new legislation are likely to be disappointed, since the EU's seventh action programme makes it very clear that a key priority to 2020 is to improve the environmental performance of goods in the European market over their whole lifecycle. "Existing product legislation, such as the ecodesign and ecolabel directives and ecolabel regulation will be reviewed with a view to improving the environmental performance and resource efficiency of products throughout their lifecycle," states the European Commission.

#### Misleading claims

There has also been a move by the EU and national bodies to clamp down on misleading and unsupported environmental claims made about products. Regulation on "green claims" in the UK and the EU is piecemeal and driven largely by historic consumer protection laws, but the commission is planning to tighten legislation dealing with environmental claims.

A March 2013 report by the multi-stakeholder dialogue on environmental claims (MDEC), which was set up by the commission to analyse the use of environmental claims in different markets, provided a series of recommendations for action on green claims and called for a more coherent and coordinated enforcement approach. The report was closely followed by a communication from the commission in April 2013 entitled *Building a single market for green products*, which reemphasised the MDEC's findings.

It is inevitable that alongside greater transparency and control, major corporations will need to adopt an increasingly legalistic approach to supply chain management. Although these companies will invariably work with their suppliers to improve performance, they will also demand strong reassurances and contractual commitments. They will expect audit rights over facilities, information sharing, confidentiality provisions, rules with governing public statements and green claims, and, inevitably, indemnities and compensation when it goes wrong.

#### Government guidance

According to Defra, environmental claims and labels must be credible to consumers, clearly understood, and genuinely reflect a benefit to the environment. Its 2011 publication, *Green claims guidance* ([lexisurl.com/iema16747](http://lexisurl.com/iema16747)), provides firms with advice on producing clear, accurate, relevant and substantiated environmental claims on products, services or in marketing and advertising.

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