FRANCE'S MANDATORY "TRIPLE BOTTOM LINE" REPORTING: AN INFORMATIONAL REGULATION APPROACH TO SUSTAINABLE DEVELOPMENT

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A Paper Prepared for Presentation at the Second International Conference of the International Center for Corporate Accountability (ICCA), New York, June 2007.

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ABSTRACT

To encourage sustainable behavior by firms, in 2001, France passed Article 116 of its *Nouvelles Régulations Economiques* (NRE), thus becoming the first country to mandate "triple bottom line" (financial, environmental and social) reporting for firms. This paper uses social network theory and firms' initial reporting behavior to predict this requirement's potential impact as an instrument of informational regulation. We conclude that, although the NRE's Article 116 is not yet ideally designed to maximize its effectiveness, the early record of this bold initiative is promising. Companies in the U.S. and other nations need to understand this French experience because it foreshadows likely changes in their own operating environments.

France's Mandatory "Triple Bottom Line" Reporting: An Informational Regulation Approach to Sustainable Development

Sustainable development (SD) is a concept, a growth model and a call to action. Where once firms operated within a broad consensus that their role was almost exclusively economic, public concern about the social and environmental impacts of economic growth and business activity is increasingly translating into a broader understanding of firms' goals, behavior, strategies and their consequences. Environmental tragedies such as the Exxon Valdez oil spill; corporate greed evidenced in scandals in firms such as Enron; and labor abuses associated with prominent firms such as Wal-Mart and Nike have raised public concern which is moving SD from the fringes of public policy toward a central organizing concept.

Inevitably, firms are being asked to play an important part in this societal evolution toward SD. How to operationalize firms' participation is now beginning to move from theoretical discussions to practical questions of business strategy, guidelines, regulations and implementing legislation (Gladwin, Kennelly & Krause, 1995; Porter & Kramer, 2006). This movement to the "next stage" is particularly notable within the European Union (EU) where, through both EU policies and national legislation in EU states, SD has become actual public policy.

Seeking practical means of encouraging firms to adopt SD has led French policy makers to consider the business networks in which firms operate. Network theory models firms' decision-making as a process of considering the effects of decisions on the overall structure of relationships in which they are embedded (Granovetter, 1985). To the extent that this model describes corporate behavior decision-making, then increased transparency through corporate reporting is one means of enhancing stakeholder pressure to modify firms' behavior. These network dynamics are the operating mechanisms of a governance approach referred to as informational regulation (IR).

Application of this governance approach to SD is prominently illustrated by a law passed in 2001 in France, Article 116 of the *Nouvelles Régulations Economiques* (NRE). Many countries have voluntary or mandatory reporting requirements that address part of the SD concept. Through the NRE's Article 116, France became the first country to require annual public disclosure by firms of a comprehensive SD triple bottom line encompassing financial, social and environmental activities. This requirement is imposed on all French firms publicly traded on the Paris stock exchange. In this paper we analyze the extent to which these reporting requirements, operating through an IR approach, are likely to move firms toward sustainable development behavior.

Based on network theory, prior research on firms' social and environmental reporting and empirical information about firms' reporting during France's first years under the NRE, we conclude that, although this mandate is far from perfect, its does appear to enhance disclosure and dialogue in ways likely to foster SD-promoting firm behavior. This experience therefore illustrates the potential of the IR approach. It also highlights the critical role of three key pre-conditions in achieving this potential: the quantity and quality of information released; the institutional ability of stakeholders to engage in sustained dialogue; and the leverage the institutional environment provides to stakeholders to act on information. Based on early French experience, we suggest options to strengthen these three pre-conditions and thereby enhance the impact of Article 116.

This French experience should be of interest to U.S. policy makers and business leaders because it provides a large-scale, “real world example” of the use of IR to shape firms’ SD behavior in a major economy. In light of the promising early experience with this approach in France, executives should anticipate such mandates increasingly to shape their operating environment in the US and many other nations.

In reaching these conclusions, this paper begins by defining SD and firms’ role within it. The paper then reviews prior theoretical and empirical research on network theory and IR to develop a framework for analyzing the likely effects of reporting requirements such as the French one. The paper next describes the French law and firms’ responses to it in its first years of implementation. Based on this experience, the paper closes with some lessons for both public and corporate decision-makers.

SUSTAINABLE DEVELOPMENT ENTERS MAINSTREAM PUBLIC POLICY

The definition of SD which has become common parlance is from “Our Common Future,” the landmark Brundtland Commission report in the 1980s, which defines SD as "a process of change in which the exploitation of resources, direction of investments, orientation of technological development, and institutional change are made consistent with future as well as present needs (World Commission on Environment and Development,1987: 9). In similar terms, the World Bank has characterized SD as “enhancing human well-being through time” (World Bank, 2003: 13), and the European Commission has stated that “sustainable development offers the European Union a positive long-term vision of a society that is more prosperous and more just, and which promises a cleaner, safer, healthier environment – a society which delivers a better quality of life for us, for our children, and for our grandchildren” (European Commission, 2001a: 2).

These definitions leave much to the imagination about what the concept looks like on a day- to-day basis. However, certain key elements are clear. SD takes a broad “systems approach” which presumes that, to maximize societal well-being, public policies and private behavior must consider all:

- Elements of individuals’ and society’s well-being -- not just income but also health, environment quality, social justice, and security;
- Impacts, both on immediate and future generations; and
- Stakeholders with power to affect these subjects. In today’s highly interdependent economies, many different actors influence this comprehensive system. In the public sector, important actors include international organizations, national and local governments and, in democracies, the voting public. In the market-driven sector, the major actors include business firms, their investors, their employees, and the consumers to whose preferences these firms are responding. Finally, non-profit, non-governmental institutions (NGOs) are increasingly active as independent forces in public policy debates.

The role of business firms in SD was put squarely in the spotlight when then-United Nations’ Secretary General Kofi Annan challenged multinational firms to join UN agencies, labor and civil society institutions in a Global Compact to support universal environmental and social principles for a more sustainable and inclusive global economy (United Nations, 1999).

During the same period, the EU's Sustainable Development Strategy enunciated its view of the role of firms and their responsibility in society:

> Although the prime responsibility of a company is generating profits, companies can at the same time contribute to social and environmental objectives, through integrating corporate social responsibility as a strategic investment into their core business strategy, their management instruments and their operations (European Commission , 2001b: 4).

Since that time, the EU has moved steadily to promote SD, and national policies by EU member states also encourage corporate social responsibility. These initiatives have taken forms such as public-private partnerships, corporate transparency (e.g. product labeling) and national public policies (e.g. trade and export policies) (European Commission, 2003a; European Commission, 2006).

Seriously taking account of non-shareholder concerns at first seems a far leap for firms and counter to the philosophy of allowing firms to concentrate on their market-based role. However, even Milton Friedman, who is prominently quoted as advocating that firms concentrate exclusively on promoting their shareholders' interests, actually took the position that corporate executives have the responsibility "to make as much money as possible *while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom*" (Friedman, 1970: 3). In 2007, SD is becoming firmly established in both law and ethical custom.

As a consequence, firms will inevitably find themselves pushed away from the single goal of maximizing shareholder wealth to an approach that is more complex and, to an important extent, unexplored (Banerjee, 2002: 9-13). Asking that firms take account of SD means persuading firms to change some of their key operational assumptions – to consider longer time horizons, internalize costs they previously had viewed as external, operate with a global view of resources, incorporate social equity considerations in products and processes, and take account of a broad range of stakeholders, including investors, employees, local communities, unions, NGOs and government. “The real challenge is in the integration of corporate responsibility into strategy and operations of a complex organization in a more and more globalizing economy” (Kolk et al., 2005: 3).

HARNESSING THE POWER OF NETWORKS

Social Network Theory

Stakeholder theory is often called upon for insight into how firms might react to demands that they incorporate SD into their business strategies. For example, Jones (1995) is well known for applying a stakeholder approach to explain firms’ adoption of business ethics and corporate social responsibility (CSR) policies. He contends that ethical relationships result in positive reputation effects and thereby create significant competitive advantages for firms.

Other researchers criticize the stakeholder approach as too limited because it emphasizes dyadic relationships with the firm as the focal point. Their preferred alternative is the social network approach. Like stakeholder theory, social network theory emphasizes organizations’ efforts to address stakeholder expectations and the influence on those expectations of other actors. However, unlike the stakeholder approach, social network theory assumes that firms make decisions by considering the overall structure of the relationships in which they are embedded (Granovetter, 1985).

This theory focuses on a firm's position, interaction, connectedness and reward structure within its network, all of which are highly dependent on their setting or context. In addition, social network constructs of density and centrality push researchers to consider the impact of stakeholders who do not have direct relationships with the focal firm but who nevertheless affect how the firm behaves (Rowley, 1997).

Gouldson (2004a, b) illustrates how social network theory can be applied to trace the effects among multiple stakeholders in a network of enhanced access to information on firms' environmental impacts. He analyzed how increased access to information from pollution release and transfer registers influenced governance through a complex web of social relations among regulators, industry and other stakeholder groups. He concluded that enhanced access to information was a factor in the emergence of new forms of engagement among stakeholders, through mechanisms such as greater self-confidence of local advocacy groups and increased demands for corporate accountability. From a social capital perspective, Gouldson saw these developments as social learning by government and industry actors which could result in new approaches to decision-making, including sharing power over industrial development with those affected by it.

Social Network Theory Applied: Informational Regulation

For public policy makers, the significance of networks is that they are governance structures reaching beyond traditional public regulation. Informational regulation (IR) is defined as:

> any regulation which provides to third parties information on company operations....[I]nformational disclosure opens up the traditional bilateral relationship between the regulator and regulated to include other social

institutions, most importantly, economic markets and public opinion (Kleindorfer & Orts, 1998).

IR relies on stakeholders, not the government, to exert pressure on firms -- through market dynamics, private litigation or moral suasion -- to comply with existing regulations and conform to societal standards of acceptable behavior. It can include a range of methods, including audits, voluntary alliances and education of community advocates.

Several rationales favor adopting an informational regulation approach to SD (Renshaw, 2006: 662). One is that more and better data can help to identify externalities associated with SD (e.g. pollution), leading to regulations requiring firms to internalize formerly external costs. IR might also provide indirect incentives for industry to undertake self-regulation and create solutions before regulators act, potentially leading to more creative solutions. Another rationale concerns IR's ability to foster civic involvement and encourage "democratization" of SD decision-making, which, in turn creates greater issue awareness and pressure on firms for better performance (Esty, 2004, Tietenburg & Wheeler, 1998).

On the other hand, IR may not be effective in all circumstances (Bui & Mayer, 2003: 707), especially as a complete substitute for more traditional regulatory approaches (such as emissions standards) or market-based approaches (such as tradable permits, emission charges and performance bonds). Like many public policy instruments, IR might best be considered one of many options within a portfolio of public policy instruments (Bendick, 1989; Case, 2001).

Informational Regulation and Firms' Environmental Reporting

Empirical evidence suggests that both mandated and voluntary environmental reporting can be credited with fomenting changes in firms' environmental impacts. Tietenburg and Wheeler (1998:19-25), reviewing a number of empirical findings concerning the effects of public disclosure of firms' environmental behavior, concluded:

- Public announcements can affect stock market valuations of firms. For example, a study of market reactions to 730 EPA judicial actions involving U.S. publicly traded firms from 1972-1991 found that the market value of firms dropped 0.43% during the week the judicial action was announced. The estimated market penalty was larger for repeat offenders (Badrinath & Bolster, 1996).
- Enhancing reporting has triggered reductions in corporate polluting behavior in a variety of settings. For example, in an Indonesian program, rating and publicly disclosing the environmental performance of Indonesian factories, caused pollution emissions to abate significantly, and public disclosure facilitated local solutions to pollution problems that were unlikely to be discovered or implemented in formal settings (Afsah & LaPlante, 1996).
- Companies can reap benefits from enhanced stakeholder dialogue. A 2001 survey in the United Kingdom on the costs and benefits of environmental reporting found important benefits in corporate reputation, internal commitment and employee awareness (Merrick & Crookshanks, 2001).
- Environmental disclosure can have important side benefits. For example, public disclosure programs in China and Indonesia provide an opportunity for firms to enhance their public image; ratings provide a practical environmental

management tool; and environmental regulatory agencies are pressured to improve their own performance (Wang et al., 2002).

Empirical studies have also helped to identify the circumstances which influence the impact of IR. The timing and quality of information, magnitude of stock market penalties, culture of enforcement, industry structure and network relationships all affect the extent to which stakeholders will be influential. Tietenberg (1998: 593-99) suggests that in a "community setting," (e.g. when local residents are exposed to toxic emissions from a local plant), there are four prerequisites to effective IR: (1) mechanisms to reveal the extent and magnitude of the risk; (2) reliable information; (3) information disseminated in a form that is useable and accessible to the community; and (4) channels for the target audience to act upon the information. These channels might include product markets, where consumers can be influenced in their purchasing decisions; capital markets, where investors can be influenced in their investment decisions; labor markets, where hiring and retaining employees may be affected by environmental concerns; judicial systems, where polluters might be sued for damages; and legislatures, where support can build for traditional regulation. Additional channels might also be created as information flows through the network.

The empirical findings about IR just cited are drawn from environmental studies. However, both conceptually and in emerging practice, SD reporting is broader than environmental concerns alone, prominently including social impacts on employees and communities where firms operate. As yet there is still only an emerging empirical literature concerning the benefits to firms who respond to IR across the full range of triple bottom line activities (Bendick, 2000; Richardson & Welker, 2001; Wright et al., 1995).

INFORMATIONAL REGULATION AND SD REPORTING

The potential of information and networks to change firms' behavior has not been lost on public policymakers and stakeholders as they have considered ways to influence firms to incorporate SD. Beginning with calls for more and better information in the early 1990s, increased transparency and disclosure have been widely discussed as ways to include firms in SD decision-making and to regulate their SD behavior (United Nations, 1999; O'Rourke, 2004; Zaelke, Kaniaru, & Kruzikova, 2005).

Strong demands for information about firms' SD behavior have also emerged from the private financial sector (EUROSIF, 2006). New institutions such as the Dow Jones Sustainability Index (DJSI); the FTSE4Good Index, the European Union Emissions Trading Scheme, and sustainable asset management funds in Asia, Europe and US have driven demand. The public sector has supported these investor-driven developments by encouraging investment in socially responsible institutions by pension funds. For example, since 2001, German private pension schemes have had to comply with certified ethical, environmental and social disclosures to qualify for tax deductions, and France has created legal frameworks encouraging socially-responsible investing by pension funds and public savings schemes.[1]

Stakeholders outside the financial industry are also looking to more corporate disclosure as a way to enhance ethical behavior by firms through strengthening management systems, increasing transparency and holding senior executives personally accountable (Pleon, 2005). The Enron financial scandal; the Brent Spar incident between

Greenpeace and Shell; and environmental accidents such as the Bhopal chemical disaster have all contributed to a lessening of trust in corporations to self-regulate (Coates, 2007; Enriques & Volpin, 2007). Such business behavior has increasingly replaced the public's acceptance of a company's request to "trust me" with a demand that the firm "show me" (SustainAbility & UNEP, 2002).

As concerns about the impact of business on society have increased, so has the development of instruments to measure, evaluate, improve and communicate corporate performance in relation to social, environmental and ethical standards. For example, after a Union Carbide chemical plant disaster in West Virginia, the U.S. Congress passed the Emergency Planning and Community Right-to-Know Act of 1986 which mandated corporate disclosure of emissions of toxic chemicals through the Toxic Release Inventory. The Exxon Valdez oil spill promoted a group of socially-responsible investment firms, public pension funds and others to establish the Valdez Principles, calling for voluntary reporting of key environmental information (O'Rourke, 2004: 11).

A dizzying array of voluntary reporting formats and systems have also been developed by long-standing institutions such as the UN and by new institutions and multi-sector alliances, such as Global Reporting Initiative (GRI) (OECD, 1999).[2] These instruments and aids to reporting include aspirational principles and codes of practice; guidelines for management systems and certification schemes; rating indices used by socially-responsible investment agencies; and accountability and reporting frameworks (European Commission, 2003b:7). With the exception of the GRI, many of these instruments address only one of the three broad areas of the "triple bottom line."

SD Reporting Increases and Evolves

Some firms have responded to these increasing demands for information about their SD behavior through increased reporting, as Table 1 shows. In 2003, approximately 1,500 - 2,000 corporate annual reports world-wide provided information about the firms' activities on some combination of social, environmental and sustainability topics. This was a substantial increase from fewer than 100 reports ten years before (ACCA, 2004).

Insert Table 1 about here

SD reporting is generally led by the largest, multinational firms. Firms' voluntary disclosure of environmental information tends to increase with the size of the firm, the extent to which it is widely-owned, its membership in environmentally-sensitive industries and its exposure to fines or legal procedures related to the environment. Large, branded, manufacturing firms who are "reputation sensitive" are also disproportionately likely to report on SD issues (O'Rourke, 2004: 15). Kolk et al. (2005: 5) report that, in 2005, 64% of the *Fortune* Global 250 firms issued corporate responsibility reports of some kind.

These reports have also tended to move from narrowly focused reports on single topics in the direction of SD in addressing a broad range of social, environmental and economic concerns. In 2005, 68% of *Fortune* Global 250's reports were considered sustainability reports in this sense, compared to 14% in 2002 (Kolk et al., 2005: 9). Issuing a sustainability report is generally deemed a positive step in itself. However, firms' information on social topics -- such as adherence to core labor standards, working conditions, community involvement and philanthropy -- has generally remained "sketchy" (Kolk et al., 2005: 5).

Firms' Strategies for Managing Reputation

The decision to report and what to report are strategic issues for firms. Firms may decide to report to promote several corporate objectives, which may or may not include "ethical" concerns (e.g. integrity or other firm values). Reporting can offer important practical benefits to the firm, such as development of better internal management systems; increased internal learning through industry benchmarking; self-regulation to minimize future risks; and improved stakeholder relations (O'Rourke, 2004: 9.) One survey of stakeholders who regularly use corporate social responsibility reports found that firms' top four reasons for CSR reporting included direct business benefits such as maintaining a competitive advantage over competitors (36%) or securing a "license to operate" (23%), as well as more altruistic goals such as "accepting and living social responsibility" (39%). The objective noted most often by the respondents was "securing or enhancing good reputation" (49%) (Pleon, 2005, table 8).

Once firms decide to report, they must make further decisions concerning which issues to address, what information should be disclosed, and to whom the message should be targeted. Not all stakeholder groups are equally important to a firm. Firms generally consider stakeholders who are "internal" to the firm, such as investors, their primary audience for SD reports. "External" audiences, such as NGOs and academics, are less likely to be firms' main audiences (Agle et al. 1999; Pleon, 2005). Cormier et al. (2002) found that environmental managers' personal values and attitudes toward various stakeholder groups affected the manager's decision to disclose information and as well as the content of the disclosure. In addition, the media exposure a firm faces "is a significant variable in explaining whether environmental disclosures are made and the amount and quality of disclosure made" (Cormier et al., 2002: 27).

In short, when a firm begins to report its SD activities, it inevitably enters the realm of public relations and management of its corporate image. The tension between efforts to improve and protect the firm's reputation and efforts to respond to stakeholders is central to the struggle between firms and stakeholders over issues of transparency and trust. Firms' concern for their reputations is a source of mistrust for some stakeholders who, for example, fear that the firm will use "greenwash" to improve its reputation without actually changing their underlying behavior. It is also a pressure point which stakeholders may use to influence firms to report (Stephan, 2002).

Mandatory or Voluntary Reporting?

As was seen earlier in this paper, many firms choose to report even in the absence of legal requirements to do so. When they do, they enjoy the flexibility voluntary reporting typically offers, compared to government mandates which generally are more specific. The ability to choose not only whether to report but also when to report, to whom to report (publicly or selectively) and what to report offers the firm greater opportunities to manage its image and advance other strategic objectives.

Not surprising, stakeholders generally favor mandatory reporting more than do firms. In a 2005 survey, about 75% of stakeholders who regularly use CSR reports advocated mandatory reporting for some if not all types of firms (Pleon, 2005). Respondents felt that mandates would obligate companies to report on non-financial issues, push company boards and investors to acknowledge the significance of environmental and social issues and lead to a better integration of financial and non-financial reporting. In addition, mandatory reporting increases the proportion of firms who report, although it does not always guarantee the quality of the reports (O'Rourke, 2004: 15).

As Table 2 illustrates, some governments have responded to these stakeholders' concerns by instituting mandated formal reporting across a variety of SD issues (Kolk et al., 2005: 40). Laws vary considerably among nations in terms of the topics covered, types of firms required to report, data required, level of public access to data, reporting boundaries of the firms (e.g. whether or not subcontractors are included) and sanctions for not reporting.

Insert Table 2 about here

One of the earliest U.S. disclosure laws designed to give environmental information to investors was filing requirements by the Securities and Exchange Commission that publicly traded US firms disclose "material information" concerning issues such as environmental liabilities, risks or pending legal proceedings.[3] However, a 1998 study on disclosure of environmental legal proceedings found a non-reporting rate of over 74%, and 84% of firms engaged in civil or administrative proceedings were not properly disclosing that fact (Franco, 2001; Sutherland, 2002). A more recent review by the US Government Accountability Office (GAO) (2004: 1) found that "little is known about the extent to which companies are disclosing environmental information in their filings with the SEC." One of the reasons for this lack of information is that the "SEC does not systematically track the issues raised in its reviews of companies' filings…"

(U.S. Government Accountability Office, 2004: 1). The GAO findings illustrate the point that legal mandates are not guaranteed to be effective. They may be on the books but not enforced.

Governments other than France have stopped short of mandating full triple bottom line reporting and instead typically combine mandatory reporting on some subjects with policy recommendations, standards, guidelines and other signals to encourage voluntary reporting on other subjects (European Commission, 2003b; Kolk et al., 2005: 43-45). In support of this approach, policy makers often argue that regulation is a question of balance and timing. In particular, governments and others argue that voluntary reporting schemes can unleash the energy and creativity of firms which might be stifled by a system of required reports and closely-specified reporting formats (Monaghan et al., 2003).

FRANCE CHOOSES MANDATORY REPORTING

In the late 1990s, French firms were already facing increasing demands for information about their SD behavior. The market for socially-responsible investment was expanding rapidly, with unions playing a key role in developing the market. Between 2000 and 2002, the number of SRI investment funds tripled to 59 funds with 1.16 billion euros in assets under management (Christensen, 2003: 46). During this same period, SD-related research organizations, such as Observatoire sur la Responsabilité Sociétale des Entreprises (ORSE), Novethic, and ASPR Eurozone, were launched to facilitate greater access to non-financial information. French legislation encouraged these trends by passing a more supportive legal framework for socially-responsible investment and management of public and private pension funds. In addition, private industry-led efforts had resulted in several influential reports on improving corporate governance (Bouton, 2002).

Nevertheless, France in this period did not have a reputation as a leader in corporate transparency or voluntary SD disclosure. In 2002, the Commission de Opérations de Bourse (similar to the American SEC) encouraged voluntary disclosure of the environmental impact of firms' activities, but in response, only about 50 of the 1,000 companies listed on the French stock exchange included any discussion of environmental issues in their annual reports (Dhooge, 2004: 446). Firms' reporting on social impacts was generally was limited to legally-mandated *bilans sociaux,*[4] which were used mostly for internal human resource management purposes and did not address broad SD interests.

The NRE Provides an Opportunity

An opportunity to catch up and move beyond the rest of Europe in SD policies came during the update of France's commercial law in 2001. The *Nouvelles Régulations Economiques* (NRE)[5] is a broad-ranging update of French corporate law, with the majority of its 144 articles strengthening provisions on topics such as corporate governance, transparency in take-over bids, and anti-trust regulation.

It was in the same spirit of improving the competitiveness of French firms that Article 116, paragraph 4 was added (Sobczac, 2002). Adopted late in debate and without extensive parliamentary discussion, this provision requires that the largest French firms listed on the French stock exchange report publicly in their annual reports on their financial, environmental and social activities – their "triple bottom line." Reporting was seen as means of encouraging French firms to move to a leadership position within the international movement to promote SD and thus gain a competitive advantage against their European and other competitors (Hoffman, 2003: 19). Concurrently, authors of Article 116 sought to respond to requests by stakeholders -- especially socially responsible investment funds -- for comprehensive and transparent information about firms' social and environmental activities (EpE et al., 2004: 15).

In February, 2002, the French Council of State passed enabling legislation[6] detailing quantitative and qualitative reporting requirements for the more than 700 French firms listed in the *premier marché*[7] of the Paris stock exchange. The authors left some flexibility in reporting but encouraged comparison across firms by suggesting that firms develop measures conforming to concepts articulated by the EU and the GRI. Mandatory environmental indicators were based on the OECD's 10 environmental priorities. (See Table 3.) With neither the business organizations pleased ("You have gone too far") nor the unions pleased ("You have not gone far enough,") France became the first country to mandate comprehensive triple bottom line reporting for companies (Goudard, 2006: 1).

Insert Table 3 about here

Passage of Article 116 fits logically within broader French political efforts to design and implement a National Sustainable Development Strategy (Dalal-Clayton, 2005: 8-17). The first Strategy was published in 1997 and the current one in 2003.[8] The aim is to combine economic development, protection of the environment, social justice, and solidarity among generations, peoples, and territories The Strategy emphasizes that firms and their consumers are intrinsically linked poles of the market economy, and that to achieve SD goals, both sides of this relationship must arrive at a model of growth that "is respectful of the environment and cognizant of the fact that resources are for the benefit of everyone" (Raffarin, 2003: 3). The Strategy explicitly refers to the necessity of stakeholders to "work in a network" (*travail en réseau*), since SD goals would never be effectively realized through a series of isolated actions. Instead, SD goals can be met only through a "systemic network of efforts involving numerous disciplines and partners" (Raffarin, 2003: 3).

IS THE NRE EFFECTIVELY ENHANCING INFORMATIONAL REGULATION?

As noted earlier, informational regulation relies on stakeholders, not the government, to exert pressure on firms through market dynamics, private litigation or moral suasion. Research on IR cited earlier in this paper identifies four conditions that influence the ability of IR to empower stakeholders to fulfill this role (Tietnenberg, 1998). The first condition, providing a mechanism to discover potential risks, is met by the NRE's mandatory reporting requirement. The other three policy conditions concern whether or not stakeholders have:

- Sufficient, targeted, and reliable data;
- Dialogue opportunities; and
- Resources, institutional strength and channels to act on the information in a timely and efficient manner.

Therefore, insight into the likely effectiveness of the IR approach in the case of NRE Article 116 can be gained by considering the extent to which these three conditions are present.

Do Stakeholders Have Sufficient Information?

As Table 4 illustrates, adherence to the law was slow in the first reporting year, 2002, with fewer than half of the 700 companies covered by the mandate providing the required report. Among those that did report, only the largest firms – the CAC40[9]– even approached the standard that they reported in a meaningful way. Of the CAC40, 21 provided sufficiently detailed, precise and comprehensive information to suggest adherence to the regulations, but only four firms provided a full triple bottom line report. Firms' responses varied considerably in form, content, length, and depth, and only a few reports documented the sources of their information or subjected it to verification comparable to that applied to financial information (EpE et al., 2004: 17-18). Social reporting, other than indicators that firms had already been required in their *bilans sociaux*, was particularly weak (Alpha Etudes, 2003: 3).

Insert Table 4 about here

Since this slow start, both the number of firms reporting and the quality of reports have improved. In 2005, 85% of the CAC40 met the requirements of the law, in contrast to about 65% in 2002 (Alpha Etudes, 2006: 4). As Table 5 documents, in a broader sample of French firms that included the CAC40 as well as selected other firms,[10] 68% of firms in 2004 had produced a report that covered topics in addition to financial information, compared to 41% in 2003 (SustainAbility et al., 2005: 8).

Insert Table 5 about here

The quality of the reports has also improved since the first reporting year. Using 100% as the maximum feasible score on a scale established by the Global Reporters series,[11] the best 20 French firms received an average grade of 42.2% in 2005, compared to 34.8% in 2003 (SustainAbility et al., 2005: 5). (See Table 6.) In 2000, ST Microelectronics was the only French firm whose reporting ranked among the top 50 “best globally” (Global Reporter, 2000). By 2005, four French firms – Lafarge, Total, Carrefour and Veolia Environnement -- appeared among the top 50. However, even with this progress, the top 20 French firms’ average reporting scores lagged about 2 to 4 years behind other international firms in the Global Reporter surveys for 2000, 2002, and 2004.

Insert Table 6 about here

Within these averages, a variety of NGOs grade and publicize individual firm’s degree of adherence to the reporting law. Alpha Etude’s (2003, 2005) yearly analysis of the CAC40’s social reports plots each firm on a graph with axes measuring how well the firm conforms to the letter of the law (e.g. whether it addresses mandatory topics) and how well it meets the spirit of the law (e.g. the quality of data). Readers can easily identify which firms are “leaders” clustered in one quadrant of the graph and which are laggards in the opposite quadrant (Alpha, 2006: 6). CFIE (2006: 4) applies a different methodology based on the degree of reporting transparency and the quality of the data (e.g. exhaustive and precise) to grade firms by name. CFIE also identifies which firms have made the most reporting progress or received the highest grades for both social and environmental reporting.

Tables 4 through 6 uniformly suggest that French firms have made progress in "triple bottom line" reporting that was unlikely without the law. Nevertheless, not all reports are meaningful, and not all stakeholders are satisfied with that progress. CFIE (2006: 29) argues that after four years of reporting, there remains a need to improve qualitative and quantitative measures, better address the diversity of stakeholder concerns and increase the transparency of the process of designing reports. One critic has concisely summarized the issue by asking rhetorically whether the reports "have the color of reporting, the taste of reporting, but are they really reporting?" (SustainAbility et al., 2005: 3). For many firms, this remains an open question.

Do Firms Participate in Dialogues with Stakeholders?

Reporting is not an end in itself but a means to an end. For changes in the behavior of firms to follow reporting, stakeholders must not only must be able to access and interpret information but also engage in a dialogue involving the firm and other stakeholders (Rowley, 1997). The importance of this dialogue was highlighted in the French government's official evaluation of the first year's reporting results (EpE et al., 2004). In this study, stakeholders' importance to CAC40 firms was measured by how often stakeholders were mentioned in the firms' reports and whether or not those stakeholders' viewpoints were discussed. All CAC40 firms mentioned their most likely stakeholders -- investors, unions and customers. However, less than one third included remarks solicited from stakeholders in response to reports. (See Table 7.)

Insert Table 7 about here

When firms and stakeholders were surveyed about the first year's reporting efforts, clear differences of opinion emerged about the degree of influence stakeholders should have over firms' SD reporting strategy (EpE et al., 2004). Firms typically wanted flexibility to choose indicators and to control the final report. NGOs typically wanted the firm's report to be the outcome of a dialogue among stakeholders to create and select indicators. Unions also wanted internal consultation built into the process so that the report would become the basis of dialogue between the company and its employees.

These differences of opinion continue to resonate. Stakeholders continue to want greater influence over creating reports to ensure that firms respond to their questions. They also want firms to present not just successes but also failures and to explain their business cases for integrating SD. Finally, stakeholders want data to be comparable across levels of the firm and geography, with some stakeholders suggesting that firms adopt an international standard, such as GRI, to increase comparability (CFIE, 2006; Goudard & Itier, 2004).

Another area of concern since the law was passed is the reliability and accuracy of firms' information. This issue has taken the form of demands for third party verification. In the spirit of a traditional audit approach, "verification" addresses issues such as the accuracy of SD data, quality of management systems and conformity to standards such as ISO 14001 and SA8000.

Indeed, on this subject, stakeholders have become more demanding over time and are increasingly asking that reports be "assured." Assurance goes farther than verification to address the general credibility of the report. It addresses issues not typically addressed in verification audits, such as why certain topics and measurements were chosen and whether stakeholder concerns were addressed. Since 2001, the number of SD reports worldwide seeking to provide “assurance” has increased, with about 30 percent of the *Fortune* Global 250 now issuing assurance statements (Kolk et al., 2005).

One French firm, Lafarge, is often cited as one of the best world-wide in developing a reporting process that reflects stakeholders’ input (Lafarge, 2005). (See Table 8.) In 2000, Lafarge began a dialogue with stakeholders by identifying SD topics the firm considered important to report. It then conducted more than 50 internal interviews, 30 external interviews and a review of related reports to refine this list of topics. In 2002, an additional series of interviews was held. In 2003, the firm created a nine-member “stakeholder panel” that represented unions, NGOs and professional organizations, with the mission of serving as “critical friends” of the company. This panel is consulted two times per year by the firm’s Executive Committee. In addition, in 2006, Lafarge created an advisory panel on biodiversity to support Lafarge’s biodiversity strategy.

Insert Table 8 about here

The stakeholders’ panel’s opinion letter on Lafarge’s corporate SD report is publicly released on the firm’s website and in their SD report (Lafarge, 2005: 48). It contains a critical review identifying improvements, such as the inclusion of new indicators, and remaining weaknesses, such as reporting on emissions of Persistent Organic Pollutants. The panel also indicates what it hopes to see in the future, such as greater discussion of social and environmental issues arising from Lafarge’s acquisitions in China and development of a cement-sector specific supplement to the GRI guidelines.

Can Stakeholders Act on Information?

Even when information is made widely available, individuals are often not well placed to influence firms. They may have little expertise or interest on a topic or are dissuaded by the cost of trying to influence firms and other stakeholders. To overcome these barriers and provide a stronger voice in the network, individual interests are often represented by institutions such as NGOs, private sector law or consulting firms or labor unions. This paper itself attests to the number of expert institutions, public and private, which have emerged in France to monitor, analyze, interpret and publicize firms' reports. Many of these institutions have come into being since passage of the NRE.

Further strengthening the IR potential of stakeholders, government infrastructure to support SD goals has also expanded since passage of the NRE. On February 28, 2005, France established its citizens' right to live in a balanced and healthy environment when Article 6 of the "*Charte de l'Environnement*" was added to the French Constitution, stating that government at all levels "must promote sustainable development." At a more pedestrian policy level (Dufau & Blissig, 2005):

- The Ministry of the Environment has been restructured as the Ministry of Ecology and Sustainable Development.
- In 2003 and 2004, new governmental interministerial committees were established, including the National Sustainable Development Council which includes 90 members of civil society; and
- Each ministerial Department has designated a high level civil servant to be responsible for SD.

Despite such developments, one crucial channel described by Tientenberg (1998) remains unavailable in France – the means for an individual or group to go beyond appealing to a firm's image or reputation to enforce the reporting mandated in Article 116 through judicial channels. Experience has shown that laws without enforcement have little impact (Potoski & Prakash, 2005). Without adequate enforcement, Article 116 runs the risk of being, in effect, just one more voluntary option for firms.

IMPLICATIONS FOR FIRMS OUTSIDE OF FRANCE

Evidence that NRE Article 116 has increased French triple bottom line reporting is clear, although evidence that enhanced reporting has effectively pressured firms to increase their SD-supportive behavior remains more speculative. A variety of indicators consistently suggests that, in the case of SD, IR is working: data are becoming more available and improving in quality; stakeholders and firms are beginning to engage in dialogue; and institutions have developed to interpret firms' reports and use them to engage stakeholders and the broader public. NRE's Article 116 has importantly advanced the discussion about corporate transparency, where "transparency is fundamentally about empowerment and trust" (GEMI/Pacific Institute, 2001: 2).

Progress towards meaningful reporting and greater transparency will be enhanced if deficiencies in the law, identified even at its inception, are corrected. The agenda for reform includes, but is not limited to, addition of topics such as bribery, human rights and corruption; expansion of reporting boundaries to reach outside of France; and coverage of public-sector firms. Lack of enforcement of the reporting requirement is another important remaining deficiency.

However, concern about ways in which NRE's Article 116 is less than ideal should not lead us to overlook a more fundamental point – that this reporting mandate is bold and revolutionary. France recognized that sustainable development is moving steadily into mainstream public policy and that firms' participation in SD goals is essential to its success. Observing that their nation's firms were lagging and at risk of missing this important trend, the French government decided to push their firms into the competitive fray and, ideally, into the lead. Expanded public reporting is better understood not as a narrow, technocratic managerial requirement but instead as a bold attempt to alter firms' fundamental consciousness.

The eventual impact of this move will echo far beyond the 700 firms currently subject to NRE's Article 116. The requirement itself – and the change in corporate consciousness it is intended to foment -- set a precedent likely to be imitated in various ways by other nations. Accordingly, the important message for US executives is that their firms, too, must prepare to encounter similar demands for SD behavior, especially as reflected in demands for greater firm transparency.

To date, U.S. firms have shown little responsiveness to this fundamental shift in their operating environments. In 2005, almost 80 percent of the *Fortune* Global 250 firms in 21 countries or regions issued corporate social responsibility reports. The striking exceptions to this trend were these firms in the United States (35%) and China (33%) (Kolk et al., 2005: 11). The French experience offers a wake-up call for American firms. Ignoring this development means risking falling behind the rest of the world, where firms are already developing SD-related strategic competitive advantages, acquiring skills and benefits derived from working with SD-conscious stakeholders, and competing in markets where SD is increasingly "embodied in ethical custom."

ENDNOTES

[1]For example, la loi du 19 fevrier 2001 sur l'épargne salariale; la loi de 17 juillet 2001 sur le fonds de réserve pour les retraites; la loi d'août 2003 sur la sécurite financiére.

[2]Working in cooperation with the Global Compact, the Global Reporting Initiative (GRI) was founded in 1997 as a joint effort between CERES, an American NGO, and the United Nations Environmental Program (UNEP). GRI became independent in 2002. See http://www.globalreporting.org.

[3]US Securities Act of 1934, regulation S-K, Items 101, 103 & 303.

[4]A *bilan social* is a legally mandated report by French firms with at least 300 employees. It provides an annual resume of the characteristics of the firm's workforce (e.g. age, sex, number hired, fired and retired), training, remuneration and working conditions (e.g. health and safety). It is normally an internal document. However, France Telecom's *bilan social*, 2005 is available at http://www.francetelecom.com

[5]Law number 2001- 420, May 15, 2001, J.O. May 16, 2001, art. 116: 7776.

[6]Decree number 2002-221, Feb. 20, 2002, J.O. Feb. 21, 2002, art. 148-2: 3360.

[7]The *premier marché* consists of the largest French and foreign companies with public stockholdings of at least 25 percent of their capitalization and a capitalization value of about 800 million euros.

[8]See http://www.ecologie.gouv.fr/IMG/pdf/Sndd-2.pdf.

[9]The CAC40 (Cotation Assistée en Continue) is a French stock market index composed of a capitalization-weighted measure of the 40 firms with the highest market capitalizations on the Paris Stock Exchange.

[10]The sample includes 140 firms from the SBF120 (the CAC40 plus the next 80 firms on the Paris Stock Exchange), 10 large public-sector firms, several large non-listed firms, and several small and medium sized firms which are leaders in reporting (SustainAbility et al., 2005: 26).

[11]The Global Reporters series 2000, 2002, 2004 and 2006 are international benchmarking surveys of nonfinancial reporting. The methodology was developed by SustainAbility and the United Nations Environmental Programme (UNEP). See http://www.sustainability.com .

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TABLE 1
Non-Financial Reporting in Corporate
Annual Reports, Worldwide, 1993 and 2003

Characteristic	1993	2003
Number of reports providing non-financial information	< 100	1,500 – 2,000
Percentage of non-financial reports that were solely environmental	Nearly 100%	40%
Percentage of non financial Reports that included external verification	17%	40%

Source: Adapted from Association of Chartered Certified Accountants (ACCA). 2004. Towards transparency: Progress on global sustainability reporting. London: Certified Accountants Educational Trust.

TABLE 2
Examples of Mandated Corporate Reporting on SD-Related Topics
in Selected Countries, 2003

Country	Legal Basis	Mandate
Australia	Corporation Law, late 1990s	In annual reports, publicly listed companies and some public-sector companies must report performance against relevant environmental legislation applicable to entities.
Belgium	Article 4.1.8 VLAREM II, 1995	Certain companies must issue annual environmental reports
Denmark	Green Accounts, 1996 Law on Annual Accounts, 2001	About 3,000 companies with "significant" environment impacts must report to the public and to authorities. Penalties for noncompliance with the law. Requires reporting in management report on environmental aspects if material to a true and fair view of company's financial position
Flanders	Decrees under Belgium laws, since 1995	Most firms holding environmental permits must submit annual reports to Flemish authorities on environmental activities, installations, changes in emissions, etc.
France	Article 6, NRE, 2001; decree 2002	Must include social and environmental information in management reports.
Hong Kong	1998 Policy Address by the Chief Executive of the Hong Kong Special Administrative Region	All 80 government agencies must have environmental reports
Japan	Law of Promotion of Environmentally Conscious Business Activities Pollutant Release and Transfer Register Law	Specified entities must publish an annual environmental report Firms must report release of specific chemical substances and promotion of improved management of substances.
Netherlands	Environmental Protection Act, 1997	Some companies are required to report to the public and to government authorities on activities, processes and main environmental changes since the previous year.

Norway	Accounting Act *(*Regnskapsloven*)*, 1999, modified 2000	Health, safety and environmental information must be included in annual financial reports of all companies. Penalties for noncompliance with the law.
Portugal	Law no. 141/85 Nov. 14, 1985; and Law no. 9/92 Jan.22, 1992	“Bilan Social” for firms with more than 100 employees, report data on employment, health, safety, training and pensions.
Sweden	Amendment to the Annual Accounts Act (Arsredovisningslagen) 1999	Environmental information must be provided in annual reports for about 20,000 companies. Fine of 500 Euros and possibility of criminal enquiry. As of 2004, some social information (e.g. sick leave, gender, corporate governance issues) must be included.
United States	EEO-1 Survey	US Equal Employment Opportunity Commission require annual filing of employment records, including race and gender of employees in different job titles.
	Sarbanes-Oxley Act	Increased transparency for US listed companies (focus on corporate governance)
	SEC Regulation S-K	Disclosure as to material effects from environmental compliance, capital expenditures & other matters
	Toxic Release Inventory	Firms must submit data on emissions of specified toxic chemicals to EPA

Source: Adapted from Kolk, A., van der Veen, M., Pinkse, J. & Fortanier, F. 2005. KPMG international survey of corporate responsibility reporting. Amersterdam : KPMG Global Sustainability Services, Appendix C.

TABLE 3
Corporate SD Reporting Required under France's NRE 116

Topic	Quantitative Reporting	Qualitative Reporting
Human Resources		
Employment	Total employees. Employees recruited. Lay-offs/redundancies. Term and permanent employees. Contract employees. Absenteeism.	Recruiting processes and recruiting difficulties. Analyses and rationales for recruitment, layoffs/ redundancies, term employees, and contract employees. Use of subcontracting/outsourcing.
Work hours	Length of workday. Amount of overtime. Use of full-time and part-time employees	Analysis and rationale for work hours
Corporate restructuring	Efforts to mitigate effects of corporate restructuring	--
Remuneration	History of pay rates. Payroll taxes paid.	--
Equal opportunity	Representation of women in different posts.	Details/analysis of representation of women. Integration of physically challenged into workforce
Health & Safety	--	Health and safety conditions. Details of incidents and accidents.
Social benefits	--	Social benefits.
	Training	Details.
Community Involvement		
Local Impacts	--	Integration into the local community.
Local Partnerships	--	Contacts with NGOs, consumer groups, educational institutions and impacted populations.
Work conventions	--	Extent to which firm's subsidiaries comply with ILO conventions on workers' freedom of association and collective bargaining, child labor and forced labor, and employment discrimination. Extent to which firm encourages its subcontractors to comply with these conventions.
Local development in foreign countries	--	--
Environment		

Resource Consumption	Consumption of water, energy, raw materials/natural resources; use of land	Use of renewable energy. Initiatives for energy efficiency
Emissions	Emissions of wastes into air, water, and land. Emissions of odor and noise.	--
Impact on biodiversity	--	Programs to reduce adverse effects on diversity. Programs to protect flora and fauna
Environmental Management	Expenditures on environmental management. Penalties paid on environmental violations. Provisions for environmental risks	Compliance with environmental laws and regulations. Efforts at environmental risk management. Environmental management structures and organization. Integration of foreign subsidiaries in environmental management. Employee environmental awareness and training. Environmental compliance auditing and certification.

Source: Adapted from Arese. 2002. Press release: Mandatory sustainability reporting for French corporations. March 5. Fontainbleau-Avon: Arese.

TABLE 4
Selected Characteristics of Reporting by Firms in the CAC40, in 2002, the First Year Under NRE Article 116

Characteristic	Description	% of Firms
Report Format	Section of Corporate Annual Report	75%
	Separate report	17
Organization Covered in Social Reporting	Holding company	10
	Group	69
	Partial group	14
	Establishments in France	7
Organization Covered in Environmental Reporting	Holding company	0
	Group	62
	Partial group	19
	Establishments in France	19
Length of Report	More than 10 pages	28
Social Indicators Provided	More than 10	64
	More than 20	19
	None	11
Environmental Indicators Provided	More than 10	33
	More than 20	11
	None	25
Data Credibility/Verification	Report mentions internal or external verification	11
	Report includes auditor notes	6
	Report includes explanations of information collection methodology	14
	Report discusses strategy to improve future reporting	6

Source: Adapted from PricewaterhouseCoopers & MEDEF. 2003. Prise en compte de l'article 116 de la loi NRE dans le rapport de gestion des entreprises du CAC40. Paris: MEDEF.

TABLE 5
Evolution of Reporting, 2002 - 2004*

Type of Report	2002 Percentage of firms	2004 Percentage of firms
Traditional financial reporting only	16%	6%
Financial report plus some reference to the firm's responsibility to SD but no performance measures	20	22
Report on traditional health, safety & environment or evaluation of human resource management performance	23	4
Report on traditional health, safety & environment (HSE) issues and evaluation of human resource management performance	14	31
Reporting sustainable development topics and evaluation of HSE and HR	27	37
TOTAL	100%	100%

Source: Adapted from SustainAbility, Utopies & Le Programme des Nations Unies pour l'Environnement (PNUE). 2005, Etat du reporting sur le développement durable, version Française de l'étude global reporters. Paris: Utopies. *The sample includes 140 firms from the SBF120, 10 large public-sector firms, several large non-listed firms, and several small and medium sized firms which are leaders in reporting (p. 26).

TABLE 6

French Firms' Average Reporting Scores Compared to Global Scores

Reporting Criteria	Average Scores of Top 20 French Firms, 2004*	Average Scores of Top 50 Global Firms, 2002*
Management quality	52%	57%
Economic performance	45	48
Social&ethical performance	40	50
Environmental performance	40	47
Accessibility & verification	40	56

Source: Adapted from SustainAbility, Utopies & Le Programme des Nations Unies pour l'Environnement (PNUE). 2005, Etat du reporting sur le développement durable, version Française de l'étude global reporters. Paris: Utopies. *Maximum possible score is 100%

TABLE 7
Discussion of Stakeholders' Views in SD Reports by CAC40 Firms, 2002

Stakeholder	% of Firms Referring to Stakeholder in Their Report	Number of Mentions of Specific Views from Stakeholder
Shareholders/investors	100.0%	4
Trade unions	100.0	1
Customers	100.0	1
French NGOs	77.5	3
Public authorities	55.0	0
Non-financial rating agencies	45.0	13
Suppliers	42.5	1
International NGOs	40.0	2
Experts	0.0	1

Source: Adapted from Entreprises pour l'Environnement (EpE), Entreprises et Collectivités: Partenaires pour l'Environnement (Oree) & Observatoire sur la Responsibilité Sociétale des Entreprises (ORSE). 2004. Rapport de mission remis au gouvernement: Bilan critique de l'application par les entreprises de l'article 116 de la loi NRE. Paris: ORSE.

TABLE 8
Selected Global Firms' Grade on Reports'
Accessibility and Verification, 2004

Firm	Grade (100% highest possible)
CFS	83.0%
Lafarge*	79.2
Shell	79.0
Gaz de France*	75.0
Carrefour*	62.5

Source: Adapted from SustainAbility, Utopies & Le Programme des Nations Unies pour l'Environnement (PNUE). 2005, Etat du reporting sur le développement durable, version Française de l'étude global reporters. Paris: Utopies. * French firms.