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Restrictions on the Exportation of Hazardous Products to the Third World: Regulatory Imperialism or Ethical Responsibility?

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I. INTRODUCTION

World trade in hazardous products raises many politically and emotionally charged issues which have stirred a continuing international debate as to the degree of regulation, if any, which should be imposed on such trade. Many products which continue to be imported by the Third World have been previously banned or severely restricted from domestic use within the exporting country due to determinations that they pose an unreasonable risk of harm to human health and environment. Companies typically rush to export existing supplies of such products before export restrictions can be imposed.

A policy which permits the continued exportation of banned hazardous products is attacked by critics as a double-standard. Supporters argue that such a policy is simply an expression of respect for the sovereignty of nations, allowing the government of each importing country to decide what is best for its own citizens. It is asserted that products


2 Such products include pharmaceuticals, medical devices, pesticides, food additives, and fabrics that have been treated with carcinogenic substances (e.g. TRIS), to name a few.

which are banned from use in developed countries may nevertheless produce benefits in the Third World which outweigh the risks. For example, the urgent need for food in developing countries may outweigh fears of the harmful effects of pesticide usage.\(^4\) Developing countries plagued with malaria and other tropical diseases may perceive a need to use banned pesticides. DDT, for instance, has been estimated to have saved five million lives and prevented 100 million illnesses since 1942.\(^5\) Similarly, despite the U.S. ban on the exportation of the injectable contraceptive Depo-Provera in 1978, several Third World leaders specifically requested that exportation of the drug be permitted in light of the special needs of the Third World, such as the difficulty encountered by African women using other methods of birth control.\(^6\)

It has been said that pollution is a "rich man's disease" which poor countries would be delighted to contract,\(^7\) and that those who argue for stricter controls over hazardous exports do not speak for the lesser developed countries.\(^8\) There is, however, considerable evidence to the contrary. Many Third World leaders have expressed a strong desire for stricter controls on hazardous exports. In 1977, a Kenyan official stated that developing countries would no longer tolerate being used as dumping grounds for unwanted products or "guinea pigs" for those which are untested.\(^9\) In November 1980, thirty-one consumer advocates from thirteen countries signed the "Penang Declaration on the Export of Hazardous Substances and Facilities" urging "all governments to establish export control programmes for hazardous substances."\(^10\) They specified that only in specific exceptional circumstances should a distinction be made between domestic and foreign consumers. Such circumstances were to be demonstrated by the exporters and exporting country governments with full public participation.

The recent tragedy in Bhopal, India has intensified the debate over the appropriate level of international regulation of hazardous substances. That incident, in which a noxious gas leak from a pesticide manufacturing plant killed over 2,000 people and

\(^4\) It should be noted, however, that the validity of this notion has been challenged by statistics which indicate that more than half, and as much as 70%, of food produced in Third World countries is for export, so the "poor and hungry may labor in the fields but they do not get to eat the crops." D. WEIR & M. SCHAPIRO, CIRCLE OF POISON 32 (1981). See also D. BULL, A GROWING PROBLEM: PESTICIDES AND THE THIRD WORLD POOR 78-86 (1982) (discussing the distribution of costs and benefits of pesticide exports to the Third World).


\(^6\) Wash. Post, Aug. 9, 1978, at C6, col. 1. The Depo-Provera controversy was unique, however, in that the importing governments had an opportunity and a willingness to evaluate the risks and benefits associated with the drug.

\(^7\) Alston, supra note 3, at 445 n.228 (citing Long, Identifying Environmental Options in Development, 69 DEV. DIG. 34, 35 (1971)).

\(^8\) D. BULL, supra note 4, at 147 (citing F.J. Rarig of the Rohm and Haas Company in DEPT. OF STATE & U.S. NAT'L COMM. FOR MAN AND THE BIOSPHERE, PROCS. OF U.S. STRATEGY CONF. ON PESTICIDE MANAGEMENT 29 (June 7-8, 1979) [hereinafter cited as 1979 Strategy Conf.]).

\(^9\) Export of Hazardous Products: Hearings Before the Subcomm. on International Economic Policy and Trade of the House Comm. on Foreign Affairs, 96th Cong., 2d Sess. 20 (1980) [hereinafter cited as 1980 Hearings]. Similar sentiments were expressed by the Nigerian Ambassador to the United States: "This Ministry supports the move being discussed by the US Government to ban the exports of products [from the United States which have been found to be hazardous to the public health and are prohibited from use in the United States], particularly with reference to Nigeria." Id., app. 18, at 405.

caused ill effects among an estimated 200,000 additional people, raised a wide range of questions concerning corporate responsibility, training, and education.\textsuperscript{11} It also drew attention to the ways in which cultural differences can increase the risk associated with products assumed to be safe. As a result, there is a growing sentiment that some materials should not be produced in certain countries.\textsuperscript{12}

There are currently no binding international controls on trade in hazardous products. The United States has taken some steps toward ensuring that Third World nations are aware of the dangers of banned or restricted exports, yet such controls have been largely ineffective in protecting foreign purchasers. This note will first examine the nature of the problems associated with the exportation of hazardous products to Third World countries by focusing attention on two specific groups of such products — pesticides and medicines.\textsuperscript{13} The hazardous export policy of the United States as well as recent developments at the national and international level will then be discussed. Finally, proposed improvements will be evaluated and alternatives suggested.

II. Nature of the Problem

A. Medicines and the Third World

International trade in pharmaceutical products is a 100 billion dollar industry which has continued to expand despite the general economic recession,\textsuperscript{14} yet millions of poor people throughout Asia, Africa, and Latin America are unable to obtain medicines to relieve suffering or cure illness.\textsuperscript{15} The Third World has three-quarters of the world's population, but accounts for only about 20% of world drug sales.\textsuperscript{16} Most Third World countries do not have the funds to obtain essential drugs nor the health infrastructure to properly distribute these drugs.\textsuperscript{17}

When funds are available, however, they are often misspent on nonessential or unsuitable drugs.\textsuperscript{18} A 1982 study of the drug market in Bangladesh concluded that nearly one-third of the country's total drug expenditures was spent on "unnecessary and useless medicines such as vitamin mixtures, tonics, alkalisers, cough mixtures, digestive enzymes, palliatives, gripe water and hundreds of other similar products."\textsuperscript{19} Drug manufacturers

\textsuperscript{11} N.Y. Times, Dec. 16, 1984, at 1, col. 2.
\textsuperscript{12} Id. As explained by Noel J. Brown, a leading official of the United Nations Environment Programme, developing countries "have not internalized the technological culture." Id. As a result, workers learn certain steps or techniques but are unable to solve unexpected crises. A 1982 Union Carbide inspection report on the Bhopal plant indicated that training consisted of "rote memorization" without "a basic understanding of the reasoning behind procedures." Id. Moreover, there is reportedly widespread ignorance of the concept of preventive maintenance in developing countries. Id.
\textsuperscript{13} Pesticides and medicines have been specifically chosen to highlight the problems associated with hazardous exports because they are linked with two of the major needs of Third World countries — food and health care.
\textsuperscript{15} D. Melrose, supra note 10, at 16-26.
\textsuperscript{16} The latter figure is nearer 15% when China is excluded. See 1983 Council of Europe Report, supra note 14, at 15.
\textsuperscript{17} Id. at ii.
\textsuperscript{18} Id. at 1.
claim that they are responding to demand rather than actively creating the market for nonessential drugs; however, the widespread promotion in the Third World of drugs of questionable necessity has generated considerable doubt about the validity of these claims.20

Drugs imported by the Third World also do not always comply with safety, price, and labeling norms of the producing countries.21 Instructions and warnings often fail to convey adequate information due to the technical medical jargon used.22 Dangerous discrepancies between instructions included with drugs sold to the Third World and those in developed countries have also been revealed. Among the most striking discrepancies is the case of Orabolin, an anabolic steroid with instructions to doctors in Bangladesh that the drug “is free from harmful effects on liver ... The raspberry flavoured liquid administered in drops is especially meant for younger children and infants.” Doctors in Britain, however, were advised that Orabolin was “not recommended for children” and that “tumours of the liver have been reported occasionally.”23

Almost any drug carries a risk of unwanted or unexpected adverse reactions,24 but these risks are often greatly magnified in poor countries where powerful drugs are dispensed to people who can have no idea of the dangers or the possibility of safer alternatives. Even the people who prescribe and sell medicines in poor countries rarely know the potential adverse side-effects of the drugs they dispense.25 Consequently, instead of curing ill health, drug use in the Third World has frequently aggravated health problems.26

The conflicting interests of drug manufacturers and people of poor nations perpetuate existing problems. Advertising and marketing strategies of drug manufacturers have fostered the notion that “the solution to illness resides in the purchase and consumption of medications.”27 As a result, the poor in developing countries will even go without food in order to buy medicines, unaware that they could better cope with illness if they spent their money on food and improvements in health or living standards in the community.28

B. Pesticides and the Third World

Pesticides29 have played a major role in food production and public health programs in developing nations.30 Their effectiveness and ease of use have created a growing

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20 D. MELROSE, supra note 10, at 43-44. For example, advertising successfully created a large market in Mexico for calcium supplements despite the fact that the Mexican people get plenty of calcium from tortillas which are soaked in lime. Id.
21 1983 Council of Europe Report, supra note 14, at ii.
22 D. MELROSE, supra note 10, at 102.
23 Id. at 103-04.
25 D. MELROSE, supra note 10, at 97.
26 Id.
28 Id.
29 A pesticide is any substance or mixture of substances intended to prevent or control any unwanted species of plants or animals and also includes any substances or mixture of substances intended as plant growth regulators, defoliants, or desiccants. World Health Organization, Report of
demand among developing as well as industrialized nations. The Third World is responsible for about fifteen percent of the world's pesticide usage.

Developing nations, however, have paid a disproportionately high price in human suffering and death in exchange for the promise of more food for the hungry and freedom from diseases spread by insects. Moreover, it is not clear that pesticides contribute significantly to feeding the hungry since even in Third World nations, most pesticides are applied to luxury, export crops rather than to food staples that the local people will consume.

Although pesticide usage causes health concerns in industrialized nations, a number of factors combine to make their usage in the Third World particularly hazardous:

In the Third World illiteracy, lack of training and equipment, lack of effective legislative controls, and an especially susceptible population combine with the availability of highly toxic pesticides which are often badly labelled, poorly packaged and irresponsibly promoted. In addition, the pressures of the treadmill may drive people to apply pesticides more often and in greater quantities than is desirable either for maximum safety or for the best crop yields. The result of all these factors is the regular and widespread incidence of poisoning.

An incident which occurred in Bolivia illustrates the tragic consequences that can result from the irresponsible promotion of pesticides in Third World countries. According to U.N. officials, an "avalanche of salesmen" had persuaded farmers in the small Indian village of Comarapa to abandon traditional crop rotation in favor of pesticide usage. Instead of causing the elimination of the pests, however, the result was a plague of moths which prompted the salesmen to recommend the application of more and different pesticides. This only resulted in more resistant moths and a pesticide addiction which has
been described as the "pesticide treadmill." Some of the farmers subsequently committed suicide by drinking the pesticides which had destroyed their crops. Reportedly they thought they were "the killers of Pachamama — Mother Earth." Of course, most pesticide poisonings are purely accidental. Nevertheless, the Comarapa incident demonstrates how an irresponsible disregard for cultural differences can have a devastating impact on the Third World, a point often neglected by policy-makers in exporting countries. Another fact often neglected is that local conditions frequently make proper handling of pesticides impossible even if the pesticides are properly packaged and labeled. For example, there may be no clean water supply for washing after application of pesticides, it may be too hot to wear the necessary protective clothing, or the clothing may be unaffordable.

Many people in developing countries are unaware of the dangers associated with pesticides. They think of pesticides as beneficial "miracle drugs" because they kill worms and bugs and help subsistence. In Latin America, workers reportedly come home with their clothes soaked with pesticides and sleep in them. In 1976, at least five Pakistanis died and 2900 became ill after sprayers mixed malathion with their bare hands, washed their spraying equipment in local water supplies, and spilled the pesticide, which can be absorbed through the skin, in areas where barefoot children played.

In 1978, Third World countries imported one billion dollars worth of pesticides. Pesticides which had been banned or severely restricted from domestic use within the exporting country constituted a significant portion of these imports. In 1979, twenty-five percent of all pesticides sold overseas by U.S. companies were products whose use was prohibited or severely restricted in the United States because of the dangers posed to health, safety, or the environment. Although any chemical substance may pose serious health and safety risks when used improperly, the special dangers of these domestically banned and restricted pesticides suggest that they may have a particularly devastating effect in developing countries. Moreover, the hazards of exported pesticides that have been banned or severely restricted domestically are not confined to Third World popula-

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37 Id. at 4. This increasing dependency upon pesticides begins when certain insects within a species survive pesticide spraying and then breed with other survivors to produce progeny which also have the traits needed to survive. In this way, large populations of pests become resistant to pesticides. Additionally, pesticides often eliminate predator species thereby allowing the populations of prey species to multiply unchecked. See R. van den Bosch, The Pesticide Conspiracy 14-31 (1980).


39 See generally, 5 Cultural Survival Newsletter, No. 3, at 1-8 (1981) (part one of a three-part series published by Cultural Survival Inc. of Cambridge, Massachusetts on the problems posed by the exportation of toxic substances for ethnic minorities and tribal societies throughout the world).

40 D. Bull, supra note 4, at 38-53.


42 Id.


44 N.Y. Times, Dec. 16, 1984, at 1, col. 3 (citing the Aug.-Sept. 1984 issue of World Health, the magazine of the World Health Organization). Two-thirds of the world's pesticide exports come from companies operating in Western Europe, especially the U.K. and Switzerland. 6 Int'l Env't Rep. (BNA) No. 4, at 159 (Apr. 13, 1983). Approximately 15% come from companies based in the United States. Id.

tions. Travelers may be exposed\textsuperscript{46} as may workers in the original manufacturing plants.\textsuperscript{47} A "boomerang effect" can also take place whereby pesticides return in the form of residues on foods imported by developed countries.\textsuperscript{48}

Pesticides can also have a devastating impact upon the environment. Organisms pick up pesticides that have washed into rivers and fish can concentrate these chemicals in their bodies. These chemicals are then transported through food chains to humans and other animals.\textsuperscript{49} Thailand was recently reported as suffering perhaps the greatest ecological disaster in its history — a mammoth fish kill which officials blame on agrochemicals.\textsuperscript{50} Careless spraying sometimes causes pesticides to drift into forests and jungles, killing off beneficial non-target species\textsuperscript{51} and harming ponds, canals, livestock, and even children.\textsuperscript{52} The problem of environmental damage is particularly severe in the case of organochlorine insecticides, such as DDT and chlordane, which can persist in the environment for many years after application.\textsuperscript{53} The other major group of pesticides, organophosphates such as malathion and parathion, degrade more rapidly but are more acutely toxic and therefore require greater care in handling, applying, and storing.\textsuperscript{54}

The negative impact of pesticides on the environment is not limited to direct adverse effects on human and animal populations. Studies of coffee plantations in Kenya indicate that the heavy use of fungicides has so poisoned the soil with copper-based chemicals that no other crops can be grown there and even the coffee trees are beginning to show signs of copper damage.\textsuperscript{55} Although the coffee crop reportedly poses no health hazard because copper does not concentrate in the coffee beans, the contaminated soil poses a threat to Kenya’s agricultural future.\textsuperscript{56}


\textsuperscript{47} A tragic illustration of this occurred at Allied Chemical’s Hopewell, Virginia plant where the pesticide Kepone was produced primarily for export. In 1975, an employee complained to a doctor of tremors, weight loss, quickened pulse rate, unusual eye movements, and a tender, enlarged liver. On a subsequent tour of the plant, the state epidemiologist found that seven out of ten production workers had such a severe case of “the shakes” that they required immediate hospitalization. Seventy-five employees suffered acute Kepone poisoning and high levels of Kepone were discovered in some of their family members as well. Goldfarb, Kepone: A Case Study, 8 ENV. L. 645, 652-53 (1978).


\textsuperscript{49} L.A. Times, Jan. 24, 1983, part I.

\textsuperscript{50} R. KIRK & D. OTHMER, ENCYCLOPEDIA OF CHEMICAL TECHNOLOGY 430-31 (3rd ed. 1978).

\textsuperscript{51} SAHABAT ALAM MALAYSIA, PESTICIDE PROBLEMS IN A DEVELOPING COUNTRY — a Case Study of Malaysia 8-9 (1981) [hereinafter cited as MALAYSIAN STUDY].

\textsuperscript{52} L.A. Times, Jan. 24, 1983, part I.

\textsuperscript{53} Id. Concerns about environmental damage and problems of pest resistance have prompted a general shift in usage from organochlorine insecticides to organophosphates, however, organophosphates are now the cause of the preponderance of insecticide poisonings throughout the world. Id. at 414, 453.


\textsuperscript{56} Id.
III. U.S. HAZARDOUS EXPORT POLICY

The United States has strict regulations governing the domestic registration and use of hazardous products, but when these products are labeled for export they generally become exempt from domestic standards.\(^57\) This results in a policy of *caveat emptor* whereby Americans are protected from the hazards of these products, but foreign purchasers buy at their own risk. Nevertheless, the United States has recognized some responsibility toward regulating hazardous exports. Thus far, this has consisted primarily of notification and labeling requirements. Rarely are products completely banned from export.\(^58\) In the words of U.S. Congressman Michael Barnes, "[u]nder current law, companies can pretty much export whatever they can convince unsuspecting people abroad to buy."\(^59\)

A. Medicines

Under the Food, Drug and Cosmetic Act,\(^60\) food, medical devices, drugs, and cosmetics may be exported if they are properly labeled, accord with the specifications of the foreign purchaser, and do not violate the laws of the foreign country.\(^61\) The Act, as amended in 1976, provides that new drugs may not be exported unless they are approved by the Food and Drug Administration (FDA) for domestic uses, except under very limited circumstances.\(^62\) New drugs also must comply with domestic labeling requirements prior to exportation.\(^63\) On the other hand, old drugs, i.e. those developed before 1938, remain largely unregulated and may be exported without notice to the FDA even if adulterated, misbranded, or expired.

B. Pesticides

Pesticide exports are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).\(^64\) Manufacturers are required to properly label exports in both English and the language of the importing country. For pesticides not registered in the United States or which are being exported for a use which has been cancelled or suspended in the United States, the exporter must obtain a signed statement acknowledging an understanding that the pesticide is not registered for use in the United States.\(^65\) The Environmental Protection Agency (EPA) is then responsible for ensuring that a copy


\(^{58}\) See generally Comment, *State Responsibility and Hazardous Products Exports: A Solution to an International Problem*, 13 CAL. W. INT'L L.J. 116, 123-25 (1983) (discusses various categories of export controls). The only products which are totally banned from export are misbranded cosmetics and drugs, biological products, and certain meat and poultry products. Products such as household chemicals, consumer goods, chemical substances, and fabrics may be banned from exportation if they pose a risk to human health or the environment of the United States unless they are not offered for sale domestically. *Id.* at 125.

\(^{59}\) See generally *Hearings*, supra note 9, at 3 (statement of Hon. Michael D. Barnes).


\(^{62}\) *Id.* § 381(d).


\(^{65}\) *Id.* § 1360(a)(2).
of the statement is sent to the appropriate government officials of the importing country. These officials may then request additional information from the EPA, such as information about available substitutes.

The United States has earned recognition as a leader in pesticide regulations. Nevertheless a number of flaws in the U.S. regulatory scheme have been exposed. For example, export notices may not always reach their destination and even when they do, they may not assure proper pesticide use since the pesticide user is not included in the notification process. Also, the EPA often has no information on specific pesticides to send to foreign purchasers since many of these products have never been registered in the United States. Even when health and safety data does exist, the EPA is prohibited from disclosing it to other governments.

C. Recent Developments

The Reagan Administration has made clear its opposition to tighter controls on hazardous exports. Shortly after taking office, President Reagan revoked former President Carter's Executive Order No. 12264 which had established a comprehensive U.S. policy on the export of banned or significantly restricted substances. The Carter policy was an attempt to further the foreign policy interests of the United States by relying primarily on regularized notification procedures, an annual report summarizing regulatory actions, and participation in international efforts to improve standards and practices with respect to banned or significantly restricted substances. Under the authority provided in the Export Administration Act, the U.S. government would also, in limited cases involving extremely hazardous substances, evaluate the risks and benefits associated with use of those substances and require a validated export license.

President Reagan rejected this policy, claiming that it resulted in "a cumbersome regulatory program, costly to both the public and private sectors." He requested instead that Secretary of State Alexander Haig and Commerce Secretary Malcolm Baldrige review existing practices relating to the export of hazardous substances and propose

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66 Id.
67 NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION (U.S.), REPORT ON THE NATIONAL CONFERENCE ON THE CODEX ALIMENTARIUS INTERNATIONAL PESTICIDE RESIDUE LIMITS 61 (May 5, 1976).
68 6 INT'L ENV'T REP. (BNA) No. 7, at 296 (July 13, 1983) (citing testimony of Don Clay, acting assistant administrator for EPA's Office of Pesticides and Toxic Substances, before the House Agriculture Subcomm. on Dept. Operations, Research, and Foreign Agriculture (June 9, 1983)). According to a U.S. Commerce Department official, one way in which U.S. firms evade the intent of notification requirements is by establishing foreign subsidiaries, shipping the hazardous materials to them, accompanied by an official notice, and then reshipping them elsewhere without any official notification. 216 SCIENCE 1301 (1982).
69 Id.
70 7 U.S.C.A. § 136h (West 1980). The EPA has unsuccessfully sought legislation to allow it to release health and safety data to foreign governments. 6 INT'L ENV'T REP. (BNA) No. 7, at 296 (July 13, 1983). The release of such data is opposed by domestic pesticide manufacturers who claim that they would be placed at a competitive disadvantage against foreign manufacturers who could use this data as a means of entering foreign markets in competition with U.S. firms. H.R. REP. No. 343, 95th Cong., 2d Sess. 4, reprinted in 5 INT'L ENV'T REP. (BNA) No. 11, at 506 (Nov. 10, 1982).
specific statutory or regulatory revisions to remove any "conflicting, duplicative or excessively burdensome requirements," and provide for a more "consistent and cost-effective" export policy.\textsuperscript{75} Haig and Baldrige responded with a report recommending a number of changes, the most controversial being a proposal to end the ban on commercial exports of drugs and biologicals that have not been approved for use in the United States but which can be lawfully marketed overseas, a move that has been pushed for several years by drug manufacturers.\textsuperscript{76} The report also recommended the elimination of shipment-specific notification except upon export of substandard consumer products. Rather than requiring companies to report to the appropriate U.S. agency and to notify the importing country when they plan to export a restricted product, the report recommended standardized notification by the Department of State to all countries when U.S. regulatory actions are taken. This information would be supplemented by an annual summary of such notices including a list of products which are manufactured in the United States but are banned from sale within the United States.

The stated purpose of these changes was to reduce the regulatory burden on both individual firms and the U.S. government while shifting the focus of attention from the source of hazardous exports to the nature of such products. This would theoretically allow foreign governments sufficient access to pertinent information to make informed judgments about hazardous products.\textsuperscript{77} Implementation of the new policy would likely require new legislation and changes in current regulations, reversing the trend toward stricter control over hazardous exports.\textsuperscript{78} It appears that the Reagan Administration is attempting to compromise the position of the United States as a leader in the development of a responsible hazardous export policy just when momentum has been building internationally for stricter export controls.\textsuperscript{79}

While the Reagan Administration has attempted to implement its new anti-regulatory approach, some members of Congress have been attempting to tighten requirements on hazardous exports. The proposed Pesticide Import and Export Act of 1983,\textsuperscript{80} for example, would require exporters to submit more information about unregistered hazardous products to the EPA to be used in an annual report prepared by the Administrator in collaboration with the Secretary of Agriculture, Secretary of State, and Commissioner of the FDA, identifying overseas pesticide use patterns. It would require

\textsuperscript{75} Id.
\textsuperscript{79} For a discussion of recent international trends, see infra text accompanying notes 131-47. S. Jacob Scherr, an attorney with the Natural Resources Defense Council (NRDC) has criticized this abrupt change in policy, saying: "It is hard to imagine that the government could propose a policy with no real checks on hazardous exports — a policy that would use foreigners as guinea pigs. It's just unbelievable." 216 Science 1301 (1982). The NRDC is a national non-profit organization dedicated to the goals of "protecting our natural resources, preserving the wilderness, and improving the quality of our environment." NRDC, Inc. Ann. Rep. 2 (1982-83). Its International Project has a close working relationship with the United Nations and has played an active role in assisting passage of the 1982 U.N. General Assembly resolution on the export of hazardous substances. Id.
exporters to give foreign importers information on the products' adverse environmental effects, prohibit the import of foods with residues of cancelled or suspended pesticides, and encourage more international exchange of information. Officials of a government that wanted to import an unregistered pesticide from the United States would be required to contact the EPA, describe the intended use, and acknowledge receipt of information regarding the pesticide's unregistered status, possible adverse effects, and the availability upon request of certain scientific documents on the pesticide. Prior to export of an acutely toxic pesticide, officials of the importing government would be required to sign a statement acknowledging an understanding of the hazards associated with exposure to the pesticide. The statement would also be required to include the steps to be taken to ensure that appropriate instructions regarding the safe handling, use, and disposal of the pesticide would be contained on the label and would be accessible, to the extent practicable, to the user of the pesticide.81

In 1984, a House subcommittee held hearings on the Pesticide Import and Export Act. However no further action was taken on the bill by the 98th Congress and it has not yet been reintroduced.

Another proposed bill, the FIFRA Reform Act of 1983, also attempted to tighten up existing pesticide laws. This Act consisted of a number of amendments to FIFRA, concentrating on the improvement of registration procedures and requirements and greater public disclosure of scientific information. The FIFRA Reform Act addressed the lack of reliable, current health and safety information, a major loophole in the current regulatory scheme which the proposed Pesticide Import and Export Act overlooked. Older pesticides, some dating back to the 1940's, were registered prior to the development of adequate safety standards and a majority of the most commonly used pesticides do not comply with the most vital data requirements.84 Before these importing governments can make truly informed choices, complete registration information on these chemicals must be obtained, particularly in the case of exportation to Third World countries, since most of these countries lack the necessary resources and expertise to conduct their own tests or the mechanisms to make such information available to their public.

Similarly, the information that is available must be accurate. The FIFRA Reform Act addressed the problem of falsified test data, most recently brought to light by the IBT scandal, by making it easier to withdraw from the market those pesticides whose registrations depended upon such distorted data.

81 Id. § 3(b).
82 The bill was never voted out of the House Subcommittee on Department Operations, Research, and Foreign Agriculture. Telephone interview with Nick Ashmore, staff assistant to the House Agriculture Committee (Mar. 4, 1985).
84 Id. (statement of Sen. Proxmire). The Senator went on to cite the results of an investigation by the House Subcommittee on Department Operations, Research, and Foreign Agriculture which estimated that at least 60% of major pesticides have not been tested for their carcinogenicity, over 90% of major pesticides have not been tested for their potential to cause genetic mutations, and at least 70% of major pesticides in use have never been tested for their potential to cause birth defects. Id.
85 A major chemical testing laboratory, Industrial Bio-Test Laboratories (IBT) was discovered to have falsified the results of numerous chemical safety tests, with less than 10% of over 2,000 key product safety tests found to be scientifically valid. Schneider, IBT—Guilty, How Many Studies Are No Good?, AMICUS JOURNAL, Fall 1983, at 4.
The FIFRA Reform Act, recently reintroduced in the Senate, represents an important step toward a more responsible hazardous export policy. Nevertheless, in 1983, EPA Administrator William D. Ruckelshaus, said he needed more time to study the law, so FIFRA was extended without change. In 1984, the position of the EPA was that it could close many of the loopholes in FIFRA administratively and that it would return to Congress in 1985 if any legislation was needed.

IV. LIMITATIONS OF A UNILATERAL APPROACH

Unilateral efforts to tighten control over the exportation of hazardous products eventually encounter obstacles which can only be removed through international cooperation. A purely unilateral approach by exporting countries raises the likelihood that industry will attempt to bypass stringent controls by relocating to free trade zones. Although the United States can enforce its laws within its own borders, it is difficult to enforce these laws on American firms operating in other countries when these laws conflict with the law or policy of the foreign country.

A unilateral approach by the United States is criticized as being too paternalistic in that it imposes U.S. standards on other nations and deprives these countries of their sovereign right to choose the products they want imported. Concern has also been expressed over the possibility that stringent controls by the United States will have a detrimental effect on diplomatic interests by generating animosity and raising questions as to the reliability of U.S. firms as suppliers. This, in turn, could encourage importing nations to rely on other countries, thereby aggravating the U.S. trade deficit as well as threatening the health and safety of the Third World population through a shift to products which may be less effective or more dangerous.

A multilateral approach to the regulation of hazardous exports, on the other hand, would minimize the concerns raised by a unilateral approach and would create a climate in which previous unilateral regulations could function more efficiently. Uniform testing and notification procedures would spread the costs of regulation more evenly and would help prevent the burden of multiple requirements. Information about hazardous products would be more accurately compiled and importing countries would be better informed. Also, widespread participation in a multilateral agreement would eliminate the incentive to industry to relocate in an attempt to escape regulatory restrictions.

87 It has been suggested that since the Congressional agricultural committees will be preoccupied with rewriting farm legislation in 1985, Ruckelshaus is essentially asking Congress to wait until 1986 before considering FIFRA reform legislation. L.A. Times, Mar. 23, 1984, § 2, at 6, col. 1 (editorial).
88 American-owned firms often export products from foreign countries. For example, after the lethal pesticide Phosvel was banned, the manufacturer, Velsicol Company, continued to export it from Panama and Mexico. When the product was banned in Columbia, Velsicol simply moved its remaining inventory to a free trade zone and continued exportation. D. WEIR & M. SCHAPIRO, supra note 4, at 24.
89 See, e.g., Fruehauf v. Massardy, [1968] D.S. Jur. 147, [1965] J.C.P. II 14, 274 bis (Cour d'appel, Paris), where an American-owned corporation operating in France was required to honor a contract which violated an American statute and was against American public policy. The corporation was required to comply with French law instead, and out of respect for French sovereignty, the United States chose not to dispute the matter. Id. See 5 I.L.M. 476 (1966) for an English translation of Fruehauf. See also infra text accompanying notes 102-09.
90 See Alston, supra note 3, at 445.
Proposals for the regulation of hazardous products typically encounter resistance on the part of developed nations and industry representatives. Nevertheless, it is becoming increasingly clear that stricter unilateral controls in combination with international efforts to coordinate information and regulation are in the long-term best interests of not only the Third World, but developed nations and industry as well.  

V. INTERNATIONAL EFFORTS

A. The Role of International Law

Although there are currently no binding international controls specifically dealing with trade in hazardous products, there are relevant agreements and precedents which offer some guidance concerning responsibility for damage to human health and environment. Although not binding on member states, Principle 21 of the Stockholm Declaration on the Human Environment, provides that

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction or control.

In addition, the U.N. Charter, a treaty with binding effect, obligates member states to promote “solutions of international economic, social, health and related problems, and international cultural and educational cooperation.”

The emergence of this sense of international responsibility for human health and environment is a natural outgrowth of the principle that a state should not use its property so as to harm other states, as established in two leading cases, the Trail Smelter Arbitration and the Corfu Channel Case. In Trail Smelter, the Canadian government was held responsible for the private acts of a smelter accused of emitting fumes which injured crops and lumber in the state of Washington. The Corfu Channel Case involved two British ships which hit mines in Albanian territorial waters. The court held that Albania was liable for the damage, regardless of whether it had actually laid the mines, under the principle that it is “every state's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other states.” Albania was held to have breached a duty to warn passing vessels about the hidden dangers of the mines.

The serious risks posed by exported hazardous products suggest that similar liability could be extended to states which fail to warn importing states of hidden dangers inherent in certain products introduced into international trade. Principle 6 of the

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91 See infra note 153 and accompanying text.
93 Id. at 71.
95 U.N. CHARTER art. 55(b).
98 Id. at 22.
99 Comment, United States Export of Products Banned for Domestic Use, 20 HARV. INT’L L.J. 331,
United Nations Environment Programme (UNEP) guidelines offers additional support for the imposition of such a duty. Principle 6 establishes a duty of states to notify other states when the planned utilization of resources "can reasonably be expected to affect significantly" the environment in the territory of other states.

The duty to warn may also be a basis for liability in a suit brought in the United States, under the law of an American state, against a supplier of a defective product for injury suffered in a foreign country. Although it is clear that the United States may regulate the exportation of goods produced within its borders as it sees fit, the scope of American regulatory legislation is not so clear in regard to whether such laws should govern activities related to the exportation of hazardous products, i.e. whether Congress intended to impose liability and whether the Constitution permits the courts to do so. Judge Learned Hand, in United States v. Aluminum Co. of America, stated that it was improper for a court to "impute to Congress an intent to punish all whom its courts can catch, for conduct which has no consequences within the United States." He suggested the use of a conflict of laws analysis to aid in determining appropriate limitations on the exercise of regulatory power. This approach generally involves a balancing of the competing interests of the parties involved or a determination of which party has the most significant contacts with the dispute at hand.

A similar approach was used more recently in Timberlane Lumber Co. v. Bank of America, to determine the scope of regulatory legislation. In Timberlane, a U.S. lumber company which milled lumber in Honduras for export to the United States charged the Bank of America and others in the United States and Honduras with antitrust violations, claiming interference with its export activities. The lower court dismissed the claim on jurisdictional grounds. On appeal, however, the court vacated the dismissal and outlined a two-step approach for the determination of whether the exercise of extraterritorial jurisdiction was appropriate. First, the potential degree of conflict between the asserted authority of the United States and the law or policy of the foreign government should be identified. This should then be weighed against the contacts and interests of the United States to determine whether, "as a matter of international comity and fairness," extraterritorial jurisdiction should be exercised by American courts. Although some of the defendants in Timberlane were foreign citizens and most of the activity took place in Honduras and probably had a more direct effect on the economy of Honduras, the court found no indication of conflict with the law or policy of the Honduran government.

371-72 (1979) [hereinafter cited as Comment, Export of Products]. "A state should have responsibility beyond ensuring that the emissions from its factories' smokestacks do not harm a neighboring country's farmland; rather, responsibility should also extend to assisting importing nations to ensure that known dangerous pesticides being produced in that factory do not injure the foreign farmworkers or the consumers of the agricultural products." Id.


101 Id.

102 148 F.2d 416, 443 (2d Cir. 1945)(question involving the extraterritorial application of the Sherman Antitrust Act).

103 Id.


105 549 F.2d 597, 613 (9th Cir. 1976).

106 Id. at 613.
Noting that the lower court failed to conduct a comprehensive analysis of the relative involvement and concerns of the two governments, the appeals court found the dismissal on jurisdictional grounds to be unjustified.107 The use of choice of law rules has gained increasing support in the context of trade in hazardous products.108 Although it is unlikely that most Third World consumers injured by hazardous products would have the knowledge and resources to assert their legal rights by bringing lawsuits against the exporter of those products, it has been suggested that "the door is open for large-scale litigation brought on behalf of classes of consumers claiming injury to their health and environment."109

B. International Organizations

A patchwork of international organizations has emerged in response to concern about trade in hazardous products. For example, in 1976, there were at least twenty-four international organizations linked in various ways to the international pesticide regulatory system.110 The following discussion highlights some of the major efforts in the field of hazardous exports.111

International concern about the protection of health and the environment, as expressed at the Stockholm Conference on the Human Environment in 1972,112 led to the establishment of the United Nations Environment Programme (UNEP), an intergovernmental organization dedicated to the promotion of international environmental cooperation.113 Shortly thereafter, UNEP committed itself to the establishment of a notification system whereby countries would be warned of the adverse health effects of imported hazardous products.114 One of UNEP's principle achievements is the development of a global pest control training program designed to teach methods for maintaining high agricultural crop yields while minimizing the adverse impact on the environment through a special emphasis on the prudent use of chemicals and on the use of biological control methods.115 UNEP also initiated a program to assist Third World nations in

107 Id. at 615.
108 Comment, Export of Products, supra note 99, at 373.
109 Id. at 374.
110 The complexity of the interrelationships between these organizations has been clearly demonstrated in a diagram by the National Agricultural Chemicals Association (U.S.). NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION (U.S.), REPORT ON THE NATIONAL CONFERENCE ON THE CODEX ALIMENTARIUS INTERNATIONAL PESTICIDE RESIDUE LIMITS 25 (May 5, 1976), reprinted in Comment, Agricultural Pesticides: The Urgent Need for Harmonization of International Regulation, 9 CALIF. W. INT'L L.J. 111, 122 n.56 (1979) [hereinafter cited as Comment, Agricultural Pesticides]. See also Alston, supra note 3, at 409-34.
detecting and minimizing environmental injury due to pesticide usage. Although UNEP's resolutions are not binding, and therefore serve merely as recommended guidelines, they still represent statements of member nations and, as such, are evidence of emerging customary international law with regard to international trade in hazardous products.

On May 25, 1977, the UNEP Governing Council passed a decision acknowledging that "there have been unethical practices concerning the distribution of chemicals, drugs, cosmetics and food unfit for human consumption" and urged governments "to take such steps to ensure that potentially harmful chemicals, in whatever form or commodity, which are unacceptable for domestic purposes in the exporting country, are not permitted to be exported without the knowledge and consent of appropriate authorities in the importing country." At a meeting the following year, the UNEP Governing Council responded to concerns of representatives from industrialized nations as well as from Bangladesh, Ghana, Iran, Jamaica, Kenya, Nigeria, Pakistan, and the Philippines, by reaffirming the 1977 decision and adopting a new decision directed toward the establishment of a sense of shared responsibility between importing and exporting nations in regard to trade in hazardous products.

The United Nations General Assembly has also expressed concern about the risks associated with trade in hazardous products. In 1979, it passed a resolution urging exporting countries to notify importing governments prior to exportation of banned hazardous chemicals and unsafe pharmaceutical products.

The United Nations Food and Agriculture Organization (FAO) has become increasingly involved in international information-sharing concerning agricultural pesticides in pursuit of its goal to "assure availability of effective products which can be used safely, without undue risk to the natural environment or to man." In 1972, the FAO and the Industry Cooperative Programme (ICP), Pesticides Working Group published a pamphlet describing the impact of pesticides on the environment and the role of pesticides in developing countries. Although the FAO began as an organization primarily concerned with the technical aspects of pesticides, it has since been criticized for being "transformed into a critical link between underdeveloped nations and multinational agribusiness firms."

The international interests of pesticide manufacturers and associations in nineteen nations, including the United States, are formally represented by the Brussels-based International Group of National Association of Agrochemical Manufacturers (GIFAP). GIFAP's position is that "we ought to be satisfied with aiming at the avoidance of undue risk" rather than striving for absolute environmental safety which GIFAP claims would ultimately lead to increased hunger and disease.

116 Id.
122 FAO, PESTICIDES IN THE MODERN WORLD (1972).
123 D. WEIR & M. SCHAPOK, supra note 4, at 52. The significant flow of high-level personnel between private industry and international regulatory agencies has subjected other agencies to similar criticism. Id.
124 Comment, Agricultural Pesticides, supra note 110, at 125 (citing GIFAP, The Two Largest Threats
In contrast to GIFAP, the position of the World Health Organization (WHO) is that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition." WHO is one of only two specialized U.N. agencies which was endowed in its Constitution with anything resembling law-making and executive, as opposed to purely advisory, functions. Specifically, Article 21 of its Constitution gives the World Health Assembly the power to adopt regulations concerning "standards with respect to the safety, purity and potency of biological, pharmaceutical and similar products moving in international commerce" and "advertising and labelling of biological, pharmaceutical and similar products moving in international commerce."

Despite these provisions, WHO's success in regulating international trade in such products has been very limited. According to Catherine Stenzl, coordinator of the International Research Group for Drug Legislation and Programs, a few well-placed drug industry lobbyists have been able to undercut WHO proposals for marketing controls. For example, when WHO proposed to draw up a Code of Advertising for Pharmaceutical Products, the International Federation of Pharmaceutical Manufacturers Associations (IFPMA) quickly drew up a voluntary code of its own. This voluntary code has been criticized, even by some members of the IFPMA, for being unclear, unstructured, and weak in the areas of monitoring and enforcement. No steps have since been taken, however, to implement the WHO proposal.

In the area of pesticide regulation, WHO and FAO have expert committees which set standards for acceptable daily intakes and maximum residue limits. Although WHO/FAO studies have generated a great deal of toxicity data for specific chemical substances, the standards and residue limits are not binding on member nations.

Many other international organizations have been involved in some way with attempts to regulate hazardous products. While conflicting goals, lack of coordination, and the unenforceability of resulting proposals have often frustrated the stated goals of these organizations, some recent international developments offer a more encouraging outlook for Third World nations.

C. Recent International Developments

Pressure for stricter controls over hazardous exports to the Third World has been increasing. In December 1982, the U.N. General Assembly passed a resolution calling for

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126 W. Friedmann, The Changing Structure of International Law 280 (1964). The other specialized agency endowed with more than advisory functions is the International Civil Aviation Organization. Id.

127 D. Melrose, supra note 10, at 181 (citing Stenzl, The Role of International Organisations in Medicines Policy, in 1981 Pharmaceuticals and Health Policy 228). Reportedly, there is a committee of drug industry lobbyists operating in Geneva whose sole job is "to infiltrate every international institution to prevent mandatory legislation against the ... activities of multinationals." Id. Industry's views have been directly represented in WHO proceedings ever since 1971, when the IFPMA was officially accorded NGO status within WHO. Id.

128 D. Melrose, supra note 10, at 180.

129 M.N.G. Dukes, World Health Organization Regional Officer for Pharmaceuticals and Drug Utilization, Drug Control in International Law 7 (Nov. 4, 1983) (unpublished manuscript).

130 See Alston, supra note 3, at 409-34; B. Ruster & B. Simma, supra note 114; Comment, Agricultural Pesticides, supra note 110, at 117-28.
the preparation and regular update of "a consolidated list of products whose consumption and/or sale have been banned, withdrawn, severely restricted or, in the case of pharmaceuticals, not approved by governments." An arm of WHO, the International Register of Potentially Toxic Chemicals (IRPTC) and the International Program on Chemical Safety (IPCS) have agreed to share responsibility for compiling the list. The United States was the only nation to vote against the U.N. resolution, claiming there was no need for such a list. Because the United States is one of the most valuable sources of the information needed for the list to be meaningful, the manager of the IPCS has expressed concern that the attitude of the United States will be "one of a whole series of political problems which are going to raise their heads once this project gets underway." 

In the European Community, a recent report approved by the European Parliament's Environment Committee (EEC) claims that the EEC has a "duty" to help Third World countries set up their own legislative provisions on pesticides and to encourage integrated pest management as a means for protecting crops. The report stated that importing countries, particularly Third World countries, must be notified of any restrictions imposed on products within the exporting country. Additionally, the importing government would have to explicitly acknowledge that it was aware of this information prior to exportation. Greater emphasis would be placed on applicator training and public education on pesticide hazards. Specific labeling requirements were also called for, including precise instructions for use written in the language of the country and accompanied by pictorial illustrations.

The EEC has been under pressure to implement export legislation similar to that of the United States. Thus far, however, it has taken the position that it is the sole responsibility of the importing country to establish rules for trade in hazardous products. Adoption of the resolution outlined in the report would establish a policy far exceeding the standards now in effect for U.S. exports.

Other recent developments include: development of a report by the U.N. Commission on Transnational Companies identifying firms that produce products considered dangerous by other U.N. agencies, the formation of an international consumer information-exchange network for hazardous products and substances, General Agreement on Tariffs and Trade (GATT) pressure on governments to "harmonize" hazardous export legislation, and work by the FAO on a draft code of conduct for agrochemical exports to developing countries. The pressure for international regulation of pesticides, in particular, has become so intense that GIFAP has become "concerned by the number of initiatives in progress, initiatives very often motivated by political considerations." GIFAP has responded to mounting criticism by establishing its own code of conduct — "Principles and Objectives of Product Stewardship and Good Marketing Practices in the Export of Pesticides." The code places primary responsibility on the importing country for protecting health and the environment from the dangers of

131 G.A. Res. 37/137 (Dec. 17, 1982).
132 The resolution was adopted by a vote of 146 in favor, 1 against (the United States) and no abstentions. 6 INT'L ENV'T REP. (BNA) No. 4, at 160 (Apr. 13, 1983).
133 M. Mercier, quoted in 6 INT'L ENV'T REP. (BNA) No. 3, at 97 (Mar. 9, 1983).
134 6 INT'L ENV'T REP. (BNA) No. 7, at 296 (July 15, 1983).
135 Id.
136 Id.
138 Id.
139 Id.
pesticides. GIFAP responded angrily to the vote on the U.N. resolution by saying that "the banning or restriction of a product in one country does not signify that this same product cannot be used in another country; indeed, this other country may have economic and social conditions which lead it to carry out a completely different risk/advantage analysis."\textsuperscript{140}

In the field of pharmaceutical exports, the Parliamentary Assembly of the Council of Europe has recently expressed renewed interest in the development of an International Code of Marketing Practices, as was debated in WHO several years earlier.\textsuperscript{141} Although appreciating in principle the contribution of industry to the maintenance of satisfactory standards through the establishment of a voluntary code of conduct, a September 1983 Council of Europe report noted that the voluntary code remained untested after being in existence for almost two years. It recommended, therefore, that discussions resume on the establishment of an independently supervised code.\textsuperscript{142}

The Council of Europe report places primary responsibility upon the governments of importing countries but also recognizes a moral responsibility on the part of producing countries to assist developing countries. The report states: "[w]e, in the producer-exporting countries cannot just watch the world resources being utilised in an irrational and irresponsible manner."\textsuperscript{143} Consequently, the Council of Europe's Recommendation 969 calls upon member states to "revise, if necessary, their health aid programs, in order to assist developing countries with drug evaluation and improved access to useful drug information."\textsuperscript{144}

The need for reliable information was one reason for the formation of the Pesticide Action Network (PAN), an offshoot of the International Organization of Consumers Unions (IOCU). PAN is a coalition of nongovernmental organizations based in forty-nine countries seeking to end the "indiscriminate sale and misuse of hazardous chemical pesticides throughout the world," and to halt "the needless suffering and death occurring every day due to the irresponsible and abusive marketing practices of multinational agrochemical corporations in the Third World."\textsuperscript{145}

PAN has advocated withdrawal of the financial support of agencies such as the World Bank, the Regional Development Banks, and the FAO, from Third World agricultural projects which utilize pesticides that cannot be safely used under Third World conditions.\textsuperscript{146} PAN has also called for a halt to the practice of developing and distributing seed varieties which require expensive and hazardous pesticides and fertilizers, and has emphasized the need to breed varieties tolerant to the pests, diseases, and other conditions in particular fields.\textsuperscript{147}

\textsuperscript{140}Id. at 160.
\textsuperscript{141}See supra text accompanying notes 128-29.
\textsuperscript{142}1983 Council of Europe Report, supra note 14, at 14.
\textsuperscript{143}Id. at 13.
\textsuperscript{144}Id. at iii.
\textsuperscript{146}PAN Press Release, supra note 145, at 3. The amount of chemicals supplied through government assistance programs is quite small, however, compared to the amount supplied through regular commercial channels. In 1979, it was estimated that aid programs accounted for only 6% of total pesticide exports. D. Bull, supra note 4, at 75 (citing comments of V. Freed in 1979 Strategy Conf., supra note 8, at 25).
\textsuperscript{147}PAN Press Release, supra note 145, at 3.
Acknowledging the unacceptable hardship that would be imposed on Third World farmers and public health programs by an immediate ban on chemical pesticides, PAN advocates a gradual shift away from pesticide proliferation and toward alternatives such as Integrated Pest Management (IPM). PAN has also pointed out the need for aid and support from developed countries in order for Third World efforts to succeed.

VI. OUTLOOK FOR THE FUTURE

It has been estimated that forty percent of all Third World countries have no legislation regulating hazardous imports.\textsuperscript{148} Countries which have such legislation often lack the funds and technical expertise to enforce it effectively. Malaysia's Pesticide Act of 1974, for example, provides for the regulation of the importation, manufacture, and sale of pesticides, however it has not been strictly enforced.\textsuperscript{149}

Among the industrialized countries, the United States has heretofore been a leader in efforts to control the dangers of hazardous exports. There are several reasons to resist recent attempts to alter that status. First, the United States has a moral responsibility to take reasonable steps to protect foreign consumers from products judged too dangerous for its own citizens. The U.S. commitment to human rights, as expressed in the U.N. Charter,\textsuperscript{150} is a hollow one if it does not extend to protection from injuries associated with known hazardous products.

Cultural differences between industrialized nations and developing nations highlight the need for a responsible approach to the sale and promotion of hazardous products of western technology. Also, the use of pesticides, pharmaceuticals, and other potentially harmful products has spread more quickly than the knowledge of their appropriate uses and potential dangers. Manufacturers and exporters of these products must therefore assume primary responsibility, at least for the time being, for the regulation of these products and the dissemination of relevant information.\textsuperscript{151}

It is also important to realize that tragedies caused by the usage of American products in other countries can lead to increased resentment of the United States.\textsuperscript{152} The discovery of hazardous effects for which no warning was given may jeopardize favorable trade relations. Consequently, export regulations on hazardous products are also in the best

\textsuperscript{148} 6 INT'L ENV'T REP. (BNA) No. 7, at 296 (July 13, 1983).

\textsuperscript{149} MALAYSIAN STUDY, supra note 51, at 11.

\textsuperscript{150} The purposes of the United Nations include the achievement of international cooperation to solve international economic and humanitarian problems and to promote respect for human rights. U.N. CHARTER art. 1, para. 3.

\textsuperscript{151} This responsibility has been recognized by Frederick J. Rarig, Vice-President of the Rohm and Haas Company:

The pesticide industry of the US must either cease to do business in countries that do not meet basic safety standards or it must assume responsibility for securing observance of these standards by its customers in these countries while it works with the governments of these countries and international and regional trade and standards groups to develop effective controls of production, formulation, use, and disposal and effective enforcement of these controls.

D. BULL, supra note 4, at 88 (citing 1979 Strategy Conf., supra note 8, at 31).

\textsuperscript{152} For example, the recent tragedy at the Union Carbide pesticide manufacturing plant in Bhopal, India has prompted predictions of a backlash that would reduce the market for investments by multinational corporations in developing countries. Kenneth Rush, a former president of Union Carbide Corp. and a former Deputy Secretary of State, noted that developing countries may spurn new investments by multinational corporations and "the desperate fear that pervades the world because of this incident will create a very bad climate." N.Y. Times, Dec. 12, 1984, at A8, col. 3.
interests of U.S. foreign policy in that they help to preserve the commercial reputation of U.S. manufacturers and distributors.\footnote{Recognition of this fact has reportedly led Ciba-Geigy, one of the world’s largest drug manufacturers, to support the requirement of notification procedures. \textit{Int’l Env’t Rep.} (BNA) No. 11, at 479 (Nov. 10, 1982). Manufacturers realize that reports of unethical marketing practices in the Third World can draw widespread attention and cause a significant drop in sales in the markets of developed countries, where disapproving consumers may even boycott a product.\footnote{See statement of D. Weir before the House Subcomm. on Dept. Operations, Research and Foreign Agriculture of the Comm. on Agriculture, June 9, 1983.}

In addition to preserving existing regulations, the United States should establish a system whereby domestically-banned products which are arguably beneficial in other countries are subject to strict control. Although there is some support for an outright ban on such products,\footnote{Note that a large-scale effort to educate users and distributors is still ultimately necessary to prevent poisonings and other dangers associated with hazardous products that are not severely restricted domestically but which pose serious risks under the conditions found in many Third World countries.} some sort of permit system is more likely to muster the congressional support needed for passage. Perhaps a presumption can be established that banned and severely restricted products are inappropriate for export. A permit would then be issued only if sufficient evidence was produced to rebut the presumption. Such a system would at least help to ensure that the most dangerous products are not carelessly exported to unwarthy buyers.\footnote{See supra notes 80-81 and accompanying text.}

Passage of bills such as the Pesticide Import and Export Act\footnote{See supra notes 83-85 and accompanying text.} and the FIFRA Reform Act\footnote{See supra text accompanying notes 131-33.} would also serve to establish a more responsible export policy, sensitive to the cultural realities and needs of importing countries.

The refusal of the United States to cooperate with U.N. efforts to prepare a list of banned or severely restricted products\footnote{The reasons provided by the Reagan Administration for not submitting the requested information have been criticized as “ludicrous and transparent.” S. Jacob Scherr, \textit{Action Alert, “U.S. State Dept. Stonewalls United Nations Request for Hazardous Exports Information”} (Aug. 29, 1983). Scherr explained: “For example, the U.S. complains that the terms ‘banned,’ ‘severely restricted,’ etc. are too vague. Yet, as noted above, the U.S. was involved in negotiations over the language of the Resolution and had the opportunity to raise its concerns then. Also, during the Carter Administration, an interagency group on hazardous substances export policy was able to develop a definition of these terms in the context of U.S. statutes and regulations. Finally, a number of other nations have already provided information in response to the Resolution.” \textit{Id.}} lends support to recent criticisms that the Reagan Administration is unduly influenced by industry.\footnote{See \textit{N.Y. Times}, Apr. 22, 1983, at B-4, col. 4. The Reagan Administration drew similar criticism when it was learned that the United States had urged a delay in Bangladesh’s decision to ban over 1700 drugs made by American companies in order for representatives of the industry to confer with Bengali officials. Many of the drugs had been banned domestically. Dr. Sidney Wolfe, director of the Public Citizens Health Research Group, accused the State Department of permitting itself to be “used by the giant multinational drug companies to promote and protect their exploitation of the impoverished citizens of underdeveloped countries.” \textit{N.Y. Times}, Aug. 20, 1982, at A5, col. 5. Weak excuses for refusing to submit requested information seem to reflect an attitude which contradicts stated goals of international cooperation. Although primary responsibility for the safety of Third World consumers must ultimately lie with Third World governments and distributors of these products, this responsibility can not be exercised effectively without access to complete, accurate, and usable information.} Weak excuses for refusing to submit requested information seem to reflect an attitude which contradicts stated goals of international cooperation. Although primary responsibility for the safety of Third World consumers must ultimately lie with Third World governments and distributors of these products, this responsibility can not be exercised effectively without access to complete, accurate, and usable information.
Nevertheless, there are some positive developments in the area of international hazardous export policy. International agencies and non-governmental organizations are taking strong stands against abusive marketing practices and careless export policies.\textsuperscript{161} International channels of information are opening; knowledge and expertise are beginning to be more widely shared.\textsuperscript{162} Finally, and perhaps most significantly, a growing number of Third World governments and the populations they serve are taking a more active interest in solving the problems caused by hazardous exports.\textsuperscript{163}

VII. CONCLUSION

The exportation of hazardous products to Third World countries has too often had tragic consequences. A growing number of Third World governments are taking steps to protect their populations from dangers associated with hazardous exports. Unfortunately, they generally lack the information, resources, and scientific expertise to be fully effective. Exporting nations must help gather complete information on hazardous exports and make this information readily available to potential purchasers and their governments in an understandable form. Technical and administrative training on the distribution and use of such products should be furnished upon request until a competent infrastructure has been established in the importing country.

There must also be a strong international commitment to the development of safe alternatives to hazardous products currently in use. The practice of promoting dangerous or unnecessary drugs must be rejected in favor of responsible marketing practices, educational programs, and the development and sale of medicines appropriate to local ailments. In the area of pest control, there must be a commitment to end pesticide proliferation and to promote techniques such as integrated pest management, biological controls, and crop rotation. Such techniques would prevent numerous poisonings, help re-establish local control over food production, and help protect vital Third World water and soil resources.

Unilateral attempts to address these issues, although helpful, can meet with only limited success. It is clear that only a cooperative effort among developed countries and the Third World can succeed in controlling the dangers associated with hazardous exports.

\textit{Carolyn D. Greenwood}

\textsuperscript{161} See \textit{supra} notes 134-47 and accompanying text.

\textsuperscript{162} See \textit{supra} note 137 and accompanying text.

\textsuperscript{163} See \textit{supra} notes 9-12 and accompanying text.