

# ENVIRONMENTAL ETHICS, GLOBAL ACCOUNTABILITY

\*Neil Hodge

Developing countries have long been a lucrative market—and a dumping ground—for products that western countries will not touch. While the dangers of substances like lead paint, asbestos and some pesticides have been known in developed countries for decades—and their sale and use thus banned or curtailed—opportunities to shift these materials to emerging markets as cheap alternatives to their safer, more expensive counterparts have proven plentiful.

Manufacturers counter that they are simply supplying markets with permissible products and that they comply with the local laws of the countries to which they export. They contend it is not their problem that the legislation may not be as tough or as adequately enforced as in the United States or the European Union. Legally, they may have a point, but ethically, such views are becoming increasingly marginalized.

In September 2016, the European Commission, the EU's executive body, authorized the continued use of lead chromate in some industrial paint products because the Canadian company that brought the case—Dominion Colour Corporation—claimed that there were no viable alternatives that could be used in their manufacture, despite the fact that these



pigments are carcinogenic, reprotoxic and toxic to aquatic life.

Environmental groups are concerned, however, because they fear that there are no adequate measures to ensure such products are being sold and distributed safely outside of the EU. "Dominion says the lead pigments it exports are used only for specific applications, but the company has no way of controlling how these products are used in countries in Asia, Africa and South America to which it exports them and where the biggest proportion of lead-poisoned children live," said Kathleen Ruff, director of RightOnCanada, a human rights advocacy website. "By allowing their continued exportation, the European Commission has adopted a double standard, valuing the lives of people in the global south less than the lives of people in Europe. This is immoral and shameful."

Advocates and health experts say that one of the key obstacles in the fight to ban the worldwide sale of hazardous products is that the countries to which they are being exported are simply unaware of the risks, or at least of the severity. Successful prosecution rates for health and safety and negligence failings are also low, and the chance of suing the international parent company is lower still. Another problem is that hazardous materials are often cheaper than safer alternatives.

The United Nations has tried to counter these problems with the formation of a multilateral treaty to promote shared responsibilities related to the importation of hazardous chemicals, called the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, which came into force in 2004.

Under the convention, extremely hazardous chemicals and pesticides that have already been banned or severely restricted in various parts of the world are put on a special list by the Chemical Review Committee, the convention's scientific body. Parties must then first obtain "prior informed consent" of the hazards before they can export these products to another country. The convention also gives countries the right to refuse entry of the hazardous product if they believe they cannot handle it safely.

The convention has its limits, however. Any substance added to the list needs unanimous approval by all members, and if some countries are host to major producers of the product set to be

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listed, progress stalls. At the last Rotterdam Convention conference in May 2015, key asbestos-exporting countries Russia, Kazakhstan, Kyrgyzstan, Belarus, Pakistan, India, Cuba and Zimbabwe refused to accept the recommendation by the Chemical Review Committee to list chrysotile asbestos, which is carcinogenic. Guatemala, Indonesia and India also blocked the listing of paraquat, an extremely hazardous and highly toxic herbicide that is widely used in parts of those countries.

BaskutTuncak, UN special rapporteur on toxic wastes, slammed such politicking, saying, "It is both legally and morally unjustifiable for countries to continue to obstruct the listing of asbestos and paraquat under the Rotterdam Convention and derogates from their obligation to realize the right to access information."

#### **Holding Businesses Accountable**

The Rotterdam Convention is not the only attempt the UN has made to encourage companies to act ethically and take responsibility for their actions.

The Guiding Principles on Business and Human Rights — unanimously endorsed by the UN Human Rights Council in 2011—provides a duty for the state to protect against human rights abuses by third parties, including business, and

establishes a corporate responsibility to respect human rights. Resting on the three pillars of "protect, respect and remedy," the principles also provide victims with greater access to effective responses, both judicial and non-judicial. These principles have become widely accepted as "soft law," meaning that while they are legally unenforceable, they have become the basis for the expected norms upon which companies operate.

John Sherman, general counsel and senior advisor at the nonprofit organization Shift, said companies must be accountable for the impact their practices and products have on people around the world, as well as the actions of their supply chains.

"A lot of legislation that has recently come into force in the United States and European Union—such as anti-bribery, corruption and anti-competition legislation—specifically tries to hold a company to account for the actions of third-party contractors, suppliers and joint venture partnerships that are acting in its name," he said. "I can see no reason why such concepts are not extended to companies producing and selling substances that are clearly known to be hazardous to health. This is an area that may be ripe for negligence claims for western-based companies in years to come." ■

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