

Spring 1994

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Recommended Citation

Pathak, R. S. (1994) "International Trade and Environmental Development: A View from India," *Indiana Journal of Global Legal Studies*: Vol. 1 : Iss. 2 , Article 3.

Available at: <https://www.repository.law.indiana.edu/ijgls/vol1/iss2/3>

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International Trade and Environmental Development: A View from India

R.S. PATHAK*

International trade has traditionally been affected by the interaction of reigning political, economic, and social forces. Invariably, trade among nations bears the imprint of contemporary history and is influenced by movements entering into the composition of community life. In recent times, no single movement has so transformed the perspectives of human outlook as the crusade to protect and preserve the planet's environment. The ethos of environmental philosophy has profound implications for international trade, and significant international events during the past two decades have evidenced the close involvement of the world community in those consequences.

India has an important role in that involvement. As a prominent developing country, India's population will soon be the largest in the world. India possesses an ancient surviving heritage of considerable vitality, and is governed by a network of modern and vigorous democratic institutions.

This paper will discuss India's environmental traditions, India's environmental laws and policy initiatives, its new environmental philosophy, and finally India's views on international trade and the environment.

I. ENVIRONMENTAL TRADITION

The interest in international trade and the respect for environmental values lie deep in India's past. As early as 2000 B.C., Indian goods were already being marketed in regions as far as Babylonia, Asia Minor, Greece, Arabia, East Africa, Madagascar, China, and South Asia. Trade routes from northwest India passed overland across the Hindukush to Balkh, linking up with caravan routes to Antioch and ports on the Black Sea, while several routes radiated eastward to central Asia and China. Sea routes carried Indian merchandise to the Persian Gulf, the Euphrates, and the Suez, as well

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as along coastal Africa. Additionally, Indian merchant vessels traveled to Burma, the Malayan Peninsula, Thailand, and the East Indies.¹

India's approach to environmental considerations can likewise be traced back to its ancient past. The philosophy which flows from the Vedas and the Upanishads teaches reverential regard for nature and all its manifestations. People must live in harmony with nature, and although authorized to use natural resources, they enjoy no divine power of control and dominion over nature and its elements.² That dimension has been carried into Buddhist philosophy and continues to find expression in the present practices of orthodox Indian sects. The essence of the modern doctrine of sustainable development appears broadly reflected in a statement from the Ishopanishad, dating back 2,000 years, which translated freely reads, "All in this manifested world, consisting of moving and non-moving, are covered by the Lord. Use its resources with restraint. Do not waste the property of others—distant and yet to come." To this day in India, the orthodox ordering of daily living, the calendar of ritual practices, and even the disciplines of music and art, bear an intimate relationship with nature.

In practical life, tradition also dictated conservation of natural resources and their use on a sustainable basis. The Indian farmer, for instance, employed an agrarian technology of shifting cultivation, which permitted the regeneration of forests and the restoration of soil fertility. However, the second half of this century has witnessed an explosion in the population of India, rising from about 350 million in 1951 to nearly 870 million in 1993, a trend which shows little signs of slowing. While income per capita has been rising slowly, about thirty-five percent of India's people live below the poverty line. Inevitably, considerable pressure has been placed on natural resources. Crop fallow cycles, for example, have been reduced to a mere five years from a more sustainable twenty to forty years in the past.³ While embarking on the New Economic Policy, India's Finance Minister, Dr. Manmohan Singh, noted:

1. A.D. Pusalker, *Cultural Interrelation Between India and the Outside World Before Asoka*, 1 THE CULTURAL HERITAGE OF INDIA 144 (1958).

2. Dwivedi and Tiwari, *Environmental Protection in the Hindu Religion*, in WORLD RELIGIONS AND THE ENVIRONMENT 182, 184 (O.P. Dwivedi ed.).

3. O.N. Kaul, *Forest Biomass Burning in India*, 2 TISGLOW 8, Spring, 1991.

The survival strategies of the poor, particularly their search for food, fodder, fuel and shelter often led to the over-utilization of available natural resources, thereby accentuating the problems of environmental degradation. Therefore, eradication of poverty and control of population growth have to constitute an integral part of a strategy of protecting the environment.

The eradication of poverty and the control of population growth are closely related. Development, including the education of women, is an important factor in the control of population. The case for development and poverty removal was made pointedly by India's Prime Minister, Indira Gandhi, at the United Nations Conference on the Human Environment at Stockholm in 1972, where she stated that the removal of poverty is an integral part of the goal of an environmental strategy for the world.

II. ENVIRONMENTAL LAW AND POLICY IN INDIA

Although the role of development has taken a high profile in the Indian economy, India has also developed a strong structure of legislative measures and policy initiatives, with the goal of safeguarding the environment. The Indian Constitution was amended in 1976 by the Constitution (42nd Amendment) Act. Inserted in the Directive Principles of State Policy in Part IV of the Indian Constitution, Article 48A obliges the State to "endeavor to protect and improve the environment and to safeguard the forests and wild life of the country." Simultaneously, Article 51A(g) in Part IV(A) of the Constitution, the part on Fundamental Duties, imposes a duty on every Indian citizen "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

A. Environmental Regulation

The following paragraphs describe some of India's main environmental legislative acts.

1. *The Water (Prevention & Control of Pollution) Act, 1974*⁴

This Act provides for the prevention and control of water pollution and the maintenance or restoration of water's purity and wholesomeness. To meet these goals, a Central Pollution Control Board as well as State Pollution Control Boards exist. Without the prior consent of the State Pollution Control Board, no person is permitted to establish any industry which is likely to discharge sewage or trade effluent into a stream, well, sewer, or on land. Contravention of this provision by any person is punishable by imprisonment for a prescribed minimum term of one year and six months.

2. *The Water (Prevention & Control of Pollution) Cess Act, 1977*⁵

This Act's purpose is to provide for the levy and collection of a cess on water for human consumption, within industries and by local authorities. A rebate is available for a person or local authority installing a plant for the treatment of sewage or trade effluents. This act was amended in 1991⁶ to mandate that rebates be withheld from persons who fail to comply with the Water (Prevention & Control of Pollution) Act, 1974 and with the Environment (Protection) Act, 1986.

3. *The Air (Prevention & Control of Pollution) Act, 1981*⁷

This enactment occurred as a consequence of decisions made at the 1972 Stockholm Conference. An integrated approach has been considered advisable for tackling environmental problems relating to the pollution of water and the pollution of air. Accordingly, the Central Pollution Control Board, created under the Water (Prevention & Control of Pollution) Act of 1974, has also been empowered to function as a Central Pollution Control Board for the prevention and control of air pollution. State Pollution Control Boards also have a role in combating air pollution. No person is permitted, without the previous consent of a State Board, to establish or

4. 1974 A.I.R. vol. 61, no. 9, at 59 (Act No. 6 of 1974).

5. 1977 A.I.R. vol. 64, no. 1, at 165 (Act No. 56 of 1977).

6. 1991 A.I.R. vol. 79, no. 1, at 3 (Act No. 53 of 1991).

7. 1981 A.I.R. vol. 68, no. 10, at 196 (Act No. 14 of 1981).

operate any industrial plant in an air pollution controlled area, and where such industrial plant is permitted, the emission of an air pollutant must not exceed the standards promulgated by the State Board. Contraventions are punishable by imprisonment.

4. *The Environment (Protection) Act, 1986*⁸

This is a comprehensive enactment which passed in response to decisions made at the 1972 Stockholm Conference. The definition of "environment" includes "water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property." The Act also provides for the prevention of hazards to human beings, other living creatures, plants, and property.

The Central Government has been empowered to take all necessary measures for protecting and improving the quality of the environment, and preventing, controlling, and abating environmental pollution. Such measures could include the following: planning and executing a nationwide program for the prevention, control, and abatement of environmental pollution; promulgating standards for the quality of the environment, and for emission or discharge of environmental pollutants; demarcating areas in which industries, operations, or processes shall not be carried out or shall be carried out subject to certain safeguards; promulgating procedures and safeguards for the prevention of accidents which may cause environmental pollution; promulgating procedures and safeguards for the handling of hazardous substances; and examining manufacturing processes, materials, and substances likely to cause environmental pollution. The Environment (Protection) Act has great Constitutional significance. Some jurists believe that because the Act implements a decision made at an international conference, it transcends the division of legislative powers between the Union of India and the Indian States, and thus enables the Union Parliament to legislate regarding the environment for the entire country.

8. 1986 A.I.R. vol. 73, no. 1, at 145 (Act No. 29 of 1986).

5. *The Public Liability (Insurance) Act, 1991*⁹

This Act is designed to provide relief to persons affected by accidents which occur while a company is engaged in handling hazardous substances. Every company must carry liability insurance against claims arising from such accidents. The Act additionally specifies that locations in which hazardous substances are handled are subject to entry and inspection; hazardous substances may be seized if they are being handled by companies without the requisite insurance. Finally, contravention of the Act subjects not only companies, but also individual supervisors, to criminal and monetary penalties.

6. *The Wild Life (Protection) Act, 1972*¹⁰

This Act's purpose is to provide protection for wild animals and birds. It creates several authorities, including Director of Wild Life Preservation, Chief Wild Life Warden, and the Wild Life Advisory Board. This Act was amended in 1991 to place a ban on the hunting of all species of wild life for commerce or for pleasure. Actions in contravention of the Act are punishable by imprisonment as well as the imposition of monetary damages.

7. *The National Environment Tribunal Bill, 1992*

This Bill, if enacted, would provide for the establishment of Tribunals to provide relief, compensation, and restitution to victims of accidents which occur as a result of handling hazardous substances, and to victims of environmental damage.

B. *Policy Initiatives*

In addition to legislative enactments, policy initiatives on various environmental issues have also been enunciated. Some of these policies are described below.

9. 1991 A.I.R. vol. 78, no. 1, at 4 (Act No. 6 of 1991).

10. 1972 A.I.R. vol. 59, no. 1, at 263 (Act No. 53 of 1972).

1. *The National Forest Policy, 1988*

This Policy concerns restoring the ecological balance and conserving the country's natural heritage by protecting its remaining natural forests.

2. *The National Wild Life Action Plan*

This Plan lays down strategy and action programs for wild life conservation.

3. *Forest (Conservation) Act, 1988*

The application of the National Forest Policy was strengthened by this Act in order to ensure that diversion of forest land for non-forest use is subjected to the strictest governmental scrutiny.

4. *The Policy Statement for Abatement of Pollution, 1992*

This Policy Statement records the commitment of the Indian government to prevent further deterioration of the environment. The Statement focuses on long-term concepts and planning because pollution particularly affects the poor, and poverty is viewed as a problem necessitating long-term, as opposed to short-term, solutions. The Policy Statement advocates a comprehensive approach which integrates environmental and economic aspects in development planning, emphasizes preventive aspects for pollution abatement, and promotes technological input to reduce industrial pollutants. The Policy Statement additionally promotes reliance upon public cooperation in securing a clean environment.

5. *The National Conservation Strategy and Policy Statement on Environment and Development, 1992*

This Statement provides the basis for the integration and internalization of environmental considerations in the policies and programs of different sectors. It further emphasizes the need for sustainable lifestyles and the proper management and conservation of resources.

6. *Other Initiatives*

Policy initiatives and action plans have been put into operation addressing a host of other environmental issues. The cleaning of rivers and other water bodies, urban housing, land use, recycling of wastes, and numerous other activities have been undertaken for the purpose of sustaining or improving environmental health and integrity. The Indian administration has involved several non-governmental organizations and activist groups, most of which enjoy excellent reputations and exhibit missionary enthusiasm for environmental causes. The environmental movement in India has gained considerable momentum and is rapidly maturing.

III. THE NEW ENVIRONMENTAL PHILOSOPHY

A. *Globalization*

In the growing jurisprudence and ethos of sustainable development, the key words are “globalization” and “equity.” Several forms of environmental damage extend across national borders to the degradation of the global commons, affecting a global society. Therefore, the concept of a global society involves the need for global perspectives which, in turn, call for new definitions of jurisprudential, economic, and social relationships. Definitions which arose from the old order tend to lose their validity when reckoning with human society in a global dimension.

With the development of new philosophic systems in modern international law, such as human rights, the individual is now treated as the direct beneficiary of the law. The members of a global society, in the final analysis, are individuals, and individuals are the beneficiary of both state law and international law. Because some areas of legal rights and obligations are common to both the state and international legal systems, one can conceive of the individual as positioned in the center of two concentric circles, an inner circle embodying the operation of state law and a larger circle embodying the operation of global law. With that metaphor, in common legal areas, such as environmental law, one may envisage global values flowing into the content of state law. In such areas, global perspectives need to be considered to arrive at a true and comprehensive interpretation of individual rights and obligations. The globalization of human society and of human values has been developing during the second

half of this century, and has taken a vitally significant and irreversible direction. All over the world, a stirring of global consciousness has occurred, from the theaters of armed conflict to the institutions of humanitarian relief.

This is not to say that the doctrine of state sovereignty has lost its basic validity. Developing nations, including India, insist on their right to development, both in terms of the right to freely determine their economic, social, political, and cultural priorities, and in terms of their right to the use of their natural and other resources. For developing countries, the pursuit of development will continue to remain at the forefront of their national aspirations. It cannot be otherwise. Developing countries' insistence on the right to exploit their resources emerges out of a long period of colonialism and economic backwardness. The natural resources of colonial territories were treated as raw materials for the manufacture of goods in imperial countries, and very little was done to promote economic development in those colonies. The general consensus is that underdevelopment in colonies was the byproduct of imperial countries' development, in that the growth of colonial territories "was blocked by the destruction of the natural balance in place before colonialism, coupled with structural disadvantages built into the present international economic system."¹¹ Upon attaining independence, the new States realized that, among other things, poverty and low standards of living at home led to comparatively weaker bargaining positions in the arenas of international diplomacy and international economic opportunity. The development of national identities made those countries desire urgent development and modernization, improved conditions of living for their people, and a more equitable place in the comity of nations.

Developing countries also maintain that to fulfill their proper role as partners in a global partnership, it is essential for them to have independent policies of natural resource use. Autonomy in the dimensions of self-development—economic, social, and political—brings discipline, experience, and national pride in the process of growth to adult statehood. The spur of history has given an immediacy to development; in consequence, development assumes a preeminent place in national priorities.

11. Roland Y. Rich, *The Right to Development as an Emerging Human Right*, 23 VA. J. INT'L L. 287, 292 (1983).

An important recollection in this regard is that the first articles of two international covenants, the International Covenant on Economic, Social, and Cultural Rights¹² and the International Covenant on Civil and Political Rights,¹³ were placed in the covenants in deference to the wishes of the newly emergent independent states. Also, of particular note is that while the United Nations Declaration on Human Rights¹⁴ was unanimously adopted in 1948, it was not until 1966 that the two aforementioned United Nations Covenants were adopted. This delay in adoption was largely caused by the differing approaches adopted by developed countries and developing countries. The former placed emphasis on civil and political rights, while the latter considered development to be a significant component of the human rights regime.

B. Equity

The other key word in the jurisprudence and ethos of sustainable development is "equity." It is evident that, as members of the global community, countries are held together by an inescapable interdependence and must inevitably interact with each other. Viewed from the perspective of an equilibrated unity, the world community must find its stability in a pervading equity. Considerations of environmental security alone require that equity be an imperative principle in knitting together a stable community. Consequently, developing nations claim that in any process of sustainable development, the present disparities between nations, as well as the needs of present and future generations, should be taken into account.

India has an ancient heritage of integrated environmental values, but it is at the same time insistent on redeeming its people from the bondage of poverty. Two approaches have been adopted by India which demonstrate the tension between these two ideals. First, to ensure that India's development processes fructify in an environmentally friendly ethos, India insists on the transfer of clean technologies and financial assistance from developed countries. Following the Vienna Convention for the Protection

12. IAN BROWNLIE, *BASIC DOCUMENTS IN INTERNATIONAL LAW* 162 (2d ed. 1972).

13. *Id.* at 152. This Covenant guarantees the right of all peoples to self-determination, entitling them to freely determine, inter alia, their economic, social, and cultural development, and to freely dispose of their natural wealth and resources.

14. *Id.* at 144.

of the Ozone Layer of 1985¹⁵ and the related Montreal Protocol on Substances that Deplete the Ozone Layer of 1987,¹⁶ India insisted at London in 1990 upon the creation of an international fund to assist developing countries in fulfilling their obligations under the Convention and the Protocol.¹⁷ An interim multilateral fund has been established under the Montreal Protocol, which is designed to assist developing countries in meeting any additional costs incurred by eliminating the use of substances damaging to the ozone layer. Similarly, the Global Environment Facility was instituted in 1991 to facilitate the funding of programs in areas not yet governed by international agreements. It is managed by the World Bank jointly with the UN Environmental Program (UNEP) and the UN Development Program (UNDP).

The second approach adopted by India lies in attempting to assure that programs giving effect to the Rio Declaration of 1992 and Agenda 21 are implemented in such a way that developed countries do not employ environmental considerations to mask designs of securing unfair advantages and discriminatory treatment in international trade. As we shall presently see, both these policies have attracted considerable international attention.

The conflict between environment and development is a long-standing controversy. The Founex Report of 1971¹⁸ and the work done by UNEP demonstrated that environmental problems result as much from overdevelopment as from underdevelopment. A linkage was recognized between environment and development, from which the concept of sustainable development gradually emerged. The World Conference on Environment and Development's definition of "sustainable development" was subsequently refined by the Governing Council of UNEP. It declared, "[s]ustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs and *does not imply in any way encroachment upon national sovereignty.*"¹⁹

The concept of sustainable development supplied the ethos of the Rio process. The Rio Declaration²⁰ adopted at the United Nations Conference

15. Mar. 22, 1985, pmbi., 26 I.L.M. 1520 (entered into force Sept. 22, 1985).

16. Sept. 16, 1987, 26 I.L.M. 1541 (entered into force Jan. 1, 1989).

17. INTERNATIONAL LAW: SELECTED DOCUMENTS 73 (Carter and Trimble eds. 1991).

18. *Founex Report on Development and Environment*, 586 INT'L CONCILIATION, Jan. 1972, at 7.

19. UNEP G.C. Dec. No. 15/2, Annex II, May 1989 (emphasis added).

20. *Report of the United Nations Conference on Environment and Development, Rio de Janeiro*,

on Environment and Development (UNCED) in June 1992, attempts to accommodate and balance the contending positions taken by the developed countries and the developing countries. It represents an international consensus on the future direction of global environment and development policy, and it attempts to provide a framework in which to integrate values. It reiterates the internationally recognized principle that “[s]tates have . . . the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies,”²¹ while insuring against transboundary environmental damage. The Declaration states that the eradication of poverty is “an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.”²² It recommends further that:

[s]tates should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environment problems should, as far as possible, be based on international consensus.²³

Agenda 21 of the Rio Declaration²⁴ is another document of universal significance. Adopted also at the UNCED, it is a comprehensive charter of action, authorized by global consensus, for resolving the present and future problems of environment and development. Many of its provisions relating to international trade are relevant for countries such as India.

June 3-14 1992, 46th Sess., Annex I, at 8, U.N. Doc. A/CONF.151/26 (1992) [hereinafter *UNCED Report*].

21. *Id.* Principle 2, at 8.

22. *Id.* Principle 5, at 9.

23. *Id.* Principle 12, at 10.

24. *Id.* Annex II, §2.5 at 14.

With the goal of establishing a global partnership for sustainable development, Agenda 21 declares that sustainable development should be promoted through trade liberalization, and that the international economy should provide for the establishment of conditions in which trade and environmental policy can be mutually supportive.²⁵ Agenda 21 envisions “an open, equitable, secure, non-discriminatory and predictable multilateral trading system [that] leads to the optimal distribution of global production in accordance with comparative advantage . . .”²⁶ while observing consistency with goals of sustainable development. A further provision stresses the importance of removing existing distortions in international trade.²⁷

Multilateral economic cooperation is viewed as vital to a sound international trading environment. Recognizing that the “expansion of world trade has been unevenly spread, and only a limited number of developing countries have been capable of achieving appreciable growth in their exports,” Agenda 21 notes that “[p]rotectionist pressures and unilateral policy actions continue to endanger the functioning of an open multilateral trading system, affecting particularly the export interests of developing countries.”²⁸ It recommends that the international community should halt and reverse protectionism in order to bring about further liberalization and expansion of world trade, to provide for an equitable, secure, non-discriminatory, and predictable international trading system, and to facilitate the integration of all countries into the world economy and the international trading system.²⁹

Specific measures have been suggested with regard to commodity trading.³⁰ These include improved market transparency through exchanges of views and information concerning markets for individual commodities, negotiations between producers and consumers, and compensation mechanisms for shortfalls in commodity export earnings of developing countries, in order to encourage diversification efforts.

25. *Id.* Annex II, §2.3 at 17. The basis for promoting sustainable development through trade is detailed in Part A, Chapter 2, Section I of Agenda 21.

26. *Id.* Annex II, §2.5 at 18.

27. *Id.* Annex II, §2.7 at 18.

28. *Id.* Annex II, §2.8 at 19.

29. *Id.* Annex II, §2.10 at 20.

30. *Id.* Annex II, §2.16 at 21.

An open, multilateral trading system advances the task of making trade and environmental policy mutually supportive by causing a more efficient allocation and use of resources. It thereby contributes to increases in production and in incomes and to diminishing demands on the environment.³¹ On the use of trade provisions in multilateral environmental policy agreements designed to tackle global environmental challenges, Agenda 21 warns against unjustified restrictions on trade. Trade restrictions should not be employed to offset differences in costs arising from disparities in environmental standards and regulations. Also, in applying environmental standards and using trade measures, "special factors affecting environment and trade policies in developing countries" should be borne in mind.³² Simultaneously, and reminiscent of Principle 11 of the Rio Declaration, Agenda 21 cautions that "environmental standards valid for developed countries may have unwarranted social and economic costs in developing countries."³³

C. India and Future Partnerships

The period following the Rio Conference is remarkable for the symposia and deliberations which have taken place in developing countries to appraise the Conference's import and to assess its achievements. In a post-UNCED Seminar on Environment and Development Policy Issues in Asia, eminent economists, jurists, and scientists from several Asian countries conferred on the implications of the Rio Declaration, Agenda 21, the Framework Convention on Climate Change, and the Biological Diversity Convention.³⁴ From the outset, conferees expressed disappointment that the Rio process was suffering from the absence of an effective follow-up, and there was an uneasy feeling that the Rio process had, in fact, become dormant. Another apprehension expressed by some participants was the ambiguity of various expressions in the Rio documents such as "supportive and open international economic system" in the Rio Declaration.³⁵ The ambiguity allows developed countries to interpret expressions like this in their favor to the

31. *Id.* Annex II, §2.19 at 23.

32. *Id.* Annex II, §2.22(g) at 24.

33. *Id.* Annex II, §2.20 at 23.

34. TATA ENERGY RESEARCH INSTITUTE, *THE ROAD FROM RIO: ENVIRONMENT AND DEVELOPMENT POLICIES IN ASIA* (Ghosh & Jaitly eds., 1993).

35. See *UNCED Report*, *supra* note 20, Principle 12, at 10.

detriment of developing countries. Indeed, one Sri Lankan speaker, while expressing trenchant criticism of the Rio process, doubted whether any real achievement had resulted from the UNCED.³⁶ The concerns of the post-UNCED Seminar have been embodied in a Compact on Sustainable Development, which was adopted by the Seminar at its conclusion.³⁷

India is a signatory to the international documents finalized at Rio, and is a strong supporter of the Rio process. However, dominant Indian opinion is that the outcome of the Rio process will depend on the broad vision and good faith which the developed countries give it. Armed with superior technology, economic advantage, and financial power, the developed countries are, in reality, the prime factors in the implementation of the Rio promises. Unless they deliver, there will be scarce meaning to the arduous labors which culminated in the Rio decisions. They, in turn, must recognize that the entire Rio edifice has been structured on the premise of a global partnership—a partnership envisioned as much in their interest and for their benefit as it is for the developing countries. Mutual need, not charity, characterizes the Rio process.

Indian official opinion accepts that developing countries can benefit from greater trading opportunities.³⁸ This, as Agenda 21³⁹ suggests, will result in a more efficient allocation and use of resources, thereby enabling India to take more effective measures for the preservation and protection of the environment. A properly structured open multilateral trading system will create such trading opportunities. However, even if such a system is established, it cannot serve as the primary forum for treating environmental concerns.

In addition, although importance has been given to the General Agreement on Trade and Tariffs (GATT), UNCTAD, and other international organizations by Agenda 21,⁴⁰ India finds it difficult to endorse the authority of these organizations' dispute resolution panels for determining questions relating to environmental protection. Important to recall is that the

36. Suriyakumaran, *The Earth Summit—Bench Mark or Non-event?*, in *THE ROAD FROM RIO*, *supra* note 34, at 46.

37. *Id.* at 13.

38. Shri Kamal Nath, Minister for Environment and Forests, Address to the Round-Table Discussion organized by the United Nations Environment Program on "Perspectives of Developing Countries: Environment and Trade", Geneva, Feb. 17, 1994.

39. See *UNCED Report*, *supra* note 20, §2.19 at 20.

40. *Id.* §2.21 at 20.

determination by the GATT Dispute Resolution Panel in the *Dolphin/Tuna* case⁴¹ has not inspired confidence, especially in the United States, and has engendered much disappointment among environmentalists. In fact, a serious question exists as to whether Article 20 of the GATT Rules, which provide for exceptions to GATT restrictions and prohibitions, can be employed to deal comprehensively with matters relating to environmental conservation. Article 20 will need to be amended by the addition, for instance, of a provision specifically allowing a country to impose measures for protection of the environment—both its own and that of the global commons.

IV. CONCLUSION

India places great emphasis on an appropriate restructuring of the international economic system. Restructuring is imperative if “an open, equitable, secure, non-discriminatory and predictable multilateral trading system . . . of benefit to all trading partners”⁴² is to be established. The existing international economic system is regarded as weighted heavily in favor of the North and against the South. Indian opinion regards it as essential that market processes should be allowed to take into account the true costs of products, in order for the liberalization of trade to benefit developing countries. Because of inequitable pricing, developing countries are driven to over-exploitation of their natural resources. Liberalization of trade without corrections in the pricing system will, it is feared, accentuate the degree of over-exploitation. To reform the pricing system, it has been suggested that environment-related costs be reflected in international market prices.

There is serious apprehension in Indian circles that developed countries will continue to covertly pursue protectionist policies and will do so by invoking the very environmental considerations which are opposed to protectionism. For instance, trade restrictions may be imposed as non-tariff barriers by specifying standards for manufactured products or for processes which are beyond the capability of developing countries. One example is eco-labeling of textiles manufactured with environmentally friendly

41. Report of the GATT Dispute Settlement Panel on United States Restrictions on Imports of Tuna, 30 I.L.M. 1598.

42. See *UNCED Report*, *supra* note 20, Annex II, at 14.

chemicals and dyes and excluding textiles using natural dyes. As a result, a developing country would be compelled, at a high cost, to employ the technology of the importing country, instead of placing reliance on its own environmentally friendly technology.

Indian opinion maintains further that while harmonization of product standards is desirable, the adoption of a single standard on a global basis is illogical. Instead, product standards should be harmonized in relation to groups of producing countries enjoying a comparatively common structure of environmental conditions and socio-economic imperatives.

India's export trade is critical to the viability of its economy, and non-tariff trade barriers imposed by the artificial policies of importing countries will severely set back India's development. India is adopting exacting standards to ensure that locally manufactured goods, for which attractive export markets exist, do not offend environmental sensibilities. Chemicals, pharmaceuticals, leather, fish, ready-made garments, machinery, and mineral fuels account for about fifty percent of India's exports, and are produced in an environmentally sensitive way. Beside strictly applying statutory pollution standards, the government encourages importing state-of-the-art technology for application in those areas. There are other features of the Indian economy which call for particular attention, such as the small-scale industrial sector, where insistence on the application of Western standards could cripple the industry and destabilize employment levels.

An excessive and incautious burden in the purported imposition of environmental considerations and standards could cripple India's attempt to open her economy to international market forces. India's overarching aspiration is to develop and modernize the socioeconomic life of its people. India is a complex society, a vast spectrum of differing habits and practices, and ancient and modern technologies, with time-honored tradition competing against impatient change. In the period of transition toward a fully developed economy, it is necessary that India enjoy freedom to establish its own balance of sustainability between the environment and development.

