

# Green Normative Power?

## Relations between New Zealand and the European Union on Environment

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# Abstract

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The relationship between the EU and New Zealand has expanded considerably since the protracted trade negotiations of the 1970s and now includes dialogue and cooperation on a range of policy issues. In recent years, environment has become an increasingly high priority matter and is increasingly referenced as playing an important part in EU-New Zealand relations. At the same time, the EU has been praised for its leadership role in climate change negotiations, and some scholars have described it as a “green” normative power with the ability to influence other actors internationally on environmental policy. Taking the EU-New Zealand relationship on environment as its case study, this thesis attempts to address a gap in the academic literature concerning relations between New Zealand and the European Union (EU) on environmental issues. It compares and contrasts the concept of EU normative power with that of policy transfer, arguing that both address the spread of ideas, but finding that what might appear to be normative power and the diffusion of norms, can in fact be best explained as policy transfer and the diffusion of policy or knowledge.

# List of Abbreviations

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<b>AAU</b>	Assigned Amount Unit
<b>CBD</b>	Convention on Biological Diversity
<b>CDM</b>	Clean Development Mechanism
<b>CER</b>	Certified Reduction Unit
<b>CITES</b>	Convention on International Trade in Endangered Species
<b>COP</b>	Conference of the Parties
<b>DG</b>	Directorate General
<b>ERMA</b>	Environmental Risk Management Authority (New Zealand)
<b>GNP</b>	Gross National Product
<b>EC</b>	European Community ; also European Commission
<b>ECJ</b>	European Court of Justice
<b>EEC</b>	European Economic Community
<b>EEZ</b>	Exclusive Economic Zone
<b>ERU</b>	Emissions Reduction Unit
<b>ETS</b>	Emissions Trading Scheme
<b>GMO</b>	Genetically Modified Organism

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<b>JI</b>	Joint Implementation
<b>HSNO Act</b>	Hazardous Substances and New Organisms Act
<b>EU</b>	European Union
<b>MEA</b>	Multilateral Environmental Agreement
<b>MFAT</b>	Ministry of Foreign Affairs and Trade (New Zealand)
<b>MfE</b>	Ministry for Environment (New Zealand)
<b>MoT</b>	Ministry of Transport (New Zealand)
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>REACH</b>	EC Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemical Substances
<b>RMA</b>	Resource Management Act
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change
<b>WTO</b>	World Trade Organisation

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# 1: Introduction

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Inspired by statements issued by New Zealand and European Union (EU) representatives declaring the desire to work more closely together on environmental issues,<sup>1</sup> this thesis seeks to reconcile accounts of the EU as a normative power, in particular recent depictions of it acting as a “green” normative power in international environmental politics, with the reality of relations with a third state as a case study, namely New Zealand. To achieve this aim the thesis compares and contrasts a normative power account of the relationship with a policy studies approach, in order to analyse the development of dialogue between New Zealand and the EU on environmental issues at the bilateral, regional and multilateral levels.

## 1.1 Background

New Zealand and the European Union (EU) respectively have both come to be perceived internationally as environmental leaders: the EU with particular reference to its efforts internationally towards tackling climate change, and New Zealand in relation to its well promoted international reputation for being ‘clean and green.’ Environmental concerns, particularly climate change, have become increasingly high profile at the international level in recent years, and the proposed responses and issues involved have far-reaching implications for a broad range of sectors, from trade and industry to science and technology.

Delivering the annual Europa Lecture on 27 June 2007 in Wellington, Benita Ferrero-Waldner, European Commissioner for External Relations, highlighted the environment – specifically energy security and climate change – as one of three key areas in which the EU and New Zealand have considerable potential for productive cooperation. In particular, she

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<sup>1</sup> "The European Union and New Zealand: Joint Declaration on Relations and Cooperation," (Delegation of the European Commission to New Zealand 2007), Benita Ferrero-Waldner, "The European Union and New Zealand - New Perspectives," in *Europa Lecture* (Te Papa Museum, Wellington: 2007).

discussed the EU's promotion of an international agreement on energy efficiency and invited New Zealand to participate. The Commissioner also highlighted the potential for collaboration in research on renewable energy and clean technologies under the current Science and Technology Cooperation Arrangement. The Seventh Framework Programme (FP7), which covers the period 2007-2013, includes a significant focus on the environment, an area which the two sides had agreed previously to expand and enhance.

Minister for Foreign Affairs Winston Peters commented at the signing of the EU-New Zealand Joint Declaration on 21 September 2007 in Brussels that New Zealand and the EU "work closely together on international issues such as climate change and environmental concerns," in particular within the United Nations framework. The Joint Declaration includes a specific section on "Environment and Climate Change". This section sets out a range of broad objectives for joint action and cooperation, and Article 38 in particular specifies a number of potential areas of mutual interest in which New Zealand and the EU could collaborate.

In the same way that the European Union (EU) has challenged traditional notions of sovereignty and governance, environmental issues, and the need for international environmental cooperation to deal with them, pose a challenge to the conventional system of state sovereignty and definitions of national interest. Just as the EU has stimulated new theoretical approaches to account for its existence and its role, global issues such as climate change seem to demand new, non-traditional approaches to accounting for actor behaviour and determining actor interests.

Environmental issues have become highly politicised in a relatively short space of time, at both the domestic and international levels. Domestically, the environment is no longer the preserve of 'Green' political parties as concern over environmental questions has become far



more widespread, with political parties across the political spectrum in New Zealand, for example, adopting policies on sustainability, renewable energies, and greenhouse-gas emissions reductions,<sup>2</sup> a development that reflects international trends. Internationally, environmental questions are considered increasingly important and feature more prominently in discussion at bilateral and multilateral levels. Actors are increasingly driven to focus on environmental questions in response to a number of factors, including public opinion, economic interests, scientific evidence, pressure from lobby groups, and arguably the influence of norms.

Considering the specific nature of environmental politics and cooperation, in which actors increasingly appear to promote or to adopt policies and agreements that go against their traditional, material interests, it would seem that in this particular policy area, a rational approach alone might not be sufficient to explain actor behaviour. This thesis asks if it is possible to go deeper than traditional material interests in order to understand environmental politics and cooperation, by carrying out a case study of the relationship between New Zealand and the EU on environment and asking if norms play a role in this relationship, or if it is reducible to less abstract, more pragmatic factors and interests.

## **1.2 Conceptual Context**

The thesis compares two theoretical approaches in order to explore and assess the nature of the relationship between the European Union and New Zealand on environmental issues. It compares a constructivist explanation – in particular the concept of EU normative power – with one provided by a policy studies approach, in conjunction with small state theory, a subfield of foreign policy analysis. It argues that for normative power to be a valid explanation, it must be able to stand on its own. That is, to quote Diez, “Military or economic

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<sup>2</sup> Greenpeace New Zealand, "The Politics of Climate Change," (Auckland: Greenpeace NZ, 2008), 348.

power may underpin normative power, but it must not be reducible to either.”<sup>3</sup> Therefore the case studies carried out in this thesis are designed to investigate whether a constructivist approach incorporating normative power and values can explain the dynamics of the relationship, or whether a realist approach using policy studies and small state theory framework provides a more accurate account of the relationship.

While numerous discussions of the EU as a normative power have been published since Ian Manners first introduced the concept in 2002,<sup>4</sup> including a number on the specific nature of the EU as an „environmental’ normative power, the majority appear to have focused either on the EU’s role in international institutions or its role in relation to EU candidate/neighbouring countries.<sup>5</sup> Robert Falkner recently rejected the concept of the EU as a „green’ normative power in a case study of EU international action in the field of biosafety regulation.<sup>6</sup> He argued that using the normative concept to explain the EU’s role in international environmental politics lacks historical depth, and “mistakes the export of domestic norms with the pursuit of global interests and universal values.”<sup>7</sup> Falkner raises a valid point – does the term normative power equate with a force for good and imply that the EU pursues a moral or ethical agenda? Helene Sjursen assumes that the concept of normative power is in itself a normative judgement and equates to ethical power, asking how it can be known that acting as a normative power is a good thing? She argues for a conceptual method in order to establish whether a pursuit of norms is legitimate.<sup>8</sup> Manners revisited his 2002 study and responded to

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<sup>3</sup> Thomas Diez, "Constructing the Self and Changing Others: Reconsidering 'Normative Power Europe'," *Millenium Journal of International Studies* 33, no. 3 (2005): 616.

<sup>4</sup> Ian Manners, "Normative Power Europe: A Contradiction in Terms?," *Journal of Common Market Studies* 40, no. 2 (2002).

<sup>5</sup> John Vogler, "The European Contribution to Global Environmental Governance," *International Affairs* 81, no. 4 (2005).

<sup>6</sup> Robert Falkner, "The Political Economy of 'Normative Power' Europe: E.U. Environmental Leadership in International Biotechnology Regulation," *Journal of European Public Policy* 14, no. 4 (2007).

<sup>7</sup> *Ibid.*: 511.

<sup>8</sup> Helene Sjursen, "The EU as a „Normative’ Power: How Can This Be?," *Journal of European Public Policy* 13, no. 2 (2006): 242.

critics by drawing a clear distinction between describing the international action and impact EU as a normative power and arguing that the EU follows an ethical foreign policy.<sup>9</sup>

This thesis investigates the validity of the concept of EU normative power specifically on environment and specifically in relation to its dialogue at all levels with a single third state – New Zealand. It assesses this dialogue and investigates whether the dynamics of the relationship indicate the EU as having a normative influence on New Zealand. A constructivist, normative power explanation will be compared and contrasted with a policy studies approach, incorporating small state theory.

Hypothetically, if the EU is in fact acting as a ‚green‘ normative power, then this should be evident in its relations not only in international regimes and with immediate neighbours, but also with a small state on the other side of the planet such as New Zealand. The EU has gained an international reputation as a leader in international environmental politics and is known for its stringent domestic regulation while New Zealand frequently promotes itself as being ‚clean and green‘ and environmentally friendly.

Relatively few scholarly studies of the EU’s relations with New Zealand have been published, and in particular the specific ‚environment‘ aspect of EU-New Zealand dialogue does not appear to have been examined in detail before. It is important that this research be carried out because the level of political focus on environmental issues at both the domestic and international level is increasingly intense. Environmental issues impact on a range of policy areas, but the relationship to trade is perhaps the most challenging. The EU is New Zealand’s second largest trading partner; therefore it makes sense that effective dialogue with the EU on the environment be a priority for New Zealand. It is anticipated that the resulting document will make a positive contribution to studies of the European Union as a normative

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<sup>9</sup> Ian Manners, "The Normative Ethics of the European Union," *International Affairs* 84, no. 1 (2008): 46.

power in the environmental arena, and to studies of New Zealand's foreign relations and international environmental politics, in addition to being of practical use in consolidating EU-New Zealand environmental dialogue, cooperation and action.

### **1.3 Research Question and Guiding Sub-questions**

With these intentions in mind, the thesis research question has been formulated as follows:

*How valid is the concept of EU normative power in explaining efforts to develop a cooperative relationship between the EU and New Zealand on environmental issues when compared with theories of policy studies? How, by analysing interactions and identifying areas of potential common interests, could this relationship be further enhanced?*

The sub-questions guiding the research are:

- What is normative power and how can it be identified?
- What is policy transfer and how can it be identified?
- What are the environmental „cultures’ of the EU and New Zealand? Given that normative power and constructivism place considerable importance on identities and ideas in accounting for behaviour and in assessing power, it is important to understand what values and identities exist in the EU and New Zealand in order to assess the importance of their role, if any, in shaping the relationship. At the same time, it is important to understand the existing policy structures and preferences present within New Zealand and the EU as they are relevant to a policy studies framework.
- What efforts (at EU and NZ government level) have been made to develop the relationship on environment?
- Is the EU shown to be an important policy learning source for New Zealand? If so, is this for normative or material reasons?

## 1.4 Delimitations and Definition of Terms

The thesis uses two case studies to examine the role of the EU in the international environmental arena, and to question depictions of the EU as a ‚green‘ normative power. Because the term ‚environment‘ encapsulates a broad range of policy areas and touches on a variety of industries, and because it is an area that is evolving very quickly, it is acknowledged that this study will be subject to limitations of space and time. To assess in depth the EU’s role in all areas that could be described as having an environmental element would be a mammoth task and it would be almost impossible to draw conclusions based on such varied information.

This thesis defines normative power as the ability and the intent to export or externalise norms and values (in this case those of the EU) using power over ideas and opinions. This thesis assumes that the concept does not intend to make a judgment on the moral value of those norms, or whether or not this makes the EU a ‚force for good‘. Ultimately, the interpretation of normative power used here is less concerned about the moral value of EU normative power, and more concerned about whether or not it is actively pursued in its foreign relations, and whether this alleged power can be shown to result in a normative effect on a third state. The normative effect is the internalisation of the ‚exported‘ norms by the third state – it is not enough for a state to comply with the norm, it must be shown to have adopted the norm as part of its identity. Care will be taken not to confuse the terms ‚normative‘ and ‚civilian‘ though they are closely related.

Policy transfer is defined as the process in which knowledge or processes from one context are applied to another context. Policy transfer in itself is a descriptive concept – placed within a wider policy studies context, in which policy processes and decision making play an important role, it can provide a more realist, pragmatic account for the spread of knowledge.

The term „EU’ will be used in most cases to refer to the European Union and the pre-Maastricht treaty European Community. It is necessary to clarify the terms used to describe the EU over the course of its history as this study will cover a period in which the structure of the EU was quite different to that of today. Until 1987 the EU was known as the European Economic Community (EEC), but the Single Economic Act (SEA) of that year changed it to the European Community (EC). This was in place until the Maastricht Treaty, or Treaty on European Union (TEU) in 1993 renamed it the European Union and reorganized its structure into three „pillars’, the first pillar of which is the Community pillar and where the EU’s environmental policy is made. For simplicity and clarity, this thesis will refer to the EU throughout when referring to general concepts, but will specify EC or EEC as necessary.

It should be noted that the subjects of this thesis are New Zealand and the European Union; that is, the EU as a bloc, and that therefore no explicit inquiry is made to bilateral relations that may exist between New Zealand and individual EU member states.

Finally, references to New Zealand and New Zealand government policy refer, unless explicitly stated, to the fifth Labour Government which was voted out of government on 8 November 2008. This is because the case studies in the thesis are effectively historical, in particular the major case study on development of New Zealand’s emissions trading scheme, and also because primary research was conducted prior to the change of government. Any reference to the current National Government will be made explicitly clear.

## **1.6 Methodology and Research Design**

To establish whether the EU exercises a normative role in the context of environmental issues, the thesis analyses the relationship on a broad range of environmental issues between the EU and a specific third state – New Zealand. Rather than examine the EU's effect through a particular international regime or within a specific policy area, the case of relations with a third state has been chosen in order to encompass a broad range of policy areas and therefore give as wide a view as possible of the EU as an environmental actor in this context. In chapter four, mini case studies covering relations on chemical and waste management, research, science and technology, biodiversity and trade and environment are carried out. These policy areas were chosen because of the relatively high level of interaction between the parties on these topics. A final, narrower case study in chapter five narrows the focus by examining the specific relations between the EU and New Zealand on climate change issues. This area has been chosen as it has enjoyed an increasingly high political profile throughout the timeframe to be studied (since 1991), and the EU's alleged rise to a leadership role on the issue coincides with this timeframe, allowing the observation of any associated changes in the dynamics of EU-New Zealand relations. Because of the high degree of activity in this policy area it is most likely to yield enough data to be assessed accurately. The potential pitfalls of choosing too narrow a topic as case study, as well as those posed by the highly political nature climate change issues, will be overcome by balancing this narrow case study with the broader, more generalized study of the wide-ranging relationship between the two actors.

By carrying out four mini case studies, as well as a major in-depth case study on the parties' relationship in climate change issues, the thesis will illustrate what factors influence the formulation of their respective environmental foreign policies, and how those policies diverge and intersect.

The thesis is carried out from a New Zealand perspective. It does not seek to question whether or not the EU actively seeks to exercise normative power in its relations with New Zealand; instead the thesis assumes that if normative power were present in the relationship, this would be evidenced in New Zealand's interaction with the EU. New Zealand would engage in dialogue for reasons not necessarily related to material interests. Therefore, the thesis concerns itself primarily with New Zealand's motivations and interests.

On a conceptual level, the comparison of a constructivist framework with a policy studies approach to the study of bilateral environmental relations takes account of the influence of ideational factors such as values and norms, and material factors such as economic interest, in the development of foreign policy, in this case environmental foreign policy, and in interstate cooperation. The thesis, in examining the dynamics of the European Union's relations with a third state on environment offers insight into the role of the EU as an alleged „normative' power, and the role of the EU as an important policy learning site for New Zealand.

### ***1.6.1 Data Collection***

Due to the contemporary nature of the research topic and the novelty of research into EU-New Zealand relations on environmental issues, there was little secondary material available. It was therefore essential to conduct primary research, making use of documents from relevant government ministries and conducting interviews with key-informants, political elites involved in New Zealand and European Union environmental policy making.

In New Zealand, the ministries and policy officials most directly involved were the Ministry for Foreign Affairs and Trade (MFAT) and the Ministry for the Environment (MfE). The Ministries of Transport, Agriculture and Forestry, Economic Development, and the Treasury also play an important role.



In the EU, the directly relevant bodies were the European Commission, specifically the Directorate General (DG) for External Relations (DG Relex), DG Environment and DG Research.

The primary analysis was therefore based on official documents sourced from these bodies, and semi-structured elite interviews with a range of officials working within them, carried out between July and November 2008. Approval from the University of Canterbury Human Ethics Committee was granted prior to interviewing. It must be acknowledged that potential inaccuracies based on the interview research method apply. The possibility of interviewer and interviewee bias must be acknowledged, along with the possibility of selective recall. Further, interviews were not recorded; therefore errors may have been made in the transcription process. Confidentiality was discussed with all participants prior to interviewing. The majority of participants requested anonymity but were happy to be listed by Ministry, while a few others were happy to speak openly and be referenced by name. After interviews were conducted, notes taken during the course of the interview were e-mailed to participants for final approval.

A total of ten interviews were carried out with officials in New Zealand, the majority in Wellington, and three in Brussels. The average interview duration was forty-five minutes.

In New Zealand, potential interview participants were initially chosen by researching internet staff listings for the specified government departments and e-mailing requests to relevant staff members. Once contact had been made with one official, they were able to suggest other potential participants that may have otherwise been difficult to identify.

In terms of timing, it is important to note that all interviews in New Zealand were carried out prior to the 2008 general election, which took place in November. Comments therefore refer to events taking place under the authority of fifth Labour Government.

In Brussels, potential participants were identified in much the same way, but with less success. This was primarily due to bad timing, as interviews were to be carried out the week immediately prior to the fourteenth Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC), which involved DG Environment staff and particularly those working on climate change. Unfortunately, it was therefore not possible to speak to any representative from DG Environment despite numerous attempts. However, a useful background interview was conducted with an official from DG Relex, as well as helpful interviews with a New Zealand Government official and Dr Claus Bruening of DG Research.

These interviews were conducted in late November of 2008, less than three weeks after the fourth Labour Government were voted out of government and a National coalition came to power. At the time, the future priorities of the new government were still unknown, as was the future of New Zealand's emissions trading scheme, the development of which is the central case study in this thesis. Information collected from these interviews therefore generally also refers to the situation as it was under the fifth Labour Government.

Interviews were designed to be semi-structured, using open-ended questions and with maximum flexibility to allow participants to speak freely. In most cases the interview structure and question format was followed but in a few cases participants that were particularly „talkative’ were encouraged to speak freely, which sometimes led to some unexpectedly interesting subjects being addressed.

Questions were designed according to the theoretical structure of the thesis. Because the thesis seeks to compare a normative power approach with a policy transfer approach to the EU-New Zealand relationship, it was important to investigate how New Zealand policymakers viewed the EU. This is because a normative power approach assumes that the

EU has induced a level of normative policy change in New Zealand through interaction. Questioning for New Zealand participants was divided into three sections, beginning with broad questions about the policy making process in general and narrowing to specific questions related to EU-New Zealand interaction. This was in order to place the relationship within as broad a context as possible, to gain a clear idea of how much influence, if any, the EU could possibly have on New Zealand policy. First, participants were asked to discuss problems or issues currently high on the agenda in their organisation and how these are generally approached. Then participants were asked about international influences and links on their policymaking, and within what contexts they exchanged information and knowledge with international counterparts. Finally, participants were asked questions specific to the EU-New Zealand relationship related to the specific context of interaction, how relations compared to relations with other international players, and what they felt the future held for the relationship.

For EU participants, questioning was slightly more targeted to the participants specific area of expertise, but still followed the structure outlined above, beginning with broad questions to place the EU-New Zealand relationship within a wider context of EU external relations, before narrowing to discuss specific issues.

The information gathered through interviewing was very helpful, particularly given that there is no secondary material on this topic. To avoid bias in the results, information gathered from interviews was balanced wherever possible with independent points of view such as news articles, research reports, and journal articles. However, it would have been desirable to have carried out a wider range of interviews with EU officials, in order to gain a better understanding of the EU perspective from a wider range of sources.

## 1.7 Thesis Outline

Chapter Two lays the foundation for the theoretical framework of the thesis, establishing the concepts of constructivism and normative power, policy studies and small state theory in relation to the thesis. It explains how these two concepts will be contrasted in relation to the case studies in order to determine whether normative power can be shown to have a role in the EU-New Zealand relationship on environment.

Chapter Three then analyses the respective environmental „cultures’ of New Zealand and the EU. This chapter examines the respective environmental values and identities of the EU and New Zealand, and also provides an overview of the environmental policymaking processes relevant to each party. The conclusions reached in this chapter help to inform the later conclusions of the nature of the relationship between the EU and New Zealand on environmental issues.

The fourth chapter provides an overview of New Zealand – EU relations on environment. It traces the development of the dialogue between the EU and New Zealand specifically on environment and provides mini case studies of relations on specific policy areas, with a particular focus on the environment-trade nexus.

Chapter Five is an in-depth case study specifically on EU-New Zealand relations on climate change. In particular, it examines cooperation that took place related to development of New Zealand’s emissions trading scheme.

Chapter Six concludes the thesis by analyzing the conceptual and practical outcomes and implications of the research.

## 2: The Power of Ideas: Constructivism, Policy Transfer and Small States

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### 2.1 Introduction

Constructivism is an increasingly popular framework for the study of international relations, and of the European Union. It is not strictly a political studies or international relations theory, but is a post-positivist social theory that seeks to explain the influence of identity and social norms on actor behaviour. Normative power, whose emphasis on EU identity as a source of a unique ideological soft power and norms links it to social constructivism, is a concept specifically addressing the European Union. The concept of normative power has been increasingly referred to as a tool to explain the unique nature of the EU and its international role, but is not without its detractors. Certainly, the EU often describes itself in normative terms and places considerable emphasis on its fundamental principles and values in its international interactions. This fact alone does not make it unique among other international actors who also espouse particular domestic values and seek to elevate them to, and spread them within, the international level. However, the foundation of the normative power concept, as shall be explained further in this chapter, rests upon the ideological influence the EU allegedly exercises by virtue of its unique character. While traditional theoretical approaches have struggled to come to terms with the *sui generis* nature of the EU, normative power claims to embrace the challenge that the EU poses to the established Westphalian state system and concepts of sovereignty by arguing that this individuality could prove its greatest strength, though the concept is not without its critics.

Studies of policy transfer, also seek to account for the role and spread of ideas. Like constructivism and normative power, the concept of policy transfer places emphasis on the influence of ideas and knowledge on actor behaviour but places greater importance on agents

than on structure. However, while normative power specifically focuses on the EU and the spread of ideas in terms of values within a moral frame, for which it is often criticised, policy studies explores the role of ideas within a policy setting and seeks to account for their spread within that context. In conjunction with policy transfer, it may be helpful to consider small state theory, which attempts to understand the foreign policy of small countries. Small state theory takes a realist approach to understanding the particular foreign policy behaviour of small countries by emphasising the pursuit of material interests and security, and establishes the background context of the EU-New Zealand relationship in which policy transfer takes place.

It has been argued that due to the complexity and unique nature of the EU, a single theoretical approach is insufficient if attempting to explain its multiple roles and the many facets of its personality.<sup>10</sup> No attempt is made, therefore to argue that either of the theoretical approaches explored in this thesis are the *only* explanations that may apply to the EU's international environmental role, or in this specific case, that they are the *only* approaches that might explain aspects of the EU's relationship with New Zealand on environmental issues. Instead, this thesis seeks to explore the validity of a constructivist approach and the concept of EU normative power by applying it to this specific context and case study, and by contrasting it with a policy transfer approach. Indeed, as has been argued by Finnemore and Sikkink, no account of norms and normative influence can be separated from rationality, and equally, any episode of rational choice occurs within a normative context.<sup>11</sup>

This thesis uses the case study of EU-New Zealand relations on environment to compare and contrast these two frameworks, and in doing so, to explore the limits of constructivism as a

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<sup>10</sup> Alice Landau, "Introduction: The European Union in a Changing Context", in *Rethinking the European Union - Institutions, Interests and Identities*, ed. Alice Landau and Richard Whitman (London: Macmillan Press, 1997), 1.

<sup>11</sup> Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998): 888.

post-positivist approach to the international relations of the European Union, and to environmental politics, by assessing the validity of the alleged „normative power’ of the European Union.

This chapter will lay the groundwork first for the meta-theory of constructivism, with specific reference to the study of the EU and international environmental politics. It will discuss in greater detail the concept of normative power, as it pertains to the EU and the environment, and criticism and debate around this somewhat controversial concept. It will then introduce the alternative; a policy transfer approach, supported by small state theory, which will be compared and contrasted with constructivism and normative power.

## **2.2 Constructivism**

The so-called „constructivist turn’ in International Relations theory of the 1980s -1990s reflected a growing interest in the social aspects of politics in a field dominated by debate between neorealist and neo-liberalist schools of thought. Traditionally, studies of international politics focused on power and interests as central to explaining actor behaviour. In the 1980s, neo-liberals introduced a third factor, arguing for the important influence of international institutions. The role of ideas was considered inferior to these three core factors until constructivists began to argue that these factors are in fact constituted by ideas, and that therefore ideas should be the central focus of studies of international politics.<sup>12</sup>

This alternative approach offered a new understanding of many central questions in international relations, and involved a move away from traditional actor- and state-centric accounts of behaviour and events, towards a method of accounting for the influence of the constructed social context within which this behaviour occurs. Constructivism is “not a

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<sup>12</sup> Alexander Wendt, *Social Theory of International Politics* (Cambridge, UK: CambridgeUniversity Press, 1999), 92-4.

substantive theory but an approach to social inquiry” and is based on the assumptions that the environment in which actors interact and make decisions is social as well as material, and that this context can constitute actors’ interests.<sup>13</sup>

One of the key constructivist claims is that political actors follow socially defined rules, values and norms, even when it may not be directly to their benefit to do so.<sup>14</sup> They argue that decisions and actions are always taken in a social context and that when faced with a situation, actors do not calculate action according to preferences, but instead refer to established social norms to decide what action is appropriate. This is described as the „logic of appropriateness’, which together with the actor’s sense of identity drives decision-making and action. This is in contrast to rationalist explanations of action that posit that actors, when confronted with multiple choices, choose the one that best serves their objectives and interests; a process called a „logic of consequences’.<sup>15</sup>

Constructivists argue that through interaction with institutions, an actor’s interests, perceptions and identities can all be transformed, as the development of institutions is viewed as a process of „mutual constitution’ between structure and actor, each shaping the other.<sup>16</sup> This is because, constructivists argue, institutions do not only consist of formal rules and regulations but also of informal social norms, which shape actors preferences.<sup>17</sup> In international relations theory, a structure is a set of conditions that constrain and condition

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<sup>13</sup> Jeffrey C. Checkel, "The Constructivist Turn in International Relations Theory," *World Politics* 50, no. 2 (1998): 324-5, Joseph Jupille, James A. Caporaso, and Jeffrey C. Checkel, "Integrating Institutions: Rationalism, Constructivism and the Study of the European Union," *Comparative Political Studies* 36, no. 1/2 (2003): 14.

<sup>14</sup> Checkel, "The Constructivist Turn in International Relations Theory," 324-5, Charlotte Epstein, "The Making of Global Environmental Norms: Endangered Species Protection," *Global Environmental Politics* 6, no. 2 (2006): 32-3, Jupille, Caporaso, and Checkel, "Integrating Institutions: Rationalism, Constructivism and the Study of the European Union," 14.

<sup>15</sup> Checkel, "The Constructivist Turn in International Relations Theory," 327.

<sup>16</sup> Mette Eilstrup-Sangiovanni, ed., *Debates on European Integration: A Reader, The European Union Series* (New York: Palgrave Macmillan, 2006), 393-6., Ben Rosamond, *Theories of European Integration* (New York: St Martin's Press, 2000), 171-3.

<sup>17</sup> Mark A. Pollack, "Theorising EU Policy-Making," in *Policy-Making in the European Union*, ed. Helen Wallace, William Wallace, and Mark A. Pollack (Oxford: Oxford University Press, 2005), 22-3.



state behaviour. They might be material conditions such as the traditional concept of the balance of power, but whatever form they take, constructivists argue that these structures and actors are “mutually constituted,” and seek to understand how the structure and the actor are reproduced in action. The actions would have no meaning without norms to guide their understanding of others and of situations.<sup>18</sup>

According to Christiansen and Jørgensen,

“...the rules, norms and patterns of behaviour that govern social interaction...are structures, which are on the one hand, subject to change if and when the practices of actors changes, but on the other hand structure political life as actors re-produce them in everyday actions.”<sup>19</sup>

Constructivism sees these norms as being constitutive to actor identity and interests as actors and institutions interact, not just as regulators of behaviour. This is in marked contrast to the traditional neorealist and neo-liberal rational approaches to interaction, in which behaviour is recognized as being altered, but identities and interests remain unchanged.<sup>20</sup> Jeffery Checkel attempted to link these two approaches, suggesting that alone, each is incomplete – a full account of the role of norms in both constituting interests and constraining behaviour requires a balance of both views.<sup>21</sup>

### **2.2.1 Constructivism and the EU**

A constructivist approach is arguably particularly suited to studies of the European Union’s international role as traditional, rationalist international relations theories struggle to account for the *sui generis* and constantly evolving nature of the EU, as Thomas Christiansen argued,

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<sup>18</sup> Ted Hopf, “The Promise of Constructivism in International Relations Theory.” *International Security* 23, no. 1 (1998).

<sup>19</sup> Cited in Rosamond, *Theories of European Integration*, 172.

<sup>20</sup> Checkel, “The Constructivist Turn in International Relations Theory,” 327-8, Alexander Wendt, “Anarchy Is What States Make of It: The Social Construction of Power Politics,” *International Organization* 46, no. 2 (1992): 391-2.

<sup>21</sup> Jeffrey C. Checkel, “International Norms and Domestic Politics: Bridging the Rationalist/Constructivist Divide,” *European Journal of International Relations* 3, no. 4 (1997).

stating that the emerging reality of post-territorial, multi-level governance in Europe cannot be captured by conventional concepts.<sup>22</sup> In contrast to traditional approaches, constructivism recognises the dual role of institutions as being constructed by actors and in turn altering and constituting the interests of the actors involved. While rationalist schools of thought assume a single fixed identity, that of the self-interested state, constructivism sees the possibility of multiple identities, considering them and ideas as dynamic, central to interaction and therefore to understanding international affairs. Constructivism argues that neglecting to study identity ignores the “nature and definition” of actors, which are fundamental to international politics.<sup>23</sup> This emphasis on identity, and by implication, perception, allows for a far deeper understanding of actor behaviour than through a rationalist lens. Inspired by idealist social theory, Alexander Wendt argued that people act towards objects based on the meaning they associate with that object, using the example that people behave differently towards friends than towards enemies.<sup>24</sup> This adds another layer to analysis of actor behaviour – constructivism allows researchers to take their analyses beyond tangible, material interest by examining the intangible.

For this reason constructivism appears to offer a viable conceptual framework within which to explore environmental cooperation and thus the EU-New Zealand relationship on environment. As Robyn Eckersley points out, the transboundary nature of many environmental issues facing states and the international community, and the cooperation necessary to resolve them, is fundamentally at odds with the traditional Westphalian state system.<sup>25</sup> Increasingly, states are asked to sign up to agreements and policies that may have a negative effect on traditional material interests. If doing so might run against these material

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<sup>22</sup>Cited in Rosamond, *Theories of European Integration*, 173-4.

<sup>23</sup> Hopf, "The Promise of Constructivism in International Relations Theory."

<sup>24</sup> Wendt, "Anarchy Is What States Make of It: The Social Construction of Power Politics," 396-7.

<sup>25</sup> Robyn Eckersley, "The Strange Neglect of Normative International Relations Theory: Environmental Political Theory and the Next Frontier," in *Annual Meeting of the Western Political Science Association* (Portland, Oregon: 2004), 3.

interests, how can the adoption of such measures be explained? A constructivist approach which accounts for the impact of norms may be a viable solution to this question, one which acknowledges that actor behaviour is often more complex and unpredictable than a traditional focus on material interests might indicate.

### ***2.2.2 Constructivism, Norms and Normative Power***

Constructivism, with its emphasis on norms and the logic of appropriateness, acknowledges ideas as a form of power by placing emphasis on both material and ideological forms of power in interpreting international relations.<sup>26</sup> Within the constructivist school in international relations studies, norms theory deals specifically with norms and their diffusion at an international level, and in which they are defined as standards of appropriate behaviour for actors with a given identity. They imply „a quality of oughtness’ and provide a considerable empirical challenge to researchers as evidence is always indirect.<sup>27</sup>

In constructivist norms theory, actors observe norms because they become part of how the actor sees itself, not because it would be otherwise coerced, and observation of a norm fulfils the actor’s self-perception as a ‚good’ member of the international community.<sup>28</sup> This is an important distinction, as a rationalist viewpoint recognises norms as constraining behaviour, but not as being internalised and constituting identity. However, in Ian Manners’ view of normative power, it is considered possible for normative power to be exercised through „carrot and stick’ means in its agreements with third parties, in particular where aid or assistance is tied to expectations of adherence to EU normative values.

Martha Finnemore, taking a sociological approach to norms, demonstrated with norms theory that ideas at the domestic level (in this case the EU level) can be constitutive of international

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<sup>26</sup> Hopf, ""The Promise of Constructivism in International Relations Theory. "".

<sup>27</sup> Finnemore and Sikkink, "International Norm Dynamics and Political Change," 891-2.

<sup>28</sup> Epstein, "The Making of Global Environmental Norms: Endangered Species Protection," 33.

institutions, which may then be reflected in third states.<sup>29</sup> This idea is also represented in Manners' diffusion of normative power. At a domestic EU level, studies of the Europeanisation of environmental standards have demonstrated that norms emerge through a "process of learning and diffusion in supranational institutions."<sup>30</sup>

Within the constructivist school, norms theory deals specifically with norms and their diffusion at an international level. Studying norms allows for a dynamic view of the international system; as Finnemore and Sikkink argued, the concept of actors following a "logic of appropriateness" neglects to account for how the norms involved in this logic can change.<sup>31</sup> They proposed a norm 'life cycle' in which the first stage of norm emergence sees norm entrepreneurs "frame" the issue and advocate in favour of adoption of a particular norm. Once a tipping point is reached at which a "critical mass" of entrepreneurs adopt the norm, the second stage occurs as the norm "cascades" throughout the international community as norm observers socialize other actors to adopt the norm. The final stage of internalisation of the norm is reached once the norm is observed by many actors as a matter of course and is no longer questioned.<sup>32</sup>

Normative power and constructivist norms theory share common themes and a common focus on norms and their spread. Where normative power differs is in its specific application to studies of the EU. While Finnemore's norms theory deals with the promotion of norms at the international level, and treats their spread as a process with several stages, Manners' normative power deals with motivation and diffusion, attempting to account for why and how the EU might appear as a "norm entrepreneur" in its international role.

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<sup>29</sup> Martha Finnemore, *National Interests in International Society* (Ithaca and London: Cornell University Press, 1996), 2. Cited in John Barkdull and Paul G. Harris, "Environmental Change and Foreign Policy: A Survey of Theory," *Global Environmental Politics* 2, no. 2 (2002): 73.

<sup>30</sup> Antje Wiener, "Constructivism and Sociological Institutionalism," in *Palgrave Advances in European Union Studies*, ed. Michelle Cini and Angela K. Bourne (Basingstoke; New York: Palgrave Macmillan, 2006), 39.

<sup>31</sup> Finnemore and Sikkink, "International Norm Dynamics and Political Change," 888.

<sup>32</sup> *Ibid.*: 895-98.

### **2.2.4 The European Union and Normative Power**

The concept of normative power seeks to understand how and why the EU contributes to the spread of particular norms in the international system. It is a concept subject to debate, but observations of the EU's external action with regard to human rights, democracy and its use of conditionality would all appear to indicate that something other than the pursuit of pure self-interest is at work in certain policy areas and interactions. Further, the way that third states respond and adapt their domestic policy and preferences in interaction with the EU could demonstrate the effects of socialisation.

The first suggestion of the EU as a superpower based on merits other than military appeared in the writings of François Duchêne. Duchêne conceived of the future EU as a „civilian power,’ spreading norms on the basis of an “ethics of responsibility” through economic might, which he saw as an alternative path for the European Community (EC) as opposed to a traditional power founded on military might. The development of the EC into a military superpower was a prospect which he considered neither feasible nor necessary.<sup>33</sup>

Almost two decades later, Joseph Nye presented the concept of „soft power’ in his work on the international position of the United States. He argued, as had Duchêne, that the traditional realist concept of power founded on military capability was not the only kind of valid and effective power in contemporary international relations. He presented „soft’ power as a contrast to the traditional “directive/command” method of encouraging changes in other state’s behaviour enforced through either punitive or incentive measures, in that is tied to “intangible resources such as culture, ideology and institutions.”<sup>34</sup> Although this was not written with the EU in mind, it certainly laid the foundations for later studies of the EU’s

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<sup>33</sup> François Duchêne, "The European Community and the Uncertainties of Interdependence," in *A Nation Writ Large? Foreign Policy Problems before the European Community*, ed. Max Kohnstamm and Wolfgang Hager (London: Macmillan 1973).

<sup>34</sup> Joseph Nye, *Bound to Lead: The Changing Nature of American Power* (New York: Basic Books, 1990), Joseph Nye, "Soft Power," *Foreign Policy*, no. 80, Twentieth Anniversary (1990).

international role and future concepts of the EU as a non-traditional normative power or superpower.

Ian Manners elaborated on Duchêne's work in 2002 when he described the EU as a „normative power' in his study of the EU's international position on the death penalty. His case study illustrated the EU deliberately acting internationally on a normative basis, seeking to change state behaviour according to its domestic norms and values out of altruism and a belief that its action is positive. While Nye's depiction of soft power did not go as far as suggesting that this power was exercised deliberately as a planned policy initiative, Manners emphasised the deliberate nature of EU international action that actively seeks to change international norms to reflect its own values. He saw it as power over opinion, or ideological power, and outlined six ways in which these norms may be diffused. They are: contagion, described as unintentional diffusion to other political actors; informational, being diffusion as a result of strategic communications; procedural, in which diffusion occurs via the institutionalisation of a relationship with a third party; transference, which occurs when the EU enters into arrangements with third parties for the transfer of goods or aid; overt diffusion, generated by the physical presence of the EU in third countries; and finally, cultural filter, which accounts for the impact of international norms and learning on third parties and institutions.

Manners rejected the suggestion that this depiction of EU action constituted a sort of „cultural imperialism' on the basis that the EU often finds itself at odds with other powerful states in pursuing its norms internationally.<sup>35</sup> This would seem to indicate that the EU pursues particular norms even when it may not be in its interests (in traditional terms) to do so.

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<sup>35</sup> Manners, "Normative Power Europe: A Contradiction in Terms?."

According to Manners, the character of normative EU power can be summed up as follows:

“The concept of normative power is an attempt to suggest that not only is the EU constructed on a normative basis, but importantly this predisposes it to act in a normative way in world politics. It is built on the crucial, but usually overlooked observation, that the most important factor shaping the international role of the EU is not what it does or what it says, but what it is.”<sup>36</sup>

The very existence of the EU demonstrates that the pooling of sovereignty and the emphasis on values such as human rights, among other things, can in fact be made a reality and considered ‘normal.’ Although the values central to the EU and enshrined in legal documents are not unique to the EU, the way in which those values have been adopted as foundations of foreign policy is perhaps unusual.<sup>37</sup> This ability to shape ideas about what is normal is at the heart of the normative power concept.<sup>38</sup>

### **2.2.5 Criticism of Normative Power**

Manners’ description of the EU’s normative impact in the international arena has been debated in a variety of contexts and applied to a number of case studies, most notably in the field of human rights,<sup>39</sup> and in relation to changes effected in candidate countries in response to EU accession requirements.<sup>40</sup> As a concept it has been criticized for not being reflexive enough – according to Thomas Diez, claims about the spread of EU norms and the EU as a ‘force for good’ risk becoming ‘self-righteous and messianic,’ if researchers do not take

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<sup>36</sup> Ibid.: 252.

<sup>37</sup> Sonia Lucarelli and Ian Manners, "Valuing Principles in European Union Foreign Policy," in *Values and Principles in European Union Foreign Policy*, ed. Sonia Lucarelli and Ian Manners (London; New York: Routledge, 2006).

<sup>38</sup> Ian Manners and Richard G. Whitman, "The 'Difference Engine': Constructing and Representing the International Identity of the European Union," *Journal of European Public Policy* 10, no. 3 (2003).

<sup>39</sup> Manners, "Normative Power Europe: A Contradiction in Terms?." Franck Petiteville, "Exporting 'Values'? EU External Co-Operation as a 'Soft Diplomacy'," in *Understanding the European Union's External Relations* ed. Michèle Knodt and Sebastiaan Princen (London; New York: Routledge, 2003). Petiteville described the EU as exercising ‘soft diplomacy’ to achieve long term cultural influence in a 2003 case study on human rights conditionality

<sup>40</sup> Mitchell P. Smith, "Soft Power Rising," *World Literature Today* 80, no. 1 (2006).

care to thoroughly question and deconstruct the concept and its application to reality.<sup>41</sup> Crucially, a further point made by Diez is that normative power *must* be able to be demonstrated to stand on its own as an independent category of power in order to be valid – it cannot be „reducible’ to economic or military power.<sup>42</sup> In the case of EU-New Zealand relations, in which economic and trade questions are at the heart of the relationship, this test may prove the downfall of the normative power concept.

Helene Sjursen highlighted the difficulty in finding a consistent definition of normative power, finding it presented variously as „civilised’, „civilising’ or „ethical’ power, with different claims associated to it. As an example, some scholars equate norms with standards, and normative power with the ability to set international standards and regulations. Zaki Laïdi for instance, discussed EU economic weight as making its normative power and norms more “compelling”, citing a number of European regulations and programmes which are being adopted by other actors due to the global economic influence of the EU.<sup>43</sup> Recalling Diez’s critique, that normative power must stand on its own to be valid, to conflate norms with standards and normative power with economic power to does little to advance the concept.

Sjursen also asked how we can evaluate whether the EU acts as a „force for good’, and whether normative power is a good thing. Otherwise, she argued, what separates „normative power’ from “Eurocentric imperialism?”<sup>44</sup> She also pointed out that many states pursue foreign policy based on particular values and norms; in particular, the EU is often presented as a normative power in contrast to the United States (US), though US foreign policy could also be said to be driven by domestic norms and values with strong moral connotations. What

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<sup>41</sup> Diez, "Constructing the Self and Changing Others: Reconsidering 'Normative Power Europe'," 635.

<sup>42</sup> Ibid.: 616.

<sup>43</sup> Zaki Laïdi, "European Preferences and Their Reception," in *EU Foreign Policy in a Globalised World: Normative Power and Social Preferences*, ed. Zaki Laïdi (Oxon; New York: Routledge, 2008), 6-8.

<sup>44</sup> Sjursen, "The EU as a „Normative’ Power: How Can This Be?," 236. Helen E. Sjursen, "What Kind of Power?," *Journal of European Public Policy* 13, no. 2 (2006).



makes the EU different?<sup>45</sup> However, it is important to remember Manners' argument that the EU is a normative power by virtue of what it is; the fact that it exists as a structure of governance unlike anything seen before, defying traditional realist views of state behaviour, is what makes the EU different to other international actors and what gives it normative power and weight.

Adrian Hyde-Pierce offered a realist critique of normative power, arguing that it is "explicitly normative in that it regards normative power as a good thing" and that researchers of the concept will have difficulty achieving objectivity, as he suggested that they hold an already idealized view of the EU based on the concept of normative power.<sup>46</sup> Manners responded to these challenges by pointing out that "it is one thing to say that the EU is a normative power by virtue of its hybrid polity...it is another to argue that the EU acts in a normative (i.e. ethically good) way."<sup>47</sup> The basic concept of normative power does not, and should not seek to judge the norms that the EU allegedly disseminates, but to explain and understand aspects of EU behaviour that other conceptual frameworks cannot account for. Criticisms of the concept such as this are useful in ensuring care is taken not to conflate normative power with a moral judgment as to the value of the norms the EU seeks to spread. Antje Wiener explored normative power and norms in relation to terrorist threats, and while sympathetic to the idea of normative power Europe, she cautioned against the assumption of shared values and norms and the expectation that these may be deliberately diffused towards „other' contexts. She cited her own recent research that found increased diversity of interpretation of the meaning of fundamental norms such as democracy, human rights, citizenship and the rule of law

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<sup>45</sup> Sjurson, "What Kind of Power?," 171.

<sup>46</sup> Adrian Hyde-Price, "'Normative' Power Europe: A Realist Critique " *Journal of European Public Policy* 13, no. 2 (2006): 218.

<sup>47</sup> Manners, "The Normative Ethics of the European Union," 45.

among different arenas of the EU, rather than harmonization, arguing that surely norms must be shared within the EU before being exported.<sup>48</sup>

Hyde-Price also posited that the member states will only allow the EU to act normatively on their behalf as long as it does not conflict with their national interests, leading to hypocrisy and conceptual limitations, citing the examples of arms sales to China or economic relations with Russia under Vladimir Putin as evidence of this.<sup>49</sup> This accusation however implies that normative power ought to always be enforced with a stick, and that immediate normative change is demanded by the EU. This would seem fundamentally opposed to the idea of normative power as proposed by Manners; that is, that the EU pursues and promotes norms through ideological power, that it has the ability to do so, and that in some cases it *succeeds* in altering the identities and interests of third parties. It is true that it has attached conditionality to agreements with third states, in particular aid agreements, in reference to human rights and democratic values. However, to quote Manners, “the long-term diffusion of ideas in a normatively sustainable way works like water on stone, not like napalm in the morning.”<sup>50</sup>

Despite the normative power concept playing a prominent role in debate over the EU’s international role, it has been applied in relatively few studies of the EU’s role in the international environmental arena.

### **2.2.6 EU Normative Power and the Environment**

The concept of EU normative power has been applied to some recent studies of the EU’s role in international environmental politics, which has been described as being a leader, in

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<sup>48</sup> Antje Wiener, "European Responses to International Terrorism: Diversity Awareness as a New Capability?," *Journal of Common Market Studies* 46, no. 1 (2008): 213.

<sup>49</sup> Hyde-Price, "'Normative' Power Europe: A Realist Critique ": 223.

<sup>50</sup> Manners, "The Normative Ethics of the European Union," 60.

particular in the case of the establishment of the international climate change regime.<sup>51</sup> Most of these studies have focused either on the EU's supposed normative role in the context of international environmental regimes and negotiations, in the context of enlargement, or in a specific subfield of environmental policy.<sup>52</sup>

The concept would seem to be highly suitable for studying the EU's role in environmental politics based on a number of factors: first, the EU has gained a reputation as leader in climate change politics relatively rapidly, based on its performance in the Kyoto Protocol negotiations, its self-imposed domestic targets and in particular in opposition to the US's obstructing role, all of which might suggest a depiction of the EU as a standard-setter and a normative force in this area; second, in recent years environmental issues, particularly climate change, have risen rapidly in public opinion and thus have gained increasing prominence on the political agenda internationally, resulting in a growth in environmental rhetoric, agreements and policies; third, sustainable development was identified by Ian Manners as one of the four „minor norms' at the core of EU policy and actively promoted in its international interactions.<sup>53</sup>

Vogler argued in reference to Manners that the EU's role as a disseminator of norms will be of long-term significance to the global environmental governance.<sup>54</sup>

Scheipers and Sicurelli<sup>55</sup> examined the EU's contribution to the ratification of the Kyoto Protocol and the development of an EU „identity' in relation to the protocol, as one of two

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<sup>51</sup> Nuno S. Lacasta et al., "Articulating a Consensus: The Eu's Position on Climate Change," in *Europe and Global Climate Change: Politics, Foreign Policy and Regional Cooperation*, ed. Paul G. Harris (Cheltenham: Edward Elgar, 2001), Miranda A. Schreurs, "The Climate Change Divide: The European Union, the United States, and the Future of the Kyoto Protocol," in *Green Giants? Environmental Policies of the United States and the European Union*, ed. Norman J. Vig and Michael G. Faure (Cambridge, MA: MIT Press, 2004), John Vogler and Charlotte Bretherton, "The European Union as a Protagonist to the Us on Climate Change," *International Studies Perspectives* 7 (2006).

<sup>52</sup> Vogler, "The European Contribution to Global Environmental Governance."

<sup>53</sup> Manners, "Normative Power Europe: A Contradiction in Terms?," 242.

<sup>54</sup> Vogler, "The European Contribution to Global Environmental Governance," 841.

case studies to test the credibility of depictions of the EU as a normative power, the other examining the EU role in establishing the International Criminal Court. Referring to Keohane, they point out that “while policies that require military action tend to divide Europe, human rights and the protection of the environment provide the EU with grounds for reinforcing its cohesion and emphasizing its moral role in international relations.”<sup>56</sup> They argued that EU identity on this issue was solidified particularly in reference to an „other’, in this case the United States, and their study found that throughout the Kyoto process the EU promoted itself as a supporter of multilateralism and international law, and as a promoter of universal values. They stated that the rhetoric used highlighted the EU commitment to consolidating its normative leadership, and concluded that the case study supports claims of an EU normative identity which, in this case study, was constructed in reference to the US as „other.’ Scheipers and Sicurelli do not make claims as to the validity of representations of the EU as a “green” normative power in general, only in relation to the specific case of Kyoto. The concept has spread beyond the bounds of academia and has been adopted and even embraced by policy officials. José Manuel Barroso, president of the European Commission made the following observations on normative power and the EU’s role in the climate change regime in a 2007 interview:

“In terms of normative power, I broadly agree: we are one of the most important, if not the most important, normative power in the world...There is not any group of countries in the world that have the same degree of homogeneity. And it is not only the member states but also the candidate states - so it is a kind of projecting influence in the ‚near abroad.’ Look at climate change. We are the ones who are setting the benchmark...Why is that? It is

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<sup>55</sup> Sibylle Scheipers and Daniela Sicurelli, "Normative Power Europe: A Credible Utopia?," *Journal of Common Market Studies* 45, no. 2 (2007).

<sup>56</sup> *Ibid.*: 436.

because we have been successful in establishing norms and applying them to different realities.”<sup>57</sup>

However, the idea of normative power as applied to the EU in international environmental politics also has its critics. Robert Falkner examined the notion of the EU as a “green” normative power in the field of biosafety regulation, and found that an interpretation of the EU as a normative power promoting the “global good over and above the national interest” leads to an incomplete picture of the various factors influencing EU environmental policy and foreign policy. He claimed that a normative view of EU international environmental policy, such as that supported in the case of Kyoto by Scheipers and Sicurelli, fails to account for the role of domestic political and economic factors, and refuted the notion of the EU as a “green” normative power based on this case study, preferring a political economy framework.<sup>58</sup> However, as a policy area the ‘environment’ is incredibly broad, with implications for, and close links to, a range of other sectors. It needs to be acknowledged that a single case study in one environmental policy area does not necessarily reflect the nature of the EU’s role in environmental politics in general. It may be that the EU can be considered a normative force in one area, for example in climate change negotiations as Scheipers and Sicurelli claim, and not necessarily in another, as Falkner argued is the case in biosafety regulation.

### **2.2.7 Summary**

The concept of normative power, as defined by Manners and related to both Duchêne’s civilian power and Nye’s soft power, has played an important role in the ongoing question of how exactly to define the phenomenon that is the EU. It has been applied as an explanation for EU action in a number of areas, most frequently it would seem in relation to human

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<sup>57</sup> John Peterson, *Jose Manuel Barroso = Political Scientist* (EU-Consent, 17 July 2007 [cited 1 May 2008]); available from <http://www.eu-consent.net/content.asp?contentid=1442>.

<sup>58</sup> Falkner, "The Political Economy of 'Normative Power' Europe: E.U. Environmental Leadership in International Biotechnology Regulation."

rights. With specific reference to the environment, it has been raised by Scheipers and Sicurelli as a possible explanation for the EU's leadership role in the international climate change regime, but has also been disputed by Falkner in a case study of biosafety regulation.

This thesis examines the role of the EU in the international environmental arena and questions depictions of the EU as a "green" normative power. To establish whether the EU exercises a normative role, as defined by Manners, on environmental issues at a global level, the thesis analyses the relationship between the EU and a specific third state – New Zealand, to find evidence of the EU „diffusing’ its environmental preferences and norms to New Zealand directly or via international institutions. Rather than examine the EU's effect through a particular international regime or within a specific policy area, the case of relations with a third state has been chosen in order to encompass a range of policy areas and gain a broad picture of the relationship.

A first case study narrows the focus further by examining the specific relations between the EU and New Zealand on climate change issues. This area has been chosen as it has enjoyed an increasingly high political profile throughout the timeframe to be studied (since 1991), and the EU's alleged rise to a leadership role on the issue coincides with this timeframe, allowing the observation of any associated changes in the dynamics of EU-New Zealand relations. Because of the high degree of activity in this policy area it is most likely to yield enough data to be assessed credibly. The potential pitfalls illustrated above in Falkner's study, as well as those posed by the highly political nature of climate change issues, will be overcome by balancing this narrow case study with the broader, more generalized study of the relationship between the two actors. In doing so, it will contribute to studies of the EU's unique role in international environmental politics on a bilateral as well as multilateral level, and the current gap in the literature on the EU's normative effect on third states, outside of an enlargement/candidate state relationship, in the environmental arena.

Further, criticism of the concept as a hypocritical and self-righteous view is often based on interpretations of normative power as equivalent to „ethical’ or „civilising’ power. The approach of this thesis is to interpret „normative power’ simply as the ability to export EU norms, whether expressly or not. No judgment is intended as to the moral value of those norms or the intentions of the EU. As Martha Finnemore points out, from the perspective of those promoting a norm, the norm always has value, or is „good.’<sup>59</sup> The value of a norm, and by extension, the value of normative power, is therefore relative. Sjursen asks “How can we know if acting as a normative power is a good thing?” That is not a question that this thesis seeks to answer in relation to normative power, only that of “Does the EU exercise normative power in its relations with New Zealand on environment?”

### **2.3 A Policy Approach**

A policy-based approach shares similar elements to constructivism – both frameworks deal with the spread of ideas. Constructivism and normative power takes a relatively broad, abstract interpretation of the concept of ideas and focuses on the spread of values or norms, while policy studies focus more specifically on ideas in the form of policies. However, unlike constructivism, policy studies emphasises material interests when explaining actor behaviour.

Within policy studies there are a number of closely related approaches that seek to account for policy change and the spread of ideas and knowledge, such as policy diffusion, policy convergence, learning and policy transfer. The differences between these terms are not always clear, and precise definitions for each are difficult to find.

Diffusion is defined by Elkins and Simmons as being „characterized by interdependent, but uncoordinated, decision making’ where „governments are independent in the sense that they make their own decisions without cooperation or coercion but interdependent in the sense

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<sup>59</sup> Finnemore and Sikkink, "International Norm Dynamics and Political Change," 892.

that they factor in the choices of other governments.’<sup>60</sup> It is sometimes considered as ‘agent-less’ as, unlike policy transfer, it does not emphasise the actual process of transfer or the agents involved.<sup>61</sup> Eyestone described policy diffusion as representing either the “spread of necessity” or the “emulation of virtue,”<sup>62</sup> either of which might explain the dynamics of the relationship between the EU and New Zealand on environmental issues. However, tracing the origin of a policy is a challenging task as ideas, problems and solutions can all become fashionable and become subject to ‘trends.’ These ideas have been termed ‘policy viruses,’ and can spread via complex networks of individual members of ‘policy communities’ as they interact with their international counterparts.<sup>63</sup>

Whereas the term policy diffusion generally refers to multiple cases of policy change or emulation stemming from a single source, the term policy transfer relates to specific, unique instances of this process. It can therefore be considered a specific sub-field within the broader context of policy diffusion.

Convergence takes policy similarities across multiple actors as its starting point and explores the reasons for this, whether these similarities have arisen independently due to comparable domestic problems or whether it is the result of policy diffusion.

Learning is the act of drawing lessons from one jurisdiction or context, whether they are positive or negative lessons, and applying them in another. Learning can thus also be considered as one type of voluntary policy transfer. As Rose explains, lessons are more specific than shifts in thinking, such as the ‘green’ revolution in which environmental issues

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<sup>60</sup> Zachary Elkins and Beth Simmons, "On Waves, Clusters, and Diffusion: A Conceptual Framework," *The ANNALS of the American Academy of Political and Social Science* 598 598 (2005): 35-37.

<sup>61</sup> Chad Damro and Pilar Luaces Méndes, "Emissions Trading at Kyoto: From EU Resistance to Union Innovation," in *Environmental Policy in the European Union*, ed. Andrew Jordan (London: Earthscan, 2005), 255.

<sup>62</sup> Robert Eyestone, "Confusion, Diffusion, and Innovation," *The American Political Science Review* 71, no. 2 (1977). Cited in Harold Wolman, "Understanding Cross National Policy Transfers: The Case of Britain and the U.S.," *Governance* 5, no. 1 (1992): 28.

<sup>63</sup> Jeremy Richardson, "Government, Interest Groups and Policy Change," *Political Studies* 48 (2000): 1017-18.



became politicised and environmental regulation and law-making proliferated rapidly. He distinguishes lesson-drawing from diffusion by explaining that while diffusion studies concentrate on the process, lesson drawing, and indeed policy transfer, focuses on what is transferred and why by analysing the decision making process leading to adoption.<sup>64</sup>

What is clear is that these policy approaches share a fundamental understanding of the world in a globalised context, in which in addition to greater economic interdependence, information, institutions and ideas are increasingly spread “horizontally”<sup>65</sup> through a variety of channels and for many different reasons. They also share a belief in the importance influence of the decisions taken by other actors, as more and more actors look outside of their own jurisdiction for possible solutions to domestic questions or problems, and emphasise the roles of elite individuals and networks (described by Haas as epistemic communities) as an important influence in the spread of ideas. They all seek to understand the process in which ideas in one context influence change in another.<sup>66</sup> A basic assumption of these approaches to policy change is that actors prefer to rely on information that is already available to them, and therefore in the process of searching for a solution to a problem, will look to policies that already exist and have already been tried and tested in another context, to starting from scratch.<sup>67</sup>

### **2.3.1 Policy Transfer**

Policy transfer is defined by Dolowitz and Marsh as “the process by which knowledge about how policies, administrative arrangements, institutions and ideas in one political setting (past

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<sup>64</sup> Damro and Méndes, "Emissions Trading at Kyoto: From EU Resistance to Union Innovation," 255, Richard Rose, "What Is Lesson-Drawing?," *Journal of Public Policy* 11, no. 1 (1991): 8-9.

<sup>65</sup> David Levi-Faur, "The Global Diffusion of Regulatory Capitalism," *The ANNALS of the American Academy of Political and Social Science* 598, no. 12 (2005): 28.

<sup>66</sup> David P. Dolowitz and David Marsh, "Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making," *Governance: An International Journal of Policy and Administration* 13, no. 1 (2000): 5.

<sup>67</sup> Helge Jörgens, "Governance by Diffusion: Implementing Global Norms through Cross-National Imitation and Learning," in *Governance for Sustainable Development: The Challenge of Adapting Form to Function*, ed. William M. Lafferty (Cheltenham, UK; Northampton, MA, USA: Edward Elgar, 2004), 252.

or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political setting.”<sup>68</sup> It is closely related to studies described above of policy diffusion, convergence and learning.

They identified six key questions as a framework for analysis:

- Why do actors engage in policy transfer?
- Who are the key actors?
- What is transferred?
- From where are lessons drawn?
- What are the different degrees of transfer?
- What restricts or facilitates the policy transfer process and how is the process of policy transfer related to policy “success” or policy “failure”?<sup>69</sup>

Dolowitz and Marsh also distinguished between voluntary transfer, direct coercive transfer and indirect coercive transfer of policy. *Voluntary transfer* occurs when a government actively seeks to improve existing policy or to adopt new policy and looks to the examples set by other governments.<sup>70</sup> Once suitable examples are identified in the policy search process, lesson-drawing or policy learning can occur, as a particular kind of voluntary policy transfer.

*Direct coercive transfer* occurs when a government is forced to accept a policy by a supranational organization, while *indirect coercive transfer* is the result of “externalities, or functional interdependence.” Some of the ‘push’ factors they identified included pressure generated by advances in technology, economic pressures, and emergence of an international

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<sup>68</sup> Dolowitz and Marsh, "Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making," 5.

<sup>69</sup> Ibid.: 8.

<sup>70</sup> David P. Dolowitz and David Marsh, "Who Learns What from Whom: A Review of the Policy Transfer Literature," *Political Studies* 44 (1996): 346.

consensus, in the face of which governments who form the exception to the consensus will be pressured into conforming.<sup>71</sup>

In terms of applying these concepts however, Dolowitz and Marsh suggest that it is best to think of policy transfer as occurring along a continuum, rather than classifying cases of transfer as either strictly voluntary or obligated; this would over-simplify what is in fact a complex and subtle process. For example, if an EU member state is obligated to adopt an EU policy, can this be considered coercive transfer given that states voluntarily join the EU and contribute to the formulation of EU policies? At one end of the continuum is voluntary lesson-drawing, in which an actor rationally searches for a solution to a domestic problem. At the other end are obligated and coercive transfers, in which a policy is imposed by one actor on another.<sup>72</sup> Thinking of transfer as occurring in this context aids researchers in understanding not only what exactly is transferred, but also why it is transferred, and what motivates the actors involved.

Of these possibilities, direct coercive transfer or conditionality is inapplicable to the case study of this thesis, leaving voluntary (lesson-drawing) and indirect coercive transfer as possible policy transfer modes in the EU-New Zealand relationship. In particular, the possible 'push' factors Dolowitz and Marsh identify in the latter case of economic pressure and international consensus are relevant to this case study.

Further, Dolowitz and Marsh adapt earlier work by Richard Rose<sup>73</sup> to explain that there are different degrees of transfer: copying is direct and complete transfer of a policy; there is also emulation in which the fundamental ideas of a particular policy are transferred; combinations in which a range of policies are transferred; and finally, inspiration, in which a policy change

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<sup>71</sup> Ibid.: 348-9.

<sup>72</sup> Dolowitz and Marsh, "Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making," 13-14.

<sup>73</sup> Rose, "What Is Lesson-Drawing?," 22.

or development may be inspired by developments in another jurisdiction, although the end result may be quite different.<sup>74</sup>

### ***2.3.2 Environmental Policy Transfer***

Damro and Méndes explored a case of environmental policy transfer between the US and the EU, in which the EU changed position in the course of the Kyoto Protocol negotiations and adopted international emissions trading as a policy tool to counter climate change. This was a significant change in position, as the concept of market-based mechanisms to reduce emissions and free-market environmentalism as espoused by the US ran counter to fundamental EU preferences for a precautionary approach, regulation and binding commitments. Damro and Méndes saw this change as a voluntary process driven by necessity and influenced by EU domestic political and economic factors.<sup>75</sup>

In a study particularly relevant to this thesis, Drezner examined the closely related concept of policy convergence using environmental protection regulation as one of two case studies and found that a neoliberal approach best accounts for the spread of environmental regulation when compared with world society (constructivist) and elite consensus (epistemic communities) approaches. In a constructivist framework, policy convergence would be driven by state identities and the spread of ideas, while a neoliberal framework explains convergence through “the number of actors, the power of international organizations, the power of international organizations, the amount of available information, and how much convergence has distributional consequences.”<sup>76</sup>

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<sup>74</sup> Dolowitz and Marsh, "Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making," 13.

<sup>75</sup> Damro and Méndes, "Emissions Trading at Kyoto: From EU Resistance to Union Innovation."

<sup>76</sup> Daniel W. Drezner, "Globalisation and Policy Convergence," *International Studies Review* 3, no. 1 (2001): 74.

Of particular relevance to studies of environmental policy and regulation, Drezner addresses the so-called „race to the bottom’ in which higher costs of production (stemming, for example, from more stringent environmental regulation) causes relocation to countries with lower costs, and usually lower standards. This argument, that strong environmental regulation and policy can reduce economic competitiveness, is often cited in debate on the adoption of environmental measures and policy, and is therefore especially pertinent to this thesis. According to this theory, states fearing capital flight are obliged to lower their own standards in order to remain competitive. Drezner pointed out that this concept ignores the influence of constituencies other than industry and capital. Also, it fails to account for entities with global economic power, such as the European Union, which arguably have the economic might to set higher standards without losing capital.<sup>77</sup> He further argued that there is no empirical evidence to support the assumption, citing the conclusions of an OECD report which found that “the strongest finding shows a positive correlation between successfully sustained trade reforms and improvements in core standards.”<sup>78</sup>

### ***2.3.4 Small State Theory***

In order to place policy transfer within the wider context of EU-NZ relations and gain a deeper understanding of the context within which the policy transfer takes place, small state theory provides a useful framework. As a subfield of foreign policy analysis, small state theory, also sometimes called weak state theory, takes an international political economy approach to understanding state interests and motivations. In contrast to social constructivism, it focuses on material motivations of actor behaviour and a neorealist interpretation of power and the international system. Small states are assumed to be more vulnerable to international competition and fluctuations in markets, and to make decisions

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<sup>77</sup> Ibid.: 58.

<sup>78</sup> Ibid.: 67.

and act according to these circumstances – their behaviour is subject to structural constraints.<sup>79</sup>

Small state theory attempts to provide a specific approach to the particular needs of small states, for which there is no precise, commonly accepted definition. Following the decolonisation process after World War II, the number of independent states proliferated. East noted in 1976 that scholars have long taken as a given that foreign policy is affected by physical factors such as population size and geography.<sup>80</sup> But what criteria ought to be applied in attempting to define a small state? Population size, land area and Gross National Product (GNP) are three material measures that are consistently cited, though there is extensive debate as to what limitations and weightings should be accorded to each of these. According to Björn Ólafsson in his case study of Iceland as a small state, population as a measure of size is the most important criteria, to be followed by land area and GNP. He argues that the Exclusive Economic Zone (EEZ) should be included in the measure of land area, as this may substantially increase a state's available resources while also increasing its administrative costs.<sup>81</sup> Other researchers have included measures such as military capability.<sup>82</sup> Ólafsson cites researcher Bilal Jaman, who created an index by size of 111 countries and suggested that a small state is one with a population less than 5 million, an area smaller than 250,000km<sup>2</sup>, and a GNP of less than US \$3 billion.<sup>83</sup> New Zealand is close to these criteria in terms of population and land area: its total land mass is approximately

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<sup>79</sup> Miriam Fendius Elman, "The Foreign Policies of Small States: Challenging Neorealism in Its Own Backyard," *British Journal of Political Science* 25, no. 2 (1995): 176-8

<sup>80</sup> Maurice A. East, "National Attributes and Foreign Policy," in *Why Nations Act: Theoretical Perspectives for Comparative Foreign Policy Studies*, ed. Maurice A. East, Stephen A. Salmore, and Charles F. Hermann (Beverly Hills; London: Sage, 1978), 123.

<sup>81</sup> Björn G. Ólafsson, *Small States in the Global System: Analysis and Illustration from the Case of Iceland* (Aldershot; Brookfield: Ashgate, 1998), 37.

<sup>82</sup> For an extensive review of the literature: Richard Thornton, "Does Size Matter? New Zealand in Partnership with the European Union: A Small State Perspective," (A Thesis Submitted in Fulfilment of the Requirements for Master of Arts in Euroepan Studies in the University of Canterbury, 2006).

<sup>83</sup> Ólafsson, *Small States in the Global System: Analysis and Illustration from the Case of Iceland*, 8-10.

268,000km<sup>2</sup><sup>84</sup> and its total population 4.27 million (in June 2008).<sup>85</sup> In terms of GNP, New Zealand's figure is considerably higher than the figure suggested by Jaman, as in 2005 its GNP per capita rank in the OECD (Organisation for Economic Cooperation and Development) was 21.<sup>86</sup> However, there is no consensus as to what the physical, demographic and economic criteria of a small state should be; indeed, Jeanne Hey argues that a general concept is preferable to attempting to arrive at a concrete definition of what physically constitutes a small state, suggesting that some flexibility is needed.<sup>87</sup> A number of studies have successfully applied small state theory to the case of New Zealand, including Salvatore, cited by Richard Thornton, who determined New Zealand to be a "very small high income state."<sup>88</sup>

Beyond simply classifying what material characteristics are needed to qualify as a small state, a number of particular characteristics of small state behaviour in international affairs were identified and classified by John Henderson, based on earlier work by Maurice East:

- 1) A comparatively low level of participation in world affairs: due to limited resources, small states cannot match the budgets and resources of large states when it comes to maintaining diplomatic representation overseas.
- 2) Narrow focus in international affairs: also due to limited resources, it is necessary for small states to focus their involvement on issues of particular relevance.

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<sup>84</sup> Statistics New Zealand, *Land* (2008 [cited October 14 2008]); available from <http://www.stats.govt.nz/environment/environmental-accounts/land.htm>.

<sup>85</sup> Statistics New Zealand, *National Population Estimates: June 2008 Quarter* (2008 [cited October 14 2008]); available from <http://www.stats.govt.nz/products-and-services/hot-off-the-press/national-population-estimates/national-population-estimates-jun08qtr-hotp.htm>.

<sup>86</sup> Ministry of Economic Development, *Growth through Innovation: Economic Development Indicators 2005* (2005 [cited October 14 2008]); available from <http://gif.med.govt.nz/aboutgif/indicators-2005/report/report-03.asp>.

<sup>87</sup> Jeanne Hey, "Introducing Small State Foreign Policy," in *Small States in World Politics: Explaining Foreign Policy Behaviour*, ed. Jeanne Hey (London: Lynne Reiner, 2003), 3.

<sup>88</sup> Dominick Salvatore, "The Economic Performance of Small Versus Large Nations," in *Small Countries in a Global Economy: New Challenges and Opportunities*, ed. Dominick Salvatore and Jože Damijan (London: Palgrave, 2001), 73. Cited in Thornton, "Does Size Matter? New Zealand in Partnership with the European Union: A Small State Perspective," 30.

- 3) Strong focus on trade and economic matters: this is in order to maximize benefits from limited resources. Small states are dependent on export revenue and vulnerable to international market forces.
- 4) Internationalism/multilateralism: small states rely on international law and institutions to advance and protect their interests, as they lack the political/economic might to influence large states independently.
- 5) Emphasis on morals: Because small states lack resources, their use of moral rhetoric is generally not threatening to large states. They support international legal norms.
- 6) Caution: This overlaps with the previous characteristic, and is a relatively controversial point, subject to debate. Small states may take particular care to avoid alienating important partners.<sup>89</sup>

Small state theory is particularly applicable in the context of the New Zealand- European Union relationship. New Zealand is the substantially smaller partner in this context and therefore is expected to display the characteristic behaviour of a small state.

### **2.3.5 Summary**

A policy approach is based in rationalism and emphasises material influences on actor behaviour. Unlike a constructivist approach, in which ideas and identities are central to explanations of actor behaviour and agents and structures are mutually constitutive, a policy approach assumes a realist interpretation of the international system, which places power, security and material interest squarely at the heart of actor decision making. Specifically, a

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<sup>89</sup> John Henderson, "The Foreign Policy of a Small State," in *Beyond New Zealand: The Foreign Policy of a Small State*, ed. John Henderson, Keith Jackson, and Richard Kennaway (Auckland: Methuen, 1980), 3, John Henderson, "New Zealand and the Foreign Policy of Small States," in *Beyond New Zealand II: Foreign Policy into the 1990s*, ed. John Henderson and Richard Kennaway (Auckland: Longman Paul, 1991), Thornton, "Does Size Matter? New Zealand in Partnership with the European Union: A Small State Perspective," 22-24.



policy transfer approach examines actor motivation and decision-making processes involved in the domestic development of policy.

Small state theory provides a suitable framework to understand the broader international context of EU-New Zealand relations within which policy transfer occurs. In contrast to a constructivist approach, small state theory takes a rationalist stance and links state behaviour to material resources and interests, consistent with a policy approach.

In contrasting a policy approach with a constructivist approach, the thesis asks what ideas are shared or exchanged in the context of this particular case study: Are ideas in the form of norms and values exchanged, and if so, is this EU normative power at work? Alternatively, does the exchange of ideas occur in the form of policies, and if so, what does this indicate about the nature of the relationship?

## **2.4 Chapter Summary**

As previously highlighted, one of the most frequent criticisms of normative power, and norms theory in general, is that it is empirically challenging, to say the least. How can such abstract notions as norms be credibly tested, measured and accounted for? How can normative power be proven, or disproven?

This thesis takes as its central hypothesis two assertions by Thomas Diez: firstly, for the normative power argument to be credible it must not be able to be reduced to either economic or military power; and secondly, that normative power, as the ability to shape conceptions of what is normal, should therefore be able to be identified as an impact on what other actors believe is appropriate behaviour or action.<sup>90</sup> It assumes that if a normative power explanation

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<sup>90</sup> Diez, "Constructing the Self and Changing Others: Reconsidering 'Normative Power Europe'," 615, 16.

is applicable to the relationship between the EU and New Zealand on environment, then it must be possible to demonstrate that:

- a) The EU can be shown to be engaging in dialogue with New Zealand on environment for reasons other than material. That is, it cannot be shown that there are economic or political benefits to be gained.

Even if this can be demonstrated, there can be no power without an impact on a third party. The crux of the normative power argument is that the EU influences conceptions of what is normal. Therefore it must also be shown that:

- b) New Zealand is engaging in dialogue with the EU on environment for reasons other than material.

More specifically, if it is to be argued that the EU has impacted New Zealand in a normative way through their relationship on environment, it would be expected that:

- c) Environmental policies or positions in New Zealand can be shown to have developed in line with EU policies or positions, as a result of interaction with the EU and for reasons other than material interest. New Zealand's conception of „what is normal' in environmental politics and policy has been influenced by the EU.

If these conditions cannot be met in the context of this particular case study, then in the proposed alternative framework incorporating small state theory and a policy approach, it would be anticipated that:

- a) There are material benefits to the EU in engaging in dialogue with New Zealand on environment.

Again, as above, it must also be shown that:

- b) There are material benefits to New Zealand in engaging in dialogue with the EU on environment.

In this approach, instead of a normative impact on behaviour, the economic impact of the EU is evident in the evolution of certain New Zealand environmental policies:

- c) Environmental policies or positions in New Zealand may be shown to have developed in line with EU policies or positions for pragmatic reasons related to material interests.

This chapter has outlined the theoretical framework of the thesis, in which a constructivist account of the EU relationship with New Zealand on environmental issues is compared and contrasted with a policy transfer explanation, as well as detailing how this framework can be applied to the case study in practical terms. In doing so, it explores the validity of constructivism and the concept of normative power in the context of the chosen case study, the results of which allows conclusions to be drawn about the limits of constructivism as applied to the European Union in its global role.

# 3: Environmental Identities and Policies

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## 3.1 Introduction

This chapter will briefly introduce the respective domestic environmental „cultures’ of the EU and New Zealand. Political rhetoric often refers to „shared values’ in the context of New Zealand and EU relations. In the context of environmental issues, to what extent is this statement valid? An understanding of the domestic contexts within which each party operates is necessary in order to better understand their bilateral interaction.

Read within a constructivist framework, this enables understanding of each actor’s „identity’ with regard to environmental policy and the importance of perceptions of environment in the formulation of policy.

Within the context of a policy framework, this highlights the institutions and networks that provide the structure for domestic environmental policy making. Thus this chapter asks; to which actors does New Zealand look when it is developing environmental policy? What are the major policy influences?

Due to space constraints a detailed discussion is not possible, therefore this chapter will only give a broad overview of what are indeed complex, detailed topics. It will discuss the policy processes involved in the historical development of environmental policy framework within each party and give an overview of the respective processes of formulation of environmental policy. It will then summarise the international role each party has played in the global environmental arena, and finally identify particular characteristics and perceptions that impact on these processes, and thus on policy.

## 3.2 The European Union

The EU and its predecessor the European Community (EC) have both played a significant role in environmental diplomacy, particularly in the last two decades. During this time, its internal environmental policy making capability has expanded exponentially and this has translated into it taking a more prominent role in international environmental negotiations and institutions.

At its founding, the European Economic Community (EEC) had no formal environmental policy. Today, it has one of the strongest and most progressive environmental regimes in the world, due to the efforts and influence of a wide variety of state and non-state actors at all levels of decision-making and governance, from the supranational institutions of the Commission and the European Court of Justice (ECJ), to national and sub-national actors such as interests groups, local government and companies.<sup>91</sup>

### 3.2.1 Development of EU Environmental Policy

EC leaders took the decision at the Paris Summit of 1972 to develop a common environmental policy, a decision which reflected a surge in public opinion on environmental issues and protection.<sup>92</sup> The following year the „Programme of Action of the European Communities on the Environment’ was adopted, establishing eleven principles which would underpin EU environmental policy, including ‚polluter pays’, prevention, precaution and subsidiarity.<sup>93</sup> The legal status of the environment in its early years as a community policy area was unclear as the founding document of the EEC, the 1957 Treaty of Rome, contained

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<sup>91</sup> Jenny Fairbrass and Andrew Jordan, "Multi-Level Governance and Environmental Policy," in *Multi-Level Governance*, ed. Ian Bache and Matthew Flinders (Oxford: Oxford University Press, 2004), 147.

<sup>92</sup> Albert Weale, "Environmental Rules and Rule-Making in the E.U.," in *Environmental Policy in the European Union*, ed. Andrew Jordan (London; Sterling, VA: Earthscan, 2005), 127.

<sup>93</sup> European Information Association, *Finding out About Environment Policy* (European Information Association, 2007 [cited February 20 2009]); available from <http://www.eia.org.uk/finding/0701-environment.pdf>.

no provisions for Community action on the environment. Instead, policy was initially implemented under Article 100 of the Treaty of Rome, regarding the free movement of goods.<sup>94</sup> As public environmental awareness increased, Member States began to enact domestic environmental legislation that threatened to disrupt trade within the European internal market.<sup>95</sup> Therefore, environment was finally given formal legal status in the Single European Act (SEA) of 1987.<sup>96</sup>

Once given formal treaty basis in the SEA the environmental *acquis* expanded rapidly throughout the late 1980s and early 1990s, periods of heightened environmental awareness and international environmental law-making.<sup>97</sup> At the same time, there was a shift in focus in EU policy-making, from a primary concern with domestic member state issues in the 1970s, to an increasingly EU level and international focus in the 1980s and 1990s. This shift in emphasis was due in part to the emergence of transnational environmental problems, such as acid rain and damage to the ozone layer, which challenged traditional responses and solutions, and, for the first time, necessitated cross-border cooperation. The European Court of Justice (ECJ) played a particularly important role in the growth of environmental policy in the EU, siding with the Commission on a number of significant decisions, including upholding the principle that the protection of the environment is a legitimate cause for restraining trade.<sup>98</sup> Policy makers also began to realise that as a wide range of otherwise legitimate activities can unintentionally impact negatively on the environment, environmental policy needed to be incorporated and fully integrated into a range of other policy areas. The

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<sup>94</sup> Alberta M. Sbragia, "Institution-Building from Below and Above: The European Community in Global Environmental Politics," in *Environmental Policy in the European Union*, ed. Andrew Jordan (London; Sterling, VA: Earthscan, 2005), 204.

<sup>95</sup> R. Daniel Kelemen, "Regulatory Federalism: E.U. Environmental Regulation in Comparative Perspective," *Journal of Public Policy* 20, no. 2 (2000): 151.

<sup>96</sup> Sbragia, "Institution-Building from Below and Above: The European Community in Global Environmental Politics," 203.

<sup>97</sup> Andrea Lenschow, "Environmental Policy: Contending Dynamics of Political Change," in *Policy-Making in the European Union*, ed. Helen Wallace, William Wallace, and Mark A. Pollack (Oxford: Oxford University Press, 2005), 306-8.

<sup>98</sup> Weale, "Environmental Rules and Rule-Making in the E.U.," 127.

SEA stated in Article 132r(2) that “...environmental protection requirements shall be a component of the Community’s other policies.”<sup>99</sup>

In the 1980s, it became increasingly common to promote environmental measures by arguing, counter to the traditional view of a necessary trade-off between environmental standards and economic interests, that environmental policies would maximise competitiveness in the interests of a new, post-industrial economy which upholds high environmental standards.<sup>100</sup> This argument has been a recurring theme in EU international discourse on environment and most recently on climate change.

The Treaty of Amsterdam in 1997 was a particular turning point in EU environmental policy. Changes were made to the preamble and to Article 2, to identify sustainable development as a key EU objective to be integrated across policy areas.<sup>101</sup> This reflected the development of environmental institutions and policy both in the EU and internationally, cementing the place of environment as a pivotal policy area in the EU.

### **3.2.2. EU Environmental Policy Framework**

Environment now falls under Articles 174 to 176 of the Treaty establishing the European Community (TEC, formerly the Treaty establishing the European Economic Community). Currently, EU environmental policy is governed by the Sixth Environment Action Programme for the period 2002-2010. The Action programme sets out the overall direction of environmental policy and specifies four priority areas of action: climate change; nature and biodiversity, environment and health and quality of life, and management of natural resources

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<sup>99</sup> Ibid., 129-31.

<sup>100</sup> Ibid., 131.

<sup>101</sup> Y. Goossens, *Environment Policy: General Principles* (European Parliament, 2008 [cited February 20 2009]); available from [http://www.europarl.europa.eu/parliament/expert/displayFtu.do?language=en&id=74&ftuId=FTU\\_4.10.1.html](http://www.europarl.europa.eu/parliament/expert/displayFtu.do?language=en&id=74&ftuId=FTU_4.10.1.html).

and waste.<sup>102</sup> As of 2007, the EU allocated almost €7.1 billion annually in funding to environmental matters.<sup>103</sup>

The Commission is the primary agenda-setter for environmental policy, and within the Commission, DG Environment is the hub of EU environmental policy making. It was first established in 1981 as Directorate General XI, responsible for Environment, Nuclear Safety and Civil Protection, and is now divided into seven thematic divisions, which are: Communication, Legal Affairs & Civil Protection; Protecting the Natural Environment; Climate Change & Air; Water, Chemicals & Cohesion; Resources; and Sustainable Development & Integration.

DG Environment policy makers consult with a range of external interest groups and institutions. One of these is the European Environment Agency, which was established in 1990 to protect and improve the environment according to Treaty provisions and the Environment Action Programmes.<sup>104</sup> Its role is to provide effective environmental monitoring information and analyses to the member states and EU institutions to enable effective decision making and policy formulation.<sup>105</sup>

Non-governmental organisations also play an important and constructive role in the EU, pressing issues onto the political agenda and influencing public opinion. Regional, national and sub-national interest groups and actors have established direct relationships with EU decision makers or with both EU and national level actors where competence is unclear or contested.<sup>106</sup> Of the environmental interest groups with influence at EU level, seven are particularly important. They are the European Environment Bureau (EEB), which has the

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<sup>102</sup> European Information Association, *Finding out About Environment Policy*.

<sup>103</sup> Fraser Cameron, *An Introduction to European Foreign Policy* (Abingdon, Oxon ; New York Routledge, 2007), 13.

<sup>104</sup> European Information Association, *Finding out About Environment Policy*.

<sup>105</sup> European Environment Agency, *What We Do* (European Environment Agency, 2009 [cited February 20 2009]); available from <http://www.eea.europa.eu/about-us/what>.

<sup>106</sup> Fairbrass and Jordan, "Multi-Level Governance and Environmental Policy," 150-51.



longest history of formal representation in Brussels, Friends of the Earth, Greenpeace International, the Worldwide Fund for Nature (WWF), Climate Network Europe, the European Federation for Transport & Environment, and BirdLife International. All seven act both as pressure groups and as think tanks, and use public campaigns and direct contact with member governments to influence opinion.<sup>107</sup> Although environmental lobbying is not unusual to Europe, the level and profile of the European lobby is, in general terms, higher than average when compared with other industrialised democracies.<sup>108</sup> An MfE Policy Adviser commented that the environmental lobby in the EU is particularly strong and many of their international positions are driven by domestic politics.<sup>109</sup>

Environmental legislation in the EU is most often developed with the co-decision procedure, in which legislation is proposed by the European Commission to be approved (or rejected) jointly by the European Parliament and the Council of Ministers. The European Commission drafts and proposes legislation after consultation with interest groups and relevant parties. It will occasionally release Green or White Papers to encourage discussion and gain feedback from interested parties.<sup>110</sup> The Parliament gives feedback to the Commission, following which the Council will adopt a common position. This is then forwarded to the Parliament who have a three month period within which they can accept the Council's position and thus adopt the law; reject the position altogether; or they may make changes to the common position, returning it to the Council who then have a three month period within which to

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<sup>107</sup> Lenschow, "Environmental Policy: Contending Dynamics of Political Change," 318.

<sup>108</sup> John Edwards, "Has the European Union Exercised Leadership in the International Climate Change Regime since the Hague Conference?" (College of Europe, 2002), 7.

<sup>109</sup> Ministry for Environment Policy Adviser 2, "Interview with Author," (Wellington: 29 August 2008).

<sup>110</sup> Scottish Parliament Information Centre, *Guide to EU Policy-Making Processes* (Scottish Parliament Information Centre, 2002 [cited December 10 2008]); available from [http://www.scottish.parliament.uk/business/research/pdf\\_res\\_brief/sb02-78.pdf](http://www.scottish.parliament.uk/business/research/pdf_res_brief/sb02-78.pdf).

act.<sup>111</sup> The Council vote on environmental legislation using the Qualified Majority Voting (QMV) procedure.<sup>112</sup>

### **3.2.2 International Role**

The EU is increasingly perceived both domestically and internationally as a leader in environmental issues. In this context, the EU has gradually exchanged roles with the United States (US), which was perceived as the international leader throughout the 1970s and 1980s, in particular for its role in the development of the 1987 Montreal Protocol on ozone depletion caused by chlorofluorocarbons (CFCs) and other chemicals.<sup>113</sup> However, from the late 1980s onwards, the EC began to consistently set higher standards in legislation to protect health and the environment than corresponding actions in the US, and since then has generally strengthened, not weakened, those standards when they have been reviewed or amended. During the same period, the US increasingly withdrew from involvement in international environmental negotiations and agreements, failing to sign a number of significant conventions.<sup>114</sup> The UNFCCC and Kyoto Protocol were the opportunity for the EU to seize the international environmental leadership role that the US had abdicated. According to Michael Grubb and Joyeeta Gupta, the EU saw and sees itself as the „historical, current and future leader’ in international climate change, having placed increasing emphasis on environment and sustainability.<sup>115</sup> The Dutch Environment Minister is quoted as saying in

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<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Schreurs, "The Climate Change Divide: The European Union, the United States, and the Future of the Kyoto Protocol," 222, Vogler and Bretherton, "The European Union as a Protagonist to the US on Climate Change," 2.

<sup>114</sup> For examples and for a brief comparative assessment of US and EC legislation passed in this period, see Theofanis Christoforou, "The Precautionary Principle, Risk Assessment, and the Comparative Role of Science in the European Community and US Legal Systems," in *Green Giants? Environmental Policies of the United States and the European Union*, ed. Norman J. Vig and Michael G. Faure (Cambridge, MA: MIT Press, 2004), 25-6.

<sup>115</sup> Michael Grubb and Joyeeta Gupta, "Climate Change, Leadership and the EU," in *Climate Change and European Leadership: A Sustainable Role for Europe?*, ed. Joyeeta Gupta and Michael Grubb (Dordrecht: Kluwer Academic, 2000), 4-11.

1997 "I firmly believe that the world is looking to the EU to play an ambitious role in the negotiating process."<sup>116</sup>

Environmental protection has increasingly become an important focus of European foreign policy. In areas such as hazardous waste<sup>117</sup> and climate change it does appear to hold an important leadership role; however, it is criticised as often as it is praised. Recently, prominent American climate change campaigner Al Gore commented that he doubted the ability of the EU to lead the world on climate change due to a lack of cohesion, instead claiming that the US is the only actor capable of such a task.<sup>118</sup> Further, the EU's external reputation is undermined by the negative environmental impact of its Common Agricultural Policy (CAP), which has contributed to the over-use of pesticides by subsidising intensive agriculture, and Common Fisheries Policy (CFP), under which EU distant-water fishing fleets have controversially negotiated access to fisheries in developing countries. However, it is in these very areas that, as Vogler argues, the EU as an economic force could potentially make a significant contribution to international environmental governance, by continuing to campaign for serious consideration of trade-environment linkages at the WTO.<sup>119</sup>

The EU's external environmental policy focus is on multilateral action, which is consistent with its endorsement of multilateral cooperation in general. It also places emphasis on inter-regional cooperation, and engages extensively in bilateral interaction, with environment clauses inserted into its regional and bilateral deals. These clauses however tend to refer back to the EU's multilateral priorities as they often call for cooperation in the course of multilateral environmental agreement (MEA) negotiations.<sup>120</sup> Vogler argues that this bilateral

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<sup>116</sup> Edwards, "Has the European Union Exercised Leadership in the International Climate Change Regime since the Hague Conference?" 3.

<sup>117</sup> Vogler, "The European Contribution to Global Environmental Governance," 840.

<sup>118</sup> Honor Mahony, *Gore Doubts E.U Leadership Abilities* (euobserver.com, 2009 [cited February 17 2009]); available from <http://euobserver.com/9/27495/?rk=1>.

<sup>119</sup> Vogler, "The European Contribution to Global Environmental Governance," 845-7.

<sup>120</sup> *Ibid.*: 838.

cooperation utilising the EU's diplomatic networks and integrating environment into its foreign policy at all levels, is essential to supporting effective multilateral environmental regimes.<sup>121</sup> He also argued that the EU can be considered a disseminator of norms when considering the role of the EU's policy ideas and the environmental conditions placed upon third parties in various bilateral agreements with the EU, although whether these extend beyond rhetoric is largely untested. What is clear, however, is that whatever its motivation, its external environmental influence is by no means limited to the environmental *acquis* that candidate countries must adopt.<sup>122</sup>

It stands to make a significant impact in climate change policy if its emissions trading scheme, which commenced in January 2005 and which covers trading between power generators and industrial plants, actually succeeds in lowering EU emissions. Under the first phase of the scheme (2005-2007), total emissions grew 0.68%.<sup>123</sup> However, entering the second phase of the scheme, the Commission tightened caps and reduced allowances. Successful emissions reduction would enhance the EU's credibility and set the standard for future schemes.<sup>124</sup>

### *Who speaks for the EU?*

According to the 1971 ERTA (European Road Transport Agreement) ECJ decision on the extent of the Commission's external competence,<sup>125</sup> external competence flows from internal competence. It found that the Commission, having exclusive internal competence for a policy area, derived „implied' external powers from its internal competence. It introduced the

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<sup>121</sup> Ibid.: 849.

<sup>122</sup> Ibid.: 841-2.

<sup>123</sup> *Emissions Trading: 2007 Verified Emissions from E.U. E.T.S. Businesses* (Europa, 2008 [cited February 18 2009]); available from <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/787&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>124</sup> Vogler, "The European Contribution to Global Environmental Governance," 848.

<sup>125</sup> *Commission v Council (European Road Transport Agreement (AETR/ERTA) case)* Case 22/70 [1971] ECR 263

concept of „exclusivity’: namely that it was feasible for the Commission to act alone and sign an international agreement on behalf of the member states, without the need for the member states to also sign.<sup>126</sup> This has resulted in three possibilities for the EU acting in the international arena: exclusive competence, mixed competence or member state competence.

Representation of the EU in international environmental politics can be complicated – it is designated as enjoying mixed competence, meaning that external representation can involve the Commission, the member states and the commission acting together, or just the member states, depending on the specific policy areas involved. Usually, the Commission negotiates with a Council mandate, and it is common practice for the Member States to also participate.<sup>127</sup> As previously indicated, although the Treaty of Rome did not include any reference to the environment, from the 1970s onwards the EU’s domestic environmental policy making and international environmental diplomacy increased exponentially, the EC acting without explicit legal basis until the SEA in 1987. The ECJ also played an important role in enabling external representation of the EU on environmental matters without formal treaty basis.<sup>128</sup> For third parties, it was particularly challenging initially in that there was no precedent for Community negotiations at a multilateral environmental level, and the varied competencies and complex legal arrangements were confusing.<sup>129</sup> The EU’s increased involvement in protracted environmental negotiations at the multilateral level is a challenge for both those representing the EU and those interacting with it. Negotiations can often last for several years, while the EU’s biannually rotating presidency system means that momentum is lost and planning strategy is difficult.<sup>130</sup> More recently however, informal attempts have been made to overcome the confusion generated by the EU’s representative

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<sup>126</sup> John McCormick, *Environmental Policy in the European Union*, ed. Neill Nugent, William E. Paterson, and Vincent Wright, *The European Union Series* (New York: Palgrave 2001), 264-5.

<sup>127</sup> Sbragia, "Institution-Building from Below and Above: The European Community in Global Environmental Politics," 211.

<sup>128</sup> *Ibid.*, 203-4.

<sup>129</sup> *Ibid.*, 210.

<sup>130</sup> Cameron, *An Introduction to European Foreign Policy*, 14.

arrangements and to maximize efficiency. In the Commission on Sustainable Development, a „lead-country approach’ was adopted, in which work is shared among the member states and the Commission, with a „lead-country’ preparing a policy draft for each agenda item for discussion. In addition an „EU-team’ approach was used in negotiations on biosafety, in which the Presidency and the Commission represented the EU.<sup>131</sup>

### **3.2.3 Perceptions of Environment**

Ideas in domestic society such as public opinion can help explain policy and behaviour,<sup>132</sup> and the EU enjoys an especially high level of public concern about and awareness of environmental issues, particularly climate change. In addition, the European public and industry are accustomed to high standards in environmental regulation and are therefore in general relatively willing to accept the need for regulation to meet environmental challenges.<sup>133</sup> This high public awareness has meant there are relatively high numbers of voters for „green’ parties in some Member States, substantial budgets for environment ministries and ready support for environmental policies.<sup>134</sup> Environmental interests are as a result well represented at national level and in the European Parliament.

Regular Eurobarometer surveys have been made of public opinion in Europe specifically in reference to the environment. When it came to suggesting solutions to environmental problems, Europeans showed a preference for stricter legislation coupled with greater fines for infringements and for the „polluter pays’ principle, with less than 10% advocated leaving

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<sup>131</sup> *The European Union on the International Scene* (EurActiv.com, 2004 [cited 26 June 2008]); available from <http://www.euractiv.com/en/future-eu/european-union-international-scene/article-116983>.

<sup>132</sup> Paul G. Harris, "Explaining European Responses to Climate Change: Power, Interests and Ideas in Domestic and International Politics," in *Europe and Global Climate Change: Politics, Foreign Policy and Regional Cooperation* ed. Paul G. Harris (Cheltenham, UK: Edward Elgar, 2007), 395.

<sup>133</sup> Farhana Yamin and Johanna Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures* (Cambridge: Cambridge University Press, 2004), 43.

<sup>134</sup> Joyeeta Gupta and Nicolien Van der Grijp, "Strengths, Weaknesses, Opportunities and Threats of the EU," in *Climate Change and European Leadership: A Sustainable Role for Europe*, ed. Joyeeta Gupta and Michael Grubb (Dordrecht: Kluwer Academic, 2000), 266.

it to industry and science to offer solutions.<sup>135</sup> In 2007, a *Eurobarometer* on attitudes to environment was conducted. It showed that increasingly, Europeans consider the state of the environment as having a similar effect on their personal quality of life as economic factors, and that they most frequently associate the concept of environment with global issues such as climate change (57%). Furthermore, the environmental issues that they are most concerned about tended to be global in scope, such as climate change and pollution. The four highest ranked environmental concerns from 2004 did not change.<sup>136</sup> The survey also found that Europeans placed great importance on protecting the environment, with 64% stating that it was very important.<sup>137</sup>

Generally speaking, European industry takes a cooperative approach to dealing with regulation and policy by trying to influence implementation programs at the EU and domestic levels, and is generally open to drawing up voluntary agreements.<sup>138</sup> Schreurs suggests that this is indicative of the influence of social-democratic governance in Europe, in which a more cooperative approach is taken on environmental matters, as opposed to, for example, the adversarial nature of the relationship between government, nongovernmental organisations and industry in the US, according to the US' neoliberal ideal of minimal government intervention in the economy.<sup>139</sup>

References to EU environmental values are frequently made. The conclusions of the European Council at Dublin in June 1990 included a declaration on the "Environmental Imperative" that advocated a proactive lead role for the European Community (EC) in promoting international environmental cooperation and action, which referred to the "special

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<sup>135</sup> European Commission, "What Do Europeans Think About the Environment?," in *Eurobarometer* (Luxembourg: European Commission, 1999), 30.

<sup>136</sup> European Commission, "Attitudes of European Citizens Towards the Environment," in *Eurobarometer* (Brussels: European Commission, 2008), 3.

<sup>137</sup> *Ibid.*, 5.

<sup>138</sup> Gupta and Van der Grijp, "Strengths, Weaknesses, Opportunities and Threats of the EU," 265.

<sup>139</sup> Schreurs, "The Climate Change Divide: The European Union, the United States, and the Future of the Kyoto Protocol," 223.

responsibility” of the Community and Member States to take action to combat global environmental problems. On global issues, the Council declared that “the Community must use more effectively its position of moral, economic and political authority...”<sup>140</sup> The Council went on to urge states to accede to the Montreal Protocol on substances which deplete the ozone layer, and indicated its concern at greenhouse gas emission levels and at tropical deforestation rates.<sup>141</sup> The declaration highlighted the legal foundations of EC obligation to the environment, and the need for action to be of a preventative and precautionary nature, the precautionary principle being central to EC environmental policy. It illustrates the value placed by the EC (and now the EU) on environment and its emphasis on EU responsibility and obligation as an economic power to take action on the international stage, making clear that the EU considers it a moral duty to support international responses to global problems, as well as a duty to encourage similar behaviour in third states.

### *The Precautionary Principle*

The precautionary principle, enshrined first at Maastricht and again in subsequent treaties is one of the key principles of European environmental law.<sup>142</sup> The principle, the essence of which is that where there is risk of harm a lack of scientific evidence should not constrain preventative action, has been embraced by the EU in its internal environmental policy-making and is expressed in the European Community Treaty, which was amended in 1992 to expressly include the precautionary principle. It has its roots in German legal tradition<sup>143</sup> and emerged particularly in the 1980s, as new environmental challenges such as acidification arose for which the causes and effects were unclear and the solutions complex and subject to

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<sup>140</sup> European Parliament, "European Council June 21-25 1990 : Conclusions of the Presidency."

<sup>141</sup> *Ibid.*, 22.

<sup>142</sup> David Vogel, "Trade and the Environment in the Global Economy," in *Green Giants? Environmental Policies of the United States and the European Union*, ed. Norman J. Vig and Michael G. Faure (Cambridge, MA: MIT Press, 2004), 241.

<sup>143</sup> Lee Ann Patterson and Tim Josling, "Regulating Biotechnology: Comparing EU and Us Approaches," in *Environmental Policy in the European Union.*, ed. Andrew Jordan (London; Sterling VA: Earthscan, 2005).



much debate. As a result of this uncertainty, which delayed remedial action, policy makers argued for precaution to be taken into account in the formulation of policy.<sup>144</sup> It is now firmly established in legislation and in case law as a binding principle.<sup>145</sup> Article 174(2) of the Treaty on European Union (TEU) states that “Community policy on the environment shall aim at a high level of protection...It shall be based on the precautionary principle and on the principles that preventative action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.”<sup>146</sup> Initially the term was used with reference to the protection of public health, but began to be used in Europe in the late 1970s with regard to protection of the environment. The EU preference for precaution, in particular with reference to its stance in biotechnology negotiations, is tied to negative experiences and policy failures, such as the Chernobyl meltdown, the outbreak of bovine spongiform encephalopathy (BSE or ‘mad cow’) in the United Kingdom, as well as health scares in individual member states, such as the AIDS contamination of donated blood in France and dioxin contamination of animal feed in Belgium.<sup>147</sup>

### 3.3 New Zealand

Environmental sustainability is seen as increasingly important to New Zealand’s national identity. New Zealand’s economy is dominated by enterprises that rely on the environment, with the agriculture and tourism sectors being the biggest export earners, therefore sustainability is also very important economically. Agriculture and horticulture use over 50% of available arable land, while the tourism industry relies on the projection of New Zealand as

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<sup>144</sup> Weale, "Environmental Rules and Rule-Making in the E.U," 129.

<sup>145</sup> Christoforou, "The Precautionary Principle, Risk Assessment, and the Comparative Role of Science in the European Community and Us Legal Systems," 21-2; 40.

<sup>146</sup> Schreurs, "The Climate Change Divide: The European Union, the United States, and the Future of the Kyoto Protocol," 210-11.

<sup>147</sup> Patterson and Josling, "Regulating Biotechnology: Comparing EU and Us Approaches," 188.

„clean and green’ and images of a pristine natural environment to attract international visitors.<sup>148</sup>

### ***3.3.1 Development of New Zealand Environmental Policy***

As in most other wealthy industrialised countries, public concern for the environment increased enormously in the 1970s, and in 1972, New Zealand appointed its first Minister for the Environment. The Values Party was one of the first “green’ political parties in the world when it was formed in New Zealand in May 1972.<sup>149</sup>

Between 1984 and 1990, the structure of environmental administration in New Zealand underwent significant changes, establishing the current framework of environmental management.

Prior to this restructuring, central government was responsible for administration of the environment. A system of environmental impact assessment had been established in 1973, under the authority of the Commission for the Environment, established the previous year. However, in the late 1970s and early 1980s, central government increasingly promoted large scale, resource intensive projects to stimulate the faltering economy, arguing in favour of these “Think Big” projects by promoting them as „in the national interest.’<sup>150</sup>

Obviously, this led to a conflict of interest between the desire for economic growth through the exploitation of natural resources and protection of the environment. Many environmental groups, highlighting this conflict of interest between the government’s desire for economic growth through exploiting natural resources and its responsibility for environmental

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<sup>148</sup> Ministry for the Environment, *The Context in Which We Work* ([cited 26 June 2008]); available from <http://www.mfe.govt.nz/about/context.html>.

<sup>149</sup> Ton Bührs and Robert V. Bartlett, *Environmental Policy in New Zealand : The Politics of Clean and Green?*, ed. Martin Holland, *Oxford Readings in New Zealand Politics; No. 3* (Auckland, N.Z: Oxford University Press, 1993), 50.,

<sup>150</sup> Ton Bührs, "New Zealand," in *Capacity Building in National Environmental Policy a Comparative Study of 17 Countries*, ed. H. Weidner and M. Jänicke (Berlin Heidelberg etc: Springer, 2002), 331.

protection, demanded that authority be devolved to a regional level, giving communities more influence over their immediate environment. This coincided with the wishes of free-market reformers, who wanted to replace central government's authority to develop resources with market forces.<sup>151</sup>

The election of the fourth Labour Government in 1984 precipitated a period of radical reform across all facets of government, inspired by "New Right" ideology. It was a period of extreme upheaval for the economy as well as for New Zealand society. Christoff and Buhrs argue that the concentration of executive power in New Zealand, and in particular the role of the Treasury, allowed for neo-liberal ideology to gain a strong influence in the politics of the day and governments began to withdraw financial support that had previously been given to industry development projects, a move that indirectly led to the strengthening of environmental institutions as environmental issues were able to be given greater emphasis.<sup>152</sup>

Some of these reforms had unintended positive environmental effects; for example the government abolished subsidies to farmers for agriculture, which led to a drop in the intensive and unsustainable use of farmland.<sup>153</sup>

The Environment Act, passed in 1986, established the Ministry for the Environment to replace the former Commission for the Environment, and at the same time, the Parliamentary Commissioner for the Environment was established as an independent overseer of the entire framework of environmental administration. The following year, the Conservation Act established the Department of Conservation to administer and protect publicly owned nature reserves. Prior to this, the administrative structure had been unclear and had grown in an ad hoc manner, leading to conflicts of interests and confusion. After a clear framework had been

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<sup>151</sup> Jon Barnett and Jonathan Pauling, "The Environmental Effects of New Zealand's Free Market Reforms," *Environment, Development and Sustainability* 7, no. 2 (2005): 282-3.

<sup>152</sup> Ton Buhrs and Peter Christoff, "Greening the Antipodes"? Environmental Policy and Politics in Australia and New Zealand," *Australian Journal of Political Science* 41, no. 2 (2006): 235-36.

<sup>153</sup> Buhrs, "New Zealand," 332.

established, a comprehensive review of resource management policies and procedures took place, resulting in the passing of the Resource Management Act (RMA) in 1991.<sup>154</sup> This marked a shift in the philosophy of environmental policy in New Zealand. Previously, New Zealand policy on environment and development had been characterised by regulation and guidelines, and planning. The introduction of the RMA, with its focus on assessing effects and outcomes as well as costs and benefits, was a more flexible framework within which to operate. At the same time, there was a shift in focus towards a more cooperative approach to environmental policy making, including the use of voluntary agreements and growing interest in the use of economic instruments to meet environmental challenges.<sup>155</sup> It shifted decision-making on environment and resource management from the central government level to the regional council level and to the Environment Court, a move which both green campaigners and free-market reformers applauded. The act allows for greater public participation in the resource consent process but this does not necessarily correspond to greater influence.<sup>156</sup> Christoff and Bührs argue that these bodies are generally weighted towards development interests.<sup>157</sup>

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<sup>154</sup> Bührs and Bartlett, *Environmental Policy in New Zealand : The Politics of Clean and Green*, Geoffrey Palmer, *Environmental Politics : A Greenprint for New Zealand* (Dunedin, N.Z: John McIndoe, 1990).

<sup>155</sup> Bührs, "New Zealand," 333.

<sup>156</sup> Barnett and Pauling, "The Environmental Effects of New Zealand's Free Market Reforms," 282-84.

<sup>157</sup> Bührs and Christoff, "„Greening the Antipodes’? Environmental Policy and Politics in Australia and New Zealand," 236.

### **3.3.2 New Zealand Environmental Policy Framework**

Environmental policy in New Zealand has generally been formulated in an ad hoc manner, especially where it intersects with other policy areas, and has not always been proactive or anticipatory.<sup>158</sup> The available example of other developed countries meant New Zealand was in an excellent position to develop anticipatory environmental policies. Bartlett and Buhrs argue that New Zealand did not take advantage of this position and instead developed a poor record in environmental planning, not implementing key legislation until quite late by international standards. However, in the 1980s when New Zealand reformed its environmental management framework, establishing its key institutions in a radical overhaul of the previous system, it also established an international reputation as an innovator in environmental policy,<sup>159</sup> even though this overhaul was not necessarily motivated primarily by environmental concerns but by a broader ideological shift.<sup>160</sup>

The Ministry for the Environment (MfE) is the body primarily responsible for the development of environmental policy in New Zealand. Within the hierarchy of government ministries and agencies, it is not particularly powerful and „lacks teeth’ when it comes to crucial areas such as energy, transport and agriculture,<sup>161</sup> relying instead on cooperation with relevant Ministries to co-ordinate and integrate policy across government. This is a reflection of the fact that MfE has a relatively small role when it comes to the practical implementation of environmental policy. The result is that environmental policy has often been ad hoc and particularly susceptible to politicisation.<sup>162</sup>

The Ministry consults with stakeholders when needed, particularly with Maori groups and local iwi. Although there are channels for participation and input, environmental groups have

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<sup>158</sup> Ibid.: 237.

<sup>159</sup> Buhrs and Bartlett, *Environmental Policy in New Zealand : The Politics of Clean and Green?* , 2-37.

<sup>160</sup> Bührs, "New Zealand," 334.

<sup>161</sup> Buhrs and Bartlett, *Environmental Policy in New Zealand : The Politics of Clean and Green?* , 159-60.

<sup>162</sup> Buhrs and Christoff, "„Greening the Antipodes’? Environmental Policy and Politics in Australia and New Zealand," 237.

less influence on New Zealand policy than their counterparts in the EU, where environmental groups are experienced and influential lobbyists. One policy official commented that local environmental non-government organisations (NGOs) tend to take a somewhat adversarial approach and that communication primarily takes the form of Official Information Act requests.<sup>163</sup> However, NGOs have had major successes influencing government environmental policy; for example, they played an important role in the decision to remove lead additives from petrol in 1984.<sup>164</sup> Their influence is growing as lobbying becomes more common in New Zealand and better understood as a legitimate democratic activity, and groups gain more experience in the practice.<sup>165</sup>

The other major government bodies in New Zealand's environmental administration framework are the Department of Conservation (DOC) and the Parliamentary Commissioner for the Environment. DOC is charged with policy development and management of publicly owned land and nature reserves, which together make up twenty three per cent of New Zealand's land area, while the role of the Parliamentary Commissioner for the Environment, who reports directly to Parliament, is to oversee the framework of environmental management and recommend changes if necessary.<sup>166</sup>

Buhrs argued in 2002 that environment was not seen as central to the functioning of most New Zealand government agencies, and was still treated as an "add-on." He pointed out that within the hierarchy of Cabinet, the status of a portfolio is tied to the „rank' of the Minister responsible. The Minister responsible for the Environment portfolio usually ranks at the low

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<sup>163</sup> Phil Gurnsey, "Interview with Author," (Wellington: 31 July 2008).

<sup>164</sup> John Horrocks and Nick Wilson, "Ngo Power Versus Leaded Petrol in New Zealand," *The International Journal of Environmental, Cultural, Economic and Social Sustainability* 4, no. 5 (2008).

<sup>165</sup> Trevor Mallard, *Lobbying and the Government: Speech to Four Winds Communication Seminar, Te Papa, Wellington, 25 November 2003* (New Zealand Government, 2003 [cited February 25 2009]); available from <http://www.beehive.govt.nz/speech/lobbying+and+government>.

<sup>166</sup> Bührs, "New Zealand," 333-35.

end of this hierarchy.<sup>167</sup> A notable exception was that of Geoffrey Palmer, who kept his Environment portfolio when he became Prime Minister in 1989. However, sustainability and the goal of carbon neutrality became a focus of the fifth Labour government. In 2007, the Carbon Neutral Public Service Programme was announced, with the goal of six government agencies achieving carbon neutrality by 2012, with twenty-eight other agencies also involved.<sup>168</sup>

A Treasury policy adviser stated that policy development in New Zealand generally takes an inclusive approach with close links between academics, business and government, and that policy is mainly driven by domestic influences and values, even international policy.<sup>169</sup>

However, in today's globalised world, New Zealand's environmental policy is also influenced by actors from outside the country. A Ministry for the Environment policy official stated that the Ministry considers Australia almost as a part of New Zealand, and thus policy developments in New Zealand are often closely linked to what might be happening in Australia. However, when it comes to best practice, particularly in specific areas like chemicals management, the Ministry looks to the EU and what can be learnt from them, as well as to the OECD. The official added that there is also a focus on building relationships with Asian partners as trading links are further developed in this region.<sup>170</sup>

### **3.3.3 International Role**

New Zealand has played key roles in of a range of major international environmental regimes, notably in its strong and outspoken opposition to whaling, its stance on disarmament and nuclear weapons, and on the protection of the Antarctic. Buhrs and Christoff argue that

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<sup>167</sup> Ibid., 335-6.

<sup>168</sup> Ministry for the Environment, *The Carbon Neutral Public Service Programme* (Ministry for the Environment, [cited February 20 2009]); available from <http://www.mfe.govt.nz/issues/sustainability/public-service-carbon-neutrality.html>.

<sup>169</sup> Treasury Policy Adviser, "Interview with Author," (Wellington: 30 July 2008).

<sup>170</sup> Ministry for Environment Policy Adviser, "Interview with Author," (Christchurch: 14 August 2008).

this reflects a concern for protection of the immediate neighbourhood rather, than a broader „ecocentric’ approach to global issues.<sup>171</sup>

Prime Minister David Lange of the fourth Labour Government barred nuclear powered ships and ships carrying nuclear weapons from entering New Zealand’s ports or territorial waters in 1984 and in 1985 refused port entry to a US ship on this basis, an act which led to US suspension of its ANZUS obligations and serious and ongoing damage to New Zealand-US defence relations.<sup>172</sup> Legislation declaring New Zealand as a nuclear-free zone was passed in 1987 following public outrage over the *Rainbow Warrior* bombing and ongoing French nuclear weapons testing in the South Pacific.<sup>173</sup> Some argue that it gives extra strength and credibility to New Zealand’s international role, in particular with relation to environmental initiatives,<sup>174</sup> and it is now a firmly entrenched policy and arguably a cornerstone of New Zealand identity.

New Zealand strongly opposes whaling other than that carried out for subsistence by indigenous groups, provided International Whaling Commission (IWC) criteria is met. It advocates the creation of whale sanctuaries and supports the moratorium on commercial whaling that has been in place since 1986.<sup>175</sup> New Zealand’s opposition to whaling is based on a moral and ethical objection to the killing of whales, and a desire to prove definitively that whale populations are at robust levels before considering lifting the moratorium.

Geoffrey Palmer identifies a number of factors that made New Zealand a trusted partner and authority in negotiations towards the Montreal Protocol, but which may also apply to

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<sup>171</sup> Buhrs and Christoff, „Greening the Antipodes?’ Environmental Policy and Politics in Australia and New Zealand," 228.

<sup>172</sup> Associated Press, "Nuclear Threat Continues to Grow, New Zealand Warns on Anniversary of Anti-Nuclear Law," *International Herald Tribune*, June 7 2007.

<sup>173</sup> *New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987*, 86.

<sup>174</sup> Palmer, *Environmental Politics : A Greenprint for New Zealand* 19.

<sup>175</sup> Ministry of Foreign Affairs and Trade, *New Zealand’s Policy on Protecting Whales* (Ministry of Foreign Affairs and Trade, 2008 [cited February 21 2009]).



international environmental negotiations in general. He notes New Zealand's small size, making it a non-threatening partner; its dependence on the agricultural/fisheries sector although industrialized, as well as its bicultural heritage and close relations with the Pacific means it is able to relate well to some developing nations; but he cites as most important New Zealand's credibility on environmental issues,<sup>176</sup> particularly its staunch anti-nuclear and anti-whaling stance.

### ***3.3.4 Perceptions of Environment in New Zealand***

The land played an important role in Pakeha New Zealanders' identity construction in colonial times, when, in the absence of family networks and historical connections to places, connection to the physical environment was defined through land ownership. Maori New Zealanders have a particularly important physical and spiritual relationship with the land. A 1993 study found that New Zealanders' self image is centred on landscape and environment, as opposed to US self image, for example, which focuses on ideological values and politics.<sup>177</sup> In the first half of the twentieth century, national parks were established through government and conservationist efforts. In the 1970s and 80s, public environmental concern was focused on the protection of forests and against logging. From the 1980s onwards, the scope of public opinion broadened and global issues began to become increasingly prominent, such as whaling, nuclear power, driftnet fishing, rainforest protection and the ozone layer.<sup>178</sup> Buhrs and Bartlett argue that New Zealand's principle strength has been in conservation and ecological issues, not in the conservation of resources.<sup>179</sup>

During the 1970s and 1980s, public opposition to nuclear power and weapons grew as a result of French testing of nuclear weapons in the Pacific. The bombing of the *Rainbow*

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<sup>176</sup> Palmer, *Environmental Politics : A Greenprint for New Zealand* 51.

<sup>177</sup> Claudia Bell, *Inventing New Zealand: Everyday Myths of Pakeha Identity* (Auckland: Penguin 1996), 5-11.

<sup>178</sup> Buhrs and Bartlett, *Environmental Policy in New Zealand : The Politics of Clean and Green?* , 42.

<sup>179</sup> *Ibid.*, 168.

*Warrior* in 1985 by French secret service agents only served to galvanise public opinion, leading to the 1987 Labour Government's legislation declaring New Zealand nuclear free. Public support for the environmental organisation *Greenpeace* increased dramatically over this time, with Greenpeace New Zealand enjoying the highest per-capita membership rate in the world in the late 1980s, as did support for other environmental issues.<sup>180</sup>

*'Clean and green'*

Bartlett and Buhrs argue that New Zealand's mantra of „clean and green,' promoted by media and politicians, and of crucial importance to the tourism industry, has resulted in New Zealand lagging behind the rest of the world in terms of environmental management by inadvertently supporting a culture of denial. They point out that “environmental policy does not begin with environmental problems.”<sup>181</sup> Instead, it is inherently political, and in New Zealand's case, the international image of a pristine natural environment is critical to the powerhouses of the New Zealand economy – the tourism and export industries. The international „clean and green' image is enhanced by New Zealand's nuclear free stance, which has given New Zealand the reputation of an environmental hero.<sup>182</sup>

The Ministry for the Environment in 2001 published a study which attempted to estimate the value of the New Zealand's „clean and green' image to the economy, finding that although ultimately the link between image and export value is indirect, should New Zealand's clean, green image be tarnished the loss in revenue to dairy exporters could be as much as \$569 million, while the estimated loss to the tourism sector could be as much as \$938 million.<sup>183</sup>

The „clean and green' syndrome meant that people (including policy makers) believed there

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<sup>180</sup> BBC News, *Lange's Impact on New Zealand and World* (BBC, 2005 [cited February 21 2009]); available from <http://news.bbc.co.uk/1/hi/world/asia-pacific/4150550.stm>, Buhrs, "New Zealand," 336-7.

<sup>181</sup> Buhrs and Bartlett, *Environmental Policy in New Zealand : The Politics of Clean and Green?* , 13.

<sup>182</sup> Bell, *Inventing New Zealand: Everyday Myths of Pakeha Identity*, 53.

<sup>183</sup> Barnett and Pauling, "The Environmental Effects of New Zealand's Free Market Reforms.", Ministry for the Environment, "Valuing New Zealand's Clean Green Image," (Ministry for the Environment, 2001), 4-6.

were few if any environmental problems for New Zealand to be concerned with, particularly in comparison to challenges faced by other developed countries such as overpopulation or pollution.

Presently, although many New Zealanders still hold fast to the „clean and green’ image, there is growing concern over international issues such as climate change, but also over domestic issues. For example, there is increasing unease at the rate of agricultural conversions to dairy farming. Growth in public complaints about water quality has matched growth in the dairy industry in the Canterbury region,<sup>184</sup> where plans for a large-scale irrigation project, which would impact upon two major rivers to support dairy farms have met strong opposition based on environmental and sustainability concerns.

The Public Perceptions of New Zealand Environment study has surveyed public opinion since 2000, most recently in 2004. The 2004 study found that on average, New Zealander’s consider the state of the environment to be good or adequate, New Zealand to be clean and green, and that they themselves have a good knowledge of the environment and associated issues. When asked about the state of specific areas such as air quality, marine issues, rivers and lakes, public perception is that the quality is good or very good, even though for some the state is actually very poor. In some areas the perceptions did not match the facts. The risk created by this mismatch in perceptions and facts is that funding may be diverted to less serious problems to reflect public opinion.<sup>185</sup>

Conservation issues feature prominently on the public agenda in New Zealand, as opposed to issues of resource management – this is due to perceptions of New Zealand as „Godzone’ and the strong link between New Zealand national identity and the image of a pristine and pure

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<sup>184</sup> A. Meredith, "Dairying and the Environment: Issues in Canterbury," in *Proceedings of the Dairying and the Environment Committee Research Meeting*, ed. M. Boardman (Hamilton: Ruakura Research, 1999). Cited in Barnett and Pauling, "The Environmental Effects of New Zealand's Free Market Reforms," 282.

<sup>185</sup> Kenneth F.D. Hughey, Geoffery N. Kerr, and Ross Cullen, "Public Perceptions of New Zealand's Environment," (Christchurch: EOS Ecology, 2004), 78-82.

natural environment.<sup>186</sup> Dew argues that environmentalists in New Zealand have traditionally shown a greater affinity and attachment to the land than to people,<sup>187</sup> while Buhrs and Christoff observe that environmental activism and awareness tends to focus on conservation issues, and „wilderness preservation’.<sup>188</sup> For example, when claims of PCP (Pentachlorophenol) contamination of land and workers at timber treatment sites around New Zealand surfaced internationally in the early 1990s, the Environment Minister at the time, Simon Upton, declared that these claims jeopardized NZ Tourism Board’s London marketing campaign.<sup>189</sup> Buhrs and Bartlett state that this strong link between identity and land or physical environment makes the New Zealand public receptive to conservation issues, but point out that while conservation issues are high on the public agenda, for government, resource issues are usually of greater priority.<sup>190</sup>

### 3.4 Summary

The EU and New Zealand share well established environmental management frameworks that have strengthened over a period of decades. However, while the EU has gradually centralised its system of environmental management, in the case of resource management, New Zealand has decentralised, devolving authority to regional level.

Internationally, the EU has made a significant impact on global environmental developments, despite its sometimes complex representation. The EU approach to environmental policy is informed by the precautionary principle, impacting its domestic and international actions.

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<sup>186</sup> Buhrs and Bartlett, *Environmental Policy in New Zealand : The Politics of Clean and Green?* , 51-55, Kevin Dew, "National Identity and Controversy: New Zealand's Clean Green Image and Pentachlorophenol," *Health and Place* 5 (1999).

<sup>187</sup> Dew, "National Identity and Controversy: New Zealand's Clean Green Image and Pentachlorophenol," 53.

<sup>188</sup> Buhrs and Christoff, "„Greening the Antipodes’? Environmental Policy and Politics in Australia and New Zealand," 227.

<sup>189</sup> Dew, "National Identity and Controversy: New Zealand's Clean Green Image and Pentachlorophenol," 54.

<sup>190</sup> Buhrs and Bartlett, *Environmental Policy in New Zealand : The Politics of Clean and Green?* , 51,55.

New Zealand has suffered from complacency in its domestic environmental policymaking in the past and the public has been slower to support and adopt environmentally friendly practices, in part arguably a result of the „clean and green’ syndrome and the fact that the public were not faced with immediate environmental problems as Europe has been. New Zealand was not seen as being particularly vulnerable, and therefore action was not taken. New Zealand is now seen as vulnerable to climate change and negotiations and publicity have generated widespread public concern and environmental policy making has expanded to incorporate sustainability and environmental objectives across all government operations.

### **3.4.1 Normative Power**

At the domestic level, it appears that constructivist concepts such as public perception, identity and ideas relating to the environment can play an important part in policymaking, as has been argued by Christoff and Buhrs in relation to the strong focus in New Zealand environmental activism on conservation issues,<sup>191</sup> and in the case of the EU, the strong interpretation of the precautionary principle linked to previous public health scares.

After considering the respective environmental identities and policy making structures of each party, it is clear that while constructivism can provide an interesting account of domestic identity formation and perceptions which are of relevance to domestic policy-making, it does not account for the economic and material factors that are also vital in environmental decision making.

In terms of the EU’s international role on environment, it has been credited by some scholars as exercising normative power in the context of the climate change regime, in relation to environmental clauses contained its bilateral agreements, and the environmental *acquis*

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<sup>191</sup> Buhrs and Christoff, „Greening the Antipodes’? Environmental Policy and Politics in Australia and New Zealand.”

exported to candidate countries. However, this influence is undermined by the negative environmental impacts in other areas, such as in relation to the CAP and CFP.

### ***3.4.2 Policy Studies***

For these reasons, constructivism and normative power cannot provide a full and credible account of each party's development of domestic policy and action at the international level; instead, small state theory can explain New Zealand's international interaction on environment, and a policy studies framework can be applied successfully to domestic policymaking in both New Zealand and the EU.

Small state theory provides a fitting account of New Zealand's role in international environmental diplomacy. It has taken a narrow focus in international environmental foreign policy, acting mostly through institutions, and has demonstrated a moral focus on environmental issues, particularly in its anti-nuclear and anti-whaling stances. However, the case of New Zealand's decision to enact nuclear free legislation and the resulting serious consequences for the New Zealand-US relationship is inconsistent with Henderson's behavioural framework, which assumes that small states will avoid behaviour that risks alienating more powerful states.<sup>192</sup>

In the case of the EU, its international leadership on climate change for example, could be explained as part political opportunism and part promotion of a „race to the top' in environmental regulation.

Policy studies can provide a complete account of domestic policy making processes by incorporating the role of material and economic factors, as well as the influence of perceptions and ideas.

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<sup>192</sup> Henderson, "The Foreign Policy of a Small State," 3.

# 4. Overview of European Union and New Zealand Relations on Environment

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## 4.1 Introduction

The relationship between the European Union and New Zealand has changed considerably since the trade disputes of the 1970s resulting from Britain's 1973 entry into the EEC. While trade remains the focus of the relationship for New Zealand, as the EU as a bloc is New Zealand's second most important trading partner after Australia,<sup>193</sup> the relationship has expanded to encompass a wide range of topics and initiatives, including environment.

As international governance of the environment has expanded and the network of multilateral environmental agreements (MEAs) has grown and become inextricably linked to trade, the EU-New Zealand relationship has broadened to include dialogue on environmental issues. While the focus of both the EU's and New Zealand's external environmental policies takes place in multilateral settings, the close links between trade and environment mean that inevitably, interaction on environmental issues in the context of bilateral relationships is also necessary.

From a constructivist perspective, the expansion of bilateral relations between the EU and New Zealand on environment could reflect international consensus on the urgency of environmental problems faced by the international community, and in a normative power context, EU desire to export its environmental values through foreign policy.

However, in a policy studies context, and particularly taking into consideration small state theory to account for New Zealand's foreign policy behaviour, the increase of dialogue on environment can be attributed to a number of interrelated practical, material factors. Small

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<sup>193</sup> European Commission, *Bilateral Trade Relations: New Zealand* ([cited March 4 2009]); available from [http://ec.europa.eu/trade/issues/bilateral/countries/newzealand/index\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/newzealand/index_en.htm).

state theory, and its expectation that small states will focus on trade, explains the interest New Zealand has in widening the relationship with the EU; further, the EU's diffusion of values can instead be characterised as a diffusion of standards motivated by economic interests.

This chapter will outline the development of relations between the EU and New Zealand on environmental issues and will give an overview of the status of relations and relevant issues in key policy areas of dialogue and cooperation related to environment: research, science and technology; chemical and hazardous waste management; biodiversity; and trade and environment.

## **4.2 Development and Structure of the Relationship on Environment**

### ***4.2.1 Development of Relations***

Throughout the 1970s and into the 1980s, New Zealand's relationship with the EU was characterised by protracted negotiations over trade and market access. As the internal and external competencies of the EU broadened and the Commission began to represent the Union more and more frequently at the international level on issues other than trade, this meant that third parties such as New Zealand began to deal directly with EU-level officials in Brussels more often. Over the same period, international environmental law making expanded quickly as a range of serious environmental challenges rose in prominence due to their complexity and global effects.

These changes are reflected in the relationship between New Zealand and the EU on environment. As environmental issues have transitioned from a relatively fringe area of politics to a high priority of governments and international organisations, environment has become an important part of the relationship between the EU and New Zealand.



The first official step in establishing relations on environment was taken in 1991, when the parties signed a Science and Technology Cooperation Arrangement, with the goal of enhancing dialogue and cooperation in science and technology in a range of areas, one of them environment. It provided for cooperation in the form of information exchange, expert exchanges and visits to research centres.<sup>194</sup> This informal Arrangement was replaced by a fully-fledged, formal Agreement in 2008, which provides for the establishment of a Joint Committee to oversee the relationship and meet every two years. The first meeting was held in early April 2009 in Brussels.<sup>195</sup> Under the new Agreement, the EU and New Zealand agreed to cooperate in fields of mutual interest within a research, science and technology context, including environment.<sup>196</sup>

The legal basis for the formal EU-New Zealand relationship is the Joint Declaration on Relations and Cooperation, the first version of which was signed in 1999 but which was updated in September 2007. The Joint Declaration envisages regular political dialogue between officials from the EU and New Zealand, in addition to dialogue and cooperation in specific policy areas, setting out the major objectives of the relationship until 2012.<sup>197</sup> It includes specific provisions for cooperation on environment under the heading “Environment and Climate Change”, and Article 38 specifies a number of potential areas of mutual interest in which New Zealand and the EU could collaborate in future. They are sustainable and renewable energy; tackling climate change; chemical and waste management; biodiversity and nature conservation; and water and marine issues.

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<sup>194</sup> *Arrangement between the Commission of the European Communities and the Government of New Zealand for Cooperation in Science and Technology* (1991 [cited March 3 2009]); available from [http://www.delaus.ec.europa.eu/newzealand/EU\\_NZ\\_relations/science\\_tech\\_agreement.htm](http://www.delaus.ec.europa.eu/newzealand/EU_NZ_relations/science_tech_agreement.htm).

<sup>195</sup> European Commission Delegation to New Zealand, *EU-NZ Joint Declaration Progress* (2009 [cited May 18 2009]); available from <http://www.delaus.ec.europa.eu/newzealand/JointDeclaration2007/progress.htm>.

<sup>196</sup> *Agreement on Scientific & Technological Cooperation between the European Community and the Government of New Zealand* (2008 [cited April 1 2009]); available from [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0170\(02\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0170(02):EN:HTML).

<sup>197</sup> European Commission Delegation to Australia and New Zealand, *An Overview of European Union / New Zealand Relations* (2008 [cited March 3 2009]); available from [http://www.delaus.ec.europa.eu/newzealand/EU\\_NZ\\_relations/EU\\_New\\_Zealand\\_Overview.htm](http://www.delaus.ec.europa.eu/newzealand/EU_NZ_relations/EU_New_Zealand_Overview.htm).

While the expansion of EU-New Zealand dialogue on environment reflects wider development in the international community, this does not mean that there are not other factors at play. There are commercial benefits to be gained from New Zealand's engagement in environmental dialogue with the EU and through linking trade and environment.<sup>198</sup> For example, by keeping abreast of developments in the EU, arguably the most influential actor in international environmental negotiations, New Zealand can anticipate potential issues for its exporters that may arise from trade barriers based on environmental standards. This intersection of trading and environmental interests is a crucial factor when considering environmental politics and policy.

#### **4.2.2 Formal Structure**

EU political relations with third states vary in levels of intensity and frequency of meetings. According to Monar, the EU interacts internationally at three main levels of interaction, the highest of which is that of meetings involving the head of state of the EU Presidency and the president of the Commission; the next level is ministerial and would include the foreign minister of the member state holding the Presidency or the Troika; and finally, the level of political directors, which would involve the political director of the presidency.<sup>199</sup>

New Zealand's general political interaction with the EU occurs predominantly at ministerial level,<sup>200</sup> with biannual meetings taking place between New Zealand's Minister of Foreign Affairs, the European Commissioner for External Relations and the Foreign Minister the EU Presidency. These Troika consultations take place in the capital of the EU Member State holding the Presidency, dealing mostly with international issues falling under the EU's

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<sup>198</sup> Government Policy Adviser, "Interview with Author," (Brussels: 27 November 2008).

<sup>199</sup> Jorg Monar, "Political Dialogue with Third Countries and Regional Political Groupings: The Fifteen as an Attractive Interlocutor," in *Foreign Policy of the European Union: From EPC to CFSP and Beyond*, ed. Elfriede Regelsberger, Philippe de Schoutheete, and Wolfgang Wessels (Boulder; London: Lynne Rienner, 1997), 264-5.

<sup>200</sup> European Commission Delegation to Australia and New Zealand, *An Overview of European Union / New Zealand Relations*.

Common Foreign and Security Policy (CFSP). This is a particularly high frequency of political interaction, especially given New Zealand's small size and volume of trade with the EU. In comparison, meetings between the EU Troika and Australia, and between the EU Troika and Canada, occur annually.<sup>201</sup> However, Canada and Australia both interact with the EU via various other official bilateral technical committees and formal frameworks. In particular, as set out in the EU Australia Partnership Framework, the EU and Australia engage in a separate High Level Dialogue on the Environment.<sup>202</sup> Under former Prime Minister John Howard, relations on environment were challenging, due to Australia's stance on climate change and its refusal to ratify the Kyoto Protocol. The Australian Joint Partnership with the EU, similar to New Zealand's Joint Declaration, is arguably more pragmatic than New Zealand's largely aspirational tone, though it contains less specific reference to environmental issues than the New Zealand document.<sup>203</sup>

In addition to the biannual Troika meetings, annual EC-New Zealand Senior Officials Meetings (SOM) alternate between Brussels and Wellington, with the most recent SOM held on 14 May 2008 in Brussels.<sup>204</sup>

There are also established dialogues in a range of sectors dealing with specific policy issues. These are the EC-New Zealand Agricultural Trade Talks; the EC-New Zealand Fisheries Dialogues, which have been held on an ad hoc basis since 2004; the EC-New Zealand Joint Science & Technology Cooperation Meetings, which has to date been held only once in

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<sup>201</sup> European Commission, *Political and Economic Relationship with Australia* (European Commission, 2008 [cited March 22 2009]); available from

[http://ec.europa.eu/external\\_relations/australia/political\\_economic\\_en.htm](http://ec.europa.eu/external_relations/australia/political_economic_en.htm), Slovenian Presidency of the EU 2008, *EU Troika - Canada* (2008 [cited March 22 2009]); available from [http://www.eu2008.si/en/Meetings\\_Calendar/Dates/March/0305\\_EU\\_TROJKA\\_KANADA.html](http://www.eu2008.si/en/Meetings_Calendar/Dates/March/0305_EU_TROJKA_KANADA.html).

<sup>202</sup> *European Union - Australia Partnership Framework* (2008 [cited April 20 2009]); available from [http://ec.europa.eu/external\\_relations/australia/docs/australia\\_pfw\\_en.pdf](http://ec.europa.eu/external_relations/australia/docs/australia_pfw_en.pdf).

<sup>203</sup> European Commission Official, "Interview with Author," (Brussels: 27 November 2008).

<sup>204</sup> European Commission Delegation to Australia and New Zealand, *An Overview of European Union / New Zealand Relations*.

2006; and the EU-New Zealand Veterinary Agreement Joint Management Committee.<sup>205</sup> Delivering the 2008 Europa Lecture, former Foreign Affairs Minister Winston Peters also highlighted the ad hoc policy cooperation between the EU and New Zealand on disarmament, human rights and development that takes place. In this lecture, he cited cooperation on climate change as a “softer” element of EU-New Zealand relations, and described Europe as the “source of many of (New Zealand’s) values and institutions.”<sup>206</sup>

Inter-parliamentary visits take place periodically, in general every 12 to 18 months, with alternating visits between representatives of the European Parliament and the New Zealand Parliament.<sup>207</sup> The most recent visit took place in July 2008, when eleven Members of the European Parliament (MEPs) toured New Zealand.

Apart from these official political and technical EC and EU level dialogues and connections, New Zealand also engages on an ad hoc basis with representatives of individual Member States, particularly if seeking to influence EU domestic policy issues.<sup>208</sup>

### **4.2.3 Informal Aspects**

A recurring theme in interviews conducted with policy makers throughout the course of this research was that of the informal, ad hoc nature of much of their international interaction. A former Ministry for Environment policy adviser and negotiator explained that at international climate change negotiations, much work was achieved through personal links prior to formal talks. He stated that he developed a good rapport with the Dutch and Norwegian delegates quite well simply because they were seated together according to United Nations alphabetical

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<sup>205</sup> Ibid.

<sup>206</sup> Winston Peters, "New Zealand and Europe: A Partnership for the 21st Century," in *Europa Lecture* (University of Auckland Business School, Auckland: 2008).

<sup>207</sup> European Commission, *Political and Economic Relations with New Zealand* (European Commission, 2008 [cited March 3 2009]); available from

[http://ec.europa.eu/external\\_relations/new\\_zealand/docs/political\\_economic\\_en.pdf](http://ec.europa.eu/external_relations/new_zealand/docs/political_economic_en.pdf).

<sup>208</sup> Government Policy Advisers, "Interview with Author," (Wellington: 31 July 2008).

seating order. He stressed that much sharing of ideas and communication occurs informally in this context.<sup>209</sup> This is of course by no means limited to New Zealand's international interaction with the EU, but reflects both the limited resources available to New Zealand and thus the need to make every interaction productive, and also the complex nature of international interpersonal linkages and networks. An ERMA policy adviser also referred to personal contacts and informal dialogue over a cup of coffee when attending international meetings as an important part of his international interaction with EU representatives, particularly when attending OECD meetings.<sup>210</sup>

This is consistent with Henderson's foreign policy characteristics of small state theory, in that New Zealand as a small state has limited resources available and must focus these resources internationally in order to maximise its presence and maintain relationships. Therefore the informal interaction that occurs at international meetings outside the formal program is an important part of New Zealand's political and technical dialogue with other actors, and of course the EU.

These personal links are also relevant when considering theories of policy transfer, which as explained in Chapter Two, places great importance on the role of the individual expert and the informal policy networks of which they may be a part. A Ministry for Environment official stated that the EU is a major influence for environmental regulation in the policy search process, due to their role as a global standard setter in environmental policy, characterising New Zealand's relationship with the EU on environmental policy as a 'regulatory, best practice link.' More specifically, the official stated that New Zealand tends

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<sup>209</sup> Former Ministry for the Environment Policy Adviser, "Interview with Author," (Wellington: 30 July 2008).

<sup>210</sup> ERMA Policy Adviser, "Interview with Author," (Wellington: 31 July 2008).

to look to the UK because of the similarity in systems of environmental administration and governance.<sup>211</sup>

### **4.3 European Union-New Zealand Relations on Environment: Case Studies**

The following section comprises of four mini case studies of EU-New Zealand relations in specific areas of environmental policy. The first two; research, science and technology and chemical and hazardous waste management, focus on the bilateral interaction between the EU and New Zealand. The final two; biodiversity and trade, address issues that are best considered in a wider multilateral context. Each case ends with a summary which evaluates the theoretical implications of the evidence presented.

#### ***4.3.1 Research, Science and Technology***

The formal basis for the EU and New Zealand's relations on research, science and technology is the EU-New Zealand Science and Technology Cooperation Agreement, which was signed in 2008, upgrading the informal 1991 Arrangement to a fully-fledged formal Agreement. The original Arrangement provided for cooperation in areas of mutual interest including environment. In practice, a great deal of cooperation and funding in this area focuses on food technology and agriculture.<sup>212</sup> Cooperation has generally been focused on links between institutions and individual researchers, so personal links rather than political ties are particularly important. The new Agreement makes more European funding programmes

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<sup>211</sup> Ministry for Environment Policy Adviser, "Interview with Author."

<sup>212</sup> Carole Glynn, "Response to Interview Questions Posed Via E-Mail," (Christchurch: 8 July 2008).

accessible to New Zealand researchers, such as the International Research Staff Exchange Scheme which is administered under Framework Programme 7(FP7).<sup>213</sup>

Nearly 50% of global non-military research is undertaken in Europe at a cost of NZ\$800 billion per year to member states and associates. A portion of this budget is spent on addressing issues at EU level rather than member state level where this is seen to be a beneficial approach. This takes place under the Framework Programme for Research and Development and is administered in five yearly cycles. The current programme, FP7 covers the period 2007-2013 and has a budget of almost NZ\$100 billion, access to which is available to projects and researchers outside of the EU.<sup>214</sup> Both the EU and New Zealand have expressed a commitment to enhancing economic growth through targeted research and development, as outlined in the EU's Lisbon Strategy and New Zealand's Economic Transformation Agenda. There is of course a substantial difference in the economic resources available to the EU and those available to New Zealand. In addition, compared to other OECD countries, levels of industry investment in research and development are very low.<sup>215</sup> Thus access to European research funding for New Zealand researchers is very valuable. In order to support New Zealand researchers in accessing EU funding, the organisation Facilitate Research cooperation between Europe and New Zealand (FRENZ) was established with funding from New Zealand's Ministry of Research, Science and Technology (MoRST) and the European Commission.<sup>216</sup>

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<sup>213</sup> Science and Technology Ministry of Research, *Science and Technology Cooperation Agreement Signed with the European Community* (Ministry of Research, Science and Technology, July 16 2008 2008 [cited February 19 2009]); available from <http://www.morst.govt.nz/international/global/eu/stc-agreement/>.

<sup>214</sup> Ministry for Research Science and Technology, *Global Relationships: European Union* ([cited June 24 2008]); available from <http://www.morst.govt.nz/international/global/eu/>.

<sup>215</sup> European Commission, *The European Community Signs a Science & Technical Cooperation Agreement with New Zealand* (Europa Rapid Press Release, 2008 [cited 26 March 2009]); available from <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1159&format=HTML&aged=0&language=EN>.

<sup>216</sup> Ministry for Research Science and Technology, *Global Relationships: European Union*.

FRENZ Director Carole Glynn noted that very few applications by New Zealand researchers for Framework Programme (FP) funding fall in the „Environment’ category, and even then the research generally tends to focus on agriculture and food science. Under FP6 (2002-2006) there were two successful applications under the „Sustainable Development, Global Change and Ecosystems’ heading, and one unsuccessful proposal under the „Environment’ heading in FP7. However, she also stated that the proportion of Marie Curie Fellowship applications with an environmental focus has noticeably increased in recent years, as has the amount of EU funding allocated to projects with an environmental focus.<sup>217</sup>

In 2006 New Zealand hosted the inaugural European Commission-New Zealand Joint Science and Technology Cooperation meeting. Representatives from the Ministry of Research, Science and Technology (MoRST) and from the European Commission’s Directorate-General (DG) of Research and Delegation to New Zealand met in Wellington on November 23.<sup>218</sup> A participant at that meeting, Dr Claus Bruening, Climate Change and Environmental Risks Research Programme Officer at DG Research, stated that New Zealand has a good reputation internationally in environmental research, specifically in stratospheric and atmospheric research and agricultural methane emissions. However, the focus of research priorities and areas of strength are different due to the different needs and priorities of the respective parties. The EU focus in climate change research for example is increasingly on how science interacts with public policy on social and economic issues, while New Zealand’s focus is on methane emission reduction and from a social perspective, security issues. New Zealand has a strong reputation in Antarctic Research and stratospheric and atmospheric research. Further, at the time of interviewing in November 2008, Dr Bruening stated that the

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<sup>217</sup> Carole Glynn, "Response to Interview Questions Posed Via E-Mail."

<sup>218</sup> European Commission Delegation to New Zealand, *Joint Statement by the European Commission and New Zealand Following the Inaugural Joint Science and Technology Cooperation Meeting* ([cited March 3 2009]); available from [http://www.delous.ec.europa.eu/newzealand/EU\\_NZ\\_relations/Joint\\_Statement\\_JSTCC\\_2006.htm](http://www.delous.ec.europa.eu/newzealand/EU_NZ_relations/Joint_Statement_JSTCC_2006.htm).



emerging financial crisis had already affected priorities and budget cuts had been imposed, which may affect possibilities for New Zealand researchers in the future.<sup>219</sup>

This overview of the EU-New Zealand relationship in research, science and technology demonstrates that for New Zealand the relationship has clear practical, financial benefits. In this brief case study there is no evidence that norms and values play a role in the relationship. In particular, there is no evidence that the EU exercises normative power in this context. Instead, small state theory can better account for New Zealand's pragmatic involvement with the EU in terms of accessing funding and resources for its researchers. Also, much of the practical relationship relies heavily on exploiting existing links and networks between researchers and institutions, a fact that speaks more to the small state theory theme of maximising limited resources than to normative power.

#### ***4.3.2 Chemical and Hazardous Waste Management***

New Zealand works closely with the EU internationally on the management of chemicals and hazardous waste. Most interaction on this subject occurs within the context of the OECD, where both New Zealand and the EC are represented.

Particularly in the area of chemicals management, New Zealand looks to the EU for examples of best practice. The EU has the financial resources to carry out extensive risk analysis for new and existing substances; something that New Zealand in most instances simply does not have the budget to do.<sup>220</sup> Therefore it makes practical sense in many cases for New Zealand to make use of EU data and research results where they are available, and even to import EU standards and regulations.

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<sup>219</sup> Dr Claus Bruening, "Interview with Author," (Brussels: 28 November 2008).

<sup>220</sup> Ministry for Environment Policy Adviser, "Interview with Author."

In terms of how important the relationship with the EU is in this context, a high-ranking policy adviser at New Zealand's Environmental Risk Management Authority (ERMA), who enjoys a high profile internationally as an expert in chemicals management both within the UN and the OECD on chemicals and biotechnology regulation, stated that New Zealand's relations with the EU, Australia, Canada and the US are the most significant for New Zealand, in terms of formal dialogues, with the formal relationships being coordinated through MFAT. At the level of operational policy, he said, New Zealand, Canada, Australia and the EU are very similar in their approach and structure.<sup>221</sup>

In 2006, it became necessary to establish a group standard for cosmetics, setting out which chemicals cosmetics made or imported into New Zealand may contain and at what concentrations. ERMA<sup>222</sup> looked to the EU and decided to incorporate many aspects of the EU Cosmetics Directive (Council Directive 76/768/EEC), which ERMA described as the cosmetic industry's „benchmark standard,' even going so far as to state that they “like to keep in line with the EU.”<sup>223</sup> Additionally, the New Zealand standard proposed a ban on a substance not covered by the EU Directive, methyl methacrylate.<sup>224</sup> The group standard was further updated in 2008 to keep up with amendments to the EU directive.

There are a number of reasons for the adoption of the EU standard. The ERMA participant stated that it was for reasons of simplicity and efficiency. As there are a multitude of chemicals in commercial use to be regulated, it was easier (and cheaper) to adopt an existing regulation, for which extensive research had already been carried out, rather than starting

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<sup>221</sup> ERMA Policy Adviser, "Interview with Author."

<sup>222</sup> Under the 1991 Hazardous Substances and New Organisms (HSNO) Act, ERMA is the crown entity responsible for implementing the Act, in conjunction with other government departments and crown entities such as the Ministry for Environment, Ministry for Agriculture and Forestry and the Ministry of Health.

<sup>223</sup> ERMA New Zealand, *ERMA Boosts Cosmetic Safety* (Scoop Independent News, 2008 [cited 12 August 2008]); available from [www.scoop.co.nz/stories/print.html?path=PO0807/S00299.htm](http://www.scoop.co.nz/stories/print.html?path=PO0807/S00299.htm).

<sup>224</sup> ERMA New Zealand, *ERMA New Zealand Proposes New Standards for Cosmetics* (2006 [cited March 10 2009]); available from <http://www.ermanz.govt.nz/news-events/archives/media-releases/2006/mr-20060329.html>.

from scratch. Further, the participant explained that most international linkage between the EU and New Zealand in this policy area is technical in nature, such as arranging access to data. Given New Zealand's limited resources, access to international databases and research is invaluable. The EU oversees one of the most extensive, comprehensive chemicals databases in the world, thanks to their substantial government and industry funding for chemicals research and a well established regulatory framework.<sup>225</sup> This was echoed in interviews with Ministry for Environment policy advisers who highlighted New Zealand's limited resources and inability to carry out risk analysis on the same scale as the EU, and therefore look to the EU and the OECD for data and regulatory best practice.<sup>226</sup>

However, although this explains why it might be a good idea to import regulation in general, it does not necessarily explain why it was specifically beneficial to New Zealand to adopt the EU standard.

In terms of the impact of trade, New Zealand imports €389 million worth of chemicals and chemical products from the EU annually. This accounts for 13.4% of New Zealand's total imports from the EU<sup>227</sup> and approximately 13% of New Zealand's total chemical imports.<sup>228</sup>

The EU is already on New Zealand's radar when it comes to the importance of dialogue and following best practice in chemicals management. This is because the EU currently accounts for approximately 60% of world trade in chemicals, making them the global standard setter in this context simply by virtue of their economic influence. For example, the EU carried out major reform of its chemicals management regime and the resulting regulation on the Registration, Evaluation, Authorisation and Restriction of Chemical Substances (known as

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<sup>225</sup> ERMA Policy Adviser, "Interview with Author."

<sup>226</sup> Ministry for Environment Policy Adviser, "Interview with Author."

<sup>227</sup> European Commission, *EU Bilateral Trade with the World: New Zealand* (DG Trade, 2008 [cited May 9 2009]); available from [http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_113425.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113425.pdf).

<sup>228</sup> International Council of Chemical Associations, *New Zealand* ([www.icca-chem.org](http://www.icca-chem.org), 2009 [cited May 13 2009]); available from <http://www.icca-chem.org/Home/About-us/Members-of-the-ICCA/?country=nz>.

REACH), which entered into force in 2007, has already had an impact beyond the EU's borders and will have a strong influence on chemical standards worldwide.<sup>229</sup> This is not only a result of the EU's market share and economic power, but also because the EU is actively promoting REACH, and more broadly, the precautionary principle embodied by REACH, in international fora such as the OECD and encouraging the adoption of REACH standards by third countries. Some might describe this as EU normative power; others describe this as the EU taking a „defensive management' approach to globalisation.<sup>230</sup> Although the EU currently dominates the global chemicals trade, the EU share of that trade is gradually falling as Asian economies increase their export production.<sup>231</sup> In this line of argument, the EU is therefore on the defensive and seeking ways to protect its position in chemicals trade. One way it would be possible to achieve this is to push for stricter environmental standards internationally through the MEA process knowing that this will disadvantage its developing competitors, which is what some observers suspect the EU is attempting to do. In promoting its domestic standards and norms at the international level, the EU uses its position as a respected environmental leader to encourage their inclusion in MEAs and endorsement or adoption by third countries.

While there have been objections raised against REACH from some actors outside the EU, in particular the US and Japan, on the grounds that it imposes steep costs on chemical producers outside the EU,<sup>232</sup> according to an ERMA Policy Adviser New Zealand is generally „comfortable' with it. He pointed out that it is necessary to recognise that the EU is a large primary market for chemicals, while New Zealand's market is a secondary, consumer market.

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<sup>229</sup> Naotaka Matsukata and Turner T. Smith Jr, *Brussels' New Reach Beyond Europe's Borders* (Hunton & Williams, 2003 [cited April 20 2009]); available from [www.hunton.com/files/tbl\\_s47Details%5CFileUpload265%5C429%5CMatsukata\\_ws\\_j.pdf](http://www.hunton.com/files/tbl_s47Details%5CFileUpload265%5C429%5CMatsukata_ws_j.pdf) -.

<sup>230</sup> Sophie Meunier and Wade Jacoby, "Europe and the Management of Globalisation: Defensive and Offensive Responses to Globalisation Pressures" (paper presented at the conference Europe and the Management of Globalisation, Princeton University, 23 February 2007).

<sup>231</sup> ERMA Policy Adviser, "Interview with Author."

<sup>232</sup> Jeremy Rifkin, *A Precautionary Tale* (2004 [cited May 13 2009]); available from <http://www.guardian.co.uk/education/2004/may/12/research.highereducation>.

Therefore the EU's needs and issues of concern, when it comes to chemicals regulation, are very different to the needs and concerns of New Zealand, and this reflected in the high standards that the EU has implemented. In terms of the respective desired outcomes of REACH and New Zealand's HSNO, they are broadly compatible.<sup>233</sup>

The Joint Declaration of 2007 specified chemical and hazardous waste management as an area of potentially closer collaboration. The ERMA participant explained that this clause dated from an earlier, less formal arrangement which he believed dated from approximately 2002. The participant is most likely referring to the 2004 Action Plan which, under the heading „Environment’, specified chemicals management as an area of cooperation and called for an expert level meeting to be held in 2004 to set out detailed proposals for technical collaboration.<sup>234</sup> The ERMA adviser and New Zealand's key Commission contact on the subject agreed at that time not to establish a formal, independent process but to continue to meet informally at OECD meetings, where most dealings between the EU and New Zealand on chemical and hazardous waste management occur. Despite the Joint Declaration clause, the adviser said the specific technicalities of closer collaboration had not yet been examined. As of July 2008, the adviser and his EU counterpart had yet to decide if this would be enhanced and formalised under the new Joint Declaration.

New Zealand's dialogue with the EU on chemicals and hazardous waste is more closely tied to MFAT's Economic Division than to its environment section, as one of the key issues in the relationship is the EU's attempts to interpret and apply the precautionary principle internationally, as mentioned above. In particular, this has become a rather controversial subject in relation to MEAs on genetically modified organisms (GMOs), as promotion of the precautionary principle in this context is viewed by some as a potential trade barrier by

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<sup>233</sup> ERMA Policy Adviser, "Interview with Author."

<sup>234</sup> "New Zealand and the European Union: Priorities for Future Cooperation," (European Commission, 2004).

proxy.<sup>235</sup> Although New Zealand applies a similar interpretation of the precautionary principle domestically to the EU, and indeed, it is currently enshrined in the RMA,<sup>236</sup> when it comes to applying this principle internationally, New Zealand has legitimate concerns over the effect this could have on trade and has on occasion demanded more restricted reference to it in international negotiations. In one high profile case, the EU invoked the principle to restrict imports of US beef, a move that was eventually overturned by the WTO.<sup>237</sup> This past experience has made many actors, New Zealand included, wary of strong interpretations of the principle being used in international law.

Another area in which New Zealand and the EU have differed in opinion within the context of chemical and hazardous waste management is with regard to the Basel Convention of the Transboundary Movement of Hazardous Waste. An amendment to the Convention was proposed in 1994 banning the export of hazardous waste intended for final disposal from OECD countries to non-OECD countries.<sup>238</sup> In principle, the amendment is aimed at preventing dumping of toxic waste in non-OECD countries. However, the amendment fails to allow flexibility for the situation of an OECD member like New Zealand – isolated and small, and lacking the scale to support an extensive recycling industry for some types of hazardous waste. New Zealand has not ratified the amendment because it must export waste for recycling to countries like Singapore, Korea and the Philippines; for example, batteries are sent from New Zealand to the Philippines to be recycled.<sup>239</sup> The EU however implemented the amendment in 1997 and it was highlighted by several New Zealand interview participants as being a significant point of contention in the EU-New Zealand relationship and as an example of what one participant described as the EU's occasional tendency to be a bit „high

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<sup>235</sup> ERMA Policy Adviser, "Interview with Author."

<sup>236</sup> Ministry for Environment Policy Adviser, "Interview with Author."

<sup>237</sup> Ibid.

<sup>238</sup> Secretariat of the Basel Convention, *The Basel Convention Ban Amendment* (United Nations Environment Programme, [cited August 15 2008]); available from <http://www.basel.int/pub/baselban.html>.

<sup>239</sup> Ministry for Environment Policy Adviser, "Interview with Author."

and mighty', implying that sometimes it acts without full consideration of the implications for other actors.<sup>240</sup>

The EU-New Zealand relationship on chemical and hazardous waste management is technical in nature, and relatively ad hoc, with technical interaction occurring via personal links and the OECD, at a technical, policy level as opposed to a political level. Due to its the economic influence in chemicals trade, the EU enjoys great influence over international regulatory standards, not only through MEA negotiations by also by virtue of the size of its market and the resources available to it. New Zealand's adoption of the EU Cosmetics Directive as the New Zealand Cosmetics Standard is an example of New Zealand acting pragmatically and recognising both its own resource limitations and the economic significance of the EU. The economic influence of the EU, with an already well established regulatory framework and extensive research database, made it logical for New Zealand to look to follow the EU lead in this area. There is no evidence of normative power at work; instead EU enthusiasm for exporting standards seems intrinsically linked to self-interest, as is New Zealand's adherence to those standards. Rather this aspect of the relationship is best explained through policy transfer, which accounts for the transfer of the Cosmetics Directive. Based on the statements of several interview participants on looking to the EU for best practice, the EU is an important policy learning site in this policy area. Small state theory can also account for some aspects of this relationship, as New Zealand seeks to take advantage of the information and resources available to it through the EU. It also accounts for the fact that much of the technical dialogue is conducted through personal, informal channels at the OECD, reflecting New Zealand's preference for maximising its limited resources.

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<sup>240</sup> Ibid.

### 4.3.3 Biodiversity

The EU and New Zealand have also had differences of opinion within the context of the Convention on Biological Diversity (CBD), in particular in relation to the Cartagena Protocol to the CBD, which deals with the transboundary movement of genetically modified organisms (GMOs). Unlike climate change, which is an issue on which New Zealand and the EU share broadly similar points of view, in the context of the CBD their positions diverge due to inherent differences in domestic systems and preferences.

This has been particularly linked to the EU's promotion of the precautionary principle in the CBD, and the Cartagena Protocol, attempting to gain support for its inclusion in a very strong form in the Protocol, and more recently in other agreements to be negotiated under the CBD. New Zealand has been concerned, along with a number of like-minded states such as Japan, Norway and Switzerland as part of the „Compromise Group' at the Cartagena negotiations, that this strong interpretation of the precautionary principle could be invoked to restrict trade in harmless goods and could be used to protect domestic producers. The EU, unlike the US for example, has few domestic producers in this area that would be affected by restrictions, but the potential gains are considerable.<sup>241</sup> New Zealand has argued instead for a scientific basis for determining risk and imposing restrictions.<sup>242</sup> The final text in the preamble to Cartagena Protocol reads: “where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty should not be used as a reason for postponing measures to avoid or minimize such a threat.”<sup>243</sup> In practice the principle would come into play when there is reason to believe a particular cause of action could result in “a

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<sup>241</sup> R. Daniel Kelemen, "Globalising EU Environmental Regulation," in *Europe and the Management of Globalization* (Princeton University: 2007).

<sup>242</sup> Aaron Cosbey and Stas Burgiel, *The Cartagena Protocol on Biosafety: An Analysis on Results* (International Institute for Sustainable Development, 2000 [cited May 13 2009]); available from <http://www.iisd.org/publications/pub.aspx?id=332>.

<sup>243</sup> Ad van Dommelen, "The Precautionary Principle: Dealing with Controversy," *Biotechnology and Development Monitor* 43 (2000).



threat of significant reduction or loss of biological diversity.” However, there is already a great deal of debate over how best to approach biosafety assessment and regulation, and the wording of the clause means that disagreement is likely over what constitutes a valid reason to suspect a threat.<sup>244</sup> New Zealand is concerned about the potential under agreement for the precautionary principle to be invoked as a form of economic protectionism, rather than genuinely in the best interests of the environment or public health. New Zealand also has concerns within the context of the CBD regarding ensuring maximum flexibility and recognition for countries with indigenous species and acknowledging differences in environmental systems, as opposed to a „one size fits all’ approach.<sup>245</sup>

This stance led to a perception in the EU that New Zealand was prioritising trade interests over environmental protection. In 2006, New Zealand was described along with Norway and Iceland, as having a „destructive attitude’ by the German Ministry for the Environment, Nature Conservation and Nuclear Safety website, with reference to discussions in a meeting of the Open-Ended Working Group on Protected Areas under the CBD.<sup>246</sup> However, from the New Zealand perspective, it was never a question of prioritising trade over environment, but rather a case of balancing both to ensure that the clause would not be abused and trade unjustly restricted.

At COP 9 in May 2008 New Zealand’s CBD delegation worked to address this perception.<sup>247</sup>

The dialogue on the CBD has started to change from a source of conflict into a more

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<sup>244</sup> Ibid.

<sup>245</sup> Ministry for Environment Policy Adviser, "Interview with Author."

<sup>246</sup> German Ministry for the Environment Nature Conservation and Nuclear Safety, *UN Convention on Biological Diversity (CBD): The Global Network of Protected Areas Is Taking Shape* (2006 [cited May 15 2009]); available from [http://www.bmu.de/english/nature/convention\\_on\\_biological\\_diversity/doc/39681.php](http://www.bmu.de/english/nature/convention_on_biological_diversity/doc/39681.php).

<sup>247</sup> Government Policy Advisers, "Interview with Author."

constructive dialogue, something that a Ministry for Environment official credited to the recent work of MFAT's Environment Division in „repackaging' New Zealand's message.<sup>248</sup>

New Zealand's economic focus is consistent with small state theory. As a small nation relying heavily on exports, and in particular exports to the EU, New Zealand has a different, more cautious approach to application of the precautionary principle to international agreements because it has the potential to enable trade restrictions. It cannot be shown that the EU exercises normative power in this case, as New Zealand's stance on this issue reflects its pragmatism and own material interests.

#### ***4.3.4 Trade and Environment***

The question of how to balance economic interests with protection of the environment is becoming more and more pressing. It is within the EU's capacity as a powerful economic actor that its environmental weaknesses and contradictions become apparent, but some argue that it is also where the EU has the potential to make the greatest environmental impact.

The EU has been widely criticised for its Common Agricultural Policy (CAP), both for its international economic effects and its environmental implications. Through its subsidies to EU producers, the CAP had the effect for many years of encouraging unsustainably intensive agriculture. Even after reform it is a central focus in the ongoing World Trade Organisation (WTO) negotiations and has been criticised by development NGOs for its negative effect on incomes in developing countries.<sup>249</sup> The Common Fisheries Policy (CFP) has also been the subject of intense criticism as it has allowed European fleets access to distant-water fishing in developing countries.<sup>250</sup>

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<sup>248</sup> Ministry for Environment Policy Adviser, "Interview with Author."

<sup>249</sup> Vogler, "The European Contribution to Global Environmental Governance," 847.

<sup>250</sup> Ibid.

Internationally, there are questions over how to ensure consistency and compatibility between Multilateral Environmental Agreement (MEA) legal requirements and the rules of the WTO, which prohibit discrimination against goods that have been unsustainably produced. MEAs such as the Convention on International Trade in Endangered Species (CITES) and the Montreal Protocol already place restrictions on trade in order to achieve environmental objectives.<sup>251</sup> However, there is a substantial difference between multilaterally agreed upon trade restrictions and attempts to unilaterally discriminate based on domestic environmental regulation.

Both New Zealand and the EU are participants in the OECD's Joint Working Party on Trade and Environment. An MfE Policy Adviser explained that the OECD interaction provides an opportunity for New Zealand and the EU to share information on negotiating environmental provisions in trade agreements, on mandates and on implementation of environmental clauses in trade agreements. Both the EU and New Zealand tend to focus on cooperation and capacity building in environmental clauses attached to trade agreements. New Zealand also pragmatically looks to achieve trade objectives through these environmental capacity building clauses, for example looking to export technology and practices in specific areas, such as management of water or hazardous waste.<sup>252</sup>

All New Zealand's trade agreements have environmental and labour standards attached, placing trade firmly within a sustainability context. EU trade agreements typically encompass these areas and may include clauses on social standards as well. A Ministry for Environment official commented that because the EU has more „clout' than New Zealand, once the EU successfully includes these kinds of clauses in its agreements it is easier for New Zealand to

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<sup>251</sup> Ibid.: 845-6.

<sup>252</sup> Ministry for Environment Policy Adviser 2, "Interview with Author."

follow their lead and do the same in its own negotiations.<sup>253</sup> In this context, an MfE Adviser stated that the EU is very important to New Zealand. The EU leads the way on sustainability, climate change and waste management, and New Zealand looks to the EU for best practice in domestic policy. Particularly within an OECD context, the EU plays a strong leadership role. Equally however, the adviser felt that the EU has perhaps incorporated elements of New Zealand's collaborative, consultative approach to negotiation of environmental clauses of trade agreements, stating that the work New Zealand carries out in trade negotiations is „world-leading.<sup>254</sup>

However, some of the principles that form the foundation of New Zealand's international trade policy put it at odds with the EU. In line with New Zealand's preference for an open international economy and trade liberalisation, New Zealand works towards the elimination of export subsidies and the use of environmental standards as economic protectionism by proxy.<sup>255</sup> The EU has recently chosen to re-establish subsidies on dairy products in order to protect European dairy farmers in the current economic climate, subsidies which are in line to be abolished in the next round of World Trade Organisation (WTO) negotiations, but which they are currently still entitled to apply under WTO rules.<sup>256</sup> As discussed in the section on biodiversity, New Zealand has clashed with the EU over their promotion of the precautionary principle in international environmental agreements because of the potential for it to be invoked as a non-tariff trade barrier.

New Zealand policy makers keep a close watch on changes to regulations and public opinion in the EU as they have the potential to have a significant negative impact on New Zealand

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<sup>253</sup> Ibid.

<sup>254</sup> Ibid.

<sup>255</sup> Ministry of Foreign Affairs and Trade, *Framework for Integrating Environment Issues into Free Trade Agreements* ([cited March 5 2009]); available from <http://www.mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/WTO/0-environment-framework.php>.

<sup>256</sup> Brian Fallow, *It's Trench Warfare to Save World Trade* (Thursday February 12 2009); available from [http://www.nzherald.co.nz/politics/news/article.cfm?c\\_id=280&objectid=10556274](http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10556274).

exporters. For example, in recent years public concern over the so-called „food miles’ issue grew in the EU, and became particularly accepted in the UK. Campaigners argued that food should be purchased as close to the source of production as possible, to avoid the use of fossil fuels and associated emissions of greenhouse gases required to transport food products from source to consumer.<sup>257</sup> This argument alarmed New Zealand exporters, as New Zealand products began to become the focus of debate due to the long distance they must travel to reach the UK.

However, a research team at Lincoln University argued that rather than focusing on the distance a product has travelled, which is a relatively simplistic argument, total energy expended during the entire production process ought to be taken into account, including transport. They studied the production processes of a range of New Zealand food products to account for the total energy expended from production to consumer and compared them with UK equivalents, finding that all New Zealand products were less energy intensive than their UK counterparts. In particular, they found that New Zealand dairy is produced at least twice as efficiently as the equivalent UK product, while sheep meat production is four times more energy efficient.<sup>258</sup> There is now a better understanding of the complexity of the issue in the EU, which is now in the very early stages of discussing the development of a life cycle assessment which fully accounts for energy used in production.<sup>259</sup>

The „food miles’ issue has since abated and has been transformed into a „buy local’ focus. However, these issues are typically driven by lobby and interest groups within the EU, meaning that they are not so much a question of EU-New Zealand relations but rather a question of New Zealand relations with EU interest groups. Just as New Zealand’s embassies

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<sup>257</sup> Caroline Saunders, Andrew Barber, and Greg Taylor, "Food Miles – Comparative Energy/Emissions Performance of New Zealand’s Agriculture Industry," in *Research Report 285* (Christchurch: Agribusiness and Economics Research Unit, Lincoln University, 2006).

<sup>258</sup> Ibid.

<sup>259</sup> Ministry of Foreign Affairs and Trade, Report on European Commission Communication COM(2008) 397/3, 18 July 2008.

monitor changes to EU regulations that may affect New Zealand's trade, they also keep an eye on active lobby groups to anticipate campaigns and changes in public opinion.<sup>260</sup>

In addition, the EU has established an eco-labelling scheme with the aim of aiding consumers to make informed choices. A Ministry for Environment Senior Adviser commented that New Zealand is trying to be as involved as possible in the process, describing this as „defensive interaction’ because of the potential consequences for New Zealand’s exporters.<sup>261</sup> The scheme does not currently include food products, but there is a proposal to include “processed food and products of fishing and aquaculture,”<sup>262</sup> so it is possible that food products may be included in the future.

Of course, any restriction of trade based on environmental criteria risks being portrayed as simply a new trade barrier. Free trade agreements are proliferating, and states are looking for new ways to exclude some products from their markets. A Ministry for Environment adviser stated that in their personal opinion, the use of environmental standards as trade barriers is likely to increase in the future. As he explained it, in a trade context, countries are constantly in competition and looking for „levers.”<sup>263</sup>

As already touched on in the section on chemicals management, some scholars have argued that the EU takes a „defensive management’ approach to the nexus between trade and environment.<sup>264</sup> They claim that as the EU has met with increasing public concern over environmental standards on the one hand, and increased competition from emerging economies on the other, it has made domestic regulations tighter. However, tighter EU restrictions have met with international opposition and the threat of legal action through the

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<sup>260</sup> Ministry for Environment Policy Adviser 2, "Interview with Author."

<sup>261</sup> Ministry for Environment Policy Adviser, "Interview with Author."

<sup>262</sup> Ministry of Foreign Affairs and Trade.

<sup>263</sup> Ministry for Environment Policy Adviser 2, "Interview with Author."

<sup>264</sup> See, for example, Kelemen, "Globalising EU Environmental Regulation.", Meunier and Jacoby, "Europe and the Management of Globalisation: Defensive and Offensive Responses to Globalisation Pressures".

WTO. Therefore the EU has sought to actively „internationalise’ its approach through MEAs such as the Cartagena Protocol to the CBD in 2000, and by encouraging adoption of its domestic standards in third countries. This is very similar to the concept of a „race to the top’ which sees countries tighten environmental standards to match others.<sup>265</sup> Rather than the desire to diffuse a normative belief in protecting the environment, the EU gains significant economic advantages if it can successfully internationalise its domestic standards.

The relationship between the EU and New Zealand on the trade and environment nexus is another example of a pragmatic relationship as opposed to a constructivist or normative one. The EU uses normative arguments to impose environmental standards as non-tariff trade barriers, to protect its own economic interests. New Zealand seeks to improve its domestic environmental standards to preserve access to international markets, in particular markets of environmentally demanding consumers such as the EU, and to gain access to new developing markets. Rather than the EU seeking to diffuse environmental norms, it is instead internationalising its domestic standards in order to protect its markets from increasing competition from emerging economies and to protect itself from WTO legal challenges.

Consistent with small state theory, one of New Zealand’s primary foreign policy priorities is a firm focus on pragmatic trading interests. Where New Zealand and the EU have faced differences in opinion in this area, it has been related to New Zealand’s focus on its economic interests and stance for trade liberalisation, and the EU’s moves towards internationalising its domestic standards. Also consistent with small state theory, New Zealand relies on the EU, with its superior economic muscle, to „break the ice’ when it comes to incorporating environmental clauses in new trade agreements with third countries.

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<sup>265</sup> Veerle Heyvaert, "Globalizing Regulation: Reaching Beyond the Borders of Chemical Safety," *Journal of Law and Society* 36, no. 1 (2009): 118.

Statements by interview participants that New Zealand looks to the EU for best practice in this area also cannot be shown to be based on normative influence; instead they are best explained in pragmatic policy studies terms as the EU's economic power and profile influencing New Zealand policy makers in their policy search process.

## **4.4 Chapter Summary**

The EU-New Zealand relationship has broadened considerably in the last two decades to include dialogue and cooperation across a wide range of policy areas. However, the pivotal focus of the relationship from New Zealand's point of view has not changed and remains trading and economic interests.

### ***4.4.1 Normative Power***

Recalling the hypotheses posed at the end of the second chapter of this thesis, it was argued that if normative power was present in the relationship, it would be possible to directly link developments in domestic policy with developments in the EU's relationship with New Zealand. Further, it would have to be demonstrated that neither party were motivated by material benefits in the context of the relationship. After conducting mini case-studies on the EU-New Zealand relationship on environment in four policy areas, it is clear that these requirements cannot be met.

In the first case study on relations in the field of research, science and technology, the majority of New Zealand's interaction with the EU involves individual researchers and institutions participating in exchanges and making use of EU funding. This is driven, on New Zealand's part, purely by practical and financial considerations.

In the case of relations on chemical and hazardous waste management, rather than being pressured by normative arguments, the EU's economic might in the chemicals industry along



with New Zealand's comparative lack of resources can explain why New Zealand adopted the EC Chemicals Directive. Although New Zealand looks to the EU for examples of best practice, this perhaps reflects the resources available to the EU and the sophistication of EU regulation in this area, for which they are credited as leading the world.

Further, in the examples of relations on biodiversity and the trade and environment nexus, instead of normative explanations, the underlying motivations are consistently shown to be economic and material. The EU could arguably be shown to be seeking the incorporation of a strong interpretation of the precautionary principle in the Cartagena Protocol for economic and practical reasons.

It is not possible to conclude on the basis of this overview of relations that normative power plays any demonstrable role in the EU-New Zealand relationship.

#### ***4.4.2 Policy Studies***

After considering the nature of New Zealand's interactions with the EU in four areas, two with a bilateral focus of interaction and the two in a multilateral context, there is no evidence that there is a normative aspect to the relationship in these areas. Instead, the common theme in all four areas is overwhelmingly consistent with a small state theory account of New Zealand's foreign policy behaviour and with a policy studies approach to domestic policy-making in New Zealand and to the transfer of policy between the parties. Rather than exchanging norms and values, the parties in this relationship exchange knowledge and standards.

Where regulation has been transferred, as was the case with the EU Cosmetics Directive, it cannot be shown to be the result of any EU normative power influencing New Zealand's decisions. Rather, what is demonstrated consistently is that such decisions are the result of a

pragmatic focus on economic interest, in particular recognition of New Zealand's limited resources and the advantages to be gained through close links with the EU, whether it be access to data and knowledge, or funding for cooperative research projects. Frequent references to the EU as a source of best practice and policy are also best explained through practical, material considerations. Equally, although the EU may present its environmental arguments in moral and normative terms, it has been shown that in each case the EU is in fact acting for economic reasons. What may appear to be normative power as the EU actively promotes the diffusion of its domestic norms and values internationally, is in fact the EU promoting its domestic standards and regulations, which is quite a different proposition and fits with an explanation of the EU taking a „defensive management' approach to globalisation.

# 5: European Union and New Zealand Relations on Climate Change

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## 5.1 Introduction

Much scholarly attention has been paid to the EU's global environmental role, and more specifically, to its role in the global climate change framework. The EU has positioned itself as the global leader on climate change, by committing to unilateral reduction targets, and by leading ratification of the Kyoto Protocol after US withdrawal.

Some have ascribed to it the role of a „classic norm entrepreneur’ by defining climate change as a moral issue, calling for states to transcend traditional economic concerns and take a holistic approach to the challenge. The EU has actively promoted the application of the precautionary principle to climate change, and has put into action the UNFCCC recommendation that developed nations have the responsibility to take the lead in climate change given their historical contribution to the problem. They argue that the EU's climate change policy has identified it as a particular kind of actor, one with a normative agenda.<sup>266</sup>

However, it can also be said that the EU has acted as a political or policy entrepreneur on climate change. By taking the lead internationally and acting first, setting demanding unilateral domestic targets, leading ratification of the Kyoto Protocol and implementing the first multi-national carbon emissions trading scheme, the EU has become the global standard setter in climate change politics and thus wields substantial influence over the direction of international climate change policy, regardless of whether or not this role can be said to have normative implications.<sup>267</sup>

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<sup>266</sup> Miranda A. Schreurs and Yves Tiberghien, "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation," *Global Environmental Politics* 7, no. 4 (2007): 23-4, 26.

<sup>267</sup> Ibid.: 23-4.

If the EU's alleged normative power is at work in the context of this specific relationship, it should be possible to demonstrate that New Zealand's climate change policy has evolved in response to EU normative leadership and pressure, and that the EU is indeed exporting its values beyond its borders and affecting policy in a third country on climate change. In the particular case study on emissions trading, one would expect that there might be a reasonable sequence of events in which EU promotion of emissions trading as a norm can be demonstrably linked to subsequent adoption by New Zealand of its own emissions trading policy.

However, a more practical explanation might be that, consistent with small state theory, New Zealand exhibits the foreign policy characteristics typical of a small state and acts based on its own practical needs, not normative influence, with trading and commercial considerations at the heart of its agenda. Further, it would be argued that the development of New Zealand's policy on emissions trading is an example of voluntary policy transfer based on pragmatism and material interests. In this approach, New Zealand shares core values with the EU regardless of the relationship between them on environment, not because of it. In this scenario, if the EU does indeed wield normative power on climate change, it cannot be demonstrated to extend to its bilateral relations with New Zealand on climate change.

This chapter examines relations between the EU and New Zealand on climate change, and more specifically on emissions trading. It will first summarise the development of the current international climate change policy framework, the commitments that the EU and New Zealand have made within the international framework and what instruments are available to them. It will highlight the particular challenges facing each of the parties and the differences and similarities in their respective positions at international negotiations, in order to establish the context within which the relationship on climate change takes place.

The chapter will then move on to discuss the broad relationship between the EU and New Zealand on climate change before approaching in greater detail the cooperation that occurred between officials from New Zealand and the EU on emissions trading. It will compare the two conceptions of the EU outlined above, those of normative power and of policy standard-setter, in order to conclude which approach best characterises the role of the EU in its relationship with New Zealand on climate change. Does the relationship show evidence of the EU acting as a normative entrepreneur, or are the dynamics of the relationship better explained by considering the EU as a policy entrepreneur or agenda setter on climate change?

## **5.2 European Union-New Zealand Relations on Climate Change in an International Context**

In the late 1980's, international concern rose over the "greenhouse effect" of rising temperatures as a result of emissions of greenhouse gasses such as carbon dioxide (CO<sub>2</sub>). Political momentum increased rapidly and climate change soon became an important international environmental policy focus. The EU played a central role in the international negotiation process, particularly with regard to the Kyoto Protocol, as a result of which the EU has been described as being "catapulted" to the role of a global climate change leader.<sup>268</sup> New Zealand has also played an important role at the international level, particularly as part of the JUSSCANNZ<sup>269</sup> group in its promotion of emissions trading as a policy tool, and with several New Zealand representatives chairing key international bodies in the regime at various stages in the process.

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<sup>268</sup> Cameron, *An Introduction to European Foreign Policy*, 14.

<sup>269</sup> The JUSSCANNZ (Japan, US, Switzerland, Canada, Australia, Norway and New Zealand) group is a negotiating bloc within the United Nations. It is made up of members of the WEOG (Western Europe and Others Group) regional bloc, which also includes the EU, and in some circumstances includes others such as Iceland, Mexico and the Republic of Korea. The Umbrella Group is a variation of the JUSSCANNZ coalition.

### ***5.2.1 The International Climate Change Regime***

In 1992 the United Nations Conference on Environment and Development (UNCED), informally known as the Earth Summit, took place in Rio de Janeiro. It was the culmination of a process of discussion and negotiation which had begun in December 1989, spurred by the 1987 release of the Brundtland Report titled *Our Common Future*, which called for a holistic approach to environment and sustainable economic development.

At the Earth Summit, which was attended by representatives from 172 governments as well as numerous NGOs, several important multilateral environmental agreements (MEAs) were concluded, including the United Nations Framework Convention on Climate Change (UNFCCC).

The UNFCCC document resulted in parties undertaking to stabilise emissions at a level which, it was estimated, would not interfere with the climate system. The EU had already unilaterally committed to reduce domestic greenhouse gas emissions to 1990 levels by the year 2000, and pushed hard at Rio for binding targets to be set for all developed countries, albeit unsuccessfully. They took the position that developed countries had a responsibility to act first before expectations could be placed on developing states, flowing from a general belief that industrialised countries bear most responsibility.<sup>270</sup> The UNFCCC divided the parties into two groups: Annex 1 states agreed to take measures to reduce climate change at the national level and to conduct regular inventories. Annex 2 states, a subset of Annex 1, additionally agreed to provide assistance to developing countries.<sup>271</sup> The EU and New Zealand were members of both of these groups.

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<sup>270</sup> Damro and Méndes, "Emissions Trading at Kyoto: From EU Resistance to Union Innovation," 260, Schreurs, "The Climate Change Divide: The European Union, the United States, and the Future of the Kyoto Protocol," 210-11.

<sup>271</sup> Schreurs, "The Climate Change Divide: The European Union, the United States, and the Future of the Kyoto Protocol," 212.

In international environmental law, once a framework agreement has been established it is standard for a protocol to be developed to define specific obligations. Following the signature and ratification of the Convention, the parties to the UNFCCC met annually as a Conference of the Parties (COP) with the aim of finalising a protocol containing binding obligations in time for the 1997 COP3.<sup>272</sup> The first COP was held in Berlin in 1995, which produced the Berlin Mandate, calling for a protocol that would set quantified objectives for Annex 1 parties.<sup>273</sup>

### *The Kyoto Protocol*

The Kyoto Protocol was adopted on 11 December 1997 and entered into force on 16 February 2005. 183 countries have ratified the Protocol, which commits developed and transitioning economies to collectively reduce emissions of four greenhouse gases (carbon dioxide, methane, nitrous oxide and sulphur hexafluoride) and two groups of gases (hydrofluorocarbons and perfluorocarbons) to 5% below 1990 levels by 2008-2012.<sup>274</sup> The Protocol itself left the issues of how to actually achieve these targets open, with negotiations to take place at later COPs.

New Zealand's individual commitment under the Protocol for the first commitment period (2008-2012) was to return its emissions to 100% of 1990 levels in the first commitment period of 2008-2012.<sup>275</sup> This would be achieved through the three market mechanisms allowed for under Kyoto, which will be elaborated below, and also through the provisions for the use of carbon sinks.

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<sup>272</sup> Ibid.

<sup>273</sup> Ibid., 214.

<sup>274</sup> Lacasta et al., "Articulating a Consensus: The Eu's Position on Climate Change," 211, United Nations Framework Convention on Climate Change Secretariat, *Kyoto Protocol* (United Nations Framework Convention on Climate Change Secretariat, 2008 [cited August 21 2008]); available from [http://unfccc.int/kyoto\\_protocol/items/2830.php](http://unfccc.int/kyoto_protocol/items/2830.php).

<sup>275</sup> Jonathan Boston, "Global Climate Change Policies: From Bali to Copenhagen and Beyond," *Policy Quarterly* 4, no. 1 (2008): 53.

Under Kyoto, the targets that parties are obliged to meet in the first commitment period of 2008-2012 can be thought of as allowed emissions levels. These allowed levels of emissions must be matched by emissions units, each worth one tonne of carbon dioxide equivalent emissions. These units are termed Assigned Amount Units (AAUs). In order to account for emissions that may occur over and above the allowed level of emissions, the Protocol provides for a number of mechanisms through which parties can generate tradable emissions units.<sup>276</sup>

The Protocol obliges parties to meet their emissions reduction obligations through domestic policy measures, but provides for three additional market-based tools as options for greater flexibility, supplemental to domestic action and allowing parties to carry out and fund international emission reduction projects, and receive credits towards reducing their own emissions at a lower cost than could be achieved if reductions are made domestically. These flexible mechanisms are Joint Implementation (JI), the Clean Development Mechanism (CDM) and emissions trading.

Joint Implementation allows Annex 1 parties to earn Emission Reduction Units (ERUs) by undertaking an emission reduction project in another Annex 1 party under Article 6 of the Kyoto Protocol.<sup>277</sup>

Article 12 of the Kyoto Protocol provides for the CDM, which allows an Annex 1 party to earn Certified Emissions Reduction Units (CERs) by carrying out emissions reduction

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<sup>276</sup> New Zealand Climate Change Project, "National Interest Analysis," (New Zealand Climate Change Project, 2002).

<sup>277</sup> United Nations Framework Convention on Climate Change Secretariat, *Kyoto Protocol: Joint Implementation* (United Nations Framework Convention on Climate Change Secretariat, [cited August 21 2008]); available from [http://unfccc.int/kyoto\\_protocol/mechanisms/joint\\_implementation/items/1674.php](http://unfccc.int/kyoto_protocol/mechanisms/joint_implementation/items/1674.php).



projects in a non-Annex 1 party, or in other words, a developing country.<sup>278</sup> This results in a transfer of technology between developed and developing countries.

Emissions trading is provided for by Article 17 of the Protocol, and operates by effectively creating a market for the right to emit. Parties that have excess AAUs because they have gained credits through carbon sinks or because their reductions are expected to exceed their targets can sell these units to parties whose reductions fall short of their targets. In addition to AAUs, there are specific tradable units available, each equal to one tonne of CO<sub>2</sub>. They are Removal Units (RMUs) which derive from land use, land use change and forestry (LULUCF) activities, also referred to as carbon sinks, such as reforestation; and as already discussed above, ERUs resulting from JI projects; and CERs which result from CDM projects.<sup>279</sup>

### ***5.2.2 The European Union and New Zealand in the International Climate Regime***

#### *The European Union*

In 1990, the European Council in Dublin decided that the European Community should play a leading role in the promotion of international action on the environment, in particular in negotiations on climate change leading into the 1992 Earth Summit. The Council called for the adoption of strategies to reduce emissions of greenhouse gasses, setting a unilateral goal of stabilising emissions at 1990 levels by 2000. As a result of this commitment, the EU assumed the lead role in the UN negotiations prior to the Rio summit for the United Nations Framework Convention on Climate Change (UNFCCC).<sup>280</sup> Between 1990 and 1992 a range of EC and member state initiatives were implemented, for example the Special Action

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<sup>278</sup> United Nations Framework Convention on Climate Change Secretariat, *Kyoto Protocol: Clean Development Mechanism* (United Nations Framework Convention on Climate Change Secretariat, [cited August 21 2008]); available from [http://unfccc.int/kyoto\\_protocol/mechanisms/clean\\_development\\_mechanism/items/2718.php](http://unfccc.int/kyoto_protocol/mechanisms/clean_development_mechanism/items/2718.php).

<sup>279</sup> United Nations Framework Convention on Climate Change Secretariat, *Kyoto Protocol: Emissions Trading* (United Nations Framework Convention on Climate Change Secretariat, [cited August 21 2008]); available from [http://unfccc.int/kyoto\\_protocol/mechanisms/emissions\\_trading/items/2731.php](http://unfccc.int/kyoto_protocol/mechanisms/emissions_trading/items/2731.php).

<sup>280</sup> Sbragia, "Institution-Building from Below and Above: The European Community in Global Environmental Politics," 215.

programme for Vigorous Energy efficiency (SAVE) and ALTENER, a programme for the promotion of renewable energy sources. Also, several member states unilaterally adopted policies targeted at reducing emissions prior to Rio. As a result of these voluntary implementations, the EU was seen internationally and domestically as pro-active and innovative in leading the response to climate change,<sup>281</sup> and this helped strengthen the EU position in negotiations. By the time the UNFCCC negotiations officially commenced in early 1991, the EU had firmly established a reputation for itself as a leader in international environmental politics and set the global benchmark by unilaterally committing to return its joint CO<sub>2</sub> emissions to 1990 levels by the year 2000.<sup>282</sup>

In March 1997, the EU finalised the burden sharing agreement which set differentiated reduction targets for its member states to make up a collective EU target under the future FCCC Protocol.<sup>283</sup> This strengthened the EU position at the Kyoto negotiations later that year as it allowed the EU to set a relatively tough reduction target of 8%.<sup>284</sup> However, it also undermined the EU in its anti-emissions trading stance, as the burden sharing agreement operates essentially as a form of emissions trading scheme.<sup>285</sup>

The EU was opposed to the idea of states meeting targets solely through the available flexible mechanisms of emissions trading, Joint Implementation, the Clean Development Mechanism and carbon sinks, and pushed hard for a 50% cap on the proportion of emissions that could be reduced through trading and JI to ensure that they were linked to binding targets and

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<sup>281</sup> Farhana Yamin, "The Role of the EU in Climate Negotiations," in *Climate Change and European Leadership: A Sustainable Role for Europe?*, ed. Joyeeta Gupta and Michael Grubb (Dordrecht: Kluwer Academic, 2000), 49.

<sup>282</sup> Sbragia, "Institution-Building from Below and Above: The European Community in Global Environmental Politics," 214-5.

<sup>283</sup> McCormick, *Environmental Policy in the European Union*, 285.

<sup>284</sup> Lenschow, "Environmental Policy: Contending Dynamics of Political Change," 323.

<sup>285</sup> McCormick, *Environmental Policy in the European Union*, 287.

timetables, and would be supplemental to, and not a substitute for, effective domestic action.<sup>286</sup>

The EU is often credited with playing an important leadership role in the ratification of the Kyoto Protocol. Although the United States (US), under the Clinton Government, signed the Protocol in 1998, it was never presented to the Senate for ratification, until President George W. Bush formally announced in 2001 that the US would not ratify the Protocol. This was a potentially fatal blow to the Protocol, which required at least 55 states representing at least 55% of 1990 carbon dioxide emissions by Annex 1 countries to ratify before entering into force, as the US represented nearly 30% of Annex 1 emissions. In order for the Protocol to enter into force, almost every other developed country would have to ratify, and it was especially vital that large emitters like Japan, Russia and Canada did not also back out.<sup>287</sup> Despite this setback, the EU announced it would forge ahead with its own ratification process, even though ensuring entry into force seemed a near impossible task. EU environment commissioner Margot Wallstrom commented on the announcement of the decision "I think something has changed today in the balance of power between the US and the EU."<sup>288</sup> From that point on, the EU spearheaded the continuation of negotiations, convening COP6 part II in Bonn in July 2001, where the Bonn Agreements on what had previously been the key points of contention were adopted.<sup>289</sup>

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<sup>286</sup> Damro and Méndes, "Emissions Trading at Kyoto: From EU Resistance to Union Innovation," 264, Ved P. Nanda and George Pring, *International Environmental Law & Policy for the 21st Century* (Ardsley, NY: Transnational, 2003), 298.

<sup>287</sup> Schreurs, "The Climate Change Divide: The European Union, the United States, and the Future of the Kyoto Protocol," 208.

<sup>288</sup> Vogler and Bretherton, "The European Union as a Protagonist to the Us on Climate Change," 3.

<sup>289</sup> Nanda and Pring, *International Environmental Law & Policy for the 21st Century*, 300.

*New Zealand*

New Zealand's role in international climate negotiations is best characterised as that of a broker, rather than an agenda-setter. However, it has played an influential role in negotiations on specific issues of particular economic importance to New Zealand.

In New Zealand, business groups argued for making ratification of the Protocol conditional on ratification by New Zealand's major trading partners out of concern that domestic trade and industry would be adversely affected. However, the fifth Labour Government argued that New Zealand ought to "lead by example" and that time was of the essence in ensuring the Protocol came into force, despite US withdrawal. As Jian Yang observed, this was in line with the Labour government's approach to international relations and global citizenship, which he describes as relatively idealist.<sup>290</sup> However, at the time there were also more pragmatic reasons for the government's decision to ratify the Protocol. The Kyoto Protocol provides for tradable credits for carbon sinks in the form of forests planted after 1990, allowing for the carbon dioxide they absorb. This mechanism was a key factor in the government's argument for ratification, as it was believed that New Zealand could earn as much as \$1.4 billion from its domestic forests.<sup>291</sup> The National Interest Analysis released in 2002 further emphasised the benefits of swift ratification, stating that New Zealand would be in a more credible position to influence later negotiations if it was seen to be acting as a leader with environmental concerns as its top priority.<sup>292</sup> New Zealand ratified the Protocol in December 2002, fulfilling a campaign promise made by Labour prior to the elections of that year.

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<sup>290</sup> Jian Yang, "New Zealand and the Kyoto Protocol: Ideals, Interests and Politics," *New Zealand International Review* 29, no. 3 (2004): 6.

<sup>291</sup> Reuters, *New Zealand Signs up to Kyoto Climate Change Pact* (Planet Ark, 2002 [cited 9 January 2009]); available from <http://www.planetark.org/dailynewsstory.cfm/newsid/18992/story.htm>.

<sup>292</sup> Yang, "New Zealand and the Kyoto Protocol: Ideals, Interests and Politics."

New Zealand's greenhouse gas emissions profile is unusual when compared with other OECD countries, and consideration for this drives New Zealand's international climate change policy. Agricultural emissions of methane and nitrous oxide make up almost 50% of total emissions, while emissions from energy production account for 44%. Compared to other industrialised Kyoto parties, this means that New Zealand faces unique challenges in emissions reduction. For most Kyoto Annex 1 parties, more than 75% of gross emissions are made up of CO<sub>2</sub>, while New Zealand's emissions profile is most similar to that of Argentina, a non-Annex 1 country.<sup>293</sup> Correspondingly, there is a greater global emphasis placed on reducing emissions related to the energy sector due to the burning of fossil fuels; however, approximately 70% of New Zealand's energy is already derived from renewable sources such as hydro power, not from fossil fuels, meaning there is very little room for improvement in this area. The proportion of fossil fuel use in energy sector is increasing however, as are emissions from the transport sector, which currently account for approximately 19% of total greenhouse gas emissions placing New Zealand third in per capita terms behind the United States and Australia in 2006.<sup>294</sup> Although the total contribution of New Zealand's greenhouse gasses is small in total global terms (accounting for approximately 0.5% of total global emissions),<sup>295</sup> it makes a significant contribution to global emissions of carbon greenhouse gasses in per capita terms. Between 1990 and 2002, New Zealand's emissions increased 22%

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<sup>293</sup> Ministry for the Environment, *Review of Climate Change Policies: New Zealand's Emissions Profile and the Economy* (Ministry for the Environment, 2005 [cited 13 January 2009]); available from <http://www.mfe.govt.nz/publications/climate/policy-review-05/html/page3-1.html>.

<sup>294</sup> Murray Ward and Colin James, "Energy Sector: Issues, Options and Perspectives," in *Towards a New Global Climate Treaty: Looking Beyond 2012*, ed. J. Boston (Wellington: Institute of Policy Studies, 2007), 187-93.

<sup>295</sup> Landcare Research, *New Zealand's Unique Greenhouse Gas Emissions Profile* (Landcare Research, 2009 [cited 13 January 2009]); available from [http://www.landcareresearch.co.nz/research/globalchange/fact\\_file.asp](http://www.landcareresearch.co.nz/research/globalchange/fact_file.asp).

while the average for OECD countries was just 7%.<sup>296</sup> New Zealand's average per capita emissions are 20 tonnes of greenhouse gas, while the European average is 10 tonnes.<sup>297</sup>

In short, the challenge for New Zealand in attempting to cut greenhouse gas emissions is that there are no 'low hanging fruit,' areas where reductions would be achieved relatively easily. Instead, New Zealand focuses its attention at the international level on issues related to agricultural emissions and LULUCF, as these are areas that make significant contributions to the New Zealand economy, and to its emission profile, playing a particularly instrumental role in negotiations on LULUCF rules.<sup>298</sup> As New Zealand's Trade Minister Tim Groser highlighted at the UNFCCC COP14 at Poznan in December of 2008, these are areas that are also of great importance to many non-Annex 1 countries. While Annex 1 countries focus their attention on industrial emissions, the commitments and rules surrounding agriculture and LULUCF will be important if non-Annex 1 parties are to make binding commitments in a post-2012 framework.<sup>299</sup>

Currently, New Zealand participates in international negotiations on climate change in a range of fora. These include the Conferences of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC), the Meetings of the Parties to the Kyoto Protocol (MOPS), and its two Subsidiary Bodies, on Implementation (SBI) and Scientific and Technical Advice (SBSTA).<sup>300</sup> New Zealand has been playing a significant role at international level negotiations. For example, David Parker, Minister for Climate

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<sup>296</sup> Buhrs and Christoff, "„Greening the Antipodes'? Environmental Policy and Politics in Australia and New Zealand," 229.

<sup>297</sup> Jonathon Boston and Lucas Kengmana, "Post-2012: Policy Issues and Options," in *Towards a New Global Climate Treaty: Looking Beyond 2012*, ed. Jonathon Boston (Wellington: Institute of Policy Studies, 2007), 148.

<sup>298</sup> Treasury Policy Adviser, "Interview with Author."

<sup>299</sup> Tim Groser, *New Zealand Statement to UN Climate Change Conference High-Level Segment* (New Zealand Government, 2008 [cited 13 January 2009]); available from <http://beehive.govt.nz/speech/new+zealand+statement+un+climate+change+conference+high-level+segment>.

<sup>300</sup> Ministry of Foreign Affairs and Trade, *Climate Change - New Zealand's International Engagement* ([cited 25 June 2008]); available from <http://www.mfat.govt.nz/Foreign-Relations/1-Global-Issues/Environment/Climate-Change/climchangeinteng.php>.

Change under the Labour Government, was one of 10 Ministers invited to attend a meeting hosted by the Polish Environment Minister, and New Zealand negotiators chair two key bodies within the UN framework. Helen Plume, a New Zealand Ministry for Environment senior advisor, is currently the chair of the SBSTA, while Bryan Smith of the Ministry for Agriculture and Forestry co-chairs the LULUCF working group.<sup>301</sup>

The challenge posed by New Zealand's unique emission profile is also an opportunity, and New Zealand has generated considerable international interest in its domestic agricultural research into nitrification inhibitors and energy reduction.<sup>302</sup> The Livestock Emissions and Abatement Research Network (LEARN) was established by the government at the end of 2007 as a networking and information sharing tool for international agricultural researchers to enable them to collaborate on research into measuring agricultural emissions, methane and nitrous oxide livestock emissions, and integrated approaches to farm impacts.<sup>303</sup>

### ***5.2.3 European Union-New Zealand International Interaction on Climate Change***

The EU has been visibly proactive in its approach to climate change since prior to the UNFCCC negotiations began in 1992 when it set unilateral emissions reductions targets and has been widely credited as playing a pivotal role in global climate change negotiations.<sup>304</sup> New Zealand's development of its own domestic climate change policy, in particular the policy design of the emissions trading scheme, has provided an opportunity for New Zealand policy makers to work more closely with the EU.

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<sup>301</sup> Phil Gurnsey, "Interview with Author."

<sup>302</sup> Ibid.

<sup>303</sup> Livestock Emissions and Abatement Research Network, *Focus Areas* (Livestock Emissions and Abatement Research Network,, 2007 [cited January 13 2009]); available from <http://www.livestockemissions.net/FocusAreas/tabid/56/Default.aspx>.

<sup>304</sup> For example: Grubb and Gupta, "Climate Change, Leadership and the EU.", Alberta M. Sbragia and Chad Damro, "The Changing Role of the European Union in International Environmental Politics: Institution Building and the Politics of Climate Change," *Environment and Planning C: Government and Policy* 17, no. 1 (1999), Schreurs and Tiberghien, "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation.", Vogler and Bretherton, "The European Union as a Protagonist to the Us on Climate Change."

In the past, the EU-New Zealand relationship was heavily focused on trade. In particular, the legacy of the United Kingdom's accession to the European Economic Community (EEC) in 1973 had a lasting effect on the way that New Zealanders, including its policy makers, viewed the EU, and resulted in years of negotiations to ensure New Zealand's interests were protected. One of the participants interviewed in this research commented that, in their opinion, the legacy of this event is still apparent, and that negative attitudes toward the EU particularly in relation to trade are still evident among some policy officials.<sup>305</sup> However, other policy officials who were asked for their opinion on this claim disagreed. One speculated that New Zealand's views tend to be relatively Anglo-Saxon and more in line with UK thinking, which is considered fairly Euro-sceptic, and that perhaps this was the source of the comment. However, the participant added they did not feel that there was any ongoing effect on policy officials' attitude towards the EU.<sup>306</sup>

In the last two decades the EU-New Zealand relationship has widened and deepened to cover a range of policy areas, and environment has played an increasingly important part in the relationship. Within that context, issues related to climate change have taken centre stage, and have been the focus of a large part of the dialogue between the EU and New Zealand in recent years. For example, when former Prime Minister Helen Clark visited Brussels in October 2007, climate change was reported to have „dominated' her meetings with EU representatives.<sup>307</sup> During the same visit, EC President Jose Manuel Barroso was quoted as stating that he was well aware of New Zealand's progress with its (at that time) recently announced emissions trading scheme, and that he was eager for the EU and New Zealand to work together towards the establishment of an international carbon trading market.<sup>308</sup>

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<sup>305</sup> Former Ministry for the Environment Policy Adviser, "Interview with Author."

<sup>306</sup> Government Policy Adviser, "Interview with Author."

<sup>307</sup> Martin Kay, "Clark Pushes Free Trade Deal in Europe," *The Dominion Post* 2007.

<sup>308</sup> Ibid.



New Zealand operates within several levels of international negotiation and consultation on climate change which provide the framework for interaction with third parties such as the EU on environment.

First, there is of course the formal, multilateral level of meetings and negotiation through the UNFCCC and Kyoto Protocol. Within the UN context, New Zealand is a member of the JUSSCANNZ negotiating group. The name is an acronym of the original members: Japan, United States, Switzerland, Canada, Australia, Norway and New Zealand. This group, along with the EU, is part of the Western European and Others Group (WEOG), one of the five regional negotiating blocs traditional within United Nations negotiations. These regional groupings do not generally reflect common interests. Instead, states align themselves with other states with similar interests. For example, developing nations cooperate as the Group of 77 (G-77) coalition, while small island nations, in light of their particular shared interests, interact and negotiate as the Alliance of Small Island States (AOSIS). However, the regional grouping of JUSSCANNZ did develop into a loose coalition in the Kyoto negotiations, and has since evolved, within the UN framework, into the Umbrella Group, made up of Australia, Canada, Iceland, Japan, New Zealand, Norway, the Russian Federation, Ukraine and the US, with other nations occasionally participating or observing.<sup>309</sup> They share a desire for a cost-effective and flexible international system of climate change mechanisms, but their focus is on sharing information rather than generating common positions as there is great variation in the interests and domestic situations of the members.<sup>310</sup> The Umbrella Group and the EU have disagreed on a number of issues throughout the course of UN climate negotiations. Areas of contention have included the EU's demand for a 50% cap on the number of credits

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<sup>309</sup> United Nations Framework Convention on Climate Change Secretariat, *Kyoto Protocol: Party Groupings* (United Nations Framework Convention on Climate Change Secretariat, 2008 [cited 10 January 2009]); available from [http://unfccc.int/parties\\_and\\_observers/parties/negotiating\\_groups/items/2714.php](http://unfccc.int/parties_and_observers/parties/negotiating_groups/items/2714.php).

<sup>310</sup> Yamin and Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures*, 45,46.

gained from CDM or JI projects, proposed out of concern that parties may use these mechanisms to avoid domestic measures altogether, while the Umbrella Group opposed limits. The Umbrella Group opposed binding measures for non-compliance, in contrast to the EU which argued for financial penalties,<sup>311</sup> and has also been more vocal in pushing for debate on the role of developing countries should play in the climate change regime.<sup>312</sup>

In addition to UN negotiations, New Zealand and the EU both participate in the Joint Working Party on Trade and the Environment at the OECD, which provides another forum for interaction.

The next level involves the informal links that New Zealand policy makers have with think tanks and research centres such as the Pew Centre and CCAP (Centre for Clean Air Policy).

A third level encompasses the formal bilateral agreements that New Zealand has with international actors, such as the formal climate change partnerships it has signed with both Australia and the US, one that has been concluded with the UK in a sustainability context and less formal arrangements such as the Joint Declaration with the EU. Agreements are being developed with China in the context of the FTA (Free Trade Agreement) and with Japan.<sup>313</sup> Phil Gurnsey, Manager of Climate Change Policy at the Ministry for the Environment (MfE) and responsible for coordinating the cross-government domestic work-programme on climate change, stated that within this bilateral context, New Zealand and the EU make an effort to have regular visits and consultation on climate change. Adrien Macey, New Zealand's Climate Change Ambassador visits relatively frequently. At the time of the development of the joint Declaration, Bruno Julien met with Gurnsey and Hugh Logan (former MfE CEO) to

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<sup>311</sup> Corporate Europe Observatory, *Greenhouse Market Mania: What's at Stake in the Hague?* (2000 [cited 10 January 2009]); available from <http://www.corporateeurope.org/greenhouse/stake.html>.

<sup>312</sup> Yamin and Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures*, 46.

<sup>313</sup> Phil Gurnsey, "Interview with Author."

discuss possibilities for climate change collaboration. The environment section of the Joint Declaration is focused particularly on this issue.<sup>314</sup>

Also in this bilateral context, New Zealand is participating in Kyoto Protocol Joint Implementation (JI) projects with individual EU member states. To date, seven projects have been approved by MfE to be carried out in New Zealand by New Zealand suppliers, with the ERUs generated to be sold to the partner JI party. Three of these projects are in partnership with EU member states, namely France, Austria and the Netherlands. The details of two projects are still to be finalised but it appears likely that the United Kingdom will be a partner on at least one of them.<sup>315</sup>

### **5.3 Case study: Emissions Trading Cooperation**

Interaction between New Zealand and the EU on environment increased substantially in 2007 when New Zealand was in the process of designing a national Emissions Trading Scheme (ETS). The EU had implemented its ETS, the largest multi-national scheme in the world and the central pillar of EU climate policy, in 2005. Policy officials from New Zealand cooperated closely with their EU counterparts as they designed the New Zealand scheme.

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<sup>314</sup> Ibid.

<sup>315</sup> The three projects are: Te Apiti Wind Farm in conjunction with the Netherlands; Tararua Wind Farm Stage II, with France; and Awapuni LFG to Energy Project, with Austria. Ministry for the Environment, *Notice of Approval of Track One Joint Implementation Projects by the New Zealand Government* (Ministry for the Environment, 2008 [cited December 23 2008]).

### **5.3.1 EU ETS Background**

The EU was initially reluctant to adopt emissions trading (ET) as a climate change policy tool, but as has been documented by Damro and Méndes,<sup>316</sup> and by Loren Cass,<sup>317</sup> throughout the course of the Kyoto Protocol they gradually came to accept ET as it was promoted particularly by the US but more accurately by the JUSSCANZ group,<sup>318</sup> or Umbrella group as it came to be known. A former Ministry for Environment policy adviser and lead negotiator on the Kyoto Protocol from 1996 to 2002, stated that JUSSCANZ advocated for emission trading from the very beginning, based on the cap-and-trade scheme implemented in the US to reduce sulphur dioxide (SO<sub>2</sub>) emissions. He further pointed out that some of the earliest literature on emissions trading in a climate change context was written by New Zealand, in particular papers produced by New Zealand within the Umbrella Group.<sup>319</sup> In contrast, European resistance to emissions trading was based on greater experience with, and therefore a natural preference for, regulatory controls. The idea of selling the right to pollute was met with much scepticism, and the EU argued that reductions ought to occur domestically, portraying the mechanism as “an American attempt to buy its way out of reducing domestic emissions.”<sup>320</sup> However, gradually, the benefits of a least cost approach to emissions reduction became clear and from 1998 the EU began to embrace ET.<sup>321</sup>

The “Green Paper on Greenhouse Gas Emissions Trading in the EU” was published in March 2000, making the case for an EU-wide scheme as the most efficient instrument available to

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<sup>316</sup> Damro and Méndes, "Emissions Trading at Kyoto: From EU Resistance to Union Innovation."

<sup>317</sup> Loren Cass, "Norm Entrapment and Preference Change: The Evolution of the European Union Position on International Emissions Trading," *Global Environmental Politics* 5, no. 2 (2005).

<sup>318</sup> JUSSCANZ is a negotiating bloc of industrialised countries comprising Japan, the United States, Switzerland, Canada, Australia, Norway and New Zealand. UN negotiations are divided into blocs. The Western Europe and Other group (WEOG) is further divided into EU and JUSSCANNZ. Later, in the context of the Kyoto Protocol it was referred to as the Umbrella Group as it came to also include Russia and Iceland.

<sup>319</sup> Former Ministry for the Environment Policy Adviser, "Interview with Author."

<sup>320</sup> Cass, "Norm Entrapment and Preference Change: The Evolution of the European Union Position on International Emissions Trading," 46.

<sup>321</sup> *Ibid.*: 39.

ensure the EU meets its Kyoto Protocol commitments.<sup>322</sup> Under the Kyoto Protocol, the 15 countries which were EU member states at the time of signing have a common target, set out in a burden sharing agreement and sometimes referred to as the “EU bubble” and must reduce their greenhouse gas emissions by 8 % below 1990 levels during the 2008–12 Kyoto commitment period. The member states that acceded later have individual targets outside the ‘bubble’.<sup>323</sup>

In October 2001, the European Commission put forward a formal proposal for a framework directive for the EU to implement an emissions trading scheme. Schreurs and Tiberghien suggest that this may have also been an attempt, albeit unsuccessful, to bring the US back into the Kyoto process, given the US preference throughout negotiations for market-based mechanisms.<sup>324</sup>

The EU commenced operation of its emissions trading scheme (ETS) in January 2005, according to Directive 2003/87/EC, which entered into force on 25 October 2003.<sup>325</sup> It will allow the EU to meet its Kyoto obligations at a cost of 0.1% of GDP.<sup>326</sup>

The goal of the EU ETS was to create incentives for industries to reduce carbon emissions and to encourage investment in less carbon-intensive technologies and services by putting a price on carbon and exploiting the variations in abatement costs of participating installations. The EU scheme is particularly targeted at the energy sector and the actual industrial installations emitting greenhouse gases. It covers 40% of EU greenhouse gas

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<sup>322</sup> Raimund Bleischwitza, Katrin Fuhrmannb, and Elias Huchlerc, *The Sustainability Impact of the EU Emissions Trading System on the European Industry* (College of Europe, 2007 [cited November 14 2008]); available from <http://www.coleurop.be/eco/publications.htm>.

<sup>323</sup> Ibid.

<sup>324</sup> Schreurs and Tiberghien, "Multi-Level Reinforcement: Explaining European Union Leadership in Climate Change Mitigation," 35.

<sup>325</sup> European Commission, *Emission Trading Scheme (EU ETS)* (DG Environment, [cited 11 November 2008]); available from [http://ec.europa.eu/environment/climat/emission/index\\_en.htm](http://ec.europa.eu/environment/climat/emission/index_en.htm).

<sup>326</sup> European Commission, "EU Action against Climate Change: EU Emissions Trading: An Open System Promoting Global Innovation," ed. DG Environment (European Commission, 2007).

emissions and almost half of its carbon emissions, comprising approximately 10,000 large installations in the energy sector. It does not, for example, cover household emissions.<sup>327</sup>

### **5.3.2 EU ETS Issues**

Current key design features of the scheme in phases 1 and 2 are that it targets stationary energy and industrial processes and concerns CO<sub>2</sub> only. It works on a ‚cap-and-trade’ basis - a fixed number of units are allocated to each member state based on factors such as Kyoto Protocol reduction obligations and GDP, then these are allocated by the state to affected domestic installations in annual NAPs (National Allocation Plans). If a company uses more than its allowed amount of CO<sub>2</sub>, it must purchase additional units. If it uses less, it may sell the surplus. Each installation must monitor and report its carbon emissions, and must pay for those emissions using carbon allowances. Each allowance is equal to one tonne of carbon emitted. Installations that fail to meet their reporting and carbon emission payment obligations are fined.<sup>328</sup> It is currently in its second phase which runs from 1 January 2008 to 31 December 2012.

After its first phase (1 January 2005 – 31 December 2007) it was already apparent that there were serious problems with the design of the scheme.<sup>329</sup>

One of the major issues to be addressed is the allocation of emissions allowances. Allowances are allocated freely, the idea being to gradually reduce the number of allowances given so that installations are gradually pushed towards emissions reductions.

It is now clear that allocation in the first phase was overly generous. Allocations were based on industry projections of how many units they would need. Although the aim was to ease

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<sup>327</sup> Emissions Trading Group Policy Adviser, "Interview with Author," (Wellington: 29 August 2008).

<sup>328</sup> European Commission, "EU Action against Climate Change: EU Emissions Trading: An Open System Promoting Global Innovation," 12.

<sup>329</sup> Karsten Neuhoff et al., *The Role of Auctions for Emissions Trading* (Climate Strategies, 2008 [cited November 10 2008]); available from <http://www.climatestrategies.org/our-research/category/17/77.html>.

industry into the scheme, the result was an over allocation of units and a substantial fall in the market value of carbon units.

In particular, the experience of the first phases has shown that in the electricity sector, a number of companies made large windfall profits through free allocation. This is because although allocation of units is free, companies face either a cost or an opportunity cost by holding units. A large number of electricity companies in particular passed their opportunity cost on to consumers in the first phase by raising their prices.<sup>330</sup>

A number of changes have been proposed for Phase III of the EU scheme based on initial experiences. In January 2008, the European Commission issued a draft directive outlining potential alterations to the structure of the scheme. It proposes expanding the scope of the scheme to include carbon dioxide emissions from petrochemicals, ammonia and aluminium, as well as nitrous oxide emissions from the production of nitric, adipic and glyoxalic acid, and perfluorocompounds emissions from the aluminium sector.<sup>331</sup> It advocates for the use of auctioning to distribute allowances, as this is consistent with the polluter pays principle, estimating that initially in 2013 (the first year of Phase III) two thirds of allowances will be distributed via auctioning, a proportion of the revenues from which would be used towards measures related to emissions reduction and climate change adaptation. This would do away with the previous system of NAPs.<sup>332</sup>

The review also mentions the possibility of including carbon emissions from shipping, and refers to the inclusion of aviation emissions in the ETS. Ultimately, the EC hope for the ETS

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<sup>330</sup> Emissions Trading Group Policy Adviser, "Interview with Author." Bleischwitza, Fuhrmannb, and Huchlerc, *The Sustainability Impact of the EU Emissions Trading System on the European Industry*.

<sup>331</sup> European Commission, "Proposal for a Directive of the European Parliament and Council Amending Directive 2003/87/EC So as to Improve and Extend the Greenhouse Gas Emission Allowance Trading System of the Community," (2008), 4.

<sup>332</sup> *Ibid.*, 8-9.

to eventually include emissions from aviation, maritime transport and forestry.<sup>333</sup> Having received final approval from the Council of the European Union in October 2008 and thus sealed into law,<sup>334</sup> domestic aviation will be included from 2011 and, controversially, international aviation will be brought into the scheme from 2012, meaning all flights landing or departing from Europe will have to participate.

Although emissions from aviation represent a small percentage of total GHG emissions, it is the fastest growing source of emissions. Total EU GHG emissions fell 3% between 1990 and 2003, while emissions resulting from aviation increased 70% in the same period.<sup>335</sup> Further, the impact of emissions from aviation is greater due to the effect of high altitude.<sup>336</sup>

The inclusion of international aviation emissions in the EU ETS will of course significantly affect all airlines flying to and from Europe.<sup>337</sup> This is a particularly sensitive issue for New Zealand, as it would mean considerable extra costs for Air New Zealand, in which the New Zealand government owns a 76.07% stake,<sup>338</sup> as well as for travellers to and from the EU. The increased cost of long distance flights in and out of the EU has the potential to negatively affect tourism to New Zealand. In addition to the obvious economic ramifications that this move represents, New Zealand, along with countries like Australia and the United States, is strongly opposed to this inclusion based on a number of other points. Firstly, that it is arguably contrary to the Chicago Convention establishing the International Civil Aviation Organisation (ICAO), according to which a signatory cannot unilaterally impose charges on

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<sup>333</sup> Stavros Dimas, "EU Climate Change Policy," in *Speech delivered to Conference of National Parliaments of the EU and the European Parliament* (London - House of Commons: 2005).

<sup>334</sup> International Air Transport Association, *I.A.T.A Blasts European Union ETS Decision* (2008 [cited 18 November 2008]); available from <http://www.iata.org/pressroom/pr/2008-10-24-02.htm>.

<sup>335</sup> European Commission, *Aviation and Climate Change* (2008 [cited 18 November 2008]); available from [http://ec.europa.eu/environment/climat/aviation\\_en.htm](http://ec.europa.eu/environment/climat/aviation_en.htm).

<sup>336</sup> Dr Christian N. Jardine, "Calculating the Environmental Impact of Aviation Emissions," (Environmental Change Institute, Oxford University Centre for the Environment, 2005).

<sup>337</sup> Ward and James, "Energy Sector: Issues, Options and Perspectives," 196.

<sup>338</sup> Air New Zealand, *Shares on Issue* (2009 [cited 13 January 2009]); available from [http://www.airnewzealand.co.nz/aboutus/corporateprofile/shares\\_on\\_issue/default.htm](http://www.airnewzealand.co.nz/aboutus/corporateprofile/shares_on_issue/default.htm).



civil, scheduled aircraft entering its territory (Article 15); and secondly, it raises questions of extra-territorial jurisdiction, which is also contrary to the Chicago Convention (Article 1). The practical ramifications of the inclusion of international aviation are still not clearly elaborated. For example, it has been suggested that the scheme will avoid „double counting’, as outlined by David Batchelor, Aviation Safety and Environment Policy Officer for the European Commission’s DG Energy and Transport. He stated that where another state has an ETS in place covering aviation emissions, flights from that state to the EU would fall under the EU scheme, while flights from the EU to that state would be covered by that state’s scheme.<sup>339</sup>

The EU argues that the ETS is fully compliant with ICAO regulations and the Chicago Convention. They argue that it is not unilateral as three other non-EU countries are involved – Lichtenstein, Norway and Iceland – and that they intend for it to become multilateral, and further, that it is not a tax or a charge as set out in Article 15 of the Chicago Convention.<sup>340</sup> Aviation emissions are not covered by the Kyoto Protocol, but will likely be brought into the post-2012 framework to be decided at Copenhagen in December 2009.<sup>341</sup> One can only speculate as to the motivations of the EU in venturing into such controversial territory, but it seems possible that the EU has grown frustrated with the lack of action and therefore results from ICAO in the 12 years that it has been charged by the UNFCCC with managing aviation emissions, as it has struggled to meet expectations in this area, resulting in increasing pressure from the UNFCCC as emissions from international aviation have trended upwards. With a functioning trading scheme already well established, the EU likely believes it is well placed to implement initial measures aiming to curb the rapidly rising emissions in this

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<sup>339</sup> *E.U States Likely to Face Legal Action from the U.S over E.T.S Regardless of Who Wins Presidential Election, Says A.T.A* (GreenAirOnline.com, 2008 [cited November 18 2008]); available from <http://www.greenaironline.com/news.php?viewStory=245>.

<sup>340</sup> *Ibid.*

<sup>341</sup> Reuters, *ICAO Presses on with Global Emissions Trading Plan* (2009); available from <http://www.guardian.co.uk/business/feedarticle/8267860>.

sector. Internationally, legal challenges on the grounds of the Chicago Convention are likely to come from the United States, Australia and the International Air Transport Association (IATA).<sup>342</sup>

In January 2008 the EU announced that it had no immediate plans to bring maritime emissions into the scheme, preferring to wait and see how International Maritime Organisation (IMO) managed efforts develop.<sup>343</sup> However, later that year a report was commissioned on maritime emissions, and it is expected to include a recommendation on including maritime emissions in the ETS.<sup>344</sup> Avril Doyle, European Parliament Rapporteur on the ETS stated in July of 2008 that she wanted shipping emissions included in the scheme no later than 2015.<sup>345</sup>

### ***5.3.3 New Zealand – EU interaction on Emissions Trading***

New Zealand and the EU have interacted closely with regard to the design and implementation of New Zealand's emissions trading scheme. Several policy officials interviewed over the course of this research between July and November 2008 agreed that most interaction between the EU and NZ on environment was on emissions trading, with most of the activity occurring between May and September 2007, leading up to the release of the Government's ETS framework, but with ongoing consultation and communication occurring as the framework was debated and further details clarified.

#### *New Zealand ETS background*

When New Zealand initially signed the Kyoto Protocol, policy officials believed that it would be a net exporter of carbon credits with a surplus of 33 million tonnes. This was one of the main arguments in favour of ratifying the Protocol. However, in 2005 when figures on the

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<sup>342</sup> Emissions Trading Group Policy Adviser, "Interview with Author."

<sup>343</sup> *Brussels Spares Shipping — for Now*. (Dow Jones Factiva, 2008 [cited 15 January 2009]).

<sup>344</sup> Emissions Trading Group Policy Adviser, "Interview with Author."

<sup>345</sup> *Shipping Industry Set for Co2 Index by 2009* (Dow Jones Factiva, 2008 [cited 15 January 2009]).

impact of transport and exhaust emissions and the contribution of carbon sinks were revised it was clear that New Zealand would actually face a deficit of 36 million tonnes in meeting its Kyoto reduction obligations.<sup>346</sup>

As outlined above, emissions reductions in New Zealand are particularly challenging. New Zealand already uses a high proportion of renewable energies in electricity generation (approximately 70%), and reducing emissions from transport is very difficult. Further complicating New Zealand's position is the unusually high proportion of methane and nitrous oxide in its emissions profile – almost 50% of total emissions – primarily as a result of the large agricultural sector.<sup>347</sup> Despite New Zealand contributing approximately only 0.3% of all global emissions, per capita emissions are amongst the highest in the world. A recent report by the Worldwide Fund for Nature (WWF) ranked New Zealand sixth globally behind United Arab Emirates, the United States, Kuwait, Denmark and Australia.<sup>348</sup>

New Zealand has been a long standing proponent of emission trading as a policy tool to reduce emissions of greenhouse gasses, based on a preference for a least-cost and flexible approach. In 2001 and 2002, prior to the EU scheme's adoption, an emissions trading scheme was seriously considered by the Labour government as part of a package of climate change policy measures. Consultation on this proposal took place, with the resulting policy proposal put forward by the Labour Government favouring a capped carbon tax on energy, industrial and transport emissions over emissions trading. It included provision for large industrial

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<sup>346</sup> Brian Fallow, "Kyoto Bill Creates \$1 Billion Deficit " *The New Zealand Herald*, June 17 2005.

<sup>347</sup> Ward and James, "Energy Sector: Issues, Options and Perspectives," 187-93.

<sup>348</sup> Worldwide Fund for Nature, *Media Releases : Living Planet Report Reveals New Zealanders Have 6th Largest Footprint* (Worldwide Fund for Nature, 2008 [cited December 5 2008]); available from [http://www.wwf.org.nz/index.php/about\\_us/media\\_releases/entry/living\\_planet\\_report\\_reveals\\_new\\_zealanders\\_have\\_6th\\_largest\\_footprint/](http://www.wwf.org.nz/index.php/about_us/media_releases/entry/living_planet_report_reveals_new_zealanders_have_6th_largest_footprint/).

emitters concerned about the impact on their competitiveness to negotiate individual terms (Negotiated Greenhouse Agreements).<sup>349</sup>

Later, the government also proposed a levy on methane and nitrous oxide emissions to fund research into the reduction of these primarily agriculture based emissions. However, due to considerable public and political pressure, both of these initiatives were eventually dropped, with the planned carbon tax officially abandoned in late 2005 after the general election.<sup>350</sup>

An alternative package of measures was needed to ensure New Zealand would be able to account for its Kyoto deficit. Emissions trading had always been a part of the long term plan of New Zealand's climate change strategy and as already described, had advocated strongly for emissions trading throughout the Kyoto negotiations. Five discussion documents<sup>351</sup> were released a year later in December 2006, with a range of proposals including, among others, emissions trading, a narrow based carbon charge, incentives, subsidies and voluntary measures. After consultation and discussion with public and industry stakeholders, an emissions trading scheme was decided upon as one of the government's preferred policy options and this was announced in October 2007.<sup>352</sup> A Senior Ministry for the Environment adviser explained that an emissions trading scheme would likely have always been „Plan B,'

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<sup>349</sup> Ministry for Environment Policy Adviser, "Interview with Author.", Ministry for the Environment, *History of Climate Change Policy Development* (Ministry for the Environment, 2009 [cited 15 January 2009]); available from <http://www.mfe.govt.nz/issues/climate/policies-initiatives/history/index.html>.

<sup>350</sup> Buhrs and Christoff, "„Greening the Antipodes'? Environmental Policy and Politics in Australia and New Zealand," 229.

<sup>351</sup> These were released by the Ministries for Economic Development, Environment, Agriculture and Fisheries. The five documents were: Sustainable Land Management and Climate Change, Transitional Measures for Low Emission Electricity, Draft Powering our Future, Draft New Zealand Energy Strategy, and the New Zealand Energy Efficiency and Conservation Strategy. Ministry for the Environment, *Consultation* (Ministry for the Environment, 2009 [cited January 15 2009]); available from <http://www.mfe.govt.nz/issues/climate/consultation/index.html>.

<sup>352</sup> Frazer Lindstrom, *New Zealand Climate Change Policy 2006+* (Frazer Lindstrom, 2006 [cited 5 December 2008]); available from <http://www.climatechange.co.nz/nzccpolicy2006.htm>, Ministry for the Environment, *History of Climate Change Policy Development*.

and that in any case, it has become increasingly apparent that emissions trading is where the rest of the world is heading.<sup>353</sup>

As only the second actor in the world to implement a compulsory, nationwide ETS, New Zealand would benefit from increased authority in international negotiations. As a small country, New Zealand is reliant on other, larger international actors to take action on climate change. Without a domestic ETS, it would be difficult for New Zealand to have credibility and to try and tell others “what they should be doing if we (New Zealand) are not doing it ourselves.”<sup>354</sup>

With a successful working model already in place in the form of the EU ETS, a process of cooperation and learning began.

#### *EU-New Zealand Cooperation*

As a senior Ministry for Environment staff member summarised, when the government decided on an ETS as New Zealand’s core market-based climate change mechanism, policy officials “were keen to mine what (they) could from (the EU.)”<sup>355</sup>

In May 2007 the government announced the establishment of a cross-ministry taskforce, called the Emissions Trading Group (ETG) and led by the Ministry for Environment, whose role was to design the policy for the New Zealand emissions trading scheme.<sup>356</sup> Early in the research process in May 2007 an official delegation including members of this group travelled to Brussels to discuss possible approaches and learn from EU experience.<sup>357</sup>

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<sup>353</sup> Ministry for Environment Policy Adviser, "Interview with Author."

<sup>354</sup> Phil Gurnsey, "Interview with Author."

<sup>355</sup> Ministry for Environment Policy Adviser, "Interview with Author."

<sup>356</sup> The Emissions Trading Group is made up of staff seconded from ministries covering sectors directly involved in the potential scheme, the Ministry for the Environment, the Treasury, and the Ministries of Economic Development, Transport, and Agriculture and Forestry.

<sup>357</sup> Government Policy Adviser, "Interview with Author."

A Treasury analyst who participated stated that generally speaking, there was a sense of common general principles between the EU and New Zealand, a sense that the two parties were closely placed ideologically on the broad issues related to climate change, even if they might not always agree on details. He acknowledged that the roles the two parties play at a global level are different, stating that the EU has played a greater role on framing the debate and deciding what value should be placed on emissions reductions.<sup>358</sup>

The Emissions Trading Group worked closely with members of Directorate General (DG) Environment at the EC level but also cooperated with relevant departments in individual member states, for example the Department for Environment, Food and Rural Affairs (DEFRA) in the UK. In addition, there was a great deal of communication with negotiators on Kyoto mechanisms in individual member states,<sup>359</sup> while DG Environment and MfE made use of video conferencing technology to enhance communication.<sup>360</sup>

There have been a number of visits to New Zealand by European Commission representatives, as well as representatives from individual member states, particularly from the UK. Phil Gurnsey visited in September of 2008 and met with Commission officials.<sup>361</sup> In addition to this bilateral dialogue, informal interaction also occurred within the context of regular UNFCCC meetings.<sup>362</sup>

An official within the Emissions Trading Group stated that contrary to criticism often mounted against the EU as being confusing for third parties, they found it easy to deal with DG Environment, and that communication was consistently swift and efficient. They

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<sup>358</sup> Treasury Policy Adviser, "Interview with Author."

<sup>359</sup> Emissions Trading Group Policy Adviser, "Interview with Author."

<sup>360</sup> Government Policy Adviser, "Interview with Author."

<sup>361</sup> Ibid.

<sup>362</sup> Emissions Trading Group Policy Adviser, "Interview with Author."

suggested that their European counterparts were impressed at the speed with which policies can be implemented in New Zealand compared with in the EU.<sup>363</sup>

Gurnsey stated that within the context of the EU-New Zealand relationship he has noticed a marked increase in focus on climate change in the two years he has been in his current role. He believes this is primarily due to development of the NZ ETS, stating that although it might be fair to say that New Zealand has more to learn from the EU than vice versa, the EU has been interested in innovations in the planned framework for the New Zealand scheme, in particular how New Zealand would bring agriculture and forestry into the scheme.<sup>364</sup>

Participants interviewed during this research agreed that close cooperation with the EU has taken place on emissions trading. When some participants were questioned as to which party, if any, was particularly driving this interaction, all responded that while the EU has been a driving force and a leader in global terms through the implementation of its emissions trading scheme, on this particular issue New Zealand was the party pushing for interaction. In terms of the actual design of the scheme, there are aspects of the EU scheme which it would not make sense to apply in New Zealand, given economic differences and different priorities and challenges when it comes to reducing emissions. As one interview participant stated, “we (New Zealand) have learned from their (EU) mistakes,”<sup>365</sup> and accordingly policy officials have designed a scheme that is actually substantially different to the EU model.

#### ***5.3.4 What was learnt? New Zealand ETS design and comparison with EU scheme***

While the EU scheme in its first two phases is limited to carbon emissions from stationary energy and industrial processes, the New Zealand scheme would eventually be an “all sectors, all gasses” scheme, covering all six Kyoto Protocol greenhouse gasses, and the first

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<sup>363</sup> Ibid.

<sup>364</sup> Phil Gurnsey, "Interview with Author."

<sup>365</sup> Emissions Trading Group Policy Adviser, "Interview with Author."

to attempt to include emissions generated by agriculture and forestry. Given the contribution of agriculture emissions to New Zealand's emissions profile it was particularly important to bring agriculture into the scheme, in order to produce a credible and effective ETS.

The EU, along with other parties, has shown a great deal of interest in just how these two sectors in particular would be included. It is generally considered unlikely that the EU would ever attempt to bring these sectors into their own scheme; indeed, there is some concern in the EU as to the legitimacy of trading forestry units for energy units, as there are scientific uncertainties related to how to actually measure and monitor forestry units, and how forests will actually be affected to climate change. If forests which had been used as carbon sinks were to die off, those reductions would be lost. Instead the EU sees emissions reductions in the energy sector as a long term solution, and therefore this is the sole sector targeted in the first two phases of its scheme.<sup>366</sup> Rather, the interest the EU has shown in the design of New Zealand's scheme is founded in the desire to ensure that, considering a future global market, trading schemes are robust and broadly compatible,<sup>367</sup> and of course to consider the potential implications for its own scheme. Individual member states have also shown interest in specific aspects of the scheme; France has shown considerable interest in work being carried out in New Zealand on nitrification inhibitors and energy reduction in agriculture.<sup>368</sup>

One of the important lessons New Zealand policy makers learnt from the EU scheme was that by targeting energy providers, costs can be passed on to the consumer.<sup>369</sup> The allocation of units is a crucial issue, representing a large transfer of wealth from taxpayer to industry, and in the EU experience already described, despite this wealth being transferred to industry, the design of the scheme allowed industry to gain windfall profits by passing their opportunity

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<sup>366</sup> Ibid.

<sup>367</sup> Government Policy Adviser, "Interview with Author."

<sup>368</sup> Phil Gurnsey, "Interview with Author."

<sup>369</sup> Zara Maung, *New Zealand Emissions Trading Scheme Gets Tough on Farming Emissions* (2007 [cited July 15 2008]); available from <http://www.climatechange.org.nz/content.asp?ContentID=5061>.



cost onto consumers. The New Zealand scheme would not allocate units to businesses that could also do this.<sup>370</sup> In addition, the New Zealand scheme takes an upstream approach, targeting fuel importers and producers, based on the assumption that cost will naturally flow „downstream’ in due course. In contrast, the design of the EU scheme meant that obligation rested downstream. An ETG analyst pointed out that in the EU scheme, allocation and obligation are located at the same levels, whereas the New Zealand scheme has the flexibility to target different levels. For example, obligations can be targeted upstream by placing obligation on a fuel importer or producer, while credits can be allocated midstream to an industrial firm, as they will face the costs passed on from upstream.<sup>371</sup>

The EU scheme limits the trading of emissions units which originate from outside the EU ETS, placing a cap on the amount of Emissions Reduction Units (ERUs) and Certified Emissions Reductions (CERs) units that can enter the scheme. It prohibits entirely the importation of Assigned Amount Units (AAU’s), also known as „hot air’ credits. These are credits resulting from a drop in emissions in Eastern European countries following the collapse of the Soviet Union. They are the result of a significant industrial and economic slowdown, not reductions through improvement in efficiency, unlike quantifiable emissions reductions like ERUs or CERs, and are viewed with scepticism by many environmentalists.<sup>372</sup>

There are also concerns that supply of AAUs could exceed demand for tradable units in the international carbon market. They are nonetheless legitimate units under the Kyoto Protocol and represent emissions that have not occurred. Unlike the EU scheme, the New Zealand scheme would allow the use of AAUs provided that they meet regulations on Green Investment by having been processed through a Green Investment Scheme (GIS), also known

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<sup>370</sup> Mark Storey, "The New Zealand ETS," in *IETA Side Event, C.O.P 13 and C.M.P 3* (Bali: 2007).

<sup>371</sup> Emissions Trading Group Policy Adviser, "Interview with Author."

<sup>372</sup> Ibid.

as ‚greening‘ AAU credits.<sup>373</sup> There are no limitations on the amount of AAUs that can be imported into the New Zealand ETS provided they are ‚green.‘<sup>374</sup>

Because of the structure of the EU scheme, carbon prices in the EU are likely to be higher than the international average. This is because of the limitations placed on the use of developing country credits, the exclusion of AAUs, the focus on carbon and the exclusion of carbon sinks. The EU sees this as a long term advantage by avoiding global market fluctuations. For example, if AAU supply did exceed demand the EU would be protected from market collapse. New Zealand’s scheme, however, needs to be fully linked internationally due to the small size of the market. The relatively closed EU model is not an option for New Zealand which cannot afford to isolate itself from the international market.<sup>375</sup>

Further, the EU exclusion of AAUs versus New Zealand’s decision to allow them could cause difficulty for future linking of the two schemes. In order to link schemes, parties must mutually recognise each other’s units. A link with New Zealand would allow AAUs to indirectly enter the EU ETS scheme.<sup>376</sup>

The resulting instrument has been praised for its comprehensive coverage, innovation and for avoiding many of the difficulties encountered in the EU ETS framework, and has been described as arguably “one of New Zealand’s most significant contributions to international climate change mitigation efforts,” ensuring a very credible platform for New Zealand in post-2012 framework negotiations.<sup>377</sup> However, even with the emissions trading scheme in place, New Zealand would likely still face a shortfall of approximately 20 million tonnes of

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<sup>373</sup> Natalia Gorina, "Cooling Down Hot Air," *Environmental Finance*, May 2006.

<sup>374</sup> Emissions Trading Group Policy Adviser, "Interview with Author."

<sup>375</sup> Ibid.

<sup>376</sup> Ibid. The term linking simply means mutual recognition of emissions units. If units are compatible, it is possible to link. Schemes do not have to be identical in order to link.

<sup>377</sup> Suzy Kerr, "Review of Proposed New Zealand Emissions Trading System," (Wellington: Motu Economic and Public Policy Research, 2007).

credits in accounting for its first commitment period targets, which would still need to be purchased from the international market.<sup>378</sup>

In September 2007 the details for the planned New Zealand Emissions Trading Scheme were released to the public, and the Climate Change (Emissions Trading) Bill was passed a year later in September 2008, with the scheme due to come into effect from January 1 2009. The forestry sector was to have retrospective obligations from 1 January 2008, with other sectors entering from 1 January 2010. However, after the November 2008 New Zealand general election the incoming National party-led Government, under the terms of its coalition agreement with the ACT party, delayed the scheme's entry into force until January 1 2010, pending further review.

## **5.4 Chapter Summary**

Dialogue on climate change and emissions trading has played a significant role in EU-New Zealand relations in recent years. In the wider context of international negotiations on climate change, while the EU and New Zealand can be said to agree on the broad issues involved, they have taken different approaches to some specific details. Broadly speaking, in the Kyoto negotiations, on some issues New Zealand's position was closer to that taken by other Umbrella Group members than that of the EU, the driving force in negotiations. While it could be argued that the EU and New Zealand share similar values in their broad approach to climate change, and while they worked closely together as New Zealand designed its ETS in 2007, the variations between their respective needs and interests mean that there are inevitable areas of difference.

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<sup>378</sup> Phil Gurnsey, "Interview with Author."

### **5.4.1 Normative Power**

An EU normative power explanation of New Zealand's relations with the EU on climate change would require evidence of the EU actively influencing a fundamental change in New Zealand's position on climate change, or on emissions trading, by virtue of normative influence. While the EU certainly has played a prominent role in international climate change negotiations and actively promotes international attention to climate change, and while the subject has been said to dominate meetings between the EU and New Zealand, it cannot be shown that New Zealand's approach to climate change policy or that its adoption of an emissions trading scheme is attributable to EU normative power. In general terms, the EU, as a leader in the climate change regime, has influenced the direction of international climate change negotiations and has been able, to an extent, to frame debate and set the agenda. It has been argued elsewhere that the EU exercises normative power in this broad context.<sup>379</sup> However, it is neither plausible nor verifiable to argue a direct normative impact on New Zealand.

The key weakness of a normative power argument in this case is as follows: As highlighted in chapter two, Thomas Diez argued that in order to argue the case for normative power, it must be shown to stand on its own, unable to be reduced to economic or military power.<sup>380</sup> Therefore, if normative power were a plausible framework in this case, it would be possible to demonstrate that the EU engages in dialogue on environment with New Zealand for reasons other than material self-interest. However, in the case of the emissions trading, it is clear that while the EU was under no obligation to cooperate with New Zealand policy makers in the design process of the New Zealand ETS, it had clear interest in the outcome due to implications for future international linkages between schemes, the future international carbon market and thus of course for the EU's own scheme.

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<sup>379</sup> Scheipers and Sicurelli, "Normative Power Europe: A Credible Utopia?."

<sup>380</sup> Diez, "Constructing the Self and Changing Others: Reconsidering 'Normative Power Europe'," 616.

Equally, it would be possible to show that New Zealand policy on climate change evolved in line with EU policy for reasons other than material interests linked to the EU's economic weight, perhaps even taking action that appeared to go against its interests based on normative arguments. However, as has been demonstrated, New Zealand's approach to cooperation with the EU on climate change and emissions trading has been pragmatic, by choosing to focus on areas of high economic priority in international negotiations and, in the case of the design of the ETS, learning from EU mistakes and picking and choosing those ideas that are applicable to New Zealand's situation and rejecting those that are not. In each case, New Zealand's motivations and decision making is firmly grounded in material interests.

Secondly, there is no evidence that the ideas exchanged in the context of the bilateral relationship are norms or values. New Zealand can be said to share core norms and values with the EU due to its colonial links with Britain. Indeed, the political discourse between the EU and New Zealand emphasises this aspect of the relationship. Interview participants also alluded to this and the belief that it is in part because of this background of shared values and understanding that effective, clear dialogue is possible. However, as discussed, in international negotiations New Zealand has followed its own interests, particularly economic interests. Due to the traditional structure of UN negotiations New Zealand shares information within the JUSSCANNZ group and Umbrella Group, and it has sometimes taken positions that are at odds with the EU view. In relation to emissions trading, the decision to look to the EU was largely a matter of convenience, as the EU scheme was the only national carbon trading scheme in operation and had been underway for more than two years when NZ began the design process.

Indeed, with specific reference to emissions trading, if there is a potential case to be made for a normative influence it would be in the context of the influence of New Zealand and the

JUSSCANZ/Umbrella group in the Kyoto negotiations on the EU position. The EU, having entered the negotiations with a clear preference for regulatory controls, gradually came to endorse market mechanisms as a vital climate policy tool. If it can be argued that emissions trading is now an international norm it is due to New Zealand and JUSSCANNZ promotion of the mechanism and its subsequent inclusion in the Kyoto Protocol. While Damro and Méndes characterised this as a policy learning experience,<sup>381</sup> Loren Cass argued that the actual change in position in international negotiations was best explained in normative terms.<sup>382</sup>

#### ***5.4.2 Policy Transfer and Small State Theory***

A policy transfer explanation incorporating small state theory is better suited to explaining the dynamics of EU-New Zealand relations on climate change, as it considers the exchange of ideas and knowledge in terms of policies rather than abstract values, and emphasises New Zealand's particular need as a small state for a pragmatic approach to foreign policy on this issue. Specifically, small state theory helps to explain New Zealand's broad interaction with the EU on climate change including its role in international institutions, while a policy transfer approach can be applied to the specific study of interaction on emissions trading.

Consistent with a small state theory explanation, New Zealand works within the international climate change regime to balance its economic needs and priorities with its need to ensure that effective action on climate change occurs. As a country with an economy that relies heavily on the primary sector and on hydro power for almost 70% of its energy, New Zealand is vulnerable to the anticipated effects of climate change. It is also a small country, and must rely on the actions of bigger, more powerful actors to make a real difference. Therefore

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<sup>381</sup> Damro and Méndes, "Emissions Trading at Kyoto: From EU Resistance to Union Innovation."

<sup>382</sup> Cass, "Norm Entrapment and Preference Change: The Evolution of the European Union Position on International Emissions Trading."

domestic action taken by New Zealand is less important in terms of actual reductions towards solving the problem, but of great value and benefit to New Zealand in terms of its international credibility: allowing New Zealand a moral platform from which to promote and encourage action by other parties with the potential to make a greater impact, and because New Zealand's emissions profile has more in common with developing countries than with industrialised countries, it may also be able to play a role in helping to negotiate binding commitments for non-Annex 1 parties in the future.

New Zealand focuses its resources internationally on climate change issues that matter most to its economy, such as agriculture and LULUCF issues, and more recently issues related to aviation emissions. It concentrates its interaction on climate change through international institutions such as the UN framework and the OECD. While it has described the challenge of climate change in normative terms in the past, describing a responsibility to take action to "lead by example,"<sup>383</sup> this is consistent with Henderson's small state behavioural framework<sup>384</sup> and is also underpinned by concern for its economic interests and priorities.

New Zealand's decision to implement an emissions trading scheme, as this chapter has demonstrated, was based in pragmatism and material interest. Firstly, New Zealand faces a shortfall in meeting its Kyoto obligations; instead of being a net seller of credits, as was believed at the time of ratification, New Zealand will need to purchase credits on the international carbon market. By devolving some of this cost to industry, whether via the ETS or via a carbon tax as previously suggested, the government can reduce its costs and therefore the cost to taxpayers. Secondly, the Kyoto Protocol is in effect a cap-and-trade scheme, and emissions trading could be described as the international norm. As more and more actors implement domestic trading schemes, international linkages will become important. There

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<sup>383</sup> Yang, "New Zealand and the Kyoto Protocol: Ideals, Interests and Politics."

<sup>384</sup> Henderson, "New Zealand and the Foreign Policy of Small States."

were therefore compelling reasons to ensure the New Zealand scheme was consistent with international developments and trends. Beyond the fact that the EU ETS was the only national ETS in operation at the time the New Zealand scheme was designed, given the EU's role in the international climate change regime and its economic power, it would be pragmatic and forward thinking to ensure that New Zealand's scheme was in line with that of the EU.

As has been shown, New Zealand worked closely with the EU on the design of its ETS. A policy transfer approach, with particular reference to Dolowitz and Marsh's distinctions between voluntary, direct coercive and indirect coercive transfer,<sup>385</sup> helps to explain the dynamics of this interaction. As established in chapter two, direct coercive transfer is not applicable in the case of EU-New Zealand relations, leaving indirect coercive and voluntary transfer as possible explanations. Recalling that Dolowitz and Marsh included economic pressure and international consensus as possible 'push' factors applicable to indirect coercive transfer, and considering the factors leading New Zealand to design an ETS outlined above – economic factors and emissions trading emerging as an international norm – it is possible to argue that New Zealand's ETS policy was perhaps not entirely voluntary. However, the final scheme was substantially different from the EU model, highlighting the voluntary policy learning that occurred as a result of the research process. Further, according to Rose's<sup>386</sup> classification of degrees of transfer, the particular transfer that occurred was emulation, in which the fundamentals of a policy are transferred while allowing for adaptation to a different context.

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<sup>385</sup> Dolowitz and Marsh, "Who Learns What from Whom: A Review of the Policy Transfer Literature."

<sup>386</sup> Rose, "What Is Lesson-Drawing?."



# 6: Conclusion

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This chapter investigates the conceptual and practical implications of the thesis. It is divided into sections addressing these outcomes with respect to the principal theoretical approaches used throughout this research with reference to the original research question: *How valid is the concept of EU normative power in explaining efforts to develop a cooperative relationship between the EU and New Zealand on environmental issues when compared with theories of policy studies? How, by analysing interactions and identifying areas of potential common interests, could this relationship be further enhanced?*

## 6.1 Conceptual Outcomes

### 6.1.1 Normative Power

From the outset, the use of normative power as a theoretical framework was going to be empirically challenging. Normative power has been applied to the EU's influence on accession countries and in specific international policy areas. Nevertheless, attempting to apply normative power to relations with a third party and across a range of policies has highlighted how vague it is as a concept and how empirically it is difficult to demonstrate. The research was designed in order to minimise these difficulties as much as possible.

In Chapter Two, it was argued that for normative power to be shown, it must not be reducible to military or economic power. Therefore, as outlined in the hypothesis section of Chapter Two, in order to show normative power, it was expected that it would be necessary to show evidence of New Zealand engaging with the EU on environment, or adopting environmental policy from the EU, for reasons that could not be reduced to economic or material interests. It would have to be demonstrated that the EU had contributed to the increasing attention paid to environmental issues within the EU-New Zealand relationship and in New Zealand politics,

and to the subsequent adoption of environmental policies. Instead, the case studies carried out have shown consistently that aspects of the relationship that might be considered normative power at first glance can in fact be shown to be based on the economic power of the EU.

There is no question that the EU has played a pivotal role in the international climate change regime, and is a world leader in chemicals regulation and hazardous waste management and in environmental research. As this thesis has touched on briefly, its role in these areas can be explained by a combination of economic interests and political opportunism. However, as was argued in Chapter Two when defining this thesis' interpretation of normative power, the motivation of the EU is not as important to the research question as the effect, if any, that the EU actually has on New Zealand politics and policy, and New Zealand's motivations for engaging with the EU. Normative power is not power if it does not have an effect. If there is no measurable effect, how can it be proven to exist? It is for this reason that the focus of research and argument has been New Zealand's motivations and policies.

Indeed, there seems to be a fundamental lack of clarity as to what normative power actually is. In Manners' original depiction he explained it as the EU's "principles, actions and impact in world politics," diffusing norms internationally without material motivation.<sup>387</sup> Some scholars of normative power, such as Zaki Laïdi, have interpreted this to mean the promotion and diffusion of particular standards, policies or regulations.<sup>388</sup> However, the diffusion of policies represents something quite different to the diffusion of norms. The diffusion of policies leads away from the constructivist concepts of perception and identity that are a fundamental part of considering the diffusion of international norms, towards rationalist concepts which consider material factors. While both address the role and spread of ideas, they take fundamentally different approaches to these questions. It is for this reason that the

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<sup>387</sup> Manners, "Normative Power Europe: A Contradiction in Terms?."

<sup>388</sup> Laïdi, "European Preferences and Their Reception." Zaki Laïdi, *Union Européenne : La Puissance Par La Norme* (29 January 2008 [cited May 25 2009]); available from <http://www.laidi.com/comment/290108.pdf>.

theoretical framework of this thesis was designed to compare and contrast these two interpretations of ideas and their diffusion across borders.

In terms of effect on policy, the case studies have shown that it cannot be demonstrated that adoptions of EU regulations in New Zealand, changes in New Zealand environmental policy or stance in international negotiations have been for „normative’ reasons, or reasons other than material. Instead, they have been shown to be squarely grounded in pragmatism and material interest.

However, in Chapter Three, which considered the environmental policy-making processes in New Zealand and the EU, and gave an overview of their respective environmental „identities,’ it was found that at the domestic level, public perception and ideas relating to the environment can play an important part in policymaking. This was argued by Christoff and Buhrs in relation to the strong focus in New Zealand environmental activism on conservation issues,<sup>389</sup> and was also argued to be relevant in the case of the EU’s strong interpretation of the precautionary principle, linking it to serious public health scares in the past.

Therefore, this thesis cannot argue that these factors are irrelevant to the domestic policymaking process. It is clear that in many cases the importance placed on environmental policy reflects public perception and opinion of the environment, and thus may contribute to domestic policies and to a state’s international position on environmental issues along with material factors. Analysis of these perceptions and ideas could allow for a deeper understanding of environmental policies and politics.

However, the case studies carried out in subsequent chapters did not provide sufficient evidence to show any kind of transfer of these domestic values and ideas in the context of the EU-New Zealand relationship on environment. Instead, this thesis argues that New Zealand’s

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<sup>389</sup> Buhrs and Christoff, „Greening the Antipodes’? Environmental Policy and Politics in Australia and New Zealand.”

relationship with the EU on environment and New Zealand's adoption of EU regulation occurs because the EU and New Zealand, based on historical context, *already* share fundamental norms and values. What is exchanged are policies and knowledge, not norms and values, and the most complete account of this exchange can be provided by a policy studies approach which incorporates material interests.

The increased attention given to environmental issues and policy in New Zealand, in particular climate change, cannot be directly attributed to EU normative power and the EU's role as a leader in climate change negotiations. Instead, it is best explained within the context of developments in the wider international community, increasing scientific consensus, public pressure, and consideration of economic factors. Alternatively, normative power could perhaps be applicable to the role of the EU in driving international political consensus on the issue.

This thesis does not and cannot argue conclusively that normative power does not exist, only that in the context of this specific case study and specific relationship there is no evidence of it. It cannot be demonstrated with any credibility that New Zealand's interaction with the EU is based on, or influenced by the EU as a normative power. This conclusion would seem to indicate that depictions of the EU as a 'green' normative power are perhaps exaggerated, particularly if discussing the role of the EU in bilateral relations. It would seem that where the EU can be depicted as acting as a normative power, it can equally be depicted as an economic one.

The wider implications for this finding are that normative power as an approach might be limited to certain specific contexts or policies. Normative power has been applied to the role of the EU on specific policy issues related to the environment before. Zaki Laïdi argues that Manners' approach is limited to "equating Europe's normative action on the global scene with

the ideals on which European integration is based.”<sup>390</sup> Thus normative power is conceivably less a testable framework of analysis than it is a descriptive concept for explaining the EU’s particular post-Westphalian international personality.

At the start of this thesis it was suggested that a constructivist approach to the EU-New Zealand relationship on environment could help explain international cooperation on environmental issues, where it appears that states are increasingly asked to take action without material incentive. It was proposed that understanding bilateral cooperation on environment could help understand what normative and value driven motivations persuade states to cooperate internationally. However, the results of this thesis suggest that states do not cooperate on environment for normative reasons, or out of the belief it is for the greater good. It is because states have come to understand that it makes economic sense to cooperate now to avoid losses in the future, or because of economic advantages to be gained. Therefore the key to driving international cooperation on environment does not lie in normative considerations or arguments, but in finding material incentives for states to participate.

### ***6.1.2 Small State Theory***

Recalling Henderson’s behavioural framework,<sup>391</sup> small state theory can account for New Zealand’s international engagement on environment, and also its relations with the EU on environment.

Consistent with small state theory, New Zealand has chosen specific environmental issues to focus its attention on internationally and targets its international representation where it is most needed, taking advantage of informal connections where possible.

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<sup>390</sup> Laiđi, "European Preferences and Their Reception," 8.

<sup>391</sup> Henderson, "The Foreign Policy of a Small State."

Furthermore, it has been demonstrated repeatedly throughout the thesis that New Zealand's international action on environment and its relations with the EU are always in line with New Zealand's economic interests. The major differences of opinion highlighted in this thesis come down to New Zealand's concern for exporters and the EU's desire to protect itself from competition. Economics and material interests have been shown to be at the heart of this relationship.

As was shown in Chapters Three, Four and Five, the vast majority of New Zealand's international interaction on environment takes place through institutions such as the OECD and the UN, and through negotiations for multilateral agreements. Indeed, as has been stated, much informal interaction takes place in the context of meetings of these bodies. This reflects the behavioural framework proposed by Henderson, as New Zealand maximises its resources by focussing its attention only on those issues that are particularly relevant.

### ***6.1.3 Policy Studies***

A policy studies approach has proven to be a more accurate explanation for the exchange of ideas in the EU-New Zealand relationship. Rather than, as normative power and constructivism argue, an exchange of norms and values taking place, instead policies and knowledge are exchanged. Because the overall EU-New Zealand relationship on environment is relatively ad hoc in nature, a policy studies approach, which analyses each party's domestic policy preferences on particular issues, and can incorporate constructivist concepts such as perception, enables a clearer understanding of the motivations and interests driving relations.

In the case of the EU Chemicals Directive adopted as the New Zealand Cosmetics Standard described in Chapter Four, this is accounted for by the fact that the EU makes up the majority of global chemicals trade and thus has a powerful influence on the global market. Further, the substantial financial resources of the EU allow it to carry out extensive testing of chemical

safety, generating one of the largest databases in the world. New Zealand does not have the capability to carry out such tests on every new chemical product that enters the market, and thus accessing EU data makes good sense. Finally, the EU in the form of REACH has now implemented the most sophisticated, rigorous and comprehensive regulatory framework in the world. Taking these factors into account it is not difficult to understand why New Zealand effectively imported this Directive.

In Chapter Five, in the case of emissions trading, policy transfer can again account for the exchange of ideas while normative power cannot. It is shown that New Zealand policymakers learnt from the EU emissions trading scheme, as the EU ETS was the only compulsory trading scheme in operation at the time, and adapted it to suit the particular needs of New Zealand.

Indeed, the policy learning process worked both ways. As stated in Chapter Five, New Zealand, along with the US and other members of the JUSSCANNZ group in Kyoto negotiations, had been one of the first proponents of emissions trading as a policy mechanism in the international climate change regime. Thus policy studies can account for the policy learning process in which the EU came to embrace emissions trading, something which normative power is not equipped to explain.

## **6.2 Practical Outcomes**

In addition to the conceptual findings it has presented, this thesis has also provided a technical account of the EU-New Zealand political and policy interaction on environment.

It has shown while EU-New Zealand interaction on environment has steadily increased since the 1991 Science and Technology Cooperation Arrangement, the most active bilateral cooperation has occurred in the areas of chemical and hazardous waste management,

research, science and technology and emissions trading. These are all areas where New Zealand's interests have aligned with those of the EU, making cooperation a possibility. At the multilateral level, where relations on biodiversity, and trade and environment occur, differences of opinion are evident and are related to trade. However, due to the shared values upon which the relationship is built, and strong relations bilaterally, this has not proven to be seriously detrimental to the relationship.

While one participant claimed that a negative bias towards the EU, dating from the trade disputes of the 1970s, exists within New Zealand Government ministries, others, admittedly ministry staff, refuted the claim. Indeed it seems possible that what the participant identified as a bias is the result of the fact that the differences of opinion in the EU-New Zealand relationship on environment have been related to trade issues, which is symptomatic of the close linkages between these policy areas. In order for effective cooperation to continue and be enhanced, these linkages need to be fully understood.

Ultimately, the relationship on environment is pragmatic and ad hoc, and relies on the existence of significant material incentives, particularly on the part of New Zealand. The day-to-day technical aspect of the relationship occurs at the policy level, where personal linkages and informal connections are important given New Zealand's status as a small state. The relationship will continue to be effective provided that both parties continue to share the same broad values and objectives when it comes to environment, and that their interests continue to coincide in the areas of climate change, research, science and technology, and chemical and hazardous waste management. A potential area of future collaboration at the international level could include whaling. The EU has recently begun to develop a common position in the



International Whaling Commission (IWC)<sup>392</sup> and this could be an area where like-minded policies and interests could coincide.

The immediate future of the EU-New Zealand relationship on environment will likely take a back seat to economic issues as a result of the global financial crisis, as environmental issues will likely be lower on the agenda than they have been recently. The likelihood of further collaboration and policy exchange on emissions trading is currently on hold until the end of 2009 as the current National Government reviews the proposed New Zealand Emissions Trading Scheme. Should the scheme go ahead, it could open up new avenues of research into climate change policy and cooperation.

It is anticipated that this thesis will prove a valuable contribution to future studies of international environmental relations. As the international community increasingly faces environmental challenges that can only be met through cooperation, it is hoped that this thesis has increased understanding of how and why states collaborate on environmental issues, while addressing the identified gap in the literature on EU normative power.

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<sup>392</sup> Government Policy Adviser, "Interview with Author."

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# Interview List

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<b>Name</b>	<b>Date</b>	<b>Duration (approximate)</b>
Former Ministry for Environment Policy Adviser	30 July 2008	60 minutes
Phil Gurnsey, Manager Climate Change Policy, Ministry for Environment (MfE)	31 July 2008	45 minutes
Environmental Risk Management Authority NZ Policy Adviser	31 July 2008	45 minutes
New Zealand Government Policy Advisers	31 July 2008	60 minutes
Treasury Policy Adviser	30 July 2008	30 minutes
Ministry for Environment Policy Adviser	14 August 2008	45 minutes
Emissions Trading Group Policy Adviser	29 August 2008	60 minutes
Ministry of Transport Policy Adviser	28 August 2008	45 minutes
Ministry for Environment Policy Adviser 2	29 August 2008	45 minutes
Ministry of Economic Development Policy Adviser	29 August 2008	45 minutes
Government Policy Adviser	27 November 2008	30 minutes
DG Relex Policy Official	27 November 2008	45 minutes
Dr Claus Bruening, DG Research, European Commission	28 November 2008	30 minutes