Robert Schuman Centre

Global Competition and EU Environmental Policy

EU Environmental Policy and the GATT/WTO

DAVID VOGEL

RSC No. 98/6

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ROBERT SCHUMAN CENTRE

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DAVID VOGEL

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This paper explores the relationship between the regulatory policies of the European Union and the Union's trade relations with the United States and other countries. The first section examines the general issue of trade and environment, placing it within the context of the rules and procedures of the General Agreement on Tariffs and Trade (GATT)/World Trade Organisation (WTO). Section two discusses two of the most visible trade disputes over the alleged use of environmental regulations as trade barriers that have involved the European Union. Both disputes involved the United States: the first stemmed from the impact of American automotive fuel economy standards on European luxury car exports to the US and the second from an American ban on imports of European processed tuna fish. The paper then turns to a series of ongoing trade conflicts in which the EU has been accused of engaging in unfair trade practices to promote conservation, protect wildlife and promote eco-labelling. In light of these disputes, the concluding section assesses the EU's recent proposals to reform the environmental provisions of the GATT/WTO and draws some general conclusions about the development of EU policies and practices on trade and environmental protection.

The growing linkages between trade policies and environmental regulations in recent years stem from the convergence of two policy objectives: trade liberalisation and environmental protection (Vogel 1995). The increase in economic integration has subjected a growing number of national policies, including environmental regulation, to greater international scrutiny. These regulations are rarely neutral and often, either intentionally or unintentionally, disadvantage foreign producers. At the same time, the number of environmental regulations has continued to expand. Many of these regulations, especially those directed at protecting the global commons, include trade restrictions either because the harm they address is trade-related or because they are enforced through trade sanctions. Consequently, there is frequently a tension between reducing trade barriers and strengthening environmental standards.

Since there is often substantial disagreement as to whether or not a particular environmental regulation constitutes an unreasonable interference with trade, balancing trade liberalisation and environmental protection poses a difficult challenge. As the world's foremost effort to promote trade liberalisation, the EU has been wrestling with this challenge for at least two decades. The European Court of Justice has developed an extensive body of jurisprudence which defines the circumstances under which the environmental regulation of a member state violates its treaty obligations while the Council of Ministers has established a number of uniform regulatory standards in order to both maintain the single market and strengthen European environmental quality.

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By contrast, the GATT/WTO has experienced much more difficulty in balancing these two policy objectives. Unlike the EU, the GATT/WTO lacks the authority to impose environmental regulations. As a more specialised and much weaker organisation, the GATT/WTO only has the authority to determine when a national, or in the case of the EU, regional environmental standard, violates the principles of free trade. Moreover, while a commitment to strengthening environmental regulations was incorporated into the provisions of the Single European Act of 1986, the first mention of the word "environment" in the GATT/WTO did not occur until the Uruguay round agreement of 1994.

The preamble to the Standards Code, which was incorporated into the provisions of the newly established WTO, states that each country "may maintain standards and technical regulations for the protection of human, animal, and plant life and health and of the environment" (Vogel 1995:136). The agreement also requires that national standards or "technical barriers to trade" "not be more trade-restrictive than necessary to fulfil a legitimate objective, taking into account the risks non-fulfilment would create" (Vogel 1995:136). As we shall see, these two provisions leave a number of critical questions unanswered.

Trade Disputes

Fuel Economy

The most important environmentally-related trade dispute involving the EU occurred in 1993, when the EU requested the convening of a dispute settlement panel to rule on the GATT consistency of American corporate average fuel economy (CAFE) standards, the so-called gas-guzzler tax, and a tax on luxury automobiles. The EU's complaint centred on the fact that all three burdens fell disproportionately on European companies. While European cars accounted for only 4 percent of American sales in 1991, they contributed 88% of the revenues collected by American luxury taxes and CAFE penalties, totalling $494 million (Lavelle 1993:39). The purpose of the CAFE standards, originally established in 1975 and subsequently tightened in 1980, is to promote fuel efficiency. They are based on the miles per gallon achieved by a sales-weighted average of all vehicles produced by a manufacturer. If a manufacturer's vehicles fall below this standard (which in 1993 was 27.6 miles per gallon) they face a penalty of $5.00 for every tenth of a mile per gallon, multiplied by the number of automobiles sold in the United States.

Although this penalty applies equally to all car manufacturers, it has been paid exclusively by European limited-line premium car makers. Since all

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American automobile firms make a full line of cars, they have avoided the tax on their less fuel-efficient luxury cars by averaging their fuel economy with the rest of their fleet. Japanese car firms have avoided the tax because they mostly make smaller, more fuel-efficient vehicles. According to A.B. Shuman, public relations manager for Mercedes-Benz of North America, CAFE rules "are really made for the Big Three. The problem for Europeans is that...they don't have little cars to balance out the higher-consumption cars" (Lavelle 1993:39).

In its complaint to the GATT, the EC argued that "the CAFE regulations are biased toward the full-line manufacturers and limited-line manufacturers that produce mostly small vehicles" (Dunne 1993:5). The EC claimed that because CAFE penalties fell only on imported cars, they violated the GATT's national treatment provision. The EC further argued that the 1978 "gas guzzler tax," which was based on a threshold fuel economy standard of 22.5 mpg--was not only discriminatory but was not based on any objective or reasonable criteria. Finally, the EU claimed that the $30,000 cutoff for the luxury tax was both "capricious" and discriminatory, since in 1990, the year the tax was introduced as part of the 1990 budget reconciliation bill, more than 80 per cent of the vehicles subject to it were imports (TE 1993:4).

In the fall of 1994, the GATT dispute panel found all three taxes to be GATT consistent. The panel noted that while the EU was correct in suggesting that the American policy objective of promoting fuel efficiency could be achieved in ways that were less trade-restrictive, namely by increasing gasoline taxes, it declined to hold the United States to a "least trade restrictive" standard. Rather it concluded that all the United States needed to demonstrate was that its regulation achieved a legitimate environmental objective, a category in which fuel conservation fell. The panel also upheld the GATT consistency of both the gas guzzler and luxury taxes, since they were levied on products rather than on companies.

The United States was extremely pleased with the GATT panel ruling. According to USTR head Micky Kantor, "The panel has emphatically rejected the Europeans' claim that trade-neutral legislation intended to further energy conservation goals and protect the environment could be attacked because Chrysler, Ford and GM invested and complied with the law while Mercedes and BMW chose not to and had to pay penalties" (IUST 1994:S-1). However, the European Commission characterised the panel report as a "backward step in the interpretation of GATT Article III that risks opening the door for inventive tax and regulatory authorities to discriminate against imported products" (Charnovitz 1996:461).

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The dispute panel did rule that the provision of the CAFE legislation requiring companies to meet CAFE averages for both their domestic and imported cars (the so-called separate fleet accounting rules) was GATT inconsistent, since it treated similar products differently on the basis of where they were manufactured. The United States refused to change this provision on the grounds that it had no adverse impact on European companies, since all their cars were imported. Nonetheless, the EU criticised the US action. As one EU official put it: "We object to the fact that the U.S. appears unwilling to change the CAFE law ...Such a posture by the U.S. does not bode well for the future of the multilateral trade system of the World Trade Organisation" (IUST 1994:S-7).

Tuna/Dolphin

One of the most contentious source of conflicts between GATT/WTO rules and environmental regulations has involved the use of import restrictions to promote global conservation. During the 1970s, in order to protect dolphins in the eastern tropical Pacific from being killed by tuna fishermen, the United States established a dolphin kill quota for its fishing fleets. In 1990, as a result of a federal court decision, this regulatory standard was applied to foreign tuna vessels as well. Consequently, the United States banned imports of tuna from Mexico and Venezuela on the grounds that the fishing practices of their fleets violated American standards for dolphin protection. At the same time, the United States also prohibited tuna imports from Costa Rica, France, Italy, Japan and Panama since these countries purchased tuna from the nations subject to a direct embargo.

Mexico immediately filed a complaint with the GATT. It claimed that GATT rules prohibit a nation from restricting the import of a product on the basis of how it was produced outside its borders. Mexico's complaint was supported by the European Union, which reiterated its long-standing objections to American unilateralism in pursuit of global environmental objectives (Maggs 1992:3A).

In April, 1991, a GATT dispute panel ruled that the American trade embargo violated its GATT obligations, since, according to the trade agreement's "national treatment" provision (Article III), imports can only be restricted on the basis of characteristics of the product itself--provided similar restrictions are imposed on domestically-produced ones. The GATT does not permit signatory nations to "restrict imports of a product merely because [the product] originates from a country with environmental policies different from its own" (Housman and Zaelke 1992:10274).

Following the passage of the International Dolphin Conservation Act of 1992, the United States informed France, the United Kingdom and several other

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countries that they had been removed from the list of nations subject to the intermediary embargo as they had certified that they were no longer importing yellowfin tuna from the nations still subject to the direct embargo. However, the American secondary embargo continued to be applied to tuna imports from four nations: Spain, Italy, Costa Rica and Japan.

The EU had criticised Mexico's refusal to submit the tuna/dolphin dispute panel report to the GATT Council, which would have enabled it to become officially adopted. It argued that "what had started as a dispute between two parties was now of interest to us all," and demanded that the GATT Council hold a full debate on the tuna report in order to correct the false "impression in some quarters that the report had placed environmental and trade issues on a collision course" (GF 1992:5). Frustrated by the fact that the panel report enjoyed no legal standing, the European Union, acting on behalf of the two member states still affected by the American embargo, requested a second dispute resolution panel in June, 1992.

In its brief the EC stated that "while it agrees with the environment goal being pursued by the US, it objects to the U.S. imposing its laws on the rest of the world" (GF 1992:5).[2] It also claimed that it had suffered substantial economic injury, because tuna fish that otherwise would have been sold in the United States was flooding the world market, thus lowering tuna prices outside the United States.

In its submission to the panel, the United States argued that its secondary embargo fell well within the terms of Article XX, since it was intended to protect an "exhaustible natural resource," whose physical presence on the high seas made "them more rather than less in need of conservation" (GF 1992:5). Furthermore, it had been imposed in conjunction with restrictions on domestic production and consumption; indeed, far from being protectionist, the United States had imposed even more stringent requirements on its own fishing fleets. The United States further argued that "there is nothing in the General Agreement that distinguishes between 'unilateral' measures and other types of measures." In fact, the term "unilateral" appears nowhere in the General Agreement. Moreover, "the vast majority of measures taken by sovereign nations in all fields of activity are unilateral" (Marshall 1992:A8). According to the Americans, "at stake is the ability of a nation to take measures to protect global resources" (Fraser 1992:4).

In June 1994, a GATT dispute panel also found the secondary embargo to be GATT inconsistent. As in the case of the first tuna/dolphin dispute, the United

[2] Contrast this view of extraterritorial environmental protection with the one adopted by the EU in the case of pesticide exports (Working Paper RSC 98/3).

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States refused to comply with the panel ruling. However, in 1995, the United States, along with Costa Rica, France, Mexico, Spain and Venezuela, signed the Panama Declaration. This is an international agreement which limits the total number of dolphin deaths as well as protecting sea turtles and small fish (ENS 1995). Once this agreement is ratified by the U.S., American restrictions on tuna imports will be lifted.

Ongoing Trade Disputes

Animal Protection

Notwithstanding its harsh criticism of American unilateralism, the EU has frequently engaged in similar practices. In 1983, following a number of resolutions by the European Parliament that drew public attention to the hunting methods used to cull baby seals off the Canadian coast, the European Council banned the import of skins of pup harp and hooded seals, as well as products derived from them (Freestone 1991:141, Demaret 1993:328-9). The Council, hesitant to directly threaten Canada's economic interests, justified its restriction not on humanitarian grounds but on the need to preserve the common market, since a number of member states had enacted similar bans.

The Canadian Government strongly protested the EU's action and filed a complaint with the GATT on the grounds that the General Agreement only permits a nation to unilaterally ban the import of a product which is only produced outside its borders if the product's consumption harms its own citizens or environment. Canada subsequently withdrew its complaint and shortly thereafter announced an end, on conservation grounds, to all commercial hunting of seal pups. When the EU extended the ban in 1988, the European Commission noted that harp seal pup hunting in both Canada and Norway had significantly declined as a result of both its 1983 Directive and the hunting restrictions both countries had adopted.

In 1991, the European Council again approved a trade restriction to protect wild animals outside its legal jurisdiction (Demaret 1993:330). The Council banned leghold traps to catch wild animals within the Union and, beginning in 1995, prohibited the importation of thirteen species of fur from nations that continued to use leghold traps, rather than more "humane trapping standards" (Simon 1991:2). Like the restriction on imports of products made from baby seals, this policy was motivated by an intense campaign on the part of European animal rights groups, whose supporters including the actress turned activist Brigitte Bardot. However, the ban was also supported by Europe's own large pelt

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industry, which relies upon "farming" rather than trapping. In part due to anti-fur movements in a number of European countries, this industry has experienced a severe decline in sales.

The ban was primarily aimed at the United States, Canada and the countries belonging to the former Soviet Union--the main suppliers of pelts of wild mammals to the Union's fur industry. The EC's decision provoked a particular outcry from Canada, where approximately 80,000 trappers earn more than $30 million a year from pelt exports to Europe (Simon 1991). Half of these trappers are aborigines, many of whom depend on trapping for most of their income; a delegation of native Canadians accused the EU of committing "cultural genocide" (Southey 1995:4). Approximately 70 percent of the furs harvested in North America are exported to Europe.

Caught between pressures from the European Parliament and animal welfare groups on one hand, and anxious to avoid a trade dispute with the United States and Canada on the other, in November 1995, the European Commission decided to postpone the import ban for a year to allow its trading partners to find a more humane alternative to leg-hold traps and reach agreement on an international standard for fur harvesting. The Commission also exempted furs from animal traps caught by indigenous people from the ban. The Commission's announcement was immediately denounced by European animal welfare activists (EE 1996). On December 14, 1995, the European Parliament condemned the Commission's action by a vote of 262 to 46; it called upon the EC to institute a ban immediately. In language reminiscent of the response of American environmentalists to the GATT tuna/dolphin decision, the Commission was accused of "sacrificing animals on the alter of free world trade" (AE 1996).

In March, 1996, EU environment ministers, frustrated by the lack of progress on an international standard, warned exporters that the Union would implement its ban in December unless discussions aimed at finding an alternative to leg-hold traps produced satisfactory results (FT 1996:5). They also announced their opposition to exempting furs and skins caught by indigenous populations from a ban. One member state, the Netherlands, chose to ignore the Commission and instituted an import ban on furs and skins from animals caught with leg-hold traps. The United States and Canada responded to the Dutch action by threatening to file a complaint with the WTO (UPI 1996). In May 1996, a delegation of fur trappers from North America arrived in Brussels to lobby the EP against the ban claiming that they have developed new types of traps that are less cruel to animals. For its part, the Commission is continuing to work with the International Standardisation Organisation to develop a definition of "inhumane traps," since

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according to the WTO Standards Code, a trade restriction based on a standard which is internationally recognised is more likely to be found WTO-consistent.

Forest Protection

The European Parliament has also called upon the Union to halt all imports of tropical hardwoods originating in Sarawak, Malaysia on the grounds that logging in that region is proceeding at "a devastating pace" (Demeret 1993:334-5). It has also requested that the Union promote conservation by limiting the importation of hardwoods to countries which had adopted "Forestry Management and Conservation Plans." The effect of the latter proposal would be to involve the Union in negotiating quotas with each producing country, which it already does for a number of agricultural products, though for economic rather than environmental reasons.

However both the Council and the Commission have resisted these pressures from the EP on the grounds that it would be inappropriate for the Union to act outside of the international frameworks provided by the International Tropical Timber Agreement, the GATT, or CITES. Accoring to the Commission, "Import restrictions unilaterally applied by the Community might...benefit other consuming countries without doing much to save tropical forests from destruction" (Demeret 1993:334-5). But EU's foreign trade ministers have called for a system of timber identification aimed at protecting tropical forests from over-exploitation and destruction under the auspices of the International Timber Organisation. Their proposal was denounced by Malaysia who accused to EU of seeking to "bash" tropical timber exporting countries in order in order to protect its domestic forestry industry (Pleydell 1993).

Consistent with this policy, the EU strongly criticised a 1985 Indonesian ban on the export of unprocessed tropical timber from its rainforests. Disputing Indonesia's claim that the "ban [was] an integral part of a long-term programme for conservation and management of its forest resources," the EU claimed that its real purpose was to protect Indonesia's wood processing industry, by requiring that the manufacture of 'value added' product such as furniture take place in Indonesia rather than in Europe or Japan (Hegenbart 1991:231). They argued that the export ban violated Article I of the GATT, which requires foreign and domestic firms to be treated equally.

Eco-Labelling

Eco-labelling has emerged as an increasingly important instrument of environmental policy, especially in Europe, where significant numbers of

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consumers have indicated their interest in purchasing "green" products. A 1995 survey reported that 82% of German consumers, 67% of Dutch consumers and 50% of French and British consumers stated that they "incorporate[d] environmental concerns in their shopping behaviour" (Rosen and Sloane 1995:76). According to another study, "67 percent of EU citizens had already purchased or were ready to buy 'green' products" (PRN 1996a:1). Eco-labelling thus can offer European firms an important market incentive to improve their environmental practices. They can strengthen their environmental practices while maintaining their market shares.

The first and most successful national eco-labelling scheme, known as the "Blue Angel," was initiated by Germany in 1977. Subsequently the Nordic Council established a "White Swan" programme and a number of other EU member states, including Great Britain, France, the Netherlands and Spain organised their own eco-labelling schemes (see Eiderstrom 1997). All are voluntary and are administered through non-state bodies.

The EU has become concerned about the proliferation of national eco-labelling programmes because fifteen different national labels, each using distinctive criteria and designating different products, would confuse consumers. Furthermore, if national labelling bodies employed criteria that were more difficult for producers in other member states to meet, eco-labelling could undermine the single European market. In 1992, to address these problems, the EU authorised a voluntary "ecolabel" to be awarded to ecologically sensitive products that met objective environmental standards established at the EU level (Bristow 1994:50-55, Eiderstrom 1997).

This eco-label was not intended to replace national labels, but rather to supplement them, though the Commission assumed that many manufacturers would prefer the eco-label because it would be recognised throughout the Union. Manufacturers were first required to apply to a national body in either the member state where the product was manufactured or, in the case of mports, where it was first imported. If their product meets the criteria, an eco-label would be awarded which the manufacturer or distributor could then use throughout the Union. The Commission was instructed to apply a "cradle to grave" assessment, meaning that the ecological impact of each product would be evaluated throughout its production cycle--from the extraction of raw materials to its disposal after use.

The standards for awarding EU eco-labels are established jointly by the EU and the member states (NWF 1996:13-14). After the EU decides which specific product categories are to be included in the programme, it assigns each to a

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member state in order to conduct life-cycle assessment research. The "lead country" then develops product criteria based on this research. However these product criteria must then be approved by all member states in order to prevent any distortion of the single market. The member states are also responsible for processing applications for certification, awarding labels and monitoring label use within their borders.

However the establishment of "euro-labels" has proceeded slowly. By November 1994, standards had only been established for washing machines, dishwashers, kitchen rolls, toilet paper and soil improvers, while to date only a handful of products with European "eco-labels" are actually on sale in Europe (Harding 1995:10). Some national representatives have suggested reducing the number of ecolabelling criteria for each product group in order to expedite the approval process (EW 1996a:11-12).

One of the difficulties the Union has faced stems from differences in priorities and practices among the fifteen member states. Packaging standards are a case in point.[3] The EU's northern member states, namely Germany, the Netherlands, and Sweden, argue that the extensive use of packaging produces large amounts of solid waste and wastes resources. Accordingly, they have insisted that the EU's "eco-daisy" label, which is meant to encourage the "environmentally-friendly" packaging of all products sold within the EU, be only granted to manufacturers who use both recycled and recyclable material in their packaging cartons or containers. However, the use of this criteria was strongly opposed by the Union's poorer, southern member states who contend that traditional packaging helps sell their products and is more cost-effective than recycling.

The EU's eco-labelling programme has also created tension between the Union and its trading partners (Jha and Zarrilli 1994:64-73). A number of the latter have expressed concern that both national and Union green labelling programmes might serve as trade barriers. For example, wood pulp and paper producers from the US, Canada, and Brazil claim that the EU's criteria for "green" kitchen rolls and toilet paper constitute non-tariff trade barriers as they place too much emphasis on the use of recycled materials and not enough on appropriate forest management. According to an official from the American Forest and Paper Association,

> Just because a paper is recycled does not mean that it has less of an impact on the environment. We have programmes on sustainable forestry that we feel are just

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[3] See "EU Ecolabelling: Impacts on Trade and Environment," Case Number 225.

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> as safe for the environment...We feel that the Commission's criteria is in fact designed to subsidise the recycling industry in Europe (BNA 1996a:935).

If a WTO complaint is filed by one of the EU's trading patterns, it may well revolve around the Union's paper standards (BNA 1996a).

An article in Newsweek in the spring of 1996 entitled, "Seeing Red Over Green," highlighted the growing fears of much of the American business community over the EU's eco-labelling programme. It noted:

> Paper recycling might make sense in Holland, but requiring paper made in Canada's sparsely settled west to use recycled pulp may consume more resources than it saves. Or take the EU's eco-label for T shirts. U.S. makers claim the rules permit more pollution from plants that dump wastewater into the sewer than do those that treat it on site, as most U.S. textile plants do (Levinson 1996:55).

The EU's eco-labelling criteria have come under especially strong criticism from a number of third world countries, who fear that the labels would be employed as a form of "green protectionism". For example, Brazil's wood producers have criticised the EU's unwillingness to consider paper produced from damaged wood or sawdust as having been made from "renewable resources." ABECEL, the association of Brazilian wood exporters, has urged the EU to revise its criteria for paper products in order to achieve a better balance between the promotion of recycling and sustainable forest management. ABECEL informed the EU that "establishing recycling as the overwhelming dominant criteria for judging the eco-label, to the exclusion of other principles is more likely to damage the cause of environmental protection than to help it" (Banki 1995:7). Likewise, third world producers have criticised the EU's efforts to establish a life-cycle standard for textiles that includes restrictions on the use of pesticides in cotton production. They claim this production standard will be used to protect European firms from the phasing out of the Multi-Fiber Agreement which has limited third world textile exports to Europe.

From the perspective of European producers, it makes sense to use the eco-label to reward European firms who have been required to devote considerable resources to address European environmental problems, such as acid rain. By this logic, to label an imported product "green" if it were produced in ways that resulted in substantial emissions of sulphur - even if acid rain was not a problem in the exporting country - would unfairly place European producers at a competitive disadvantage. Not surprisingly, this logic has been sharply criticised by many of the EU's trading partners, who argue that they should not be required to adopt the EU's production standards to earn a "green" label. Similar conflicts

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have emerged over the application of EU production standards to paper and leather products produced outside the EU.

The trade implications of the EU's eco-labelling plans have come before the WTO. In response to widespread criticism of the GATT's decision in the tuna/dolphin case, in 1991 the GATT agreed to reconvene its Working Group on Environmental Measures and International Trade. This group was reconstituted as the Committee on Trade and Environment (CTE) following the establishment of the World Trade Organisation in 1995. Among the most important issues facing the Committee has been the WTO consistency of eco-labelling standards. Specifically, the CTE has attempted to reconcile the growth of eco-labels with the newly strengthened Standards Code that commits all WTO signatories to insure that "technical regulations and standards, particularly with respect to the packaging...and labelling of goods...create no unnecessary obstacles to international trade" (Banki 1995:15). Among the issues recently discussed by the WTO's Committee on Trade and Environment are mutual recognition, certification criteria, and transparency issues for eco-labelling.

There is considerable debate about whether the European eco-label falls within the scope of the Standards Code (Banki 1995). The European eco-label is clearly not a "technical regulation" because compliance is voluntary. However because the EU is a widely recognised organisation and governments play an important if informal role determining the criteria for awarding ecolabels, its label could constitute a "standard," which would bring it within the Code's scope. This would mean that the EU would be required to make its labels non-discriminatory, transparent and based whenever possible on international standards. It would also be obligated to provide its trading partners with the opportunity to comment on the criteria used to award ecolabels.

The WTO wishes to encourage the use of eco-labels since they are clearly preferable to unilateral barriers to trade, such as the American tuna embargo. They also represent a promising new approach to environmental regulation, one which relies on market incentives rather than command and control. Significantly, in the tuna/dolphin case, the GATT dispute panel found the American "Dolphin-safe" labelling requirement to be GATT consistent, even though it was based on a process, rather than a product standard and sought to influence environmental conditions outside the legal jurisdiction of the United States. The panel reasoned that the American labelling standard was GATT consistent because it applied to all tuna fish caught in a given area and did not distinguish the products on the basis of national origin. Also, unlike the embargo, it did not prevent consumers from purchasing tuna regardless of how it was caught.

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Still, the WTO, as well as the Organisation for Economic Cooperation and Development, fears that the growing use of eco-labels by developed countries may restrict trade. In particular, lifecycle based labelling programmes, which incorporate criteria relating to process and production methods, frequently appear to favour environmental conditions and preferences in the importing country. A central holding in the 1991 GATT dispute panel decision in the tuna/dolphin dispute between the United States and Mexico was that the GATT did not permit nations to restrict imports on the basis of how a product was produced or processed outside its own borders. From this perspective, the EU's use of life-cycle criteria for the awarding of eco-labels, represents a "slippery slope" which could lead to legitimating the use of process production measures (PPMs) as trade barriers.

For its part, the U.S. has claimed that the EU's eco-labelling programme "violates the law of international trade" and it has threatened to file a formal complaint with the WTO (Kirwin 1996:447). According to U.S. ambassador to the EU Stuart Eizenstat, the American concern was "not with eco-labels per se. Our problem is that the process is not sufficiently transparent and does not allow for the participation of non-EU industries" (Kirwin 1996). He added that he was also concerned about the problem of discrimination: "We want to be able to show that if we have equivalent environmentally benign production processes, they should be given an eco-label. Just because a U.S. process is different does not mean that it is environmentally unsound. Our hope is that this does not turn into a covert trade restriction by favouring EU processes" (Kirwin 1996). An American trade association official has stated that "this is a very important issue not only for the U.S. but for countries such as Canada and Brazil" (BNA 1996b:884). An American trade lawyer has characterised both the EU's packaging and labelling standards as an "area of enormous potential conflict," adding that "as we move toward international standardisation of labelling, Europe is going to be setting the agenda" (BNA 1995). Nonetheless, the United States has yet to take any formal action under the WTO, largely because the European labelling programmes have yet to adversely affect the sales of any American product in Europe.

On February 28, 1996, the EU Commission issued a statement encouraging the CTE to "work on a WTO regime that ensures full transparency and non-discrimination in voluntary eco-labelling schemes..." (PR 1996). The EU has specifically proposed that the Technical Agreement to Trade agreement be amended to permit the use of eco-labelling schemes based on a life-cycle approach, thus assuring the WTO consistency of its own scheme. This proposal has meet with opposition from many third world nations since it would legitimate the application of process and production requirements, albeit voluntary ones, to

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traded products. However, such an amendment would also subject eco-labelling to WTO discipline.

At the same time, a subcommittee of a working group of the International Organisation for Standards (ISO), a private standards setting body based on Geneva, has begun work on international standards for eco-labels. These would emphasise "credibility, consultation with stakeholders, transparency, accessibility and avoiding the creation of unnecessary obstacles to trade."[4] The working group's efforts are strongly supported by the United States and export-reliant developing countries who fear the use of eco-labels as trade barriers. However the development of an international consensus on an ISO Standard on Environmental Labels and Declaration (Draft Standard 14020) has proven difficult. In particular, a number of national delegations, including those from the UK, Germany and France, want the ISO's draft principles to serve as guidelines rather than standards, a position which the United States and Canada strongly oppose (EW 1996b:1-2).

There are, however, other ways of promoting international cooperation on eco-labelling. These include, for example, employing the principle of "equivalency" which would permit a product to qualify for an eco-label if it meets minimal or equivalent environmental standards, even if they were not identical to those of the country to which the product was exported. Another approach is "mutual recognition," which would mean that the importing country's eco-label could be awarded to any products covered by the eco-label of the exporting country. All of these approaches remain at the discussion stage.[5] The United Nations has begun work on devising a certification scheme which would reflect the environmental and economic priorities of both developed and developing countries (EW 1994).

Trade and Environment

In March 1996, the European Commission issued a report on trade and environment to the EU Council as part of its preparation for the first Ministerial meeting of the WTO in Singapore in December, 1996. It began by asserting that there was in principle no tension between a liberal trading system and

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[4] Statement of Belinda Collins, Director of the Office of Standards Services, National Institute of Standards and Technology (FNS 1996).

[5] Mutual recognition and equivalency approaches are also being considered in the context of EU eco-audit rules. See Taschner (1997).

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environment regulation: not only had a $250 billion market developed in green technology, but it estimated the EU's costs of compliance with strict environmental standards at only between 1 and 2% of overall production costs. In short, the EC claimed that strict regulatory standards were not a source of competitive disadvantage. However the EC cautioned that "friction can arise when domestic rules hamper or discriminate against imports....[or when] nations tackle transboundary problems by setting rules beyond their jurisdiction" (PRN 1996b:1). The former includes such measures as "life-cycle" eco-labelling and recycling requirements. The EC strongly endorsed the use "life-cycle" eco-labelling requirements while at the same time emphasising the need for international rules to assure they are implemented in ways that are both transparent and non-discriminatory.

In the case of extra-jurisdictional environmental measures, the Commission urged the WTO to recognise the legitimacy of trade measures taken under multilateral environmental agreements and urged the EU to encourage environmental improvements in developing nations through market premiums and preferential access rather than eco-duties. Nonetheless, the EC did acknowledge that there might be "exceptional cases" that would justify trade restrictions taken outside a multilateral framework--for example if a state had "breached its obligation toward fundamental international environmental law and the health of the world ecosystem" (PRN 1996b:2).

The Commission's statement about the essential compatibility of free trade and environmental regulation clearly represented an effort to stake out the environmental "high ground." Its efforts to make sure that WTO rules and procedures do not interfere with the strengthening of national, regional or global environmental standards, popularly referred to as "greening the GATT," reflects the continuing strength of green parties and pressure groups in much of Europe as well as their substantial influence in the European Parliament. It also demonstrates the extent to which global environmental leadership has passed from the United States to the European Union.

While American environmental officials have been preoccupied in recent years with preventing the rolling back of existing environmental rules and regulations, EU environmental policy-making has been relatively innovative, developing initiatives such as eco-labelling and integrated pollution control. The EU has also taken the initiative in developing "greener" international standards, such as for eco-labelling and fur trapping.

The leadership role played by the Commission in Geneva contrasts with that of the United States, whose role in the deliberations of the WTO's Trade and

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Environment Committee has much more passive. One WTO official observed, "The U.S. is proposing nothing and systematically trashing everyone's else's proposals. It is a major obstacle to getting anything done" (Williams 1996:3). Ironically, while it was American pressure that led to the establishment of the trade and environment committee in the first place, the United States has yet to advance its own policy proposals on any of the critical issues on the committee's agenda. Caught between the Republican congressional victory in the 1994 mid-term elections and the impending presidential election, and fearful of antagonising either environmentalists or industry, as of late 1996 the Clinton Administration had yet to propose any changes in WTO rules or dispute procedures that would strengthen the links between trade liberalisation and environmental improvement.

The Commission's statement also reflects two of the EU's most important priorities. Most importantly, it wants to make sure that its life-cycle eco-labelling programme is not challenged by the WTO. This programme is not only important to European environmentalists but also to European industry which is faced with the significant costs of complying with EU environmental directives. Eco-labelling represents a strategy for enabling European consumers to share in these costs by promoting the "greener" products produced by European firms. It is a critical component of the EU's efforts to improve European environmental quality without unduly impairing the competitiveness of European industry.

Secondly, by supporting the establishment of new procedures for handling of disputes that might arise out of the trade provisions of multilateral environmental agreements, the EU accomplishes two objectives: it reinforces its long-standing opposition to American efforts to use trade restrictions to enforce extra-jurisdictional environmental regulations in the absence of international environmental agreements, and it protects European firms from imports from countries which have not complied with international environmental agreements to which the EU is a signatory. The latter issue is likely to become especially critical if and when an international agreement to curb carbon emissions is adopted.

The EU's efforts to reconcile the political demands from European environmentalists with the welfare of European firms is apparent in its position on each of the trade and environment conflicts in which it has been involved. The initial pressures for the EU's initiatives regarding imports of hardwoods from tropical forests, furs from animals caught using leg-hold traps and eco-labelling all came primarily from environmentalists. At the same time, it is noteworthy that none of these policies disadvantages European producers. On the contrary, all would either maintain or increase their European market shares. Thus both the

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Union's standards for paper products and its efforts to restrict the imports of hardwoods would benefit European wood processing firms and its forestry industry. Likewise, any restrictions imposed on fur imports would assist Europe's financially hard pressed fur industry. Most importantly, both European and national eco-labelling criteria, no matter how transparent or "non-discriminatory," are far more likely to promote the sales of European products than of imported ones.

At first glance, it is difficult to find a logically consistent pattern in the EU's trade and environment policies. Thus the EU filed a formal complaint with the GATT against the American secondary embargo on tuna, arguing that nations should not use trade restrictions to influence the regulatory policies of their trading partners in the absence of an international environmental agreements. Yet at the same time, the EU has supported a ban on imports of fur from nations which permit the use of leghold traps which is vulnerable to the same objection. Likewise, many of the same criticisms the EU made of the American CAFE standard could also be made of the EU's eco-labelling programme, since both implicitly, though not explicitly, discriminate against imports. Clearly, what does explain these seemingly contradictory positions is that in each case the EU has favoured the interests of European firms.

Finally, as in the case of the EU's own environmental policies, important differences among the Union's member states have emerged. Concerns about animal protection are particularly strong in Great Britain and northern Europe, but are less widely shared in France and the EU's southern states. The Dutch and Austrians have been particularly strong advocates of trade restrictions to protect tropical forests, while the British and Irish remain relatively unenthusiastic about the Union's beef hormone ban (discussed in Vogel 1995). The American secondary tuna embargo directly affected only two member states, Spain and Italy, while the U.S. CAFE penalties only significantly affected German and British manufacturers. And in the case of eco-labelling, many of the EU's southern states have echoed the concerns of many of the Union's trading partners. Nonetheless, to date, the Union has spoken with one voice in international negotiations on each of these issues.

To date, the impact of the GATT/WTO on EU regulatory standards has been modest. No EU regulation has yet to be successfully challenged, though its leg-trap ban may be subject to dispute settlement proceedings in the future and its eco-labelling plan has certainly faced considerable scrutiny by its trading partners. In addition, the EU's efforts to restrict tropical hardwood imports and furs from animals caught with leg-traps have been constrained by fear of GATT/WTO scrutiny. Still, all these constitute a relatively minor component of

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EU environmental policy. In general, EU regulatory policies have yet not been significantly constrained by multilateral trade agreements. It is in part in order to prevent this from occurring that the Union has proposed changes in WTO rules and procedures.

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