

**Environmental Policy in the European Union After
1992**

**Dissertation submitted to the Jawaharlal Nehru University
in partial fulfillment of the requirement
for the award of the degree**

MASTER OF PHILOSOPHY

Teiborlang T. Kharsyntiew

**Centre for American and West European Studies
School of International Studies
Jawaharlal Nehru University
New Delhi – 110067
2002**

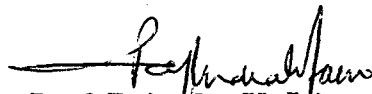



CENTRE FOR AMERICAN & WEST EUROPEAN STUDIES
SCHOOL OF INTERNATIONAL STUDIES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI-110067

CERTIFICATE

Certified that the Dissertation entitled "**Environment Policy in the European Union After 1992**", submitted by **Teiborlang T. Kharsyntiew**, is in partial fulfillment of the requirements for the award of the degree of **Master of Philosophy** of this University. This dissertation has not been submitted for any other degree of this University, or any other University.

We recommend that this dissertation be placed before the examiner for evaluation.


Prof. Rajendra K. Jain
(Chairperson)


Prof. B. Vivekanandan
(Supervisor)

FOR MEI AND PA ...

ACKNOWLEDGEMENT

I would like to take this opportunity to acknowledge my sincere gratitude to a number of people who have directly or indirectly lent me a helping hand. This dissertation would not have been possible without the indispensable guidance, support and encouragement of my supervisor, Prof. B.Vivekanandan. Thank you Sir.

The journey to this stage has been long, arduous and a personal revelation at the same time. In the process a long list of familiar faces have always been there to offer and insist on any kind of help - the staffs of JNU, ACL, BCL and CSE library. I would like to also extend my thanks to Wanshai and Satya for helping me in every possible way.

New Delhi, 5 April, 2002.


Teiborlang T. Kharsyntiew

Preface

Environmental concern in Europe has been one of the most important issues that shaped European politics in the recent years. The late 1960s saw a major change in the European outlook towards environment. As environmental issues began to assert, foreign policy too had to come to terms with this new development, which had subsequently changed and influenced foreign policies of the countries to a great extent, especially in the 1990s. However, today issues regarding environmental problems are not viewed exclusively in the context of national policy of a particular country, but are being recognized as ones concerning the whole international community. This study has been done keeping those aspects in view.

Chapter 1 of this dissertation has focussed on the evolution of global and European Union's environmental policy. The chapter is divided into two parts. Part one deals with the general global environmental problems and the initiatives taken so far. It also focuses on the roots of environmentalism in European politics. This first part also deals with different approaches to environmental policy and their validity in the study of environmental policy of the European Union. The second part deals with the evolution of the European Union's environmental policy till 1992. Here Environmental Action Programmes, starting from the first to the fourth, and the implication of the Single European Act of 1987 are discussed in detail.

Search for a common environmental policy, whether within or outside, has been one of the most important endeavour of the European Community's. This was more

pronounced in the 1990s when developments inside and outside the Community shaped the course of international politics. Within the Community, changes have been constant with the introduction of the Environmental Action Programmes, the Single European Act in 1987 (where environment policy was given a legal basis) and, most importantly, the Maastricht Treaty that established the European Union (EU). As it was in the 1970s, environmental policy of the Union in the late 1980s and 1990s was also shaped by various developments in international relations. The Brundtland Report (1987), the Rio Summit (1992) and the Kyoto Protocol (1997) are the three important landmarks that shaped the Union's environmental policy, thus, recognizing that environmental policy should be one of the main priorities in the Union's policy objectives. Therefore, the need to enforce stringent rules and regulations was formulated to achieve this objective. Moreover, a need to integrate environment with other economic policies was called for, in other words, sustainable development, became a watchword for the Union's environmental policy in the 1990s. Chapter 2, apart from dealing with the above developments, has focussed on the role of various institutions, policy-making processes and development of the EU's environmental policy in the form of Environmental Action Programmes.

However, the call for such environmental policy at times also ran counter to that of the Union's common market objectives. Chapter 3, therefore, looks into the importance of economic factors in the EU's environmental policy. The chapter will focus on the linkages between market and environment, how environmental policy not only distorted the spirit of the single market within the Community, but also that of a

global free trade. Such distortion of the single market is related to the (mis)interpretation of the Community laws relating to the environment by Member States, the European Commission and the European Court of Justice. Taking advantage of the unclear interpretation of the Community laws, member states formulate a stringent environmental policy which, at times, acts as a barrier to the economic relationship between fellow member states of the EU or with those outside it. This chapter therefore, has discussed whether such interpretation, by the member states and institutions of the EU, amounted to protectionism in disguise or not.

The need to diversify the Union's role in international environmental policy, however does not end here. The EU's search for leadership in international environmental negotiations has been one of the major initiatives that the Union has tried and continues to do so. Chapter 4 deals with the partial success of the EU to don the mantle of a leader in the pre-Kyoto negotiations for a climate change regime. The fourth chapter also discusses the Union's internal and external climate change policy and negotiations.

The last chapter (chapter 5) is conclusion which sums up the Union's environmental policy and its implications. This chapter presents the various problems faced by member states, as well as the problems faced by the Union, in implementing the Community's Legislations and Directives. In this, the report of the EEA, the Commission's paper has been analysed. Besides, this chapter has focused also on the implications of the Union's environmental policy (especially those dealing with trade) on

the developing countries. Lastly, it has made a few suggestions on the prospects of the EU's environmental policy in the future.



Teiborlang T. Kharsyntiew.

Contents.	Page no.
Chapter 1- Introduction.	1-34
A) Global Environmental Issues	
- The UN Conference on the Human Environment, Stockholm, 1972.	
- The Vienna Convention (1985) and Montreal Protocol (1987) on the Protection of the Ozone Layer.	
- The Basel Convention on Hazardous Waste	
- From Rio Summit to the Kyoto Protocol: Climate Change and Global Warming.	
- From Environmental Protection to Sustainable Development.	
- The Brundtland Report	
- Environmental Non-Governmental Organizations and Green Parties	
- Approaches to Policymaking.	
B) Evolution of the European Community's Environmental Policy Up to 1992	
- The First Environmental Action Programme (EAP) (1973-76).	
- The Second Environmental Action Programme, (1977-82).	
- The Third Environmental Action Programme, (1982-87).	
- The Fourth Environmental Action Programme, (1987-92).	
- The Single European Act.	
 Chapter 2- Environmental Policy in the European Union After 1992.	 35-59
- Introduction.	
- The Fifth Environmental Action Programme (1992-2000): "Towards Sustainability".	
- From the Maastricht Treaty to Amsterdam Treaty.	
- Decision-Making, Institutions and Processes.	
- Institutions	
- Legislative Actions	
- Water Policy.	
- Waste.	
- Air quality.	
- Conclusion.	
 Chapter 3- Environmental Factors in EU's Economic Policy.	 60-81
- Introduction.	
- Growth and Environment.	
- Economic Instruments for Environmental Protection.	
- Environmental Management and Audit Scheme (EMAS).	
- Eco-labelling.	
- Trade and Environment.	

- Environmental Protection or Trade Protectionism?
 - Internal Protection(ism)?
 - External Protection(ism)?
- Conclusion.

Chapter 4- European Union Climate Change Policy and Negotiation.

82-118

- Introduction.
- EU Internal Climate Change Policy.
 - Climate Change After 1992.
 - The Carbon/Energy Tax.
 - Renewal Energy: ALTENER Programme
 - Energy Conservation: The SAVE Programme.
 - The Monitoring Mechanism.
 - Burden Sharing.
 - The Sixth Environmental Action Programme.
- EU External Climate Policy and Negotiation.
 - i) Pre- Kyoto.
 - Policies and Measures.
 - Emission Limitation and Reduction Commitment.
 - Issues of Sinks (Land Use Change and Forestry-LUCF)
 - Flexibility Mechanism.
 - a) Joint Implementation.
 - b) Emission Trading.
 - ii) Constraints to EU Leadership Role.
 - iii) Post- Kyoto.
- Conclusion

Chapter 5- Conclusion: Problems and Prospects.

119-143

- Progress Made
- Problems.
 - i) Non-implementation.
 - ii) Integration Gap.
 - iii) Enlargement.
 - iv) Subsidiarity Principles.
- Some Reflections.
- Prospects.

APPENDIX

144 -161

BIBLIOGRAPHY

162-173

CHAPTER 1

INTRODUCTION

(A) Global Environmental Issues

The environment - defined as the whole outer physical and biological system in which man and other organisms live - is a whole, albeit a complicated one, with many interacting components.¹ Since his evolution, man was shaped by the environment and remained in equilibrium with it. But, in the course of time, he began to exert an ever-increasing influence on the environment. "Due to growing urbanization and industrialization, man has distorted the environment and the intensity of this distortion was left only when it exceeded the limit which it become irreparable".²

Man's activities and exploitation of nature since the time of the Industrial Revolution was realized in the late 60s and early 70s. This was reflected in the spurt of environmental literature and environmental movements during the intervening period. However, even before the 1960s environmental concerns did exist. Most of these concerns evolved as a response to Neo-Malthusian concept of demographic growth. The UNESCO's and FAO's World Population Conference, that was held in Rome in 1954,

¹ Essam El Hinnawi and Manzur ul-Haque Hasmi, *Global Environmental Issue* (Dublin: Tycooly International, 1982), p. 3.

² *Compendium of Environmental Statistics 1997* (New Delhi: Central Statistical Organization, Department of Statistics and Ministry of Planning Programme Implementation, Government of India, 1997), p. 5.

linked the 'population problems' to development issue, and considered it as one of the central concerns of environmentalism.³

Moving to the 1960s and 70s environmentalism reached a global scale. Literature as well as movements by pressure groups began to highlight the danger of environmental degradation due to population growth, use of chemical pesticides, nuclear weapons, etc. Rachel Carson's *Silent Spring*, is one of the first books to highlight the danger of pesticides pollution in agricultural products, and its harmful effects on man and animal's health. Following this are other publications of the early 1970s. E. Goldsmith, et.al, *Blue Print for Survival*, published in 1972, was "an eco-centric attempt to outline the global predicament, popularize the view that infinite growth cannot be sustained by finite resource".⁴ *The Limit to Growth* by Dennis Meadows, et.al, and published as a Report by the Club of Rome in 1972, uses a 'world system' model, "in exploring a range of possible future scenarios which depended on how population and other key development parameters were managed".⁵ The report, states that, "the production pattern based principally on economic growth...could lead to a serious crisis and a catastrophic global ecological imbalance".⁶ Other literatures on the subject that stimulated the debate are: E.F. Schumacher's *Small is Beautiful: A Study of Economics as if People Mattered* (1973), warned that the "West's pursuit of profit and development has promoted giant

³ W.M. Adams, *Green Development: Environment and Sustainability in the Third World* (London: Routledge, 1990), p. 28.

⁴ C.J. Barrow, *Developing the Environment: Problems and Management* (Edinburgh Gate: Longman Group Limited, 1995), p. 14.

⁵ Ibid.

⁶ B. Vivekanandan, *International Concerns of European Social Democrats* (London: Macmillan, 1997), p. 133.

organizations, increased specialization, economic inefficiency, environmental damage and inhuman condition”.⁷ J.A.C. Loraine's *The Death of Tomorrow* (1972) and L.K. Caldwell's *In Defence of Earth: International Protection of Biosphere* (1972) are the other two influential writings on the danger and need for environmental protection.

The growth of environmental literature, no doubt, brought about the changes in environmental perception. Environmental policy which was seen as an exclusive policy for the particular state affected is now perceived as an international problem. Considering the transboundary nature of most pollution, the international community took the initial steps in forming an international environmental regime. Conferences, Reports, Declarations, Conventions and Protocols on environmental issues took place from time to time under the auspices and guidance of various organizations. Among the various conferences and reports, the Stockholm Conference (1972); the Montreal Protocol (1987); the Basel Convention; the Rio Summit (1992); the Kyoto Protocol (1997); the Brundtland Report (1987); the Brandt Report; are a few of the most important developments in environmental regime formation.

The UN Conference on the Human Environment, Stockholm, 1972.

The UN Conference on the Human Environment, held in Stockholm in 1972, also known as the ‘Stockholm Conference’, marked the beginning of global environmental policy. The conference produced an action plan for the Human Environment, which was submitted as a report of the conference to the UN General Assembly in the autumn of

⁷ C.J. Barrow, *Developing the Environment: Problems and Management*, n. 4, p. 14.

1972. The report was endorsed by the General Assembly Resolutions 2994 (XXVII) of 15 December 1972.⁸

The most conspicuous result of the Stockholm Conference was the creation of the United Nations Environmental Programme (UNEP). The Conference in all passed twenty-six resolutions and made 109 recommendations, “which could together, serve as a code of conduct for all countries in matter of environmental protection”.⁹ Most importantly, the Stockholm Conference produced an Action Plan for the Human Environment. The recommendations in the plan fell into three groups.¹⁰

- a) Environmental assessment demanded a process of evaluation and review, providing a world “intelligence service” describing the state of the world environment, and providing a means for international exchange of knowledge of environmental situations, problems, and management technique.
- b) Environmental management had, as its broad objectives, the development of comprehensive planning, the protection and enhancement of the environment for future generation. Action to protect the ocean and seas of the world was given priority. International action to prevent dumping of waste at sea, strengthening the international whaling commission,

⁸ Martin W. Holdgate. et al. eds., *The World Environment 1972-1982: A Report by United Nations Environment Programme* (Dublin: Tycooly International, 1982), p. 8.

⁹ B. Vivekanandan, *International Concerns of European Social Democrats*, n. 6, p. 134.

¹⁰ Martin Holdgate. et al. eds., *The World Environment 1972-1982: A Report by United Nations Environmental programme*, n. 8, pp. 8-11.

preserving the world's genetic resources and to regulate trade in endangered species, was strongly urged.

- c) The third area of supporting measures had three components: The first was education, training and public information; the second was organizational arrangements; and the third, financial and other forms of assistance.

The Stockholm Conference, therefore, marked the beginning of a global policy on environmental protection. It, for the first time encompasses a broad range of global environment and developmental issues. The conference therefore, as B. Vivekanandan argued, “sharpened the realization that if the world community did not take immediate action in the direction of environmental protection, it could irreparably destroy the life supporting system of the earth”.¹¹

The Vienna Convention (1985) and Montreal Protocol (1987) on the Protection of the Ozone Layer

The concern over the depletion of the ozone layer was reported as early as late 1960s. By the late 1970s and early 1980s, ozone layer depletion was detected in the Antarctic. This was confirmed by the finding of Joe Farman in 1984. In 1975, Professor Sherwood Rowland and Mario Molina of the University of California pointed to the Chlorofluorocarbons (CFCs) widely used in homes and industry (as propellants in spray cans, cooling system, foam blowing and as solvent in electronics industry) as the main

¹¹ B. Vivekanandan, *International Concerns of European Social Democrats*, n. 6, p. 135.

substance endangering the ozone layer.¹² Furthermore, depletion of the ozone layer was linked to the entering of the UV-B rays into the atmosphere, and hence can affect human health in the form of cancer, cataract and other diseases.

Responding to this, the UNEP in 1976 called a meeting of the international governmental and non-governmental organizations to address the issue of ozone depletion. However, it took ten years of hard work to achieve a framework convention of general principles that would result in cooperative action. Beginning with the Washington meeting in 1977, the UNEP and the World Meteorological Organization (WMO) established a committee on the ozone layer made up of representatives of specialized agencies, national, inter-governmental, non-governmental organizations and scientific institutions. This committee was to produce a semi-annual assessment of ozone layer depletion and its impact. However, negotiation on the protection of ozone layer went into rough weather, when, disagreement arose between the European Community (EC) on one side and the other western nations on the other. The 'Toronto Group' comprising of Canada, The US, Finland, Norway, Sweden and Australia favoured a worldwide ban on the use of CFCs as aerosol propellants but opposed other CFC restriction. The EC on the other hand advocates eventual limit on total production, but opposes any cut from the current production level.

Nevertheless, negotiations on the framework convention began in January 1982. Disparate views on the need for action were apparent from the outset. Some nations wanted to accept a general framework convention, which according to them, "the real

¹² Mostafa K. Tolba and Iwona Rummel-Bulska, *Global Environmental Diplomacy: Negotiating Environmental Agreements for the World, 1973-1992* (Massachusetts: MIT press, 1998), p. 56.

objectives were a global ban on CFCs in aerosols (except for essential purpose) and a limit on CFCs emission in non-aerosols uses".¹³ Others, especially the developing countries felt that such measures will hamper their economic development. But some were reluctant to agree to any regulatory measure.¹⁴ Moreover, while the 'Toronto Group' wanted to go faster in controlling CFCs and halons' consumption rather than controlling their production, the EC preferred the latter.

When the Vienna Convention was convened in 1985 to adopt the Convention for the protection of the ozone layer, it was apparent that nothing more than a framework that contained non-specific obligations for protecting the ozone layer and general requirements for more research and the exchange of information could be achieved. Hence, the "convention did not commit the parties to reduce the consumption of ozone depleting materials".¹⁵ Nevertheless, in Vienna in March 1985, under the auspices of the UNEP and WMO, adopted a treaty to protect the ozone layer, committing its signatories to take appropriate measures to protect human health and environment from human activities, which had the potential of affecting the ozone layer adversely.¹⁶

Negotiation on a protocol on the protection of the ozone layer was started in December 1986. In September 1987, after nine months of intense negotiations and hectic lobbying, the 'Montreal Protocol' was concluded. Nations agreed to control eight

¹³ Patrick Szell, "Negotiations on the Ozone Layers", in Gunnar Sjostedt, ed., *International Environmental Negotiation* (London and New Delhi: Sage Publications, 1993), p. 32.

¹⁴ Mostafa K. Tolba and Iwona Rummel-Bulska, *Global Environmental Diplomacy: Negotiating Environmental Agreements for the World, 1973-1992*, n. 12, p. 59.

¹⁵ Gareth Porter, et.al, *Global Environment Politics* (third edition) (Boulder: Westview Press, 2000), p. 15.

¹⁶ Mostafa K. Tolba and Iwona Rummel-Bulska, *Global Environmental Diplomacy: Negotiating Environmental Agreements for the World, 1973-1992*, n. 12, p. 61.

substances, five CFCs and three Bromine compounds. Production and consumption of CFCs was agreed to be cut back within ten years and in three stages. It was also agreed that, production and consumption of halons' would be frozen within three years.

The Basel Convention on Hazardous Waste

Waste is generated as a major consequence of almost any human and economic endeavour. Low-toxicity waste can be collected, transported, and disposed of using low-sophistication technologies such as incineration, disposal or landfills. In the case of high toxic waste, however, "specific methods of handling, transport, and disposal are applied as stipulated by national environmental and health regulation".¹⁷ The question of transportation of waste from one place to another is therefore, raised. Toxic waste is transferred from one country to another in the form of reprocessing consignments. For example, a consignment of hazardous waste cross an OECD frontier on average of five minutes, for a total of more than 100,000 border crossing each year. In 1988, between 2 and 2.5 million metric tons of hazardous waste crossed European frontiers; annually some 200,000 to 300,000 metric tones move from western to eastern countries.¹⁸

Though industrialized countries have a well developed waste management system, it is the developing countries that face the problem of waste management generated due to rapid industrialization. Moreover, laws in regulating movement and waste disposal or for that matter environment law differ from one country to another, and

¹⁷ Willy Kempel, "Transboundary Movement of Hazardous Waste", in Gunnar Sjostedt, ed., *International Environmental Negotiation*, n. 13, p. 48.

¹⁸ Mostafa K. Tolba and Iwona Rummel-Bulska, *Global Environmental Diplomacy: Negotiating Environmental Agreements for the World, 1973-1992*, n. 12, p. 99.

from one region to another. The European Community (EC) adopted Directives 84/631, relating to the supervision and control within the European Community of the transfrontier shipment of hazardous waste within its domain. Similarly, the OECD initiated similar effort in 1984.¹⁹

Though, at the regional level stringent law was formulated for such movement and disposal of hazardous waste, at the global level there is no such law. The increase of waste shipment especially from developed to developing countries increased after the 1980s. To address this problem, the UNEP governing council, in June 1987, adopted a Cairo guidelines and principles for the environmentally sound management of hazardous wastes. The success of the Cairo guidelines was followed by a meeting of the working group of technical and legal expert to prepare a global convention on the control of transboundary movements of hazardous waste. After six sessions of negotiations, the Final Act establishing the adoption of the Basel Convention was signed by 105 states, including the six EEC members. Thirty-five states and the EEC signed the convention in March 1980. By June 1990, fifty-three states and the EC have signed the convention and seven countries ratified the treaty.²⁰

¹⁹ Willy Kempel, "Transboundary Movement of Hazardous Waste", n. 17, p. 49.

²⁰ The EC/EU stands on the Basel Convention has been reaffirmed by the Council Decision 93/98 EEC of 1 February 1993 on the conclusion, on behalf of the community of the convention on the control of transboundary movement of hazardous waste and their disposal (Basel convention). OJ L39, 16.02.1993. For more detail on the negotiation the Basel Countries see:

i) Mostafa K. Tolba and Iwona Rummel-Bulska, *Global Environmental Diplomacy: Negotiating Environmental Agreement for the World, 1973-1992*, n. 12.

ii) Willy Kempel, "Transboundary of Hazardous Waste", n. 17.

From Rio Summit to the Kyoto Protocol: Climate Change and Global Warming

Man's activities since the time of the Industrial Revolution has been held responsible for the climate change and global warming. Scientific reports on these changes, though disputed at times, has indicated that global temperature is rising. Such changes will affect man, nature and its bio-diversity. Studies sponsored by the UNEP, WMO, and the International Council of Scientific Union (ICSU) in 1982, "indicates that by 2030 the doubling of atmospheric carbon dioxide and other greenhouse gases would lead to a warming of an average of 3°C".²¹

Alarmed at such scientific reports, the intergovernmental negotiations for setting a framework convention on climate change (INC) was established by the UN General Assembly in December 1990 (resolution 45/212). The task entrusted upon the INC was a mandate to negotiate a convention on climate change, which was to be formally signed at the UNCED summit meeting in the Rio de Janeiro in June 1992.²² However, "the outcome of the summit on the framework agreement for climate change was regarded by many as a failure".²³ The Summit, although indicated a concrete plan of action, "it did not contain binding commitments by which signatory governments would cut their emissions of carbon dioxide (CO₂) or other greenhouse gases".²⁴

²¹ Mostata K. Tolba and Iwona Rummel-Bulska, n. 12, p. 90.

²² For details on the negotiations on the climate change at Rio Summit and after see Irving M. Mintzer and J.A. Leonard, eds., *Negotiating Climate Change: The Inside Story of the Rio Conference* (Cambridge: Cambridge University Press, 1994).

²³ Gunnar Sjostedt, "The E.U. Negotiates Climate Change: External Performances and Internal Structural Change", *Cooperation and Conflict* (London), vol. 33, no. 3, September 1990, p. 234.

²⁴ *Ibid.*, pp. 234-35.

Nevertheless, representatives of over 150 countries signed the Framework Convention on climate change. Initially, fifty countries ratified it in 1993. The parties to the Convention agreed to stabilize the emission of CO₂ at 1990 level by the year 2000. The framework agreement was regarded as a stepping stone towards addressing the problem of climate change and global warming. As agreed in Rio, the Conference Of Parties (COP) to the agreement first met in Berlin in 1995. The outcome of this conference was the 'Berlin Mandate', an action plan to reduce CO₂ emission and to extend the time frame of the climate convention to the year 2000. Like the Rio Summit the Berlin Mandate was, "criticised by environmentalist for not going far enough, in particular for not agreeing a protocol to reduce CO₂ emission".²⁵ Following the Berlin was the second conference of parties in Geneva where the United States indicated its readiness to accept a formal treaty of binding commitment to reduce the emission of greenhouse gases in the atmosphere.

Five years after Rio, the contracting parties met again for the third conference in Kyoto, Japan, in December 1997. In Kyoto, a protocol known as the 'Kyoto protocol', for the first time was adopted. The protocol contained legally binding reduction targets for all major greenhouse gases. The protocol treaty stipulates that countries should reduce emission as agreed upon accordingly. Reduction should be below 1990 level in the first commitment period of 2002-2012.

The debate on the Kyoto protocol has been focused on the non-ratification of the protocol by the industrialized countries as well as the developing countries, especially

²⁵ Mathew Patterson, *The Politics of Global Warming* (London: Routledge, 1996), p. 71.

China and India, who are the two major greenhouse gases emitters. Moreover, ratification of the protocol was conflicted over reduction of emissions, targets and nature of reduction -sinks, carbon trades and taxes. All this led to the failure of the protocol (Chapter 4).

From Environmental Protection to Sustainable Development

While concerns for environmental degradation was a major theme during the 1960s and 70s, the 1980s marked the advent of the concept of 'sustainable development'. The concept is at the centre of the current debate on environment and development. The concept of sustainable development formed an inextricable part in environmental movement that emerged in Europe and North America in the 1960s and 1970s, and gained its worldwide recognition in the published work of the World Conservation Strategy (WCS) and the Brundtland Report.

Funded by the United Nations for Environmental Protection (UNEP) and World Wildlife Fund (WWF), the WCS which was prepared by the International Union for Conservation of Nature (IUCN) took two decades to come out with the document that aimed at stimulating a more "focussed approach to the management of living resource and to provide a policy guidance on how this can be carried out".²⁶

Though the document aimed at providing an intellectual framework, guidance to governments, policy-makers, conservationists and so on, however, "remain limited in the

²⁶ W.M. Adams, *Green Development: Environment and Sustainability in the Third World*, n. 3, p. 42.

sense that its prime focus was ecological sustainability as opposed to linking sustainability and economic issues”.²⁷

The Brundtland Report

The Concept of sustainable development was, however, clearly defined in the Report of the World Commission on Environment and Development, entitled *Our Common Future*. The Report is also known as the ‘Brundtland Report’. According to the report sustainable development is defined as development that, “meet the needs of the present without compromising the ability of future generations to meet their own needs”.²⁸ The report argues that “sustainable development is not a fixed state of harmony, but rather a process of change in which the exploitation of resources, the direction of investment, the orientation of technological development, and institutional change are made consistent with future as well as present need”.²⁹ In *Our Common Future*, the concept of sustainable development is based on two concepts. The first “is the concept of basic needs and the corollary of the primacy of development action for the poor”.³⁰ The second “involves in idea of environmental limits. These limits are not, however, those set by the environment itself, but by technology and social organization”.³¹

²⁷ Susan Baker, et.al, “The Theory and Practice of Sustainable Development in EU Perspective”, in Susan Baker, et.al, eds., *The Politics of Sustainable Development: Theory, Policy and Practice Within the European Union* (London: Routledge, 1997), p. 3.

²⁸ World Commission on Environment and Development, *Our Common Future* (New Delhi: Oxford University Press, WCED, 1987), p. 8.

²⁹ Ibid., p. 140.

³⁰ W.M. Adams, *Green Development: Environment and Sustainability in the Third World*, n. 3, p. 59.

³¹ Ibid.

The report, therefore, place the element of sustainable development debate at the heart of economic and political context of international development that represents an interesting blend of environmental and developmental concern. Moreover, development, according to the report, is concerned with meeting the basic needs like the merging of environment and economics in decision making. The report also pleaded for a new sustainable growth approach that will benefit not only the rich countries but also the developing countries. Thus, it called for a “freer market access for the products of developing countries, lower interest rates, greater technology transfer, and significantly larger capital flows, both concessional and commercial”.³² Such vision by the report was, however, criticized by the environmentalists, who argued that while at one point the report called for sustainable development, on the other it called for rapid economic growth, which meant the need for the use of natural resources for such growth. However, according to W.M Adams, the concept of sustainable development as defined in *Our Common Future* can be interpreted “not by some notional measurement of the ‘health’ of the environment”, but by “the achievement of certain social and economic objectives”.³³

Thus, the Brundtland Report represents a milestone in defining the concept of sustainable development. It represents a truly inter-disciplinary Report. The Report itself argues that there is no blueprint of sustainable development, and that countries differ from each other in terms of economic, social and ecological condition. It further pointed

³² World Commission on Environment and Development, *Our Common Future*, n. 28, p. 89.

³³ W.M. Adam, *Green Development: Environment and Sustainability in the Third World*, n. 3, p. 59.

out that though sustainable development should be a global objective, each nation would have to work out the concrete policy implications for itself.³⁴

Environmental Non-governmental organizations and Green parties³⁵

Non-Governmental organizations:

Global environmentalism in 1960s was also reflected in the growth of various environmental groups and organizations. The Friends of the Earth (FOE), founded in 1969 by David Bower is one of the first organizations to politicise the state of the environment. To them Governmental role and action is crucial for it is the only institution capable to handle the problems of environmental degradation.³⁶ Since its founding, the FOE has grown into an international movement with many branches all around the world. Its main aim is to corner states action into environmentally sound behaviour rather than directly lobbying them.³⁷

The other Non governmental group that is prominent in environmental movement is the Greenpeace International. This Group throughout the 1970s was active against nuclear tests. The Greenpeace see the bulk of global environmental problem falling into

³⁴ Susan Baker, et.al, "The Theory and Practice of Sustainable Development in EU Perspective", in Susan Baker, et.al eds., *The Politics of Sustainable Development: Theory, Policy and Practice Within the European Union*, n. 27, P. 4.

³⁵ For details on environmental movement, see John Mc Cromick, the *Global Environmental Movement* (Second edition) (New-York: John Wiley and Sons Inc, 1995).

³⁶ Paul Wapner, *Environmental Activism in World Civic Politics* (Albany: Sunny Press, 1996), pp. 125-26

³⁷ Ibid.

four categories: toxic substance, energy and atmosphere, nuclear issue, ocean and terrestrial ecology.³⁸

Both the FOE and the Greenpeace are the two internationally recognised non-governmental environmental organization. Till recently these organizations have been in the forefront of environmental campaign. In 1985, the Greenpeace's 'Rainbow warrior', on it way to protest the French nuclear test in the Pacific Islands, was blown up by the French intelligence in the harbour of Auckland, New Zealand. This act resulted in the death of a Greenpeace volunteer. This incident did not deter the Greenpeace movement, infact, it strengthened their determination to stand against nuclear tests. The most recent in the activities of the Greenpeace is the protest against the shipment of nuclear wastes across Europe. On the other hand the FOE's main activities is to disseminate international awareness on the danger of climate change and global warming.

Green parties:

It is in the activities and presence of these environmental organizations, along with the growth in environmental literature, that environmentalism took a new shape. Environmental groups began to be more active in political decisions made through lobbying and pressurising the governments to act on certain environmental issues. In the 1960s, in the United States, the Netherlands and Germany the 'Ecology movement' and 'Alternative movement' played a leading role in raising environmental awareness. The 'provos' in the Netherlands, besides free transport and disarmament of police also

³⁸ Ibid., p 47.

demanded a ban on advertising for alcohol and tobacco, and the introduction of measures to curb pollution.³⁹ In Germany, the environmental movement took a great leap in the 1970s. From 1976 onward, mass movements and protests organised by the 'ecology movement' against nuclear reprocessing and nuclear energy was organized. Protest in 1979 in Hanover and Bonn against government policies on nuclear energy attracted the attention of 100,000 and 1,50,000 protesters.

It is in the growth of these movements that the Green parties came into being. In 1973 the Green party was formed in England. In 1977 the Green List emerged in West Germany at a local level. In 1978, the Green List gained around 4 percent of the votes in Hamburg and Lower Saxony State election. By 1979 when the European elections took place, the Green list gathered 3.2 percent of votes. Such success catches the attention of the 'young socialist' (JUSOS) in Germany. The young socialists are members of the SPD who at the beginning were part of the protest movement, but later no longer associate with the social democrats, but instead join the Greens.⁴⁰ By the 1980s the Green Party was a dominant force in the European political system. In Germany the Green Party gathered a 5.6 percent of votes in the 1983 federal elections, and was able to gather 27 seats in the federal parliament. In Sweden, though the Swedish Green Party received only 1.7 percent of votes in 1982, yet, it marked the beginning of the Green Party. And for the first time in 1988 it succeeded in entering into parliament. This was a historic achievement for the Greens, for, it "was the first time in seventy years that a new party

³⁹ Elim Pepadakin, *The Green Movement in West Germany* (New York: St Martin's Press, 1984), p. 6.

⁴⁰ Werner Hulsberg, *The German Greens: A Social Political Profile* (London: Verso, 1988), p. 99.

entered the Swedish parliament”⁴¹ In the 1998 German elections, once again the Green Party became the leading coalition partner in the Gerhard Schroeder's government.

In Europe, it is, however, not only the Green Parties which are concerned with environmental issues. The social democrats, irrespective of any country they represent, are the original champions of environmental issues. It is under the social democratic government of Gro-Harlem Brundtland that the 'Brundtland Report', *Our Common Future* was published in 1987. To this all social democratic parties of Europe have accepted its recommendations.⁴² The other report is the one prepared by the German Social Democrat, Willy Brandt. The Brandt Commission Report of 1980, like the Brundtland report, reflects the Socialist Democratic concern of the environmental problems. They called for integration between economics and the environment, and North-South dialogue in protecting and preserving the environment. Such concern was also reflected in the SDP Government of Sweden. The Government, on 4 March 1988, presented a bill on its environmental policy for the 1990s. The Bill urged for clean air, water, food and long term conservation. Likewise, in Norway, the SDP Manifesto of 1989 underlined the need to pursue a programme of environmentally sustainable development in all planning and political decision making.⁴³ In the eighteenth Congress of the Socialist International in Stockholm in June 1989, the Chairman of the Swedish Socialist Democratic party, Ingvar

⁴¹ Detlef Jahn, "The Rise and Decline of New Politics and the Green in Sweden and Germany", *European Journal of Political Research* (Dordrecht), vol. 24, no. 2, August 1993, p. 182.

⁴² B. Vivekanandan, *International Concerns of European Social Democrats* (London: Macmillan Press, 1997), p. 138.

⁴³ *Ibid.*, p. 100.

Carlsson, “highlighted the growing concern and awareness of environmental problems and issues both at the local and global political agenda.”⁴⁴

Thus, by the late 80s environmental movement, whether at the regional, national, or global level had already gained sufficient ground and recognition. However, while at the national level, environmental policies have been well developed, at the regional and global level, any such attempt to establish an environmental regime was met with limited success. The next section will therefore, attempt to explain the reasons for such a failure.

Approaches to Policymaking:

Environmental degradation, which until a few years ago was seen as national problem, is now widely recognised as a global problem. The transboundary nature of various pollutions - air, water and waste - affects the eco-system of not only one country, but that of the world as a whole. Given the transboundary nature of environmental pollutions, international cooperation for an environmental regime to protect the environment came up both at the global and regional level. At the regional level, the European Union’s environmental policy represents another kind of regime on environmental protection, where states at the national and the supranational level negotiate a common environmental policy.

According to Caldwell, “environmental issues are seldom simple and characteristically involve degrees of synthesis that to be adequately understood require

⁴⁴ Ibid., p. 150.

more information than ordinary common sense usually provides”.⁴⁵ Therefore he argues that, “as a policy area, the environment presents problems that are distinctive in complexity and ramification”,⁴⁶ and that these “difficulties would be diminished were there a consensus on the basic values consistent with the way the natural world works. But this is not the case”.⁴⁷ The reason he opined is that, “the dominant values in modern society are economic and egocentric”.⁴⁸ And hence, “their modification to protect environmental quality and sustainability has yet to be achieved”.⁴⁹

Thus, environmental policy making, whether at the regional or global level involve a need for distinction and dovetailing with different policies such as, economic policy, energy, health, transport, tourism and security. All these areas touch the very core of socio-economic and political issues of a modern sovereign state. It is in the complexity of such policy making that an attempt to form an international environmental regime has been difficult, if not at all impossible. According to Andy Blower, such difficulties in agreeing for an effective common environmental policy at the international level is due to: first, the lack of power to establish policy, define targets, select instruments for implementation and sanction for non-compliance.⁵⁰ Secondly, international environmental policy and issue is characterised by a high degree of scientific uncertainty

⁴⁵ Lynton K. Caldwell, “Environmental as a Problem for Policy”, in Lynton K. Caldwell, and Robert V Bartlett., ed., *Environmental Policy: International Issues and National Trends* (Westview: Quorum Book, 1997), p. 1.

⁴⁶ Ibid., p. 9.

⁴⁷ Ibid., p. 10.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Andrew Blowers, “Policy Making for Environmental Change”, in Andrew Blowers and Pieter Glasbergen, eds., *Environmental Policy in an International Context*, vol. 3 (London: Arnold), p. 2.

that is contestable and hampering policy targets and goals.⁵¹ And lastly, that there is the underlying conflict of interests and priorities over a range of policy areas which hinder collaboration.⁵²

Despite these problems, environmental policy making continue to exist in the form of environmental regime. The range and degree of transboundary environmental problems leave nation states with not much choice but to negotiate and set up rules and norms. International Regime has been defined as “principles, norms, rules, and decision making procedure around which actors expectation convergè in a given issue-area”.⁵³

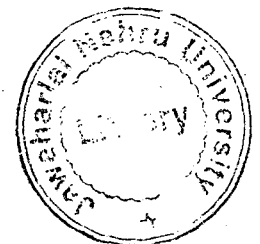
Global environmental regimes are operated under three forms of binding agreements or legal instruments.

TH- 9516

- 1) **Convention:** It may contain all the binding obligations, expected to be negotiated or may be followed by more detailed legal instruments elaborating on its norms and rules.
- 2) **Framework Convention:** If a convention is negotiated in anticipation of one or more later elaborating texts, it is known as Framework Convention. It is intended to establish a set of principles, norms, goals and formal mechanism for cooperation on the issues rather than to impose major binding obligations on the parties.

DISS
363.70094
K5278 En

TH9516



⁵¹ Ibid., p. 2.

⁵² Ibid., p. 3.

⁵³ Stephen D. Krasner, “Structural Causes and Regimes Consequences: Regimes as Intervening Variables,” *International Organization* (Massachusetts), vol. 36, no. 2, (Spring), 1982, p. 1.

- 3) Protocols: A Framework Convention is followed by the negotiation of one or more protocols, which spells out more specific obligations of the parties on the overall issue in question or on a narrower sub issue.⁵⁴

Approaches to global environmental regime formation have been explained in terms of structure, game theories, institutional bargaining and epistemic communities approaches. Of all these approaches, institutional bargaining and epistemic communities approach can be tested in the context of the European Union environmental Regime. The former states that the primary interest is in protecting natural security and maintaining economic growth, thus, making them incapable to adequately address the problem of environment. In such a situation international institution is established to guide international behaviour.

The latter model (epistemic communities approach) “emphasises on international learning, primarily on the basis of scientific research on a given problem, as a factor influencing the evolution of regimes”.⁵⁵ This approach was effectively applied in the “Med Plan”(Mediterranean Action Plan). Here the role of the specialised agencies- UNEP, WHO, FAO- and the like minded governmental officials in the region comprised an “epistemic community.” Together, they acted as an informally coordinated lobbying group. They also share a common ecological outlook. In this epistemic ecological community, the members had similar beliefs about the need to preserve the quality of physical environment and shared similar views on the origins and severity of pollutants,

⁵⁴ See Gareth Porter, et.al, *Global Environmental Politics*, n. 15, p. 13.

⁵⁵ *Ibid.*, p.18.

the policies necessary to control pollution and the research needed to determine the physical linkages between sources of pollution and health of the environment by evaluating all economic activities and possible uses of the environment with a broader eco-system framework.⁵⁶

Analysis of environmental regimes suggests that while some regime negotiations are clinched in a short time, others take years to conclude. According to Young, this depends on various factors. He is of the view that in an institutional bargaining for an international regime, factors such as multiple actors and unanimity in rules, integrative bargaining and the veil of uncertainty are necessary to avoid any failure in regime formation.⁵⁷ However, he argued that constraints to regime formation do exist. Such problems arise due to the inefficiency of parties involved "...to make a sustained efforts to perfect their information regarding the full range of outcomes and the dimensions of contract zones before getting down to serious bargaining".⁵⁸ He further pointed out that in dealing with the problem, some approaches are seriously handicapped and limited to only a few areas. But treatment to these problems have been articulated through several other approaches, and at the same time seek to reconcile differences among these approaches in course of their negotiations. Moreover, regime formation has been compounded by the presence of 'transnational alliances' and 'shifting involvement' that occur due to socio-economic or political development in a player's domestic policies.⁵⁹

⁵⁶ Oran Young, "The Politics of International Regime Formation? Managing Natural Resources and the Environment", *International Organization* (Massachusetts), vol. 43, no. 3, (Summer) 1999, p. 384.

⁵⁷ *Ibid.*, pp. 359-62.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

Nevertheless, Young also laid down the determinants for a successful international regime formation. These are:

- 1) Institutional bargaining can succeed only when the issues at stake lend themselves to 'contractarian' interactions. This acted as a problem-solving exercise aimed at reaching agreement on the terms of a social contract.
- 2) The availability of arrangements that all participants can accept as equitable (rather than efficient) is necessary for institutional bargaining to succeed. In other words, it can succeed only when all the major parties and interest groups come away with a sense that their primary concerns have been treated fairly.
- 3) The existence of a salient solution (or focal points describable in simple terms) increases the probability of success in institutional bargaining.
- 4) The probability of success in international bargaining rises when clear-cut and effective compliance mechanisms are available.
- 5) For most part, exogenous shocks or crisis increases the chances of success in the effort to negotiate the terms of international regimes.
- 6) Institutional bargaining is likely to succeed when effective leadership emerges; it will fail in the absence of such leadership.⁶⁰

In applying regime approaches to EU environmental policy, the EU environmental policymaking is a multi-level governance structure, where local, national and supranational policymaking is involved. There is an institutional bargaining within

⁶⁰ Ibid., pp. 366-74.

the EU, but still members are willing to cooperate to reach a common position. Negotiation on a common environmental policy in the EU is supported by scientific data and evidence from the European Environmental Agencies and other independent agencies. At the EU level, most legislations are implemented through Directives, Regulation, Resolution, and Framework Directives. These are reached through negotiations among member states at different level.

Like any regime, the EU environmental regime-building process was a development of agreements and common concerns to a problem or issue area. Common rules, norms, and procedures are thus established for members to adhere. Thus, “expressed in EU formal language, regime-building process in the environmental area was a development of consecutive and tightly interlinked environmental action programmes”.⁶¹

Regimes are argued to undergo structural change in course of time, where members agree to modify or amend from time to time according to the situation. In the EU, changes in environmental policy have been first in the Environmental Action Programmes, then in the Single European Act and the Maastricht Treaty. Moreover, changes are decided at the various levels of institutions and inter-governmental conferences within the union.

Considering the facts of non-compliance, difference in attitude to environment and other factors, the question remains as to whether environmental regimes are successful. For a successful regime, various approaches have been identified. The

⁶¹ Gunnar Sjostedt, “EU Negotiates on Climate Change: External Performance and Internal Structural Change”, *Cooperation and Conflict*, n. 23, p. 244.

approaches of network or integrative policy (Wilkinson),⁶² Co-operative governance between public and private (Glasbergen)⁶³ and Bottom-up approach (Baker, et.al),⁶⁴ are some of the approaches identified.

The EU, which represents an intergovernmental, as well as federal governance structure, where local-national and super-national objectives interact, where also different institutions and sector cross each other, integrative, bottom-up and co-operative approaches can be thus tested.

(B) Evolution of the European Community's Environment Policy Upto 1992

The treaty of Rome that established the European Economic Community, as it was called in 1952, contains no provision with regard to environmental matters. "This is hardly surprising given the primacy of economic concerns on the newborn community's agenda".⁶⁵ The primary objective of European integration at that time was the promotion of a "harmonious development of economic activities".⁶⁶ Moreover, environmental policy in the Community was formulated to "avoid distortion of competition within the

⁶² David Wilkinson, "Steps Towards Integrating the Environment Into Other EU Policy Sectors", in Tim O' Riordan and Heather Voisey, eds., *The Transition Towards Sustainability: The Politics of Agenda 21 in Europe* (London: Earthscan, 1998), pp. 113-29.

⁶³ Pieter Glasbergen, *Co-Operative Environmental Governance: Public-Private Agreements as a Policy Strategy* (Dordrecht: Kulwer Academic Publishers, 1998).

⁶⁴ Susan Baker, et.al, "Introduction: The Theory and Practices of Sustainable Development in EU Perspective", in Susan Baker, et.al, eds., *The Politics of Sustainable Development: Theory, Policy and Practice Within the European Union*, n. 27, pp. 1-42.

⁶⁵ Angela Liberatore, "The European Union: Bridging Domestic and International Environmental Policy-Making", in Elizabeth Economy and Miranda A. Schreurs, eds., *The Internalization of Environment Protection* (Cambridge: Cambridge University Press, 1997), P. 189.

⁶⁶ Art 2 of EEC.

EEC, and to preserve and increase the competitiveness of EC's products and industry in the world economy".⁶⁷ Secondly, some environmental problems are more effective when tackled collectively rather than individually. Finally and most importantly, EC environmental policy is the outcome of a worldwide recognition that environmental problem is a global problem.

The concept of EC environmental policy was first conceived at the 1972 Paris Summit. The Heads of State and Government of the member states officially recognised the need for a Community environmental policy when they declared that "...economic expansion is not an end in itself" and that "particular attention will be given to intangible values and to protecting the environment so that progress may be really put to the service of mankind".⁶⁸ However, at that time environment as a legal framework was not yet made ready by the Community. All that the Community was willing to take action was in the form of an 'Action Programme'. From 1973 to 1992 the Community has adopted four Environmental Action programmes.

The First Environmental Action Programme (EAP) (1973-76)

The First Environmental Action Programme was adopted on 22 November 1973. The programme is an important landmark in the European Community history. It marked the beginning in the series of future environmental programmes. The First EAP was

⁶⁷ Angela Liberatore, "Problems of Transnational Policymaking: Environmental Policy in the European Community", *European Journal of Political Research* (Dordrecht). vol. 19, no. 2/3, March/April 1991, p. 282.

⁶⁸ As quoted in Nigel Haigh, "Introducing the Concept of Sustainable Development Into the Treaties of the European Union", In Tim O' Riordan and Heather Voisey, eds., *The Transition to Sustainability: The Politics of Agenda 21 in Europe*, n. 63, p. 66.

presented as a Declaration of the Council of the European Communities and of the Representatives of the Governments of the Member States' Meeting in the Council. This was important, as "it was an acknowledgement that action should be carried out at the national or the supranational level of government".⁶⁹

The First EAP principles focused on: 1) prevention of pollution; 2) environmental impact assessment in planning and decision making process; 3) other exploitation of natural resources; 4) use of scientific data in environmental planning and protection; 5) Polluter Pays; 6) transboundary pollution; and 7) EC role and commitment to global environmental protection; 8) appropriate level of action in the EC level; and 9) harmonization of environmental policies.⁷⁰

Apart from the principles, the policy objectives of the First EAP set up the targets to be achieved by: 1) application of the appropriate provisions of the treaties; 2) implementation of the programme; and 3) implementation of an environmental information procedure.⁷¹

The First EAP thus set the agenda to identify general objectives of future environmental policy. It is from the First EAP that the other subsequent Action Programmes followed. Hence, the First EAP served as a reference point. Its main concentration was mainly with remedial action addressing both cumulative and immediate problems facing the Community. Priorities were particularly given to Directives on regulation and elimination of toxic waste discharges, and the introduction

⁶⁹ Pamela G. Barnes and Ian G. Barnes, *Environmental Policy in the European Union* (Cheltenham: Edward Elgar Publishing Limited, 1999), p. 28.

⁷⁰ *Ibid.*, p. 30.

⁷¹ *Ibid.*

of labour control measures. In these areas its principles of 'Polluter Pays' was applied to underpin policy measures.⁷²

The Second Environmental Action Programme (1977-82)

The Second EAP was adopted in May 1977.⁷³ This programme underlined the Community's desire to continue the effort and measures of the First EAP. In this programme, greater emphasis was given to 'preventive action'. It also emphasised on the 'non-damaging use and rational management of land, the environment and natural resources' and 'general action to protect and improve the environment'. Besides, the Second EAP for the first time, stressed on the use of environmental impact assessment and environmental labelling of products.⁷⁴

Implementation of the Second EAP's objective was rather slow. Nonetheless, the Second EAP aspired to make EC's evolving environmental policy more operational. Its differentiation between broad categories of ecological questions was clearer. For instance, air, water and noise pollution was differentiated. Compared with the first action programme, the second programme was given a legal status in the sense that it became secured in binding Council Resolution.⁷⁵

⁷² See Christopher M. Dent, *The European Economy* (London: Routledge, 1997), Chapter 11.

⁷³ COM 1977, OJ C139/1, 13.6.1977.

⁷⁴ Environmental Impact Assessment and eco-labelling was not adopted until the 1985 and 1992 respectively.

⁷⁵ Gunnar Sjostedt, "The EU Negotiates Climate Change: External Performance and Internal Structural Change", *Cooperation and Conflict*, n. 23, p. 244.

The Third Environmental Action Programme (1982-87)

The main focus of the Third EAP, adopted on 7 February 1983,⁷⁶ was mainly on the 'prevention rather than cure' principles. The main objective of the programme was to shift from pollution reduction to pollution prevention. The principle of 'Polluter Pay' was strengthened with the need to rectify the problem of pollution and environmental damage at the source. Furthermore, the Action Plan envisaged the need to develop clean technologies. The role of Environmental Impact Assessment (EIA) was regarded as the prime instrument for ensuring that environmental data were taken into account into decision-making process. In the Third EAP the most notable approach is the call for an integration of environmental policy into other sector policies like transport, industry, agriculture and tourism.

The Third EAP therefore, strengthened the focus on concrete policy measures. It also served as a transition to the Single European Act. It thus hinted at the changes that would be changed later with the introduction of the Single European Act.

The Fourth Environmental Action Programme (1987-92)

The Fourth Environmental Action Programme was adopted as a Resolution on 19 October 1987.⁷⁷ The Fourth EAP coincided with the introduction of the Single European Act (SEA). Issues identified in this programme of action are, therefore, consisted of essential elements of all economic and social policies. Hence, harmonization of environmental policy with the objective of the internal market is highlighted. The Fourth

⁷⁶ COM 1983 OJ C 70/3, 18.3.1987.

⁷⁷ COM OJ C 70/3, 18.3.1987.

EAP also called for a number of objectives, which do not need to replace the earlier programme, but rather strengthen them. It called for an urgent action on the application of agro-chemical and waste management. The programme also identified the importance and advantage of adopting a multimedia approach for the protection of the environment from pollution that has a 'cross over effect' into other. Other priorities identified for action include: compliance and control by national governments of Community's environmental policy, integration of environmental policy into other Community policies is to be achieved at both Community level and national level. The Fourth EAP also sought to emphasize in increasing public access to and dissemination of information and job creation.⁷⁸

The Fourth Environmental Action Programme placed the importance of environment as that of the market. The programme's emphasis on 'balanced growth' indicates the Community's concern on the pattern of growth that affects the environment's health. This is in line with the Brundtland Report that was published in the same year that the Fourth EAP was launched. For such a 'balanced growth', the Fourth EAP argued that there was a need to integrate environmental policy into all other areas of EC decision-making. Thus, signifying the call for a more political will by member countries in implementing the programme.

⁷⁸ EC Commission, *European Community Environmental Legislation (vol. 1)* (Luxembourg: Office for Official Publications of the European Communities, 1992), p. xxi.

The Single European Act

When the Fourth EAP was adopted, the most important development was that 'Environment' for the first time was recognised in the Single European Act of 1987. The Act, which amended the Treaty of Rome, placed environment under part three of the treaty. The SEA laid the foundation and policy of the Community's environmental provision in three articles; Articles 130r, 130s and 130t, which set out the goal and elements of environmental protection and action by the Community. These goals were: 1) to preserve, protect and improve the quality of the environment; 2) to contribute towards protecting human health; 3) to ensure a prudent and rational utilization of natural resources; 4) preventive action should be taken; 5) environmental damage should be rectified at source; and 6) the polluter pays.⁷⁹

Article 130r, established environmental protection as a basic objective of the Community and adopted the 'Proximity Principles', the 'Polluter Pay Principle' and the 'Preventive Principle'. It also explicitly applied the doctrine of 'subsidiarity', calling for Community action to protect the environment when it would be more effective than national actions. Thus, "given the transboundary nature of most pollutants, this gave the Community a broad range of authority".⁸⁰

Article 130s, imposes the requirement of unanimity in the Council. However, the Commission and the Court of Justice have made it clear that Community environment legislation sets minimum standards, but "may not be used to prevent the member states

⁷⁹ Ibid , pp. xxi-xxii.

⁸⁰ "International Environmental Law and Policy: The European Union", <http://www.wcl.american.edu>

from going further”.⁸¹ The Article states that the “protective measures adopted in common pursuant to Article 130s shall not prevent Member States from introducing more stringent protective measures compatible with this treaty”.⁸²

Article 130t permitted Member States to stronger protective measures than those required by the Community law so long as these measures were compatible with the internal market.

In the SEA, Article 100a was also introduced. The new Article authorised the Council to adopt a ‘Qualified Majority Voting’ (QMV) in area ‘concerning health, safety, environmental protection and consumer protection’. Article 100a also provides for a ‘co-operation procedure’ for parliament with regards to decision -making.

The SEA, therefore, marked the “single most influential step forward in the history of the development of the EC's environmental policy”.⁸³ It, for the first time, established a basic legal status to address the problem of environment. Most importantly, its stated objectives were “broad and allowed for subjects that could well have been excluded even under the elastic interpretation of the treaty that had previously prevailed”.⁸⁴ The new treaty’s call for environmental integration is a response to the Brundtland Report for sustainable development. Thus, in December 1988, the EC heads of government clearly endorsed, in a Declaration on the Environment, that ‘sustainable

⁸¹ EC Commission, *European Community Environmental Legislation (vol. 1)* (Luxembourg: Office for Official Publication of the European Communities, 1992), p. xxii.

⁸² Article 130t EC.

⁸³ Pamela G. Barnes and Ian G. Barnes, *Environmental Policy in the European Union*, n. 70, p. 47.

⁸⁴ Nigel Haigh, “Introducing the Concept of Sustainable Development Into the Treaties of the European Union”, in Tim O’ Riordan and Heather Voisey, eds., *The Transition to Sustainability: The Politics Of Agenda 21 in Europe* (London: Earthscan, 1998), P. 68.

development must be one of the over-riding objectives of all Community policies'.⁸⁵ Moreover, environmental protection was considered important for economic development. Such environmental policy would deter trade distortion within the Community.

It is, however, noted that despite a more coherent environmental policy laid down in the SEA, problems regarding non-implementation and distortion of trade was reported. The earlier years after the implementation of SEA environmental measures suffered from the "lack of financial and technical resources, organizational problems within administrative structures and various other elements make the implementation of (sometimes unclear) written provisions at local and national levels. The problems become yet more complex at Community level, where local, national and transnational elements interact".⁸⁶

⁸⁵ As quoted in Susan Baker, "The Evolution of European Union Environmental Policy: From Growth to Sustainable Development", in Susan Baker, et al, eds., *The Politics of Sustainable Development: Theory Policy and Practice Within the European Union*, n. 27, p. 92.

⁸⁶ Angela Liberatore, "Problems of Transnational Policymaking: Environmental Policy in the European Community", *European Journal of Political Research*, n. 68, p. 282.

CHAPTER 2

ENVIRONMENTAL POLICY IN THE EUROPEAN UNION AFTER 1992

Introduction

It was not until 1987 that environmental protection in the European Community was given a legal basis. However, the need for such a policy was first initiated in the 1985 Commission's *White Paper* on the internal market. The paper identified the effects of the single market on different policies including the environment. The paper argued that for the 'success of the internal market' environmental policy 'must not be ignored'.¹ Thus, the need to harmonise environmental consideration with the internal market and other sector policies was considered to be most important and necessary. Moreover, environment as a policy was aimed at: protecting European market; enhancing quality of European goods in competitive world market; avoiding trade distortion within the Community; and most importantly to respond to global environmental change.

Nonetheless, 'environment' as a policy issue has come a long way since the First Environmental Action Programme in 1972. With each passing programme, the Community, while focusing and endorsing the earlier programmes its successive programmes' aims and objectives to the issue began to evolve into a more concrete policy. For example, while the first and the second programme dealt only with the issue,

¹ EC Commission, *Europe Without Frontiers: Completing the Internal Market* (Luxembourg: Office for the Official Publications of the European Communities, 1987), p. 23.

the third programme focussed more on 'prevention' rather than 'end of the pipe' solution to the problems of pollution. The fourth programme focussed on the need to harmonise environmental policy with other sectors, particularly the internal market.

It is, however, after 1992 that environmental policy in the European Community underwent a sea change. This was due to two developments that took place in the late 1980s and early 1990s within and outside the Community. First, the fifth environment programme (1992-2000) on "Towards Sustainability" is an endorsement to the World Commission on Environment and Development's (WCED) Report on the global environment and sustainable development. Secondly, is the negotiation and conclusion of the Maastricht Treaty of the European Union.

This chapter will, therefore, focus on the importance and development of the EU's environmental policy after 1992. The chapter will deal with two themes. First, with the concept of 'sustainability' as laid down in the fifth environmental programme and the second will deal with the implication of the Maastricht Treaty on the Union's environmental provision, starting from the treaty provision to the institutional and policy making process.

The Fifth Environmental Action Programme (EAP)(1992-2000): “Towards Sustainability”²

The Fifth EAP was adopted by the Council of Minister' Resolution on 17 May 1993.³ This programme reaffirmed the basic objectives of the earlier programmes. But one of the most notable differences of the fifth programme from its predecessors is that the concept of ‘sustainable development’, as envisaged in the Brundtland Report of 1987 (WCED), was adopted and endorsed by the Fifth EAP.

Central to the theme of the Brundtland Report, the Fifth EAP sought to achieve ‘sustainability’ through the principles of: preserving, protecting and improving the quality of the environment; rational use of natural resources; that development should take into account the economic, social and environmental consequences. The fifth programme, therefore, sought to achieve this through various target sectors and themes, which would be operated across all social and economic sectors. Out of the major environmental problems, the programme “focuses on five main economic sectors which can damage the environment and deplete natural resources”. These are, “industry, transport, energy, agriculture and tourism”.⁴ Besides, the programme identified seven themes in the Fifth EAP (see figure 1 in Appendix), which has both internal and external implications.

² See EC Commission, *Towards Sustainability: A European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development* (Luxembourg: Office for the Official Publications of the European Communities, 1993).

³ OJC 138, 17 May 1993.

⁴ EC Commission, *The European Union and the Environment* (Luxembourg: Office for the Official Publications of the European Communities, 1997), p. 15.

The fifth programme is the only EAP to have a title-‘Towards Sustainability’. It was devised as the EU's long-term approach to achieving the objectives of sustainable development. It was also designed to “cover a longer period of time than the previous programmes”.⁵ Fundamental to the programme is the principle of policy integration. The programme, developed parallel to Agenda 21, stresses the need for “integration of environmental considerations into other policy areas” and “for a comprehensive programme of reform aimed at a single goal - sustainable development”.⁶ Such policy is aimed beyond the traditional command-and-control regulation to include “economic instruments, voluntary agreements, and better information and education to enable the public to make more informed choices”.⁷ The definition of sustainable development used in the Fifth EAP, therefore, contains the three dimensions of the concept. Sustainable development is “intended to reflect a policy and a strategy for continued economic and social development without detriment to the environment and natural resources on the quality of which human activity and further development depends”.⁸

Thus, in contrast to the earlier approach of building policy around a restrictive regulatory framework, the European Union has now embarked on a more positive task of constructing a balanced relation between the use of environmental resources and

⁵ Pamela M. Barnes and Ian G. Barnes, *Environmental Policy in the European Union* (Cheltenham: Edward Elgar Publishing Limited, 1999), p. 42.

⁶ EC Commission, *The European Union and the Environment*, n. 4, pp. 15-16.

⁷ David Wilkinson, “Steps Towards Integrating the Environment into other EU Policy Sectors”, in Tim O’ Riordan and Heather Voisey, eds., *The Transition to Sustainability: The Politics of Agenda 21 in Europe* (London: Earthscan, 1998), p. 118.

⁸ As quoted in Pamela M. Barnes and Ian G. Barnes, *Environmental Policy in the European Union*, n. 5, p. 41.

economic activity within the member states.⁹ While aiming at sustainability, the programme at the same time provides for continued growth in Europe. The policies are, therefore, now directed at reducing environmental impact at different points. The Fifth EAP also provides for interplay between the main group of governmental and societal actors and the principal economic sector through the use of an extended and integrated range of instruments.¹⁰ It, thus, for the first time, provides for a 'bottom up approach' to environmental solution. This strategy is based on the interaction and active participation of various actors in achieving socio-economic solution to the problems of environment.

However, such policy solution remains elusive. Its success has been a subject of debate. The 1999 Commission's report on the progress of the fifth programme indicates that, "practical progress towards sustainable development has been rather limited"¹¹ and that the "commitment by other sectors and by Member States to the programme is partial".¹² The Commission was also concerned with the lack of implementation and enforcement of the Action Programme, which includes breaches of EC's environmental law and "lack of quantifiable targets and monitoring mechanisms".¹³

The Fifth Environmental Action Programme, which ended in 2000, reflects the difficulties in implementing the programme in totality. Nevertheless, the Commission and

⁹ Kenneth Hanf, "Implementing Environmental Policies", in Andrew Blowers and Pieter Glasbergen, eds., *Environmental Policy in an International Context*, vol. 3 (London: Arnold, 1996), p. 210.

¹⁰ *Ibid.*, pp. 10-11.

¹¹ EC Commission, *Europe's Environment: What Directions for the Future? The Global Assessment of the European Community Programme of Policy and Actions in Relation to the Environment and Sustainable Development, 'Towards Sustainability'* (Brussels: Com (1999) 543 final), p. 6.

¹² *Ibid.* p. 3.

¹³ *Ibid.* p. 5.

the Parliament once again reaffirmed the goal of the programme. The Commission in its reflective report in 2000 called for a debate with other institutions, stakeholders and citizens of the Community to enable the Sixth Environmental Action Programme, scheduled in 2001, to be successful.

From the Maastricht Treaty to Amsterdam Treaty

Under the Maastricht Treaty, environmental policy is considered as one of the Community's tasks. If the SEA's concern was with the internal market of the EC, the Maastricht Treaty of 1992, that established the European Union, is more concerned with the trans-national environmental problems. Moreover, the treaty negotiation, which came close on the heel of international focus on global environmental problems like the ozone depletion, climate change and greenhouse effects, therefore, incorporates environmental provision to address both external and internal environmental problems.

The Maastricht Treaty, instead of doing away with the previous treaty of the European Community, strengthened the earlier treaty through various amendments or additions. In the field of environmental policy, a new legal status was given. Environmental provision under Chapter VII, including 130r, 130s and 130t of the Single European Act of the European Community, has been entirely re-written as chapter XVI. Article 100a was further strengthened with the addition of a legislative process for the European Parliament in the form of co-decision procedures.

Under article 130r, apart from 'preserving, protecting and improving the quality of the environment' two new principles were added to the original four of the SEA - 'the principles of high level of protection' and the 'principles of precaution'. The new article also stresses the need to integrate environmental protection into the "definition and implementation of other community policies".¹⁴ Article 130r(2), thus expressly stated that the European environmental policy as such is aimed at a "high level of protection taking into account regional differences".¹⁵ The addition of the 'principles of precaution' in the treaty means that environmental protection should be as quick as possible, and action to be justified before it is too late. Thus, the principles aimed at keeping the period of time lag as short as possible.¹⁶ Moreover the Community must take into account of 'available' scientific and technical data, environmental conditions in various regions' communities, cost and benefits, and economic and social implication of the policy. [Article 130r(3)].

Article 130s provides for a 'cooperation procedure' in the Council. Under this procedure, only a qualified majority voting in the Council is needed to approve the proposed legislation by the Commission. This, therefore, eliminates the procedure of unanimity of the previous treaty. In the Maastricht Treaty, the principle of subsidiarity laid down in the SEA [Article 130r (4)] was reaffirmed. The treaty's emphasis on the principle is seen in the change of the subject from Article 130r (4) to Article 3b, thus, bringing the principle to the forefront. Subsidiarity was to be applied in areas which do

¹⁴ TEU, Article 130r (2).

¹⁵ As quoted in L.Lavrysen, "The European Context of Flemish Environmental Policy", <http://www.allserv.rug.ac.be/~jhegman/LL/European%20context.htm>

¹⁶ Ibid.

not fall within its exclusive competence, the Community shall take action "... only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the community".¹⁷ Hence, subsidiarity principle, which was moved from the environment chapter to the 'principles' section, was meant to generalise its application to the entire range of EU policies.¹⁸

The Maastricht Treaty therefore seeks to address the problems of environment in totality. Environmental protection is to be the Union's main priority. The treaty also takes into consideration the social and economic dimensions of the environment. It states that the Community task is to "promote economic and social progress which is balanced and sustainable".¹⁹ In addition, the Maastricht Treaty also amended Article 2 of the Treaty of Rome by replacing objective of 'continuous expansion' with that of "sustainable and non-inflationary growth respecting the environment".²⁰

It is, however, argued that the Maastricht Treaty do not address the real issue of sustainable development. All that it mentions is the promotion of non-inflationary growth, thus concerning itself more with the economic aspect of the Union. Though problems such as that of subsidiarity in trans-national environmental problems, distortion of competition and impediments to trade, economic and social cohesion and advantage of

¹⁷ TEU, Article 3b.

¹⁸ Joseph Henri Jupille, "Sovereignty, Environment and Subsidiarity in the European Union", in Karen T. Litfin, ed., *The Greening of Sovereignty in World Politics* (Massachusetts: MIT Press, 1998), p. 239.

¹⁹ TEU, Article B.

²⁰ David Wilkinson, "Steps Towards Integrating the Environment Into Other EU Policy Sectors", in Tim O' Riordan and Heather Voisey, *The Transition to Sustainability: The Politics of Agenda 21 in Europe*, n. 7, p. 411.

scale was resolved in the Edinburgh Summit of the European Council in 1992, it is not until the Amsterdam Treaty of 1997 that 'sustainable development', under a new article 3d (now 3c) was realised. Thus, it amended the earlier provision of Article 2. The new Article, therefore, strengthened the integration with a view to promoting 'sustainable development of economic activities' and 'high level of protection and improvement of the quality of the environment'.²¹

Decision-Making, Institutions and Processes

Decision making processes in the European Union in the area of environment is marked by 'multi-level governance structure'. It is this multi-governance structure that represents a complex policy formulation. This complexity is attributed to the following factors: a) The number of issues which the policy is attempting to deal; b) The existence of the principle of 'shared competence' for environmental policy; c) The way in which national issues may come to dominate the EU's environmental policy agenda; d) The multiplicity of environmental actors and interests in the EU and their influence on policy making process; and e) The fragmentation on policy making, and the lack of coordination in the policy making process.²²

²¹Nigel Haigh, "Introducing the Concept of Sustainable Development into the Treaties of the European Union", In Tim O' Riordan and Heather Voisey, *The Transition to Sustainability: The Politics of Agenda 21 in Europe*, n. 7, p. 74.

²² Pamela M. Barnes and Ian. Barnes G, *Environmental Policy in the European Union*, n. 5, p. 58.

Institutions:

Despite the progress being made in the SEA and the Maastricht Treaty, environmental policy remains an area of concern. The Union's institutions: the Council of Ministers, the European Commission, the Parliament, the European Court of Justice and the European Environmental Agencies are the major institutions among the various actors in policy formulation and decision-making.

The European Union institutionalised participation by the governments of its fifteen member states in the making of Union policy through the Council of Ministers. The **Council of Ministers**²³ is the main source of the EU legislation. The Council has the authority to adopt or reject the Commission's proposal after consulting the Parliament. Although the Council of Ministers is nominally one entity, the complexity of the issue with which it deals has led to the creation of more than twenty sub-councils, including the Environment Council. These Councils have traditionally made decisions by consensus, however, as per the SEA, decision in most environmental areas, are made by qualified majority voting (QMV). Under this system, a large country can block a measure to which it is opposed by obtaining the support of two or three small countries. In practice, however, only a small number of issues are put to a formal vote, which indicates that members still prefer to operate on the basis of consensus.

Moreover, the Presidency of the Council greatly influences the scale and degree on which environmental issues are to be dealt with. A particular Council president can

²³ For detail on the European Council and the Environmental Policy, see Mikael Skou Andersen and Lise Nordvig Rasmussen, "The Making of Environmental Policy in the European Council", *Journal of Common Market Studies* (Oxford), vol. 36, no. 4, December 1998, pp. 585-97.

influence policy making on a particular agenda. For example the Dutch Presidency interest in environmental policies had resulted in the provision of 'sustainable development' in the Amsterdam Treaty of 1997.

The **European Commission** is another institution that contributes to the policy-making processes. It is the Commission that monopolises the right to propose legislation. The Commission consists of twenty Commissioners who head twenty-three Directorates General (DGs). DG XI is responsible for the environment, nuclear safety, and civil protection. Directives in the environment field are proposed by the Commission, possibly amended by the European Parliament and approved by the Council of environment ministers of the fifteen member states. A number of other Directorates General also share environmental responsibilities including DG I (external affairs), DG III (industry), DG VI (Agriculture), DG VII (Transport), DG XII (Science, Research and Development) and DG XIV (Fisheries).

The **European Parliament**, which directly represents the citizens of the European Union, is a 625-member parliament. The Parliament holds the responsibility for monitoring the activities of the Commission and the Council. It involves in the formation of the EC laws and the union budget as well. Following the ratification of the treaty of European Union, the Parliament's role has been increased, which include its co-decision procedure.

The Maastricht Treaty gave the Parliament the authority to veto (by an absolute majority) any policy measure on which the Council of Ministers cannot agree upon. Such changes in the treaty had led to a more "consensual decision making in the EU and

greatly diminished the collective controls that governments had exercised through the Council of Ministers”.²⁴ Moreover, the treaty provides that any draft legislation from the Commission has to be submitted to the Parliament, which it can either accept, reject or amend the legislation. This power, however, does not extend at the time of the final reading. Like the Council's Committee, the Parliament's Committee also involves in environmental issues - it is responsible for reviewing and giving its opinion on environmental initiatives proposed by the Commission.

The **European Court of Justice**, considered cases brought before it by the Commission, the Council or the States. Cases involving environmental legislation regularly fall within the preview of the Court. Cases that are brought to the court are of various natures ranging from non-compliance to EU laws, to its applicability to the member states, co-operation, etc. The Court's decisions are final and binding on member states. The Court can impose fine on the states that fail to comply with the decisions. The most notable decisions of the court in recent times that have implications on the Treaty of the Community are the *Cassis de Dijon* (1979) and the *Danish Bottles Judgements* (1988).

The **European Environment Agency (EEA)** is another important institution that deals with environment. The EEA, which was approved in 1990, started its work in 1994. The agency though lacks regulatory and enforcement powers; yet it is “becoming an

²³ Andrew Jordan, “EU Environmental Policy at 25: The Politics of Multinational Governance”, <http://www.findarticles.com>.

important actor in EU policy making”.²⁵ The role of EEA is to collect and compile scientific database on the state of environment in Europe and develop analytical models for understanding environmental processes and improving decision-making.²⁶

Other important actors in the field of environmental decision-making are the various non-governmental organizations (NGOs) like the European Environmental Bureau (EEB), The Friends of the Earth (FOE), Greenpeace, etc. Lobbying by different kinds of organizations whether business or green parties lobbyists did influence of the decision making of environmental policy in the European Union. Environmental Policy-Making in the European Union, therefore, presents a multiple of complexity, where each institution has its own role to play, or otherwise overlapped with one another. In recent time policymaking has been greatly influenced by the active involvement of private parties, like the business groups and industrial groups. One such private party are the automobile manufacturer and energy industrial house

Policy Process and Implementation

“Policy making within the EU is more ‘political’ than a description of the institutions might suggest”.²⁷ The European Union that combines the 'intergovernmental' and 'federal structure' in its policy-making is complex to understand. Controversy over

²⁵ Regina S. Axelrod and Norman J. Vig, “The European Union as an Environmental Governance System”, in Norman J. Vig and Regina S. Axelrod , eds., *The Global Environment: Institution Law and Policy* (Washington D.C: Congressional Quarterly Inc, 1999), p. 76.

²⁶ Ibid.

²⁷ Ibid.

issues, policies and process of integration within the Union added to the complicity of environmental policy and governance.

Environmental policy working on the European Union is principally based on Articles 130s and Article 100a, “which foresee the use of different legislative procedures, each entailing different levels and forms of involvement for the member states and the EU institutions”.²⁸ It is important to note that, though under the Maastricht Treaty the various institutions in the Union have been given a new leverage and role to play, yet, there are deficiencies and conflict in the treaty’s provision. Despite the Parliament newfound co-decision procedure and the Commission’s monopoly in policy initiative, it is the Council of Ministers that dominates the legislative process. This indicates that policy formulation and decision still rest with member states. Secondly, the Council’s new QMV, as provided in the Maastricht Treaty to environmental issues, does not apply to all environmental areas. Issues which are of controversial or hold national importance and interest like carbon tax, and emission target still have to be resolved through intergovernmental negotiations, and the concept of QMV does not apply in such areas. Moreover, for QMV to operate, a “Common position” (in other words a consensus) by the Council of Minister on the issues is needed. These processes make legislation on such issues more difficult. Under the Maastricht Treaty, the role of the Parliament, no doubt, has increased with the introduction of the ‘Co-decision procedure’ with the council of Ministers, which means that the Parliament has the right to propose amendments to the

²⁸ Joseph Henri Jupille, “Sovereignty, Environment, and Subsidiarity in the European Union”, In Karen T Litfin, ed., *The Greening of Sovereignty in World Politics*, n. 18, p. 230.

legislation and the right of 'negative assent'. However, what the European Parliament can do is one of the three.²⁹ First, if the Parliament accepts the Council's position, the legislation is passed. Secondly, if it rejects the Common position, this rejection can only be overridden by a unanimous Council vote. Thirdly, if the parliament amends the position, the proposal goes back to the Commission, which can accept or ignore any or all of the amendments.

The new procedure, therefore dilute the role of the Parliament. Moreover, member countries can alter policy outcome in negotiations with other members as well with the other institutions. The European Parliament's policy formulations thus remain limited by the failure of the treaty to empower it and by the national governments, which continue to use unanimity voting instead of the QMV.³⁰ The role of the Commission in environmental policy making has been no more than a legislation initiator. The Commission as seen, do not have any legislative power. Its role is limited only in proposing and reporting on the issues. Moreover, within the Commission there is lack of coordination between different directorates that hold environmental implication. Thus, there is a lack of policy integration and harmonization, each directorate pursue its own issues, objectives and policies. These issues and policies at times run counter to one another and resulted in one negative policies consequence or another. More than this, problems that beset the Commission and the Council of Ministers is always a known fact.

²⁹ Ibid.

Also note the type of procedure and required majority to pass environmental legislation are complex and beyond in scope of their section. In brief, it depends upon whether the law is based upon Article 130 or Article 100a and its contents-internal market provision.

³⁰ Pamela M. Barnes and Ian G Barnes, *Environmental Policy in the European Union*, n. 5, p. 89.

Legislative Actions:

Since its first inception, the EU environmental policy has been implemented in the form of Regulations, Directives, Decisions and Recommendations.³¹

A **Regulation** is immediately and directly applicable and does not have to be converted to national (or regional) law in order to grant rights or impose duties directly on the citizens of member states.

Directives, is not immediately and directly applicable. The result of a directive is binding on member states, but it can choose the means for achieving this result. The member states have to bring their legislation and administrative practice in line with the directive within the term laid down in the directive. They must, therefore, either adopt the new legislation or amend or repeal existing legal or administrative provisions or administrative practices. Directives usually enter into force on the specified date or on the twentieth day of its publication in the official journal.

Decisions are individual legislative acts that are binding in their entirety upon the parties to whom they are addressed. They differ from Regulation or Directives in the sense that they are usually very specific in nature. They are less common in the environmental field.

The **Framework Directives**, which was introduced since 1992 “set out general principles, procedure and requirement for legislation in different sectors”.³² The introduction of framework directives provides an opportunity for national authorities and

³¹ See H. Lavrysen, “The European Context of Flemish Environmental Policy”, n. 15.

³² EC Commission, “Guide to the Approximation of European Union Environment Legislation”, <http://europa.eu.int/comm/environment/guide/contents.htm>.

the Community to resolve the problem of legislation in a more flexible way. So far such framework has been adopted for water and air quality.

Environmental legislations in the European Union are mostly adopted in the form of directives. By 1995 The EU had “adopted a total of 179 directives, 71 regulations, and 41 resolution, as the body of its environmental policy”.³³ Regulation forms only ten percent of the total environmental law. The failure to adopt the 'regulation' is seen as the unwillingness of state to transfer environmental policy to Brussels. Moreover environmental legislation in the EU since 1992 has been slow. This is perhaps due to several reasons. First, the principle of subsidiarity, which, requires member states to leave to Brussels any area, which cannot be resolved individually. Secondly, focus on environmental issues was less prominent within the Union itself. The intergovernmental conference of 1996, which reviewed the negotiated treaty, does not give any importance to the environmental issues. Instead, the main concern of the conference was the completion of the monetary union and enlargement. Thirdly, slow economic or static growth of economy in Europe force member states to disagree on any policies that may harm their economic interest.

Nonetheless, environmental protection after 1992, though less in number, has been more by focusing on the issues it intends to legislate. Taken together, over 200 directives and regulations dealing with environmental protection have been implemented in the Union. These cover the area of environmental impact assessments, fresh water and

³³ Joseph Henri Jupille, “Sovereignty, Environment, and Subsidiarity in the European Union”, in Karen T. Litfin, ed., *The Greening of Sovereignty in World Politics*, n. 18, p. 233.

marine pollution, water quality objectives, air quality standards (ranging from acid rain controls to lead emissions), waste management, control of chemicals, wildlife protection, a Community eco-label to identify environmentally superior consumer products, a voluntary eco-management and audit scheme, financial grants for national development and implementation of Community environmental policies, form the major objectives after 1992.

Water Policy:

In relation to EU legislation on water, the Union seek to prevent water pollution, first by classifying the various kinds of pollution and preventions into different categories like its management of water resources, water quality, monitoring of ground water, and others. EU's Directives on water policy was first initiated in 1975.³⁴ Surface water intended for the production of drinking water, swimming water, fishing water and shell-fish water. Following these directives are other directives on water policy, which aimed at the problem of discharging dangerous substances in surface water. Two of such Directives are Directive 76/464/EEC and Directive 91/676/EEC, which aim at resolving pollution caused by 'nitrates from agricultural source'. Some of these directives, like Directives 91/271/ EEC requires member states to meet the requirement of the direction by 31 December 1998, or 31 December 2000, in accordance with the type of area concerned.

³⁴ Council Directive 75/440/EEC on the Quality of Water Intended for the Abstraction of Drinking Water in the Member States, OJ L 194, 25 July 1975.

One of the most important developments after 1992 in the area of water policy in the European Union was the introduction of framework directives. The Commission's amended proposal for a framework for EU action in its water policy was aimed at protecting surface water and ground water. This is intended gradually to repeal a number of existing directives on water. The benefit of this is that, it will lead to a more rational protection and use of water, to reduced water treatment costs, to increase amenity value of surface waters and to a much more coordinated administration of water.³⁵ In all the aim of the new directives is to enhance water management. Therefore, a definition, procedures and monitoring of water quality (in river, lakes, estuaries and coastal water), chemical quality standard for surface water, ecology of inland and coastal water and chemical in ground water are proposed.

Waste

In the area of waste management, the Directives and Regulation adopted are aimed at pollution reduction of both 'disposal' and 'recovery' waste "through the establishment of an operational framework of public authority responsibilities, strategy development and a hierarchy of related waste avoidance and reduction measures".³⁶ A directive on waste was first introduced in the mid 1970s. The framework directive on waste as amended in 1975³⁷ was aimed at various types of waste and established the

³⁵ Keith Clement, *Economic Development and Environmental Gain: A European Environmental Integration and Regional Competitiveness* (London: Earthscan, 2000), p. 165.

³⁶ See *Ibid.*, pp. 116-68.

³⁷ Council Directive on Waste Of 15 July 1974 (75/442/EEC, O J N o L 194 of 25 July), p. 47.

principle of proximity and the use of waste management. The framework directive stipulates that member states must take appropriate measures in waste disposal. It also establishes a mandatory element for members in the waste management. This directive was amended and further expanded in a European Commission's decision of 24 May 1996 on the disposal and recovery operation in line with scientific and technical progress.³⁸

It is however in the Council resolution, of 24 February 1997, on European Community for waste management, that an EU strategy for waste management was adopted. The resolution urged for: -

- An appropriate emission standard to apply in the operation of facilities in which waste is incinerated and emission there from should be strictly respected.
- Adequate integrated disposal facilities.
- Safe control landfill and rehabilitation of contaminated landfill.
- Distinction between wastes, non-waste goods for disposal and recovery waste should be clearly distinguished.
- EU wide data collection on waste.
- Waste management to take into consideration the responsibility of different economic actors.
- Use of audit scheme in alternative technologies to prevent waste pollution.

³⁸ Keith Clement: *Economic Development and Environmental Gain: A European Environment Integration and Regional Competitiveness*, n. 35, p. 167.

- Waste management planning at all levels, local and regional.³⁹

With regard to transportation of waste, its Council regulations of 1993, deals with the supervision and control of shipments of waste within, into and out of the European Community.⁴⁰

Air quality

EU legislation to protect air quality dates back to 1970 when the first directive to regulate emission from automobile was passed. Air quality directive after 1992 focussed mostly on the ambient air quality. In July 1994, the Commission proposed a new air quality Framework Directive and the Council adopted it in September 1996.⁴¹ The primary goal of the Directive is to “define and establish objectives for ambient air quality in the community designed to avoid, prevent or reduce harmful effects in human health and the environment as a whole”,⁴² and to “assess the ambient air quality in member states on the basis of common methods and criteria”.⁴³

In this Directive, ‘Daughter Directives’ are to be made under 96/62/EC to introduce air quality standards for a wider range of substances. Thus, the Commission in 1997 proposed the first ‘Daughter Directive’, which spells out tighter standards for

³⁹ Ibid.

⁴⁰ Council Directive on Waste of 15 July 1974 (75/442/EEC, O J N o L 194 of 25 July), p. 47.

⁴¹ Directives 96/62 EC On Ambient Air Quality Assessment And Management.

⁴² As quoted in Regina S. Axelrod and Norman J. Vig, “ The European Union as an Environmental Governance System”, in Norman J. Vig and Regina S Axelrod, eds., *The Global Environment: Institutions, Law and Policy*, n. 25, p. 83.

⁴³ Ibid.

sulphur dioxide (SO₂), nitrogen dioxide (NO₂), lead, and other particulate. The SO₂ standards are to go into effect across the EU in 2005, others, in 2010⁴⁴. Moreover, “the Commission is also developing separate legislation to reduce acid precipitation (primarily from SO₂ and NO₂) and to cut pollution from automobile in a series of steps beginning in 2000. The goal is to reduce pollution from road traffic by 60-70 percent by 2010”.⁴⁵

Other policies initiated in the 1990s is the ‘integrated pollution prevention and control’, the ‘governmental auditing’, and ‘environmental information’. The integrated pollution prevention and control directive was adopted by the Council of ministers on 24 September 1996.⁴⁶ The objective of this directive is to prevent pollution or solve pollution problems from industrial installation. The directive seeks to impose common requirements for issuing permits to large industrial source of pollution throughout the EU. In this directive ‘the best available technique’ will determine the Commission standard of each member.

Environmental auditing was adopted by the Council Regulation EEC/1836/93 of 29 June 1993 allowing voluntary participation by companies in the industrial sector in a European Community Eco-management and Audit Scheme (EMAS). The objective of the regulation is to “promote environmental improvement of industrial activities by committing sites to evaluate and improve their performance and provide relevant

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Council Directives 96/61/EC of 24 September 1996 Concerning Integrated Pollution and Control, OJ L 257, 10/10/96.

information to the public”.⁴⁷ Environmental information was laid down in Directive 30/313 “on the freedom of access to information on the environment”,⁴⁸ which requires dissemination of information of public on the state on the environment.

Conclusion:

It is therefore clear that the EU's environmental policy in the 1990s addresses more to the need for ‘sustainability’ and ‘sustainable development’. Directives on water, waste and air quality suggest the Union commitment towards achieving a healthy environment for its citizen, which at the same time will be sustainable to its economic growth. Environmental policy is no longer seen as a hindrance, but rather an incentive to economic growth. Moreover, such ambition depends largely on the commitment which member states are willing to transpose these directives and decision into their national law.

As far as the implementation of 'directives' into national policies, past record shows that member states lack commitment and political will in this matter (see table 1-4 in appendix). The Commission in its report on the ‘Towards Sustainability’ programme has indicated that implementation of Community law on the environment was often “unsatisfactory”.⁴⁹ In 1998 the Commission registered some 600 suspected breaches of

⁴⁷ See Keith Clement, *Economic Development and Developmental Gain: A European Environmental Integration and Regional Competitiveness*, n. 35, p. 170.

⁴⁸ OJ L 158, 23/6/90.

⁴⁹ EC Commission, *Europe's Environment: What Directions for the Future? The Global Assessment of the European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development*, ‘Towards Sustainability’, n. 11, p. 16.

EC environmental law. Likewise, the EEA's report on the European environment clearly states that there is a long way to go in "implementing environmental policy on a Pan-European scales"⁵⁰ and that the "pressure on the environment are predicted to grow further".⁵¹ The Commission also states that, "the commitment by other sectors and by member states to the programme is partial".⁵²

Moreover, implementations of EU policies are impaired by the degree of differences between member states that share different political, economic, social and legal administrative structure. States are still entities of self-interest in the matter of sovereignty. Environment, though a trans-boundary and trans-national problem, at times had an economic impact on the country, which thereby translates into political implications.

Non-implementation of EU policy is not solely to be blamed to member state's unwillingness or lack of political will. The European Parliament's Committee attributes the non-implementation of EU environmental legislation to a number of structural factors⁵³. First, the large volume, imprecision, and poor integration of environmental legislation into other policies, all made an unwieldy body of policy to implement.

⁵⁰ European Environment Agency, *Europe's Environment: The Second Assessment* (Copenhagen: EEA 1998), p. 17.

⁵¹ EC Commission, *Europe's Environment: What Directions for the Future? The Global Assessment of the European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development, 'Towards Sustainability'*, n. 11, p. 2.

⁵² Ibid. p. 3.

⁵³ Joseph Henri Jupille, "Sovereignty, Environment, and Subsidiarity in the European Union", in Karen T. Litfin, *The Greening of Sovereignty in World Politics*, n. 18, p. 235.

Secondly, conflicts and poor delineation of the Commission's institutions in decision-making added to the magnitude of the problem. Moreover, unlike economic policy, environmental policy is a new policy and the process of integration in this area has not been profound enough. Environmental policy as a subject affects and touches a vast area of other policies and therefore, institutional bargaining within the sectors and member states always delay the process of integration. In other words, it is a two-game level, one at the local and national level and the other at the regional and international level.

CHAPTER 3

ENVIRONMENTAL FACTORS IN EU'S ECONOMIC POLICY

Introduction

The beginning of the 1990s witnessed the unfolding of events in international environmental politics. The most important among them is the UNCED Rio Summit. The Summit, for the first time argued that exploitation of resources for economic development has led to environmental degradation. Therefore, sustainable development as a new concept, is needed to preserve the environment and at the same time, to achieve uninterrupted economic growth. Likewise, it is in the context of these new developments that in the EU, the Maastricht Treaty and the Fifth Environmental Action Programme stressed the need for further integration between environmental protection and economic policies. This appeared necessary, especially when the European Union (EU) was showing readiness to expand its membership. Thus, the need to have a comprehensive environmental policy, as envisaged from the Single European Act (SEA) onwards was taken to avoid any distortion in the functions of the internal market. Moreover, environmental protection vis-à-vis sustainable development is no longer seen as a social cost, rather an opportunity for a balanced growth to the recessing economy and also as a boost to employment generation. Lastly, the new environmental policies while on the one hand aimed at encouraging the EU to invent and adopt competitive cleaner technologies, on the other it called for an alternative to the over dependence on fossil fuel and nuclear

energy. It is in this context that environmental factors began to play a vital role in the Union's economic policies in the 1990s.

Growth and Environment

Integration of environment with EU's economic policy was first initiated in the Third Environmental Action Programme (EAP) when the EC Commission underlined the need for an environmental impact assessment and integration of environmental policy with socio-economic development. The Fourth EAP (1987-92), again more forcefully emphasized on better integration between economic and environmental policies in decision making and stated that, environmental protection is "no longer an optional extra but a *sine qua non* for the quality of life that the Community's citizens expect".¹ However, the most important development in the integration of environment to economic policy was reflected in the Fifth EAP (1992-2000). The Fifth EAP emphasized on the legality of the EAP and environmental protection as provided in the Maastricht Treaty. Moreover, the Fifth EAP, 'Towards Sustainability' indicated a shift in EU's environmental policy making, where, environmental policy is now diversified to other sectors of the economy. Thus, the new policy takes into consideration the likely impact of such environmental policy on social and economic policies of the Union (see table 5 in Appendix). In other words, it focused on the need for sustainable development.

¹ EC Commission, "Fourth Environmental Action Programme (1987-1992)", *Official Journal of the European Communities* (Luxembourg), C328, 7 December 1987.

The Fifth EAP therefore stressed on a long term European strategy for 'sustainable development' which will focus on a 'balanced' economic growth, and, at the same time, give due respect for the environment. Its basic objectives, therefore, are: (a) to achieve societal change by involving all sectors of society, industry and government, and encourage them to adopt an attitude of shared responsibility; (b) that instruments for environmental protection are not necessarily be depended on market-based instruments alone, but can also include other supplementary regulatory measures; and (c) measures are to be taken on a sectoral basis rather than relying on general environmental issues.²

To strengthen the objective of 'Towards Sustainability', the Fifth EAP recognized the need to implement the principles of prevention, precautionary, polluter pays and proximity. **Prevention principle** requires that any possible damage to the environment should be prevented before it occurs. The second principle, **Precautionary**, stressed that in areas where there is lack of scientific evidence on environmental degradation by any activities, both at the local and regional level, a cautious approach should be adopted. **The Polluter Pays Principle** states that environmental pollution and cost should be borne by the polluter. The **Proximity principle** indicates that there is a need for a self-sufficient Union in areas of resources and energy. In such areas emphasis on renewal of sources that are beneficial to the environment were given.

Taking these four principles as a reference point, the Fifth EAP targeted five sectors of the economy for achieving sustainable and balanced growth. These sectors are:

² Keith Clement, *Economic Development and Environmental Gain: A European Environmental Integration and Regional Competitiveness* (London: Earthscan Publications Ltd., 2000), p. 38.

the manufacturing industry, energy, transport, agriculture and tourism. These sectors are included because they represent the key for economic growth, and at the same time, are sectors that can have a maximum impact on the environment. **Manufacturing sector**, for instance, is expected to grow less, but within this sector, steel, paper and board, and non-ferrous metal industries, all of which can have fairly serious impact on the environment through their emission and waste, which is expected to grow.³ **Energy and transport** are the two sectors where the Fifth EAP targeted because, according to the European Commission the “total primary energy demand for power, heat, transport is expected to grow by 22 per cent from 1990 to 2010”,⁴ and that transport alone accounts for 60 percent of Carbon monoxide (CO) emission and 25 per cent of energy Carbon dioxide (CO₂) emission. More than half of total Nitrogen oxide emission is from the traffic.⁵ Such demand will therefore lead to overall negative impact on the environment in areas such as climate change, acidification of air and water, and noise pollution. To tackle this, the EC Commission, proposed various measures which included the combined carbon/energy tax, incentive to switch over to lower carbon fuels such as natural gas, implementation of Research programme of Energy Efficiency (SAVE and SAVE II) and Renewal Energy (Altener), demonstration of Clean and Efficient Energy Technologies (Joule-Thermie), internalising external cost and using taxes and subsidies to steer demand into more environmentally sustainable mode of transport, strategic environmental impact

³ EC Commission, *The European Union and the Environment* (Luxembourg: Office for Official Publications of the European Communities 1997), p. 16.

⁴ *Ibid.*, p.18.

⁵ *Ibid.*, p. 17.

assessment of transport network, and the establishment of Trans-European networks (TENs).⁶

According to the DG for Energy and Transport's Green paper, "Towards a European Strategy for the Security of Energy Supply", published in November 2000, as a discussion paper, EU's constant dependence on external energy source "is a cause of concern", and that "if no action is taken, external dependence will increase to 70 per cent by 2030 (90 per cent in the case of oil)".⁷ Thus, over dependence on external supply, especially of fossil fuel, is not only a concern to the frequent fluctuation of crude oil prices, which the EU was unable to restrict within an acceptable limit, but also a concern for the impact of such energy use on climate change, thus hampering the EU's commitment to reduction of greenhouse gases. The paper, therefore, argues that, "it is important that EU policy plays a key role in managing the delicate balance between the growing demand for energy, economic development and environmental impact".⁸

Agriculture and tourism are the other two areas where the Commission tried to achieve a balance between economic development and environmental protection. In the area of agriculture, according to Keith Clement, the Commission's initiative in this regard will be evaluated as part of the evaluation of the Common Agricultural Policy (CAP).⁹

Nonetheless, stricter control on the use of pesticides, herbicides and fertilizers was

⁶ EC Commission, *The European Union and the Environment*, n. 3, pp. 17-18.

⁷ EC Commission (DG Energy and Transport), *Green Paper: Towards a European Strategy for the Security of Energy Supply*, COM (2000) 769, November 2000, http://europa.eu.int/comm/energy_transport/lpi-en.html

⁸ *Ibid.*

⁹ Keith Clement, *Economic Development and Environmental Gain: A European Environmental Integration and Regional Competitiveness*, n. 2, p. 20.

implemented, and use of friendly farming practices along with financial incentives was encouraged. Tourism, which in 1992 represented about 5.5 percent of GDP and 6 percent of jobs,¹⁰ is expected to grow further and will thus continue to have a maximum impact on the environment, especially in the Alps and the Mediterranean corner where tourism industry thrives. The Fifth EAP, therefore targeted not only environmental protection in this sector, but also encourages an environmentally friendly sustainable tourism industry through mass awareness, pilot programmes, quality services, and preservation of natural habitat.

Economic Instruments for Environmental Protection

In the Fifth EAP, a chapter on environment and economic instruments entitled “The Economic Approach: Getting the Prices Right” was incorporated. In this chapter the Commission stated that, “in order to get the prices right and to create market based incentives for environmentally friendly economic behaviour the use of economic and fiscal instruments would have to constitute an increasingly important part of the overall approach”.¹¹ To pursue this, the Commission proposed two approaches, the first being the pricing approach to economic incentives, i.e. environmental tax, and the second, an option on the use of tradable permit. This indicated the Commission’s “continued interest in economic instruments to protect the environment”.¹² Such instruments were to be the

¹⁰ EC Commission, *The European Union and the Environment*, n. 3, p. 20.

¹¹ Pamela M. Barnes and Ian G. Barnes, *Environmental Policy in the European Union* (Cheltenham: Edward Elgar, 1999) p. 135.

¹² *Ibid.*

Commission's long-term strategy to internalize environmental costs from the production stage to the disposal stages and that such intention should not be a disadvantage to environmentally friendly products.¹³

In 1997, the Commission's communication on "Environmental taxes and charges in the single market"¹⁴ indicates that, "Environmental taxes and charges form part of the range of environmental instruments and can be an appropriate way of implementing the polluter pay principle, by including the environmental costs in the price of a good or services".¹⁵ It argues that such taxes can "induce consumers and producers into environmentally more sustainable behaviour".¹⁶ However, the Commission's view is that the purpose of such taxes and charges "is to reach an environmental objective, and concurrently, they should have an effect on the market".¹⁷ The Commission also identifies that such revenue "can be used to finance environmental protection activities".¹⁸ Despite the call for such taxes, "little progress has been made in implementing them at the EU level".¹⁹ This shortcoming arises mainly because of differentiation of taxes charged between Member States. Moreover, the Commission lacked the power to levy any such taxes. As far as taxes are concerned - for example emission levies in industrial plants - a large extent falls outside the purview of the

¹³ Ibid.

¹⁴ See EC Commission, *Communication from the Commission on Environmental Taxes and Charges in the Single Market* (Brussels: Com 97, final, 26.03 1997).

¹⁵ Ibid., p. 1.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Pamela M. Barnes and Ian G. Barnes, *Environmental Policy in the European Union*, n. 11, p. 143.

Commission and the cost of paying them falls only on domestic producers.²⁰ Nevertheless, use of environmental tax at a national level has increased substantially in the period from 1990 to 1996. For example, energy taxes in the Netherlands and Denmark rose by 1.5 per cent to 4 per cent respectively. In Portugal and Greece they represented 10 percent of all taxes, while in Italy and the UK they were between 6 and 7 per cent. When taken together energy taxes accounts for 5.2 percent of overall EU taxes.²¹ However, as discussed later in chapter 4, an attempt to introduce a EU-wide carbon/energy tax was met with resistance from various quarters including Member States and business lobby. Member States opposed such taxes because they fear that such taxes will lead to an increase in real energy prices, thus putting an additional burden on the coal and oil industries. Moreover, introduction of such taxes was sceptical from the beginning for it was believed that it would make industries uncompetitive. Therefore, industrialists - coal industries and other heavy users of carbon fuels - were generally sceptical about the effectiveness of such taxes.²²

Nevertheless, the Fifth EAP recommended other measures to be taken. These measures, though not necessarily be direct market based instruments, nonetheless, are measures that will have an economic impact on the function of the Union's environmental policy. They include the Environmental Management and Audit Scheme (EMAS), Eco-labelling, Civil liability and Polluter pays.

²⁰ EC Commission, *Communication from the Commission on Environmental Taxes and Charges in the Single Market*, n. 14, p. 4.

²¹ Pamela M. Barnes and Ian G. Barnes, *Environmental Policy in the European Union*, no.11, p. 143.

²² *Ibid.*, p. 146.

The Environmental Management and Audit Scheme, as suggested by the Fifth EAP, was formally initiated by a Directives of July 1993. EMAS was introduced as an incentive to firms to aspire to “a standard, which states that effective systems of managing the environment are in place”.²³ The main aspects of the EU’s EMAS includes the following: (a) The development of an environmental strategy which involves the setting of performance criteria by firms regarding the environmental management system, and establishing a pattern of eco-auditing, which includes methods to generate useful and reliable data to be employed by these systems and the public; a commitment to external validation assessment exercise must also be shown. (b) EMAS is site specific, not company specific; thus, EMAS awards may be dispensed on location rather than on a corporate basis. (c) EMAS is a voluntary action scheme; firms are free to opt into the scheme. The provisions made for EMAS apply across the EU. Therefore, no firm can be denied access.²⁴

The EMAS is, therefore, aimed at achieving a EU long-term strategy on environmental management. The scheme though will incur a high cost for compliance in the beginning it will be, however, compensated by the advantages in the long run. Such system will ensure that consumers are informed on the nature of the firm. Compliance to environmental regulation will also enable firms to avoid the chance of being fined or payment of insurance premium to environmental risks projects or sites. Thus, EMAS sets a standard to firms where they can establish an environmental policy of their own; set the

²³ Christopher M. Dent, *The European Economy: The Global Context* (London : Routledge, 1997) p. 400.

²⁴ *Ibid.*, p. 21.

objectives for environmental performances; and introduce a pattern of eco-auditing to acquire the EMAS logo that will be helpful for publicity and better information to consumer of the company's reputation. At the beginning of 1998, a total of 700 sites of manufacturing companies within the EU had been registered for EMAS scheme.²⁵

Eco-labelling

Eco-labelling regulation aims at “promoting the production, sale and use of environmentally friendlier products and informing the consumer about them by means of a label that may be attached to a product involved”.²⁶ Eco-labelling in Europe dates back to 1978 when Germany introduced its ‘Blue Angel’ eco-label. By 1992 most of the European Countries had a national eco-labelling scheme. In the European Union eco-labelling scheme was introduced in 1992 by a Regulation. The need for such a EU wide eco-label was deemed necessary to avoid the danger of distortion of trade, especially when the number of national eco-labelling schemes has increased. The EU eco-label was conceived as the ‘cradle-to-the-grave’ approach where an entire cycle of the product, from the pre-production to disposal, was necessary to consider before awarding any such label. The main objectives of the eco-label scheme are the following:

1. It is an attempt to promote products with reduced environmental impacts and will be guidance for consumers and users.

²⁵ Pamela M. Barnes and Ian G. Barnes, *Environmental Policy in the European Union*, n. 11, p. 192.

²⁶ L. Lavrysen, *The European Context of Flemish Environmental Policy*, <http://allserv.rug.ac.be>

2. Some Member States already have an eco-label award scheme for less polluting products. An eco-label will establish uniform criteria for the award scheme, which can be applied throughout the EU.
3. The eco-label scheme will encourage, together with market forces, the research and development and innovation of clean technologies.
4. The eco-label will take into account the interest of the principal groups concerned, and therefore, should provide the appropriate involvement of these groups in the definition of products groups and specified ecological criteria for each group.²⁷

The EU eco-labelling scheme, is thus an attempt to “persuade consumers to change their environmental behaviour and through them, to target the behaviour of the producers”.²⁸ The scheme is also, at the same time, a “EU’s approach to supporting the competitiveness of European industry and persuading companies of the benefits of compliance with environmental measures”.²⁹

Despite being revised from time to time, the Eco-labelling scheme’s progress has been somewhat disappointing. First, there are disagreements between environmentalists and industry over the evaluation criteria issue. Secondly, there is resistance from organization at national level to switch over to EU’s eco-label regulation.³⁰ Thirdly, the scheme is based on voluntary registration by the manufacturers for the license to use the

²⁷ Pavlos Karadeloglou, Toney, Ikwue and Jim Skea, “Environmental Policy in the European Union”, in Hink Flomer. et. al., eds., *Principles of Environmental and Resources Economics* (Aldershot: Edward Elgar, 1995), p. 284.

²⁸ Pamela M. Barnes and Ian G. Barnes, *Environmental Policy in the European Union*, n. 11, p. 185.

²⁹ Ibid.

³⁰ Christopher M. Dent. *The European Economy: The Global Context*, n. 23, p. 402.

logo. Fourthly, differences over the methodologies adopted by Member States to identify the environmental criteria. Fifthly, eco-labels are based on rewarding the least environmentally damaging and not the most environmentally friendly. Therefore, such labels are not a reward for improved environmental performance but are marketing tools. And, lastly, labelling is littered with examples of manufacturers making extravagant claims for their products.³¹

Nevertheless, the EU's economic instruments for environmental protection had to a large extent, benefited the European industries. In the first place, environmental protection-related industries had the potential of job creation, thus, reducing the pressure on problems of unemployment (see table 6 and 7 in appendix). Secondly, instruments and schemes as introduced in the EU, has led to a greater emphasis on research and development of eco-technologies. This will enable industries to shift to clean technologies and thereby improve the standard of the environment. On the other hand, the development of eco-technologies will make the Union self-reliant on such technology, and most importantly a boost to the eco-industries. Therefore, having a competitive edge to that of the US and Japanese eco-industries. In other words, this will provide an opportunity to the growth in eco-technologies export (see table 8 to 11 in Appendix). As in 1999, the EU eco-industries recorded a total turnover of 183 billion Euro, thus contributing to about 2.3 percent of the total GDP (see table 10,11, and figure 3 and 4 in

³¹ See Pamela M. Barnes and Ian G Barnes, *Environmental Policy in the European Union*, n. 11, pp. 165-66 and 183-88.

appendix). Therefore such objectives in the Union's policy were aimed at both growth and sustainable development.

Trade and Environment

The link between trade and environmental policy in the European Union has become increasingly important in the 90s. Both the SEA and the Maastricht Treaty provides a provision of convergence between trade and environment, taking into consideration the continual expansion of trade within the Union, and also within the accession countries and outside the EU. As laid down in the treaty of the Community, environmental policy shall be one of the top priorities of the new European Union. To understand the function of environmental policy in the internal market the basic treaty provisions need to be examined.

Under the Maastricht Treaty, Article 130r,s,t, laid down the basis of environmental policy of the Union. With regard to the single market, Article 130t provides that "it shall not prevent member states from maintaining or introducing more stringent protective measures".³² Thus, Member States may, first increase taxes on certain products for environmental reasons. Secondly, quantitative restrictions on trade or equivalent measures can be applied - if they are normally banned under Articles 30, 34, and 36 - if they achieve environmental objectives.³³ However, such provisions are feared to lead to trade distortion in the form of non-tariff barriers, which may eventually lead to

³² "International Environmental Law and Policy: The European Union", <http://www.wcl.american.edu>

³³ Pamela M. Barnes and Ian G. Barnes, *Environmental Policy in the European Union*, n.11, p. 136.

practice of protectionism by Member States. Hence Article 100a requires that, domestic taxes cannot be levied higher on products from other Member States than on domestic products. Secondly, any charges that are applied with respect to the environment must comply with the secondary legislation on indirect taxes and duties (Article 99). And lastly charges should not discriminate against foreign products (Article 9 and 12).³⁴

Environmental Protection or Trade Protectionism?

Trade-environment conflict within and outside the EU has attracted a considerable debate in the function of a free trade market. According to the EU treaty provisions Member States can use stringent measures against any product that lacked environmental conformity. These measures apply to products of both Member States within and outside the EU. Within the EU, the case of *Cassis de Dijon*, Danish bottle, German Beer, Dead Red Grouse, Wallon Waste and Pentachlorophenol are a few of the cases which involved a conflict between the spirit of free-trade of the single market and of Member States' environmental policy.

Internal Protection(ism)?

The *Cassis de Dijon* case between the Federal Republic of Germany and the French liquor Company by the same name is a classic example of conflict between trade and environment. Though this case had taken place way back in 1979, it is relevant in the

³⁴ Ibid.

current context, for it served as a central reference point to the latter case. According to the German law, any alcoholic beverage should contain a minimum of twenty five percent of alcoholic content. The French manufacturer was found to have violated this, by reducing the alcoholic content. Thus Germany took the case against the manufacturer to the European Court of Justice (ECJ), arguing that, such lower alcoholic content endanger public health as consumers tends to consume more drinks if there is low alcoholic content. It also argued that such lower proof beverages allows a proportionally lower tax rate to the manufacturer.³⁵ The ECJ in its Judgment concluded that Germany's health argument to be unjustified because much of the higher proof alcohol sold in Germany is diluted prior to consumption, and that market advantage gain by the *Cassis de Dijon* could be overcome by other means such as the displaying of alcohol content for consumer's information.³⁶

The **Danish bottles** case is another case which "marked the first time that the ECJ had been asked whether Member States should justify a violation of Article 30 on environmental grounds".³⁷ The Commission brought a case in 1988 against the Danish Government that Denmark's provision for a deposit and return system for beer, mineral water, and soft drinks containers is a violation of Article 30 for free trade, and secondly that it amounted to quantitative restriction, since such law put an undue burden on the company which has to set up a system of storing, collecting and transport. According to

³⁵ Kenneth M. Lord, "Bootstrapping an Environmental Policy from an Economic Covenant: The Teleological Approach of the European Court of Justice", *Cornell International Law Journal* (New York), vol. 29, no. 2, 1996, p. 580.

³⁶ Ibid.

³⁷ R. Daniel Kelemen, "The Limits of Judicial Power: Trade-Environment Disputes in the GATT/WTO and the E.U.", *Comparative Political Studies* (London) vol. 34, no. 6, August 2001, p. 641.

the Danish Government's argument, the purpose of such system was "to protect the environment by conserving resources and reducing waste".³⁸ The Court in its ruling, upheld most aspects of the Danish recycling law, including the mandatory collection and recycling requirements. Thus, for the first time, environmental protection was constituted as a 'mandatory requirements' that could justify restrictions on intra community trade.³⁹

The **Dead Red Grouse** (1990) is another example where the European Court ruled that the Dutch law banning on the marketing of red grouse imported from the United Kingdom was unjustified. The Red Grouse, a native bird of the United Kingdom, is legal for hunting and marketing in the UK but banned under the Dutch Bird Conservation Law. The Court supports its ruling on the ground that first, protection of bird species should be within their territories. Secondly, such ban is applicable only to migratory species, and, lastly, protected birds listed as 'endangered' under the Directive of the Community fall under such law.

In **The Wallon Waste** case, Belgium brought in a case against the Commission on the disposal of Waste in province of Wallonia in 1992. The Commission argued that the ban on such disposal of waste is a violation of Article 30. On the other hand, Belgium argued that apart of banning of disposal of waste in the Wallonia province from other regions within Belgium, and from other countries, such disposal will have a negative

³⁸ Kenneth M. Lord, "Bootstrapping an Environmental Policy From an Economic Covenant: The Teleological Approach of the European Court of Justice", n. 35, p. 589.

³⁹ R. Daniel Kelemen, "The Limits of Judicial Power: Trade-Environment Disputes in the GATT/WTO and the E.U", *Comparative Political Studies*, n. 37.

environmental impact, and that waste should not be treated as good under Article 30.⁴⁰ The Court, in its ruling upheld the Wallon waste ban as it applied to non-hazardous waste.⁴¹

Pentachlorophenol (PCP). The PCP case was “the first case to test the use of the Article 100a(4) “opt-up” provision that allowed Member States to maintain stricter national standards even when Community standards had been established”.⁴² The case concerned the German law, which impose strict limit on the chemical PCPs. Such limit was criticised as almost “amounted to nearly an outright ban”. The move by Germany which was supported by three other Members States, was enacted as a Regulation (91/173/EEC) by the Commission in 1991, thereby limiting the use of PCP. And hence, by December 1992, the Commission approved the German notification banning the use of PCPs.

Reacting to this, France, Belgium, Italy and Greece went to the Court against the Commission’s decision, with a plea to view the regulation as a “disguised trade-barrier particularly against leather goods”⁴³ (PCPs is used in wood, leather and textiles preservatives). The court ruled that the “Commission had violated procedural rules in allowing Germany to maintain its ban under Article 100a(4)”.⁴⁴

Thus, within the Union, protectionism over local market by Member States has been one of the major concerns of the ECJ. Such practices arise from, individual Member

⁴⁰ Ibid., p. 644.

⁴¹ Ibid.

⁴² Ibid., p. 645.

⁴³ Ibid.

⁴⁴ Ibid.

State's obsession of over protection of environment vis-a-vis local industries. Such cases are further complicated by regulatory measures existed over a period of time. Germany's regulatory measures in protecting the environment have been one such case.⁴⁵ Secondly, there is a confusion over the interpretation of trade-environment provision by the Commission and Member States on the one hand, and the Commission or the Member States versus the ECJ on the other. Such confusion is left to the Court to decide under the provisions of the treaty. And in most of the times, the Court has found that both Member States and the Commission - thereby leading to unfair practices of trade - have wrongly interpreted the treaty's provision.

External Protection(ism)?

The use of environment as trade protectionist measures against non-EU products have been criticized by many countries as a disguised protectionism to benefit EU products and manufacturers. Moreover, such practices are viewed as a clear violation of the GATT/WTO rules of free and fair trade. Non-EU products are banned if they are found endangered to public health and the environment. Such danger may result from lack of environmental standards in location plants, substances used, packaging, labelling and transport of such products.

Conflicts between the EU and the US over the **hormones treated beef** and **genetically modified organism (GMO)** foods are such issues of trade-environment

⁴⁵ For more details on Germany's environmental regulation, see for example, Albert Weale, "Vorsprung Durch Technik? The Politics of German Environmental Regulation", in Kenneth Dyson, ed., *The Politics of German Regulation* (Aldershot: Dartmouth Publishing Limited, 1992), pp. 159-83.

conflict. In 1996, the EC came up with a series of regulations that prohibited the use of six hormones for growth promotion, claiming that they were hazardous to human health.⁴⁶ Again, in 1997, it introduced a Directive, which required all genetically modified foods to be labelled, to enable the public better information on the nature of the products. In both the cases, the US protested strongly against the EC Directives. It took the first case to the WTO dispute settlement body – the Panels ruled that the EC violated WTO rules.⁴⁷ On the latter case the US, though reluctant to launch a dispute settlement case at the WTO, is putting up pressure on the EC decision makers to end the ban on its export of GM crops.⁴⁸

Besides, the EU's restrictions of foreign products include leather and textile products that uses PCPs chemical as preservatives. In March 1997 the EU banned Indian Marine products on the ground that they are "of poor quality and unhygienic conditions in processing".⁴⁹ Likewise, the North American and Brazilian paper and pulp producers "have accused of EU's eco-labelling scheme as being trade restrictive".⁵⁰ Arguing that although the scheme is voluntary, "foreign suppliers which are not able to acquire label status due to logistical or other reasons may be discriminated against".⁵¹

⁴⁶ Alan Rugman, *The End of Globalization* (London: Random House, 2000), p. 31.

⁴⁷ Ibid.

⁴⁸ Edward Alden and Micheal Mann, "US Steps Up Pressure on Brussels Over Modified Crops", *Financial Times* (London), 18 December 2001, p. 14.

⁴⁹ Centre for Science and Environment, "EU Bans Indian Marines Products", *Indian Green File* (New Delhi) vol. 122, February 1998, p. 32.

⁵⁰ Christopher M. Dent, *The European Economy: The Global Context*, n. 23, p. 419.

⁵¹ Ibid.

Conclusion:

The EU policy of harmonizing environmental policy with that of the single market and world market has thus been of mixed results. While, internally a few Directives and Regulations, like the EMAS and eco-label scheme, are somewhat successful, others, like the carbon/energy tax and other direct market based taxes, failed. This failure stems from the lack of non-enforceability of rules, and lack of approximations of the national law to that of the Union. As seen, even the EMAS and Eco-label scheme lack enforceability, for they are mandatory in nature. Moreover, application of environmental policy over trade is interpreted differently by Member States, using the treaty's provisions. For example French Beer are banned in Germany because they are not made of barley but of other substitute. Germany, therefore, can use the treaty provision giving the explanation that it bans such beer to protect the public health, but, at the same time the French can argue that this action amounts to technical barrier of trade and protectionism to protect local German beer manufacturer. To outsiders, concern was raised over the Union's environmental measures, which is often criticized as a technical barrier to trade and a violation of WTO's rules. For example, in 1998, the US Government in its report on 'European Trade Barrier', "denounced the EU's restrictive distribution practices, certain customs duties and unpredictable demand relating to the approval, labelling and licensing of products".⁵² It argued that "EU law lacks common standards, uniform evaluation methods, fair labelling rules and certainty

⁵² Pamela M. Barnes and Ian G Barnes, *Environmental Policy in the European Union*, n. 11, p. 170.

regarding the licensing and certification of products”.⁵³ Moreover such rules are further confused by member states operating their own national law besides the EU’s law in certain areas. Thus non-EU countries have to deal with two laws - one at the Community level and the other at the national level. Lastly, EU’s strict environmental rules on certain products forces manufacturers to bear the high cost of production by replacing their technology with environmentally clean technologies. In such a situation products from the developing countries faces high cost of production and become uncompetitive in the European Market. Such a concern from the developing countries was more profound in recent times when the EU, along with the US, sought to propose in the WTO for the inclusion of labour and environment in the WTO rules. Such a move was regarded by developing countries as a means to “shut out their products from rich countries markets”.⁵⁴ According to critics, the EU proposals at the Doha WTO summit for an environmental “precautionary principles” “amount to protectionism in disguise”.⁵⁵

Thus, for the EU, trade and environment can be explained in the remarks of the German Ministry for Environment, Nature, and Nuclear Safety that, “Free Trade does not mean that foreign products are exempted from the legal provision that apply for domestic products.”⁵⁶ But for the developing South, the remarks of Malaysian Environment Minister, Rafidah Aziz, at the Marrakesh Ministerial meeting in April 1994, and the late

⁵³ Ibid.

⁵⁴ Centre for Science Education, “Rich and Poor Class Over Trade and Environment”, *Global Green File* (New Delhi), vol. 4, issue 2, September 1999, p. 5.

⁵⁵ “Precautionary Principles: Protectionism in Environmental Clothing?” <http://www/ncpa.org/iss/tra/pd0808016.htm>. August 08,2001.

⁵⁶ Steve Charnovitz, “Free Trade, Fair Trade, Green Trade: Defogging the Debate”, *Cornell International Law Journal*, vol. 27, no. 3 Symposium 1994, p. 471.

Anil Agarwal, Centre for Science and Environment, can be best summed as follows. According to Aziz, environment is “now clearly being used to provide protectionist motives particularly to keep out import from countries which have a better competitive edge and comparative advantage”.⁵⁷ And, according to Agarwal, “the increasing internationalization of trade (has) led to the emergence of the global consumer, and the birth of a selective global conscience”. As a result, he argued, “the dividing line between actions motivated by genuine environmental concerns, and those which are a guise for protectionism in trade (has) narrowed”.⁵⁸

⁵⁷ Scott Vaughan, “Trade and Environment: Some North–South Consideration”, *Cornell International Law Journal*, vol. 27, no. 3 Symposium 1994, p. 593.

⁵⁸ Adil Najam and Nick Robins, “Seizing the Future: The South, Sustainable Development and International Trade”, *International Affairs* (London), vol. 77, no. 1, January 2001, p. 51.

CHAPTER 4

EUROPEAN UNION CLIMATE CHANGE POLICY AND NEGOTIATION

Introduction

For the last decade and a half, climate change has been one of the most debated environmental topics in international politics. The impact of climate change on man and environment was extensively detailed in the report of the United Nations sponsored Intergovernmental Panel of Climate Change (IPCC) in 1990. The report highlights that excessive human activity since the time of Industrial Revolution may be inadvertently changing the climate of the earth through the enhanced greenhouse effects of gases like carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), chlorofluorocarbons (CFC) and other gases. Such activities have led to global warming which, over the last 100 years, has increased surface air temperature by 0.3°C to 0.6°C, and that over the same period global sea level has increased by 10-20 cm and that the 1980s was the hottest decade on the record.¹ Likewise, in its latest report (2001), the IPCC concludes that the increase in temperature stands as before and that the 1990s was the hottest decade.²

Such changes in the earth temperature will therefore have an adverse impact on the eco-system of man-nature relationship. Changes in climate and warming of temperature will result in the disappearing of glacier and the thinning of ice surface over

¹ United Nations Environment Programme, *Climate Change: The IPCC Scientific Assessment* (Cambridge: Cambridge University Press, 1990), p. xiii.

² Time, "Life in the Greenhouse" (TIME Magazine), vol. 157, no. 14, 9 April 2001, p. 29.

Antarctica, rising sea level will lead to flooding and submerging of small island states and archipelagoes. Such changes will also lead to desertification, loss of species, diseases and environmental displacement.

Faced with such realities, the European Union has over the years tried both at the regional and international level, to reach an agreement on a common climate policy or regime. Such desire for a climate regime within and outside the Union emanates from the study of the impact of climate change on Europe since the 1980s. Studies show that changes in climate and global warming will lead to the rising of sea level, thus, would inundate low lying city, such as Amsterdam, shifting of vegetations and desertification which had already affected the Southern Member states, and the likely disappearance of the regulating mechanism of the Gulf stream which provide a temperate climate to Europe. They are, of course, the most serious concerns.

This chapter will, therefore, focus on the evolution of the EU climate change policies after 1992. The first part of the chapter will deal with the initiative taken by the Union in formulating such policies internally. The second part will deal with the EU external climate polices and negotiation to the Kyoto protocol and after. It will also examine the EU leadership role in negotiating such climate change policy and regime.

EU Internal Climate Change Policy

The initiation of an internal climate change policy for the EU began in the second half of the 1980s. This was largely a culmination of responses to the unfolding global

climate talks in the IPCC and the Intergovernmental Negotiating Committee for Framework Convention for Climate Change (INCC)³. The problem of climatic change was first addressed by the European Commission in 1985 when it stated that the “CO₂ emissions were a vital environmental issue”.⁴ However, it was not until November 1988 that the first communication from the Commission to the Council was presented. The paper admitted that reduction of greenhouse gases concentration at that stage does not seem to be a realistic objective, but ‘could be a very long term goal’.⁵ The Commission’s paper, though somewhat vague in its recommendations, proposed a certain comprehensive programmes dealing with scientific aspects and policy options to tackle climate change.⁶

It was only in the beginning of the 1990s that EU climate change policy began to take shape. The first in the initiative, at the highest level, was in June 1990 at the European Council Summit that was held in Dublin. The meeting called for an early adoption of emissions targets and strategies for greenhouse gases. In October 1990, in a joint council of the Environment and Energy Ministers, the Council attempted to work out an EU common climate position on CO₂ reduction for the upcoming Second World Climate Conference,⁷ and agreed to an EU wide target of stabilizing carbon dioxide

³ Gunnar Sjostedt, “The EU Negotiates Climate Change: External Performance and Internal Structural Change,” *Conflict and Cooperation* (London), vol. 33, no. 3, September 1998, p. 239.

⁴ Jon Birger Skjaereth, “The Climate Policy of the EC: Too Hot to Handle?,” *Journal of Common Market Studies* (Oxford), vol. 32, no. 1, March 1994, p. 26.

⁵ See EC Commission, *The Greenhouse Effect and the Community Commission Work Programme Concerning the Evaluation of Policy Option to Deal with the Greenhouse Effects* (Brussels: CEC, COM (86) 656 final, 16 November), p. 44.

⁶ Jon Birger Skjaereth, “The Climate Policy of the EC: Too Hot to Handle?,” n. 4.

⁷ Gunnar Sjostedt, “The EU Negotiates Climate Change: External Performance and Internal Structural Change”, n. 3.

emission by the year 2000 at 1990 levels. The Joint Council agreement, however, provided no procedure regarding the means of achieving this target or the distribution of the target among individual member states.⁸

Though the early initiative was taken by the Council, it was however, left to the Commission to devise objectives and strategies for stabilizing CO₂ emissions. The Commission thus formed an interservice group composed of different Directorate Generals (DGs) affected by climate policy. These are: DG I (External Relations), DG II (for Economics and Financial Analysis), DG III (Internal Market), DG VI (Agriculture), DG VII (Transport), DG XII (Research), DG XVII (Energy) and DG XXI (Taxation). Of these, DG XI, DG VII and DG XVII are the main actors in formulating climate policy. The main objectives of this interservice group is to enable these Directorate to work together for a common policy. But, on most occasions differences between Directorates hampered such policy formulation. This was more prominent in the DG XI and DG XVII's draft communication to the Council for CO₂ emission reduction by 10 to 20 percent. The proposal for such reduction includes fiscal measures, energy efficiency through 'Specific Actions For Vigorous Energy Efficiency' (SAVE) and 'Specific Actions For Greater Penetration For Renewable Energy Sources' (ALTENER), Transport and sectoral measures. The proposal for fiscal measures in the form of CO₂ tax was opposed by DG XXI (taxation) Commissioner, Christiane Schrivener. She was also

⁸ Pavlos Karadeloglou, Toney Ikwue and Jim Skea, "Environmental Policy in the European Union", in Henk Folmer, et.al, eds., *Principles of Environmental and Resources Economics* (Aldershot: Edward Elgar, 1995), pp. 287-88.

supported by the 'business-friendly' DGs responsible for economics and internal market⁹ who felt that such taxes will hamper the process of economic integration and economic growth.

Despite this, the two Directorates (Environment and Energy) again, in May 1991, prepared a draft which identified four major elements of climate policy: (a) Regulatory approach; (b) Fiscal measures; (c) Burden Sharing; and (d) Compliance at national level. Realising the need for strengthening the groundwork already set up for climate policy, the European Union Environment Ministers, during their informal meeting in Amsterdam on 12 October 1991, agreed unanimously to take action on the climate change issue, which included the introduction of an energy tax. This decision was lauded by the environmental Commissioner, Ripa di-Meena as a turning point in the EC environmental policy'.¹⁰ Such enthusiasm was washed away by the Energy Ministers who, in their meeting at Luxembourg, were against any unilateral EC tax. Thus, from October 1991 to May 1992 climate policy within the Union was hampered by lack of policy objectives between Directorates, lack of consensus on certain issues like carbon and energy tax among member states, and by the 'not very good' relationship between the President of the Commission Jacques Delors - who is more interested in the consolidation of the internal market - and the environment Commissioner, Ripa di-Mcena.

As the Rio Conference approached, the Commission wanted something in concrete policy shape, i.e. an approve directives on the earlier Commission's proposal, to go and

⁹ Jon Birger Skkjaerseth, "The Climate Policy of The EC: Too Hot to Handle?", n. 4, p. 23.

¹⁰ Ibid.

attend the Conference. Ripa di-Meena even threatened to withdraw from the Conference if member states fail to reach a common position on the tax proposal it had submitted earlier, along with the new refined draft sent as a communication to the Council in May 1992. The Commission's proposal strategy was aimed at the following areas: (a) monitoring mechanism for member states', 'carbon dioxide and other greenhouse gas emissions; (b) set of conventional measures relating to the promotion of renewal energy source and energy efficiency; (c) a fiscal measure relating to carbon energy tax; and (d) the use of cohesion funds to stimulate development of economically less favoured regions of the EU, which could be adversely affected by the tax proposal.¹¹

The Commission's strategy was officially presented as a final proposal for a Council Directive on tax. Considerable pressure on both the Council and the Commission was built up as the UNCED Conference in June 1992 at Rio was approaching. The event took a dramatic turn when, on 26 May 1992, the EU Environment Ministers failed to reach a common ground or commitment to the Commission's proposal. The very next day, when no agreement was likely to reach, Ripa di-Meana declared that he would not attend the Rio Conference. While he blamed member states for the failure and their lack of political will to go an extra mile to reach a compromise on the proposal, countries like Germany, Denmark, the Netherlands, Luxembourg, and Italy accused the Commission of not going far enough to compromise on the principle of 'conditionality'.¹²

¹¹ Pavlos Karadeloglous, Toney Ikwue and Jim Skea, "Environmental Policy in the European Union", n. 8.

¹² The principles of 'conditionality' implies that the tax proposed would be implemented in EU only if other OCED countries follow suit. Initially DGXI was against the conditionality principles and instead favour EU unilateral action on carbon/energy tax.

Notwithstanding such differences, the EU entered the Rio Conference only with the political goal of the Council in reducing CO₂ emissions by the year 2000 at 1990 levels. The framework policy for future measures, as finally announced in June 1992, consisted of a proposed legally binding climate which covered the areas of: (a) A framework directives on efficiency within the SAVE programme; (b) Decision on renewal energies- ALTENER programme; (c) A carbon-energy tax; and (d) A decision concerning a monitoring mechanism for CO₂ emission.

Climate Policy After 1992

EU's climate policy, developed after 1980s, underwent a sea change after 1992. The failure at Rio and the Maastricht Treaty provided the Union a lesson to learn for new initiative to be taken on climate policy. The new treaty boosted the much needed general competence of the European Commission in the environmental areas. Thus, from a procedural and institutional point of view, the EU's response to climate change appeared effective. It realized that for any negotiation at the international level, outside the Union, it has first to agree on a common policy within the Union. But, most importantly, it has to see that when such agreement on a common policy is reached it is implemented and transposed into national law.

It is in this context that climate policy within the Union after 1992 was diversified, keeping in view the importance of other sectors in the making of a climate change policy, the Fifth Environmental Action Programme (5EAP), unlike other Action programme, had extended its role to areas relating to climate change and global warming.

The programme envisaged that the Union's 'Towards Sustainability' would be achieved through integration of environmental policy with other sectors. Moreover, the programme committed the Union to international negotiation on environment and the formation of a global environmental regime.

Taking into account of the internal constraints and the need for external performances, the Commission, over the years, tried to expand its competence in the area of climate policy. From 1993 to 1997, the Commission had taken several initiatives in this regard. Some of these such as ALTENER, SAVE, Burden Sharing and Monitoring mechanism were proposals sent by the Commission to the Council for consideration and necessary action.

The Carbon/Energy Tax

The most important, and at the same time, controversial area in climate policy planning is the Carbon/Energy tax. Carbon dioxide, which is the main source of greenhouse effects, was seen by the Commission as the first necessary issue to be tackled. Apart from the renewal and efficient energy strategy, the Commission proposed several innovative legislations needed to tackle climate change. One such proposal was the carbon/energy tax. The Commission considered the carbon/energy tax, first, as a step towards the Union taking over a mantle of global leadership on the important

international issue of climate change.¹³ Secondly, tax was initially promoted simply as a penalty for CO₂ emission, but “subsequently as an innovation in fiscal policy”.¹⁴ However, the tax proposal which has had the “potential to be the pre eminent policy weapon in the environmental policy arsenal...had been weakened and blocked by special interest.”¹⁵ While such tax was favoured by the environmentally conscious Northern European Member States, it was opposed by the UK, Ireland and other southern Member States who feared that such unilateral EU tax would hamper their economic development. Moreover such tax proposal was not welcomed by DG XXI (Taxation) who refused to put an extra burden on the already heavy tax agenda. Thus “integrating carbon/energy tax into the broader remit was difficult in both technical and political terms”.¹⁶ While the European Commission “collectively backed up the tax proposal, taxation commissioner Christiane Schivener was notably lukewarm, emphasizing the importance of first ‘exhausting non-fiscal measures’”.¹⁷

Notwithstanding such differences, the Commission went ahead with the proposal of a package of measures on carbon/energy tax. Thus, in June 1992, after a careful study of the overall impact of such taxes, the Commission presented a proposal for a Council

¹³ Anthony R. Zito, “Integrating the Environment into the European Union: The History of Controversial Carbon Tax”, in Carolyn Rhodes and Sonia Mazey, eds., *State of the European Union: Building a European Polity ?* vol. 3 (Colorado: Lynne Rienner Publishers inc., 1995), p. 439.

¹⁴ Nigel Haigh, “Climate Change Policies and Politics in the European Community”, in Tim O’ Riordan and Jill Jager, eds., *The Politics of Climate Change: A European Perspective* (London: Routledge, 1996), p. 165

¹⁵ Anthony R. Zito, “Integrating the Environment Into the European Union: The History of Controversial Carbon Tax”, n. 13.

¹⁶ Pavlos Karadeloglou, Toney Ikwue and Jim Skea, “Environment Policy in the European Union”, n. 8, p. 290.

¹⁷ Ibid.

Directives to introduce an energy carbon tax.¹⁸ However, as mentioned earlier, the proposal faced a stiff resistance from various quarters partly because of sensitivities over the subsidiarity issue and also due to concern over the likely public reaction to substantial increase in energy prices.¹⁹ And, lastly, the heavy lobbying of industrial houses led to the collapse of such proposal. Thus, efforts to reach an agreement on the tax proposal was delayed, and it was only in 1995 that once again the Commission proposed a “much diluted version of the original proposal which would grant member states considerable discretion over a lengthy transitional period in the levels of CO₂ emission and energy use which they apply”.²⁰ Hence the carbon/energy tax was not adopted on an EU-wide basis, but it did become an element of national environmental strategies of Member States.²¹ Germany, Denmark, Belgium, the Netherlands and Luxembourg were the leading countries, which favoured the implementation of tax, and thus have the most ambitious carbon dioxide emission reduction targets. For example Denmark and the Netherlands started introduction of carbon tax in 1992.

In June 1996, when the European Council met in Florence, the Council of Finance Ministers “suggested developing a tax system.”²² Responding to this, the Commission, in October 1996, proposed a “widening” of the tax base on energy source.²³

¹⁸ Norman Lee, “Environmental Policy” in M.J. Artis and N. Lee, *The Economics of the European Union: Policy and Analysis*, (2nd edition) (Oxford: Oxford University Press, 1997), pp. 259-60.

¹⁹ Ibid.

²⁰ Ibid. Also see EC Commission, “*Proposal for a Council Directives in Introducing Tax on Carbon Dioxide Emissions and Energy*” (Brussels: CEC, COM 226, final, 1992).

²¹ Pamela M. Barnes and Ian G. Barnes, *Environmental Policy in the European Union* (Cheltenham: Edward Elgar, 1999), p. 147.

²² Ibid.

²³ Ibid.

However, such move, as always, was opposed by the member states who are unwilling to cede their power of taxation to the EU.

Renewal Energy: The ALTENER Programme

The Commission's proposal for renewable energy was agreed in the Energy Council of September 1993.²⁴ The programme, aimed at funding for renewable energy, sets out three objectives which member states are to take into account in their own programme. The objectives are: increasing the renewal share of energy supply from nearly four percent to eight percent between 1991 and 2000; trebling the output from renewable sources other than large-scale hydro-electric plant; sourcing for biosphere a five percent share of the fuel consumption of motor vehicles.²⁵ Areas to be covered under this programme include pilot action on solar collectors and water heaters, biofuels for vehicle fleets, financial arrangements for renewable projects, photovoltaics on buildings, wind farm planning and bioclimatic system in building-designs. For these projects a budget of 40 million ECU was suggested for the first five years.

²⁴ See EC Commission, "Council Decision Concerning the Promotion of Renewal Energy Sources in the Community (Altener Program)", *Official Journal of the European Communities* (Brussels), CEC, L 235, 18 September 1993.

²⁵ Nigel Haigh, "Climate Change Policies and Politics in the European Community", n. 14, pp. 173-74.

Energy Conservation: The SAVE Programme

The Directives on energy saving measures (SAVE) was set out in Council Decision 91/565 and Council Directives 93/76.²⁶ The directives place an obligation on member states to introduce national programmes related to the following areas: energy certification of buildings; billing of heating, air conditioning and hot water costs on the basis of actual consumption; third party financing for energy efficiency investments in public sector; thermal insulation of new buildings; regular inspections of boilers; and energy audits for undertakings with high energy consumption.²⁷ An indicative budget of 35 million ECU for the period 1991-1995 was provided for this programme. Under this programme Member States are required to submit to the Commission a list of the proposed measures, and the bodies, which are to undertake them. The Commission on receiving the proposal, submitted a draft list to the advisory committee and then to the Council for approval.²⁸

When closely examined, the SAVE programme fell short of its expectation. First, the programme's scope and implementation were left to the member states themselves to decide. It led to the ineffectiveness of both the decision and directives. Moreover, many of the original Commission proposals, like regular inspection of cars and energy audit, were either dropped from the final version or changed. As a result the SAVE programme

²⁶ See EC Commission, "Council Directive to Limit Carbon Dioxide Emissions by Improving Energy Efficiency (SAVE)", *Official Journal of the European Communities* (Brussels), CEC, L 237, 23 September 1993.

²⁷ Nigel Haigh, "Climate Change Policies and Politics in the European Community", n. 14, pp. 175-76.

²⁸ Ibid.

became only a 'framework agreement' and did neither set out any quantified target to be met nor define any binding policy measures.²⁹

The Monitoring Mechanism

Perhaps of all measures and initiatives taken by the Union in tackling climate change, the Monitoring Mechanism is one of the most important policy objectives for climate change. The Monitoring Mechanism was adopted by the Council decision of 93/389/EEC in June 1993. The mechanism has been established to monitor CO₂ and other greenhouse emission in the Community. It was also to "track progress towards" the 'fulfillment of the commitment relating to the limitation of CO₂ emission in the UNFCCC by the Community as a whole'³⁰ The monitoring mechanism requires that: (a) Member States are required to inform the Commission of national programmes, including information on policies and measures taken to reach the targets and assessment of the economic impact of the measures. These programmes are to be periodically updated; and (b) The Commission is to produce an evaluation of progress in the Community towards reaching the emissions targets, based on an assessment of the national programmes.³¹

In addition, the Commission is to annually assess progress towards recovering the target based on consultations with Member States. In 1999 the Monitoring Mechanism was amended by the Council Decision of 1999/296/EC to "Strengthen the EC's existing

²⁹ Gunnar Sjostedt, "The EU Negotiates Climate Change: External Performance and Internal Structural Change", n. 3.

³⁰ European Environment Agency, "Reporting by EU Member States on Environmental Policies and Their Effects: Summary of EU Reporting Requirements and the Example of CO₂ Reduction Programme" (Draft Paper 2), <http://www.eea.eu.int>, 4 November 1999, p. 18.

³¹ Ibid.

monitoring mechanism and to cover all greenhouse gases not controlled by the Montreal protocol".³² This amendment was again 'revised' to accommodate the Kyoto protocol and to address the problems highlighted in the Commission's previous evaluation report.³³ The revised monitoring mechanism focuses on following areas:

- (a) Greater emphasis on more transparent and accurate monitoring of actual and projected progress with greenhouse gases reductions;
- (b) Reporting and abide by UNFCCC guidelines such as policies and measures.
- (c) The Commission with the Monitoring Mechanism Committee is to produce standard guidelines and methodologies for developing projections.
- (d) Details are required of measures being taken by member states (or envisaged) for the implementation of relevant Community legislation and policies.
- (e) The Commission is required to assess the contribution made by Community measures in meeting the agreements of the UNFCCC and the Kyoto protocol.³⁴

Thus, by incorporating the essential elements of the UNFCCC guidelines into the Community Decision, Member States will: (a) now have legal obligation to provide the

³² "Preparing for the Implementation of the Kyoto Protocol", <http://www.weathervane.rff.org>

³³ European Environment Agency, "Reporting by EU Member States on Environmental Policies and Their Effects: Summary of EU Reporting Requirements and the Example Of CO₂ Reduction Programme", n. 30, p. 24.

³⁴ Ibid.

information requested, making reports more consistent and comparable; (b) for the first time, both Member States and the Commission are obliged to identify the separate contribution to greenhouse gases reductions of Community measures and; (c) the new reporting mechanism will be useful for more general policy learning. Thus, making Member States to think clearly through the types of instruments they are using, their objectives, their impacts and progress in achieving the objectives.³⁵

The Monitoring Mechanism policy thus arises out of the need to ensure compliance and to assess the progress committed at the international level. Moreover, such mechanism is seen as an alternative to the controversial carbon/energy tax. Such mechanism, therefore, avoids Member States not only to transfer their competence to Brussels but also allow them to set their own targets and devise their own national measures to ensure that national targets are achieved.³⁶

Hence, Monitoring Mechanism remains one of the most important policy objectives of the Union in reducing CO₂ emissions both at the Union and International levels. This was evident in the Commission's strategy paper for the Conference of Parties (COP)-7. The paper commits the EU to the fulfillment of monitoring and reporting obligation as laid down in Articles 5 and 7 of the Kyoto protocol for a "reliable monitoring and reporting tools to preserve the environmental effectiveness of the Kyoto protocol".³⁷ However, the progress of such objectives has been hampered by lack of cooperation by Member States. Failure to report on the measure and progress,

³⁵ Ibid., p.17.

³⁶ Nigel Haigh, "Climate Change Policies and Politics in the European Community", n. 14, p. 166.

³⁷ EC Commission, "COP-7: "Issues to be Tackled", <http://europa.eu.int>

unavailability of data, disagreement and distortion of methodologies all led to the slow progress and non-implementation. The European Environment Agency reports that “national communications are still failing to provide the right information in the right form” to the UNFCCC guidelines and that measures undertaken are “clearly not having enough of the desired effect as emission levels continue to rise.”³⁸ (see table3 in Appendix).

So far the Commission has produced only three evaluation reports, which are based on the documents provided by Member States under their respective national programmes. Table12 in Appendix indicates that in 1994 all members, except Germany, have submitted their reduction programme up to 2000. Germany’s failure to report was due to the restructuring of East Germany at that time. As for the cohesion countries of Spain, Portugal, Greece and Ireland emission levels are likely to increase. Emission targets are relaxed for these countries in order to allow them to absorb the pressure of economic restructuring and convergence with that of the rest of EU. However, this does not mean that they are exempted from any burden sharing. As agreed, the cohesion fund, among others, will include environmental protection projects, thus, acting as an incentive to help these countries to adopt clean technologies and comply with the Monitoring Mechanism in subsequent years.

The second evaluation report of 1996 concludes that not enough information was provided by the Member States to the Commission’s Monitoring Mechanism Committee

³⁸ European Environment Agency, “Reporting by EU Member States on Environmental Policies and Their Effects: Summary of EU Reporting Requirements and the Example Of CO₂ Reduction Programme”, n. 30, p. 28.

to evaluate their progress in emission reduction programme, using the newly developed evaluation methodology.³⁹ The Commission, therefore, based its evaluation on the communication submitted by Member States to the UNFCCC. In 1996, when the UNFCCC guidelines were revised, the parties to the Convention were asked to summarise the information provided on policies and measures along with types of instruments,⁴⁰ methods of reduction, sector, status of implementation and progress.⁴¹ Responses to the UNFCCC suggested format by member states has been disappointing. For instance, two Member States (Italy and Luxembourg) failed to report; only eight Member States used the table; not all of these eight Member States reported on each item – and some invented their own categories; Member States using the table followed different interpretations of what the column heading required; and the remaining five Member States reported without table, addressing to varying degrees the requirements and suggestions of the guidelines in the body text (see table 12 in Appendix).⁴²

According to the 2000 report, though green house gases emission fell by 2.5 per cent between 1990 and 1998, this is largely because of one-off emission reduction in Germany and the UK⁴³, and that the ‘majority of Member States are far away from their

³⁹ The Monitoring Mechanism Committee developed a ‘Methodology to the Evaluation of Progress and for the Contents of National progress’ in 1995.

⁴⁰ Instruments suggested include economic instruments, regulations or voluntary agreement, information, education and training, research and development.

⁴¹ European Environment Agency “Reporting by EU Members States on Environmental Policies and Their Effects: Summary of EU Reporting Requirements and the Example of CO₂ Reduction Programme,” n. 30, p. 19.

⁴² Ibid., p. 20.

⁴³ “one-off” emission reduction refers to the total emission reduction in a single phase, thus, between 1990 and 1995, CO₂ emissions in the UK and Germany decreased substantially. This is because of their commitment to the “burden sharing” concept. Thus, Germany is required to reduce CO₂ by -21 per cent and the UK by -12.5 percent.

targets'.⁴⁴ The report also focused on the uneven contribution from Member States and their failure in showing satisfactory emission reduction and concluded that they have to a considerable "way to go to meet the EU's obligation and individual commitments by Member States under burden sharing agreement".⁴⁵

For the Monitoring Mechanism to operate successfully to achieve the emission target, a higher level of compliance is needed. The European Environmental Agency (EEA) is of the view that, besides compliance, guidelines should be revised to elicit more useful information. Therefore, a wide interpretation of the terms used, such as 'Status of implementation', 'objectives' and 'indicators and monitoring', by member states "would help assess progress and develop a more effective policy strategy".⁴⁶ It is also important that the UNFCCC reporting guidelines at the EU level should be closely monitored through the Monitoring Mechanism Committee or there "are many possibilities for the application of such framework to other Directives".⁴⁷

Burden Sharing

Burden sharing remain one of the most important commitment of the Union to reduce greenhouse emission both at the EU level and international level. The concept of Burden sharing was first included in the national targets for curbing CO₂ emissions. The

⁴⁴ EC Commission, "Report Under Council Decision 1999/296/EC for a Monitoring Mechanism of Community Greenhouse Gas Emission, COM (2000) 749, <http://europa.eu.int>

⁴⁵ Ibid.

⁴⁶ European Environment Agency, "Reporting by EU Members States on Environmental Policies and Their Effects: Summary of EU Reporting Requirements and the Example Of CO₂ Reduction Programme," n. 30, p. 28.

⁴⁷ Ibid. For complete details on climate change report in the EU in 2000, see European Environment Agency, "Climate Change – Environmental Signals (Chapter 8)", <http://www.reports.eea.eu.int>

green countries of Austria, Denmark, Germany, and the Netherlands are members who voluntarily formulated national policy to curb emission much before the European Union policy came about. However, a EU wide burden sharing was formulated prior to the Kyoto summit. Here, the EU member states agreed in principle of a common climate policy reaching beyond the year 2000.⁴⁸ The Union's policy was to achieve a 15 per cent flat reduction of emission of greenhouse gases in the EU by the year 2000, at the 1990 level. Hence, to achieve this target, a distributional plan was agreed among Member States (see table 13 in Appendix). Initially, the Union set the target at 9.2 per cent but this was lowered down to 8.0 per cent because, according to the Kyoto protocol, the Union requires to reduce only by 7 Per cent. Moreover, the 1998 agreement contained a total of six, instead of three, basket gases as favoured by the Union earlier. It is also to be noted that such new adjustment was done more to suit national governments rather than the Kyoto result. For example, "Denmark and Germany demanded adjustments and the former 'green' countries, Austria and the Netherlands, admitted that they would not be able to meet their ambitious, targets of the first agreements."⁴⁹ Such announcements were opposed by Ireland and the southern member states who were already required to reduce emission further in the next target. Of these, only the UK, being one of the largest emitter, declared that it would take a stronger commitment than before.⁵⁰

⁴⁸ Gunnar Sjostedt, "The EU Negotiate Climate Change: External Performance and Internal Structural Change", n. 3, p. 236.

⁴⁹ Sebastian Oberthur and Hermann E. Ott, *The Kyoto Protocol: International Climate Change Policy for the 21st Century* (Berlin : Springer-Verlag, 1999), p. 147

⁵⁰ Ibid.

The Burden sharing agreement, as reached in 1997-98, indicated a high level of compromise among member states to commit themselves to the reduction of greenhouse gases emission. It was through a burden sharing agreement that a common policy on other areas could be reached. The burden sharing also obliged Member States to comply with the Kyoto Mechanism (Emission Trading, Clean Development Mechanism, and Joint Implementation), which at the same time, are incentives not only to reach the agreement but also to reduce emissions as a whole. Therefore, the burden sharing should be taken seriously by Member States, since failure by any one Member State will affect the EU emission reduction programme and target.

The Sixth Environmental Action Programme (6th EAP)

The European Commission, in its 'Global Assessment' of the Fifth Environment Action Programme – 'Towards Sustainability', has indicated that the European Union's environmental policy in the area of climate change is unsatisfactory. The Commission has predicted that the EU "will fail to reach its Kyoto commitment to cut greenhouse gas emissions by 8 per cent by 2008-2012 and instead increase its emissions over the coming years".⁵¹ In a proposal for a Decision of the European Parliament and the Council on the Sixth Environment Action Programme (2001-2012), 'Environment 2010: Our future, Our choice', the "Commission has indicated climate change as key priority" of the sixth

⁵¹ EC Commission, *Communication from the Commission, "European's Environment: What Directions for the Future?: The Global Assessment of the European Community Programme of Policy and Actions in Relation to the Environment and Sustainable Development, 'Towards Sustainability'* (Brussels: CEC, COM (1999) 543 Final), p. 20.

programme, and that “ratification and implementation of the Kyoto protocol to cut greenhouse gases emission by 8 per cent over 1990 levels by 2008-2012 ... must be considered as a first step to long-term target of a 70 per cent cut”.⁵² The Commission acknowledged that stabilizing of CO₂ emissions in 2000 at 1999 level has been achieved, but this was due to “one-off reductions in Germany and the UK.” However, the paper added that “the level of greenhouse gases emission are not expected to fall by 2010 if no further measures are taken”,⁵³ and that “a major growth in CO₂ emissions of up to 40 per cent is forecast for the transport sector which already today accounts for close to 30 per cent of total CO₂ emissions in the EU”.⁵⁴

Therefore, the Commission in its proposal had identified the objectives and targets which included a commitment to the UNFCCC, and achieve an 8 per cent reduction in emissions of greenhouse gases by 2008-2012 at 1990 level. To achieve its aims, objectives and target, a policy approach in combating climate change has been identified by the Commission - its green paper on EU wide emissions trading scheme and the newly launched European Climate Change Programme (ECCP)⁵⁵. Moreover, the Sixth EAP focuses on an integration of climate change objectives with the Community’s

⁵² EC Commission, *Environment 2010: Our Future, Our choice. The Sixth Environment Action Programme. Proposal for a Decision of the European Parliament and of the Council* (Brussels: Com (2000), p. 4, See also the official website, <http://europa.eu.int>

⁵³ *Ibid.*, p. 25.

⁵⁴ *Ibid.*, p. 52.

⁵⁵ *Ibid.*, p. 26.

sectoral policies, to develop a cross sectoral approach, ‘research’ and information to citizens and business.⁵⁶

It is in this context that a series of negotiations with private parties like that of the car manufacturers, other than members of the European Automobile Manufacturers Association (ACEA), like Japan and Korea (JAMA and KAMA) on reduction of CO₂ emission from passenger cars, have made considerable progress. Within the Union, the ACEA has committed to achieve an emission target of 140g of CO₂ per kilometers for an average on the sale of new cars by ACEA members in the EU by 2008.⁵⁷

EU External Climate Policy and Negotiation

i) Pre-Kyoto:

Climate policy has been EU’s top priority since the early 1990s. The Union has, over the years, attempted to create an international climate change regime. But such attempts of the Union failed. As seen in the Rio summit, it failed because its leadership lacked commitment. In the negotiation prior to the Rio summit on climate change, the EU position differed from that of the US and its allies.⁵⁸ While the US held the view that scientific evidence on climate change and global warming lacked credibility, the Union maintained that there was enough evidence that growing human activities are responsible

⁵⁶ Ibid., p. 27.

⁵⁷ Council of the European Union, General Secretariat, A press release of the 2194th Council Meeting on Environment held at Luxembourg, 24/25 June 1999, 9406/99 (presse 203), P. 21.

⁵⁸ The US and its allies are known by the abbreviation of JUSSCANNZ i.e. Japan, US, Switzerland, Canada, Australia, Norway and New Zealand, prior to the Kyoto protocol and in the negotiation. Later (post-Kyoto) it was known as the “umbrella group” which consists of the earlier JUSSCANNZ allies plus Iceland, the Russian Federation and Ukraine.

for the growth of anthropogenic gases in the atmosphere. The EU therefore called for a global initiative to tackle the climate change. One such proposal was that, any Convention on climate change should be accompanied by a strict quantified target. However, such proposal was rejected by the United States. Following this failure, the U.K. and Japan developed a 'pledge and review concept' which could 'commit industrialized countries to set unilateral target within one year of entry into force of the Convention, and then to have their performance in relation to this pledge monitored internationally.'⁵⁹

When the EU and Japan agreed on such a concept, the US refused to accept it. Thus, by the Third session in Nairobi, the pledge and review concept collapsed. The adamant attitude of the United States held back any progress towards the final text for the Convention. It remained committed to its position against certified targets and target dates. Thus, by February 1992 when the Fifth session to the Convention was held in New York it was clear that a compromise between the EU and the US should be reached before it was too late. The compromise text presented at the final session did not contain any commitment of parties to any quantified target or time target, but provided that parties would adopt national policies and measures. Other controversial issues like 'financial mechanism', 'joint implementation', and soon were left untouched and were to be negotiated in the upcoming Conference of Parties (COP) in Berlin.

EU's leadership role in the climate negotiation was clear. Yet, it failed. Its negotiation with the US within and outside the INC or the UNCED Preparatory

⁵⁹ Mathew Patterson, *Global Warming and Global Politics* (London: Routledge, 1996), p. 56.

Committee failed because it lacked credibility. Though the EC Environment Council, on 12 December 1991, declared the EU position on UNCED, including its CO₂ target and increased assistance for developing countries.⁶⁰ But internal constraints such as internal debate on implementation of stabilization targets, debate over the Maastricht Treaty and its subsidiarity concept, in particular, the Danish referendum, the opposition and heavy lobbying against carbon/energy tax by the Union of Industrial and Employers Confederation of Europe (UNICE) and Member States, undermined its leadership role. Thus, the more the EU faltered internally to implement its target, “the easier it becomes for the US to resist pressure within the negotiation.”⁶¹

The signing of the framework agreement for climate change in 1992 was followed by the first meeting of the Conference of the Parties (COP) to the agreement (UNFCCC) at Berlin in the spring of 1995. At Berlin, the parties agreed to negotiate, by the end of 1997, quantitative limits on greenhouse gases emission beyond 2000, but failed to agree on “whether those limits would be reductions or which countries would be subject to the new commitment”.⁶² To resolve this problem, the Ad hoc Group on Berlin Mandate (AGBM) was created to negotiate on the binding agreement on actions to be taken after the year 2000.

Between 1995 and 1997, the negotiating period on the Kyoto Process, the EU took the leadership role in the international climate policy. In the process it clashed with

⁶⁰ Ibid., p. 88.

⁶¹ Ibid., p. 89.

⁶² Gareth Porter et.al, *Global Environment Politics*, (third edition) (Boulder: Westview Press, 2000), p. 118.

the US and its allies over a variety of issues, ranging from the common and coordinated policies and measures to joint implementation and emissions trading.

Policies and Measures⁶³

According to the EU, common and coordinated Policies and Measures along with the Quantified Emission Limitation and Reduction objectives are to be the cornerstone of the future protocol on climate change. In October/November 1992 the Union proposed three types of Policies and Measures (PAMs). The first would be mandatory, the second would not be mandatory but give “high priority” and the third also not mandatory, but would be assigned high priority in line with national circumstances.⁶⁴ However, by 1997 EU “self reinforcing dynamic” leadership on the issue of PAMs was a failure. Its uncompromising position of the early 1996 gave way to heavy opposition from the US and its allies. The US was against any attempt to international harmonization of PAMs. Even developing countries were of the view that such PAM will hamper their economic performance. In the end the EU also accepted that no mandatory PAMs would be proposed in the near future.

⁶³ Policies and Measures (PAMs) is laid down in Article 2 of the Kyoto Protocol. According to the EU’s proposal, PAMs will deal with issues of policy instruments such as information and awareness, economic instruments (like emission taxes) and command and control instruments.

⁶⁴ Sebastian Oberthür and Hermann E. Ott, *The Kyoto Protocol: International Climate Policy for the 21st Century*, n. 49, p. 104.

Emission Limitation and Reduction Commitment

Emission limitation and Reduction Commitments in the Kyoto process represent differences of interests between the US and the EU. While the EU, as on March 1997, agreed on a common target and proposed reduction of emission in three baskets gases (CO₂, CH₄, and N₂) by 15 per cent by 2010 at 1990 baseline, by June 1997 the EU Environment Ministers agreed on 7.5 percent reduction target in 2003. The US, however, favoured a “multi-year time frame for emission reductions, rather than a fixed single-year target”.⁶⁵ Hence the US proposed a commitment period of five years under the term “Budget period”. Such period, according to the US, will “smooth out the effects of short term events, such as fluctuations in business cycles and energy demands, or hard winters and hot summers that would increase energy use and emissions”.⁶⁶ Apart from this, the US suggested other flexible approach like banking (transfer of unused emission into next budget period) over several budget periods, inclusion of six greenhouse gases, emission trading and joint implementation. Of all, except the concept of borrowing, the US succeeded in its strategy. Thus the EU attempt for an earlier commitment from 2003-2007 failed, instead a period of 2003-2012 was agreed as the first commitment period. The only concession that the EU got from other industrialized countries was a soft provision in Article 3.2 that “each party...shall, by 2005 have made demonstrable progress in achieving its commitments under this protocol.”⁶⁷

⁶⁵ US Under Secretary of State, Stuart Eizenstat’s Statement delivered before the Senate Foreign Relations Committee, “Eizenstat Prepared Testimony on Kyoto Protocol” <http://www.iitap.istate.edu>

⁶⁶ Ibid.

⁶⁷ Hermann E. Ott, “The Kyoto Protocol to the UN Framework Convention on Climate Change: Finished the Unfinished Business,” <http://www.wupperisnt.org>

Issue of Sinks (Land Use Change and Forestry-LUCF)

The concept behind 'Sinks' provision is that reduction or stabilization of CO₂ emissions can be achieved by land use, which included "growing forests as well as storage of carbon dioxide fraction after air has been technically decomposed".⁶⁸ Article 3 of the Kyoto Protocol provides that parties shall reduce emission by sources and enhance removals by sinks.⁶⁹ In the beginning, the EU along with Japan and Developing Countries were against the inclusion of Sink at least for the first commitment period, while the other non-OECD countries along with the US were in favor for it.⁷⁰ The reason behind EU opposing 'sinks' is that if such provision is allowed, then commitment for emission reduction will be weakened and undermined. However, partly for tactical reasons and partly because of internal opposition, the EU slowly moved towards accepting certain LUCF activities. Moreover, it was clear that only after the sink issue was resolved, that negotiation on numerical target would start.⁷¹ Thus, in the end an agreement was reached to allow both changes of emission from sources and removal from sinks as part of emission reduction determining targets, with 1990 as a base year.

Flexibility Mechanism

Under the Flexibility Mechanism, issues of Joint Implementation, Emission Trading and Clean Development Technologies are part of the Kyoto Protocol negotiating

⁶⁸ Thomas Langrock, "The Sink Controversy", <http://www.wupperinst.org>

⁶⁹ Ibid.

⁷⁰ Sebastian Oberthur and Hermann E. Ott, *The Kyoto Protocol: International Climate Policy for the 21st Century*, n. 49, p. 133.

⁷¹ Ibid., p. 137.

process. The first two are the main issues under the Flexibility Mechanism that was negotiated between the EU and the US.

a) Joint Implementation: -

A major achievement of the EU in the negotiation for the Kyoto Protocol is that it succeeded in introducing the 'Bubble concept' in Article 4 of the protocol. Article 4 states that parties "may jointly fulfill their commitments" to limit Greenhouse gases emissions. Though the term joint implementation does not figure in the protocol, under Article 4, the EC and the member states may, upon ratification, notify the secretariat that they intend to jointly fulfill their obligation under Article 3.⁷² According to Article 3 parties shall "individually or jointly" reduce greenhouse gases. Therefore, such 'bubble concept' was meant to achieve total emission reduction target of the EU. Hence the concept of burden sharing was agreed (See table 13 in Appendix) among member states. Under this agreement, the EU has committed to 9.2 per cent reduction of EU emissions of the main greenhouse gases at 1990 level by 2010. The Burden sharing concept was greatly criticized by the US and other countries that such concept has not included the accession countries of Central and Eastern Europe. Moreover, the 'bubble concept' was criticized on the ground that it had "no basis in EC legal competence".⁷³ Another

⁷² Hermann E. Ott, "The Kyoto Protocol to the UN Framework Convention on Climate Change: Finished an Unfinished Business", n. 67.

⁷³ Charlotte Bretherton and John Vogler, *The European Union as a Global Actor* (London, New York: Routledge, 1999), p. 102.

criticism referred to the fact that, “an agreement on internal burden sharing should be required at the time of ratifying the protocol, and not at such a late stage.”⁷⁴

b) Emission Trading: -

Emission Trading is one of the issues under the flexibility mechanism that attracts considerable debate in the international climate change negotiations. “Emission Trading is an attempt to create a market where none exists”.⁷⁵ Under this system, countries with economies in transition are allowed to emit a certain level against a target set by the protocol. Those countries that can reduce their emission levels cheaply can sell their rights to emit to those countries facing higher costs. Such emission trading within firm was successful in the United States. Hence, in the negotiations heading to the Kyoto protocol, the US wanted the introduction of such trade among parties as early as possible and “without specified conditions for its applications”.⁷⁶ The US’s proposal was not favoured by the EU. The EU opposed trading not as a whole but held the view that such trading should be accompanied by adequate guidelines and compliance to avoid any misuse of any such permit. The EU is particularly opposed to a “Trading regime that would allow the use of banked emission reductions accumulated between 1990 and the period for which commitments apply”.⁷⁷ This is also known as “hot air” emissions

⁷⁴ Sebastian Oberthur and Hermann E Ott, *The Kyoto Protocol: An International Climate Policy for the 21st Century*, n. 49, p. 144.

⁷⁵ Pamela M. Barnes and Ian. G. Barnes, *Environmental Policy in the European Union*, n. 21, p. 138

⁷⁶ Gareth Porter, et. al., *Global Environmental Politics*, n. 62, p. 119.

⁷⁷ European Commission, “Business and Sustainable Development”, A speech by Ritt Bjerregaard, Commissioner responsible for Environment, to the EU committees of the American Chamber of Commerce in Belgium, Brussels, 25th November 1997, SPEECH/97/260, p. 3.

trading. In other words if such trade in “hot air” is allowed freely “there will be no real emission reduction”⁷⁸ for it will enable these countries a “15 per cent cut without any action”.⁷⁹ Thus, what the EU proposed for a limit on ‘hot air’ sale is mainly for environmental reasons and to benefit the climate.

ii) Constraints to EU Leadership Role

When the final process to the Kyoto protocol negotiation came, it was clear that EU leadership was faltering. It lacked leadership role in the pre-Kyoto because of several constraints. First, in the field of environment the European Commission did not have the exclusive competence to negotiate on behalf of Member States, but it was the Member States, which negotiated for an agreement among themselves prior to international negotiations. This kind of bargaining on most occasions had resulted in a ‘lowest common denominator’ agreement, thus undermining its leadership role.⁸⁰ Secondly, in negotiating a climate change policy “national predicaments and related interests differ considerably between the EU Member States”.⁸¹ In economic terms, Member States’ industrial structures differ between states, so do their respective levels of economic development. Economic interests, therefore, hinder, if not at all, political agreement on climate change policy. The case of CO₂ /energy tax is one such example.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ For more details on the role and legal competence in EU climate change policy see Richard Macrory and Martin Hession’s, “The European Community and Climate Change: The Role of Law and Legal Competence”, in Tim O’Riordan and Jill Jager, eds., *Politics of Climate Change: A European Perspective* (London and New York: Routledge, 1996), pp. 107-54.

⁸¹ Gunnar Sjostedt, “The EU Negotiates Climate Change: External Performance and Internal Structural Change,” n. 3, p. 240.

Nevertheless, despite its failure as a leader in the international climate change negotiation, it was due to EU and its Member States' persistence and determination that all was not lost in the negotiating process. It was because of EU pressure that the target was accepted, though not as it had wanted. In all the EU had performed a partial leadership role in an area where the US "perhaps had a leadership capability but had not wanted to use it to move the climate negotiations forward".⁸²

iii) Post-Kyoto

All parties to the Convention adopted the Kyoto protocol unanimously in 1995. The protocol, though lacks a complete policy guidelines and mechanism, yet it marked an important milestone in the history of the world. It is for the first time, apart from trade, that the EU stands together in the international arena. Though it played a partial leadership role at the Kyoto process, the EU once again took the lead role in the aftermath of the Kyoto Protocol, thus transforming itself from the 'partial leader' to the 'potential leader' in negotiating climate change.

Soon after signing of the Kyoto protocol, the EU has indicated that there is still a long way to go to resolve the unfinished business of the Kyoto. Among them the 'flexibility mechanism' introduced in the Kyoto protocol, which aimed at reducing the overall cost of greenhouse gases, is one on the agenda. Four years have passed since the signing of the Kyoto protocol. What is the stand of the European Union on the Kyoto

⁸² Ibid., p. 250.

protocol and its ratification?. The answer to this can be best summed up at the latest EU position on the Kyoto protocol.

Starting soon after the Kyoto protocol was signed in 1997, the EU, under the British Presidency, agreed in 1998 for a burden sharing agreement within the Union, taking into account the likely impact on each Member State. Apart from this, the EU had developed internal policies and mechanisms to tackle climate change, ranging from the renewable energy to monitoring mechanism and financial assistance to cohesion countries, and also an agreement with private parties in tackling the CO₂ emission.

At the international level, the EU took the lead in maintaining pressure on the US and its “umbrella group” to ensure that the Kyoto Mechanism are implemented effectively at the domestic level. Thus it proposes in 1999 a “Cap” formula⁸³ to ensure that the purchase of emission allowances abroad remains “supplemental” to domestic action.⁸⁴ Moreover at the Conference Of Parties 4 (COP) that was held in Buenos Aires in 1998, the EU had also agreed to transfer of technology and financial mechanism under the Global Environmental Facility to finance “vulnerable” developing countries to designed measures in adapting to climate change.⁸⁵

Though a few issues were resolved in the COP4, others were not. The Hague summit of November 2000 witnessed another failure of climate change negotiations, again between the United States and the European Union. Here also the critical issues are

⁸³ ‘Caps’ are upper limit to be placed on International Trading as a percentage of total reductions.

⁸⁴ Hermann E. Ott and Sebastian Oberthur, “Breaking the Impasse: Forging an EU Leadership Initiative on Climate Change” (A policy paper), <http://www.wupperinst.org>, p. 16.

⁸⁵ Ibid., p. 17.

Compliance, the Kyoto Mechanisms, Sinks and the Mechanism for financial technology and transfer to developing countries. The summit also witnessed the differences between Member States when a dramatic picture of John Prescott, UK Deputy Prime Minister, storming out of the negotiations was flashed in the media. He blamed the collapse on “Squabbling European colleagues and the vacillations of the French Presidency of the EU”.⁸⁶ However, others argued that Prescott had made too many concessions to the demand of the US and other non-EU-OECD-countries in the broader ‘umbrella group’ on issues such as carbon sinks and supplementary.⁸⁷ The US proposal of 1 August 2000, which maintained that countries should get credits for sinks from all managed land, was strongly opposed by the EU and G-77 which regarded such a proposal as “unbalanced and completely unacceptable, and calling it a full-frontal assault on the environmental credibility and integrity of the (Kyoto) protocol.”⁸⁸ In the end nothing came out of the negotiation and the Hague summit was concluded without any agreement. The failure of the Hague summit was attributed to various factors. It was first blamed that Jan Pronk, the Dutch environment minister, who presided over the conference lacked a leadership role and abandoned the legal text which had been working for over two year, in favour of a twelve pages of bullet points of proposed political agreement. Secondly, there was a lack of frank, open discussion between the US and EU. Thirdly, the EU performance was weak, negotiations between its Member States not only took considerable amount of

⁸⁶ Michael Grubb and Farhana Yamin, “Climatic Collapse at the Hague: What Happened, Why, and Where Do We Go From Here?”, *International Affairs* (London), vol. 75, no. 4, October 1999, p. 264.

⁸⁷ Ibid. In the COP4 the US and its allies try to link both the Treatment of Forest Sinks and the inclusion of further categories to a special report by the IPCC to be adopted after the year 2000

⁸⁸ “EU rejects Compromise Climate Deal”, www.cnn.com. November24, 2000.

time, but, at times, individual Member States involved themselves in negotiating with a third party. Thus when a full EU Ministers sit down for an agreement, the deal falls apart, and negotiation has to start afresh. It is, therefore, said that EU negotiated not as a team but as a bloc or group, each representing its own interest.⁸⁹ Fourthly, the uncompromising position of the EU to controversial issues, such as compliance mechanism, led the Summit to total failure and to end up with no agreement on issues like finance, technology transfer, adoption and compliance.

However, it would be unfair to blame the EU for everything. In fact, what the EU did was that it stood on its ground. Hence in the Hague it stood firm on its position whether it is 'sink' or 'necessary compliance'. Its position was to "take it or leave it". Following the Hague summit was the announcement of the new US President George W. Bush's administration to "reject and abandon the Kyoto treaty".⁹⁰ The EU reaction to this was reflected in the British minister of environment, Michael Meacher's remark that it is "not simply an environmental issue but an issue of transatlantic and indeed global foreign policy"⁹¹ and decided to push ahead for the early ratification of the protocol even if it meant without the US.

Notwithstanding such developments and differences, the Sixth Conference of Parties, under the EU leadership, resumed the session in Bonn from 16 to 27 July 2001 and adopted the "Bonn Agreement to the Kyoto protocol". At the Conference, a

⁸⁹ Michael Grubb and Farhana Yamin, "Climatic Collapse at the Hague: What Happened, Why, and Where Do We Go From Here?", n. 86, p. 274.

⁹⁰ "Business Lobby Behind Kyoto Decision", *The Hindu* (Chennai), March 30, 2001, p. 16.

⁹¹ "Britain Regrets US Move", *The Hindu* (Chennai), March 30, 2001, p. 16.

compromise was reached and detailed issues were transferred to the Seventh Conference of Parties, to be held in Marrakesh, Morocco, in November 2001. Under the Bonn agreement, the European Union “did not succeed to impose a quantitative cap on the use of the economic instruments namely emission trading, joint implementation and the clean development mechanism”,⁹² but it was able to push for an agreement to the establishment of the Compliance Committee which will supervise over the compliance procedure. Thus, the Bonn agreement facilitates the progress of the early ratification of the Kyoto Protocol by the EU, Central and Eastern Europe, Russia and others even if the US stays away. Thus, in the history of climate change negotiation, for the first time, the European Union has “taken a leadership position on vital global issue that was deserted by the United States”,⁹³ and that too with a positive framework for the next level of negotiation.

Moving ahead with a positive result, the Seventh Conference of Parties in Marrakesh, under the EU leadership, “ended with an agreement on operational rules for climate change”.⁹⁴ The Conference also agreed upon the package to include “decisions on compliance rules, the so-called ‘flexible mechanism’ and monitoring and reporting obligation for parties”⁹⁵ and hoped that timely ratification of the Kyoto protocol by 2002 by at least 55 parties will be achieved. The EU, on its part has indicated that all its member states and accession countries will be ready to ratify the Kyoto protocol by 2002 even if the US and others stay away.

⁹² Hermann E Ott, “The Bonn Agreement to the Kyoto Protocol: Paving the Way of Ratification”, Wuppertal Institute for Climate, Environment and Energy, <http://www.wupperinst.org>.

⁹³ Ibid.

⁹⁴ EC Commission’ “EU Hails Marrakesh Agreement on Operational Rules to Combat Climate Change”, Press Release (Brussels), 10 November, 2001, <http://europa.eu.int>

⁹⁵ Ibid.

Conclusion

Climate change negotiation has been one of the most intricate negotiation in which the EU played a leadership role in reaching an agreement. However, the EU, which wanted to play a leadership role, was hampered by many institutional factors, which are internal and external, in the early part of the negotiation. Moreover, such constraints to EU leadership was undermined or neutralised by the adamant attitude and opposition of the US to any proposal made by the EU. It was only when the US stayed away that EU leadership role took a center stage. However, for the Kyoto protocol to be real, much is still to be done. Ratification by parties, especially industrialized countries, will see the Kyoto protocol turning into a legal text. It is also important that meaningful participation of developing countries, particularly major countries like China, Brazil and India, in reducing greenhouse gases emission is ensured.

The European Union, therefore, has to take the lead on this issue. First, internally within the Union, it should reach an agreement among the member states regarding any climate change policy, be it CO₂/energy tax, monitoring mechanism or compliance. It should see that member states comply with the Union Decision or Directives. Secondly, the EU should get countries with economies in transition - Japan and Russia - to agree on the early ratification of the protocol. Lastly, developing countries should be involved in policy making, apart from the financial mechanism and transfer of technology, and that

the Global Environmental Facility, as agreed should be strengthened so as to be enable the developing countries to adapt to the impact of climate change.

CHAPTER 5

CONCLUSION: PROBLEMS AND PROSPECTS

Environmental policy of the EU, as evolved in the 1970s, was largely a direct response to the unfolding global environmental discourses and movements. Thus, the first two environmental action programmes dealt mainly with the issues of general environmental problems and the management of natural resources, as indicated in the Stockholm Conference. However, in the 1980s, as the Union expanded, the need to integrate environment with the function of the internal market was seen necessary to avoid any distortion of trade which may arise out of Member States' (mis)interpretation of EU laws on the one hand, and their national laws on the other. Moreover, the need to integrate environment policy into other sectors of the economy was emphasised. Hence, from the Third EAP onwards integration of environmental policy with other policies was aimed at achieving the objectives of sustainability as laid down in the 'Brundtland Report'

Environmental policy's objectives and competence, as laid down in the action programmes, was further boosted with the introduction of an environmental provision in the Single European Act of 1987. The new treaty had either amended or added new articles to the Treaty of Rome to accommodate environmental provisions. In the SEA, decision-making in some environmental areas were to be taken through the Qualified Majority Voting rather than the previous Unanimity voting. Likewise, the concept of

'subsidiarity' was adopted to enable better action at the Community level, when, it is more difficult to reach at the national level individually. Thus, in the 1980s a higher level of commitment by the Community in strengthening its environmental policy within the Community was initiated.

Development at the international level and at the EU in the forms of the Rio Summit and the Maastricht Treaty respectively, greatly influenced the outcome of the EU environmental policy in the 1990s. The Rio Summit in general influenced the outcome of the Fifth EAP-'Towards Sustainability'. Similarly, the new Maastricht Treaty, which came out at the time of the Rio Summit, endorsed the Summit's approach for sustainable development. The new treaty, thus, added a new dimension to the EU competence in the area of environmental policy, both at the EU level and at the international level. The treaty, first of all overcame some (if not all) of the most frequent criticism, democratic deficiency, by extending the role of the European Parliament from co-operation to co-decision procedures in some of the areas concerning the environment. Secondly, and most importantly, the new treaty endorsed the environmental action programmes as the Union's policy objectives. Therefore, the treaty, together with the new Fifth EAP, recognised the role of the EU in the future global negotiation on environmental problems. The recently announced Sixth EAP further strengthened this newfound role of the EU, thus allowing the EU to take a solid stand in the international negotiation arena in negotiating the issues of climate change/global warming and trade-environment, amongst others. Environmental policy in the EU has, therefore, evolved from a general policy framework to deal with the overall problems to a more precise and sectoral target. It has

also evolved to deal not only with trans-national environmental problems within the Union, but also with larger problems of a global scale.

Progress made:

In analysing the progress of the EU environmental policy, the reports of the European Environmental Agency (EEA) (see table 1, 2, 3, 4 and 14 in Appendix) and the European Commission can be used as a base for such analysis.

In 1995, the EEA published a report on the state of the environment in Europe. The findings of the report confirmed the poor quality of Europe's environment.¹ The report observed that, "although environmental improvements were being achieved in cases such as emissions control, these actions were often insufficient on their own to achieve recovery and improvement of natural resources and environmental quality".² The report in its assessment of the air, water quality and waste generation indicated that in the sector of air quality, the content of sulphur dioxide in some cities still exceeded the World Health Organization guidelines. Water, it said, was overexploited of its groundwater, especially in the urban and industrial areas, and that, the nitrate level in river water continued to rise. Likewise, waste generation was increasing at a rate of three per cent per year, and that transport still constituted as a major source of carbon dioxide, nitrogen oxide and carbon monoxide emissions.³

¹ Keith Clement, *Economic Development and Environmental Gain: A European Environmental Integration and Regional Competitiveness* (London: Earthscan Publications, 2000), p. 40.

² Ibid.

³ Ibid.

The second report of the EEA was published in 1998 as *Europe's Environment: The Second Assessment*. The report noted: "While at the national level there has been some progress in developing policies that integrate environmental requirements into decision-making, there is a long way to go in implementing these on a pan-European scale".⁴ Such concern in the report was mainly due to the fact that "policy measures taken had not yet produced significant improvement in the state of the environment overall".⁵ For example, between 1990 and 1995 waste generation increased by ten percent.⁶ Emissions reduction from transport and agriculture has been less successful, thus upsetting the Union's emission reduction target.⁷ Similarly, groundwater quality is still affected by high-level concentration of nitrate from agriculture.⁸ The report also made it clear that intense economic activity has led to a severe impact on the environment, and that, measures such as end-of-pipe action will be unable to cope with increasing infrastructure development, production and consumption. Therefore, it argues that what is needed is a proactive approach of integrating the various economic sectors with environmental policy.

Environment in the European Union at the Turn of the Century is another report issued by the EEA in 1999. The main findings of this report indicate that, "general

⁴ European Environmental Agency, *Europe's Environment: The Second Assessment: An Overview* (Luxembourg: Office for official Publication of the European Communities, 1998), p. 17.

⁵ Keith Clement, *Economic Development and Environmental Gain: A European Environmental Integration and Regional Competitiveness*, n. 1, p. 41.

⁶ European Environmental Agency, *Europe's Environment: The Second Assessment: An Overview*, n. 4, p. 28.

⁷ *Ibid.*, p. 8.

⁸ *Ibid.*, p. 11.

environmental quality in the EU is not recovering significantly”⁹. Besides, the report also expressed concern with the growing pressure on the environment as result of increase in transport and tourism. It doubted the EU target to reduce greenhouse gases emissions by eight percent between 1990 and 2008-2012, and predicted that an increase of six percent in greenhouse gases emissions was likely.¹⁰

Apart from this, the report indicated that, sustainable development alone cannot guarantee successful environmental policy, and that, “economic sectors will have to carry their part of the responsibility for bringing about sustainability”.¹¹ Therefore, an integration of the environment into other economic sectors such as transport, energy, agriculture, household consumption and tourism was needed. As of 1998, the report concluded that, the “process of integration of the environment into sectoral decision making and policies is real, but with a long way still to go”.¹² Lastly, the EEA report presented two major concerns; first is the lack of data in some environmental areas such as soil, biodiversity, pesticides in groundwater, and to uncertainties about future socio-economic developments.¹³ Secondly, it concerns with the pattern of development adopted by the accession countries, and said that, if they followed the EU development path “there is a danger that their environment will suffer”.¹⁴

⁹ European Environment Agency, *Environment in the European Union at the Turn of the Century* (Copenhagen: EEA, 1999), p. 31.

¹⁰ Ibid., p. 32.

¹¹ Ibid., p. 31.

¹² Ibid., p. 33.

¹³ Ibid.

¹⁴ Ibid., p. 34.

Europe's Environment: What Directions for the Future? The Global Assessment of the European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development, 'Towards Sustainability', is a Communication from the EC Commission, in 1999, on the performance of the Fifth EAP. The Communication, while agreeing with the EEA report, is also concerned with the success level of the Fifth EAP. According to it, "the commitment by other sectors and by Member States to the programme is partial, and the patterns of production and the consumption in our countries prevent us from achieving a clean and safe environment and protecting the world's natural resources".¹⁵ Focusing on each area of the environment, the Commission admitted that while progress in some areas like water, and climate change is noticeable, in other areas such as waste, chemicals, genetically modified organism, soil, and management of natural resources, it noted, still remained at risk.

The Commission also expressed its concern on the lack of quantifiable targets and monitoring mechanism and the non-implementation and enforcement of the Fifth EAP in particular, and observed that, "implementation of the Community law on the environment was often unsatisfactory".¹⁶ The Commission noted that in 1998 it registered some 600 breaches of the Community law. This was based on the complaints from the public,

¹⁵ EC Commission, *Europe's Environment: What Directions for the Future? The Global Assessment of the European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development, 'Towards Sustainability'* (Brussels: COM (1999) 543 final), p. 3.

¹⁶ *Ibid.*, p. 16.

parliamentary questions and cases detected by the Commission.¹⁷ It even highlighted the report published in the 'Euroborometer' study, showing a high degree of public concern about the degradation of the environment, where seventy percent of the respondents believed, "that urgent action is needed".¹⁸ Besides, the Commission was of the opinion that further efforts were needed for a clean and safe environment that will ensure a high quality of life, and, at the same time, a sustainable management of global resources.¹⁹

Implementing EU environmental legislation into national law has been one of the major problems, which hampered the progress of the Union's environmental policy. It is to be noted, from the EEA and the Commission's reports, that whatever progress that has been made, it was confined only to the areas that were less conflicting to Member States' national interest or that affected sovereignty at the least. Thus, when areas such as energy, transport, and agriculture are involved, progress is disrupted by lack of agreement or through non-implementation by Member States.

Problems:

Environmental policy in the European Union, notwithstanding its successes, has been hampered by various problems such as differences between Member States on the issue of environmental protection; horizontal and vertical problems of integration between systems organised on functional lines (between directorates within the European

¹⁷ Ibid.

¹⁸ Ibid., p. 5.

¹⁹ Ibid.

Commission); and systems organised in terms of scale (between national and European environmental policies) respectively.

One of the major hurdles to the EU environmental policy-making has been the problem of consistency between Member States. According to Bretherton and Vogler, “this is hardly surprising given their differing locations, degree of modernisation and varying administrative traditions”.²⁰ Moreover, they argued that this inconsistency could perhaps be that “Member States at states and similar levels of developments have fundamental policy differences”.²¹ In this, the case of British-German disagreement over the requirements and approaches to pollution control is one such example. However, while this to some extent might hold true, it is also important to note that within the EU there has been a “North-South” split over environmental measures. While Germany, the Netherlands and Denmark are ahead in supporting environmental friendly amendments to the EEC treaty, as was the case of SEA and Maastricht Treaty, and support stringent standards and other environment friendly measures to be taken in order to improve the quality of the environment; Greece, Italy, Portugal and Spain are reluctant to such stringent measures, and favour somewhat weaker measures. On the other side is Britain and France which usually fall somewhere in between.²² In the case of large-scale combustion Directives, while Denmark and Germany favour more stringent measures, Britain and Italy are opposed to it.

²⁰ Charlotte Bretherton and John Vogler, *The European Union as a Global Actor* (London: Routledge, 1999), p. 83.

²¹ *Ibid.*

²² Richard H. Steinberg, “Trade-Environment Negotiations in the EU, NAFTA and WTO: Regional Trajectories or Rule Development, *American Journal of International Law* (Lancaster), vol. 91, no. 2, April 1997, p. 258.

i) Non-implementation:

Flowing directly from the above differences between Member States is a direct impact on the non-implementation of EU environmental Directives and Regulations by Member States. As of 1995, the Commission's Annual Report on Monitoring Mechanism and the Application of the Community Law indicated that Member States regularly failed to implement and transpose EU Directives and Regulations into their national law in totality. While Belgium, Finland, Italy, Portugal, Spain and the UK were able to implement only less than 90 percent of the total measures notified, Denmark and the Netherlands topped the list with 98 percent. Similarly, the 1997 report showed that except for Belgium (with 100 percent) and the Netherlands (99 percent), all the others remained below the expected level in applying notified Directives into national law (see table 1 in Appendix)

Reasons of non-Implementation of EU Directives and Regulations have been attributed to several factors. First, it is often argued that the EU is engaged in a two-level, and often three-level, process of policy and decision-making.²³ For example, Directives and Regulations agreed at the Union level have to be negotiated, changed or introduce additional legislation to suit national or even local policies. This problem is most active in Member States that have federal structure of governance. For instance, in Belgium, regional government within the federation are required to implement EU legislation separately. Similarly, in Germany the problems occurs when sixteen pieces of legislation

²³ Charlotte Bretherton and John Vogler, *The European Union as a Global Actor*, n. 20, p. 107.

may be necessary to put one EU Directives into place - one each for the *Lander*.²⁴ Secondly, lack of legal competence of various institutions, which deal directly with the environment, is another reason. **The European Commission**, the main body which formulates policy, lacks any legal status in implementing policies. Its role is just of a policy framer and initiator, and in most cases of international environmental negotiations its role is relegated to the backstage. **The European Parliament**, which is a direct representative of the EU citizens, is crippled by its own role which is no more than an observer. In the decision-making, its power are limited only to co-decision procedures, that too are limited to a few areas of the environment. Similarly, the **EEA**, as an independent body to monitor the state and progress of environmental policy in the EU lacks enforcement power - its reports are non-enforceable and are not mandatory for the Member States to implement. Thirdly, though decision-making in environmental areas has been changed from unanimity voting to qualified majority voting (QMV), the process in arriving at a majority voting is cumbersome and difficult as before. Moreover, when it comes to environmental policies not all areas are covered in the QMV. Therefore, in areas such as carbon/energy tax or general environmental taxes, which is detrimental in achieving an environmental target, unanimity voting still operates.

²⁴ Pamela M. Barnes and Ian G. Barnes, *Environmental Policy in the European Union* (Cheltenham: Edward Elgar, 1999), p. 106.

ii) Integration gap:

Besides trade, perhaps there is no other policy which is so complex, yet important as that of the environmental policy. The action programmes, Directives and Regulations issued, indicated the degree of importance given to environmental protection. This is more relevant from the 90s onwards when the Union is committed towards sustainability and at the same time towards an effective international environmental regime. The EU has, therefore, evolved different mechanisms and policies to achieve its objectives. However, while some of these directives and regulations are successful, other lacks result. Thus, leaving the EU with many challenges to face. First among them is the approach of integration. Traditionally a 'top-down approach' has been one of the EU's environmental approaches. Such system directly flows from the supranational to national body where formal power and legal authority of the supranational body is supposed to have an impact on the national agencies. This kind of approach needs a base to support, which may be received from the 'horizontal integration' where local bodies within the system, national or supra-national, play a role in reviewing and regulating the environmental performance. However, such approach appears to be in a fluid. The legality of the supranational body, i.e., the Commission, does not have any legal obligation or power over national governments. Hence the Commission and its agencies are crippled by the lack of legal power and competence to punish any violation or non-implementation of Directives and Regulations by Member States.

Integrating national policies with that of the Union has been one of the major persistent problems in the EU environmental policy-making. As mentioned above,

Member States shared a different geographical, social, cultural and economic history. These differences thus pose a barrier to the speedy integration of national policies with that of the Union. Such differences are witnessed in the negotiating process within the Union. Though in principle the Council of Ministers negotiate for a common European interest, in reality such negotiations are influenced by national interests. The end result of such negotiation is often a 'lowest common denominator', thus lowering, or at times, ignoring the degree of intended action.

Without discarding the 'top-down approach' entirely, what is needed, is the inclusion of a 'bottom-up approach'. This approach will, therefore, overcome the deficiency of transparency for it allows an effective mechanism and application of environmental objectives. Though the approach lacks formal power when compared to the 'top-down approach', it is more effective because it relies more on 'influence'. Such influence is derived from the participation of various agencies of a civil society at various stages. This approach is more relevant in the modern context of sustainable development for it forms an important integrated network, where involvement of citizen at the grassroots level; active participation of NGOs, private parties and stakeholders; and dissemination of information is necessary. Such an approach will, therefore, dispel the criticism of 'democratic deficit' that the Union faced.

Secondly, the environmental policy like other policies is characterised by incrementalism, thereby, the policy needed to undertake results in a step-by-step

movement. This policy style has led to negative policy making, where the process of change remains slow when the demand is for radically new policy or policies.²⁵

Thirdly, to further complicate this, is the shared and overlapping competences to which environmental policy is subjected. Environment, as a policy area, covers almost all the other areas of EU policies, such as agriculture, energy, industry, trade, transport and tourism amongst others. On a few occasions, a single Directive on a particular issue needs to be taken into consideration on the impact of various other sectors, thus overlapping the competence of DG for environment with that of other DGs. Likewise, in international agreement, the Commission, the Member States and at times, the DGs, are involved and they operate at a parallel level, each according to its own convenience for a particular agreement.

The overlapping of shared competence may therefore, be extensive and varied as to make the exercise of policy making extremely complex and difficult.²⁶ Such complexity is often agreed to have resulted from various bargained compromises between ranges of national interests. Therefore, while on one hand, Member States sought to restrain the expansion of Community's competence, on the other, they try to advance green legislation and at the same time ensure that common policies do not provide a brake on progressive national developments.²⁷

²⁵ Ibid.

²⁶ See Richard Macrory and Martin Hession's "The European Community and Climate Change: The Role of Law and Legal Competence", in Tim O' Riordan and Jill Jager, eds., *The Politics of Climate Change: A European Perspective* (London: Routledge, 1996), pp. 107-54.

²⁷ See Charlotte Bretherton and John Vogler, *The European Union as a Global Actor*, n. 20, p. 83.

Fourthly, integration of the Union's environmental policy with other policies has been one of the major emphasis of the Fourth, Fifth and Sixth EAPs. So are the EEA and Commission's recommendations. However, such integration has been rendered difficult by internal differences between the various institutions within the EU. Even within the Commission, differences between the Directorate responsible for environment and Directorate responsible for agriculture, external affairs, internal market and trade, and taxation are inevitable.

Lastly, taking into consideration all the policy-making decisions, the EU lacks the most important machinery of a democratic institution, i.e. accountability. In EU policy-making and governance no one is sure who is responsible to whom. The lack of transparency in decision-making and the absence of a collective responsibility mechanism, with most of the decisions shrouded in secrecy, have been blamed for the 'democratic deficit' within the functioning of the EU.²⁸ Thus, failure of any policy – as in the Rio Summit - is mired in controversy and mud slinging, with the Commission Member States and even between institutions or directorates, blaming one another.

iii) Enlargement:

Another challenge that the Union is faced with is the current enlargement debate. As the Union expands, environmental pressure will increase, taking into account the nature and history of environmental protection in these accession countries. Though

²⁸ See, for example, Susan Baker, "The Evolution of European Union Environmental Policy: From Growth to Sustainable Development", in Susan Baker, et al., eds., *The Politics of Sustainable Development: Theory, Policy and Practice Within the European Union* (London: Routledge, 1997), p. 99.

financial assistances in the form of structural fund are provided to these countries to clean up the environment, these countries are faced with the dilemma of transition between environmental protection and rapid economic growth of the market-driven economy, both of which are the criteria for membership to the Union as laid down in the *acquis communautaire*. Moreover, for these countries, environmental protection requirements as laid down in the accession agreement is considered to be expensive and a barrier to early membership to the EU.

The EU, therefore, has a bigger role to play in helping these countries to join the Union at the earliest and at the same time conform to environmental laws. Economic incentives on voluntary agreement and economic instruments such as eco-taxes and clean technologies investment should be encouraged. This will in turn improve not only these countries' environment but also that of Europe in general.

iv) Subsidiarity Principle:

The last and perhaps the most controversial, yet important challenge to the EU's environmental policy is the application of the principle of 'subsidiarity' (chapter 2). Subsidiarity principle has been interpreted mostly in two ways. One interpretation is concerned with the fear of national government over the loss of traditional sovereignty, power and autonomy of a nation state in dealing with its citizen and issues within its territorial boundary. The second deals with the question of effectiveness in relation to the environmental problems, which, of late, has been regarded as a trans-national problem.

Therefore, in such a situation, it is argued that the principle of subsidiarity “entails an alternative to traditional sovereignty as an approach to the delineation of political authority”²⁹ and as a “political principle to do with the allocation of power to the appropriate level of governance”.³⁰ Such subsidiarity principle, as often agreed, will neither replace “the ordering principles of life” nor allow sovereignty to disappear but rather provide an “imaginable alternative to sovereignty”.³¹ Thus, to avoid this controversial debate over the principle, the Amsterdam Treaty provides an ample space and scope for interpretation when it states that the ‘Community measure should leave as much scope as possible for national decisions, consistent with the aim of the measure and observing the requirements of the treaty’.³²

Some reflections

Of all environmental policies that exist today, whether regional or global, the EU’s environmental policy is the most developed. However, when analysed deeply, environmental policy as of today, serves the purpose of the Union more sufficiently. Self-interest, whether it is of the member states or of the Union, dominates the policy formulation in the Union. Therefore, sectors that affect the economy, positively or negatively, are taken more seriously than those sectors which have less importance. Thus,

²⁹ Karen T. Litfin, “The Greening of Sovereignty: An Introduction”, in Karen T. Litfin, ed., *The Greening of Sovereignty in World Politics* (Massachusetts: The MIT Press, 1998), p. 13.

³⁰ Pamela M. Barnes and Ian G. Barnes, *Environmental Policy in the European Union*, n. 24, p. 302.

³¹ Joseph Henri Jupille, “Sovereignty, Environment, and Subsidiarity in the European Union”, in Karen T. Litfin, *The Greening of Sovereignty in World Politics*, n. 29, p. 245.

³² As quoted in Pamela M. Barnes and Ian G. Barnes, *Environmental Policy in the European Union*, n. 24, p. 305.

sectors as energy, manufacturing industries, transport and tourism, are given more emphasis. Energy, which is controversial, also attracted considerable resistance from member states. Therefore, reforms are inevitable because energy is considered to be the main lifeline for economic growth. By reforming this sector, European industries will avail lower energy cost, hence, making them more competitive in world market. Manufacturing industries as targeted by the Union's environmental policy is to achieve an overall environmental conformity by this sector. As laid down by EU Directives and Regulation, manufacturing industries are required to conform to the EMAS, Environmental Impact Assessment, Eco-label, etc. With the introduction of such directives and regulations, the Union aimed at: i) achieving environmental standard at the source; ii) making EU's products more competitive in world market - this also served as a protection to EU market against products which lacks EU's specific norms and iii) promoting the eco-industries. According to the EC Commission's White Paper, published in 1993, eco-industries will be the key to future competitive advantage. The paper, also expected the growth of eco-industries to ECU 174 billion by 2000 (see table 8, 9 and 10). Similarly, ECOTEC, a research consultant, forecasted in 1995, that an increase of 266,000 jobs in eco-industries between 1992 and 2000 was expected.³³ Tourism is another sector where the Union sought to maximise, this is more important especially, when, along with better incomes, standard of living has improved in most EU countries. Thus, tourism provides an important opportunity for employment as well as economic

³³ See, Christopher M. Dent, *The European Economy: The Global Context* (London: Routledge, 1999), pp. 415-17.

growth. Transport, which accounted as a major source for pollution, is also important for both commercial and citizens movement. Reforms in this sector, is therefore, seen necessary to limit emissions of CO₂. Thus, initiative and investment on cleaner technologies was envisaged. This proved to be beneficial to European car manufacturers. Firstly, any car imported to the EU has to conform to “Euro-I, Euro-II and Euro-III emission norm,” which in turn restricts import to EU markets of those foreign cars, which do not comply with EU emission norms. Secondly, such specification will enhance EU market and investment on clean technologies and eco-industries.

It is therefore important to analyse the impact of such policies on non-EU countries. Environmental policies as developed in the EU will affect developing countries more. Firstly, as most of the developing countries lacked the technique and resources to develop clean technologies, they are therefore, dependent on EU manufacturers for such clean technologies. Take the case of the Indian leather industry. Leather products have been India’s major exported items, the ban on the use of PCP by the EU has led Indian leather manufacturers to substitute with Busan 30, which has to be imported mainly from Germany or the United States. Therefore, the beneficiaries here are the chemical industries of Germany and the United States, while the losers will be the Indian chemical industries who will either have to stop manufacturing such chemicals (PCPs) or change their production to other chemicals for which they do not have access to the technology or are otherwise too costly. Therefore adoption to such new technologies apart from being costly, especially in the case of small firms, are not guarantee for profit in the initial years of investment. Though in the long run such investment might bring higher

returns, but what is more concerning is the changing face of technology. Technology as a tool for development, developed at a much faster rate than ever. Technologies which today are considered as eco-friendly, might be replaced by a much more 'eco-friendlier' western-developed technology after a few years. Such development will greatly hamper the developing countries, both in terms of growth and adaptation to such rapid changes.

Secondly, over dependence on western technologies will mean that developing countries will rely more on either loans to purchase environmentally viable technology or 'tied-aid'. In both cases, poor countries are in a disadvantageous position, where, in the first case, debt services will not only upset the firms' (private or public sector) performance but also put undue burden on the consumers. In the latter, 'tied-aid' will benefit the donor countries more, for what is aided is remitted back in the form of purchase of technologies.

Thirdly, with the enlargement of the EU, environmental aid towards other developing countries will be reduced significantly. The Central and Eastern region, which is seen as the major economies for growth of the overall EU economy, is also a region with environmental hazard. This was mainly due to decades of unplanned environmental economies in the communist's years. To enable these countries to join the EU, environmental protection is one of the main criteria. To achieve such environmental conformity, the EU over the years has provided these countries with financial aid and funds in the form of structural fund and PHARE programme. For example, between 2000 and 2006, 3,120 million ECU was made available annually for assistance to these

countries, part of the fund is directed towards environmental protection. Besides this, several countries are provided with subsidies and transitional period on certain products.

The consequence of this policy is a negative impact on other developing countries. Apart from reducing the overall aid to the developing countries, it also acts as a hindrance and is uncompetitive against highly subsidised EU and accession countries' products. Moreover, such policies went against the Organization for Economic Cooperation and Development (OECD) - where most of EU countries are members - concept of "Polluter Pays Principle" (PPP) and even the EU's own PPP, that was adopted in 1975 (in pursuance of the OECD's adopted PPP of 1972), and given a legal status in the SEA of 1987 in Article 25. According to the OECD principle, the polluter has to bear the cost for polluting, and the measures adopted for such measures would not be subsidised. And according to the EU's article, those responsible for pollution have to pay, and that "environmental protection should not in principles depend on policies which rely on grants of aid and place the burden of combating pollution on the community".³⁴ Thus environmental protection in principle was to punish the polluter and deny them any subsidies. However, in practice as mentioned above, the Union has been providing member states and especially the accession countries with aids, grants, and transitional subsidies in order to achieve environmental protection. Such practices by the Union are deemed as protectionism and unfair to trade practices.

³⁴ As quoted in, Charles S. Pearson, "Testing the System: GATT+PPP=?", *Cornell International Law Journal* (New York), vol. 27, no. 3, symposium 1994, p. 506.

Fourthly, when it comes to reforming of such policies that may benefit non-EU countries, EU environmental policy has rather been slow. The Common Agricultural Policy (CAP) is one such example. Reforms for the CAP had been initiated as early as the formation of the EEC, and again in the 1980s to harmonize with the function of the single market. However, such reforms were very slow and attracted considerable opposition from the main agricultural countries such as France and the other Southern Member States, which are mainly agriculturally driven economies. Therefore, reforms, such as reduction of subsidies to farmers were met with great opposition. Moreover, what has been reformed in the CAP are only in those areas which are beneficial to European farmers; ban of organic pesticides was enforced partly to prevent entry of foreign products in the EU market; subsidies and quotas still exist, and quotas provided to foreign products are allotted mostly to markets which either lack consumer or are accompanied with high tariffs.

It is also to be noted that outside the Union, at the international level, the EU's initiative towards financing the global environment has been lukewarm. For instance, at the Rio summit, the EU had committed for ECU 3 billion-aid pledge for Agenda 21. But after the event there was a dispute among member states on the question on how money should be spent; how should it be divided; and over which period.³⁵ Thus the Union itself struggled to meet its promises, a glaring example of inconsistencies between deeds and commitments.

³⁵ Richard Sandbrook, "Down to Earth: Five Years From Rio", *World Today* (London), vol. 53, no. 6, June 1997, p. 164.

Thus, environmental policy in the EU has been influenced by both member states and EU's own interests, which have been more cohesive in those areas that touch the economic lifeline of the Union. This can be explained especially in the 1990s, when, the Union faced an economic recession and slow economic growth. Therefore, to achieve a higher economic growth, trade within the single market has to be strengthened. This in other words means the protection of a single market. Though aimed at protecting the health of the citizen in particular and that of the environment in general, environment policy at the same time, acts as a technical barrier to the spirit of free trade. In the name of sustainable development, developed countries had tried to call for a more open market and restructured economy of developing countries which is sustainable, but at the same time had over the years tried to protect their own industries from developing countries' products which are competitive and cheap.

Prospects:

Nevertheless, notwithstanding the debate, environmental policy as evolved till now has increasingly focussed on the "approximation" of national law to that of the EU law. Measures and directives on environmental effectiveness, reporting and audit have put much more pressure on Member States to comply with EU legislation. The ruling of the ECJ, though carrying not much weight, does have an impact on the functions of EU policy. Therefore, analysing the effect of subsidiarity principle on state's sovereignty, we can conclude that, though sovereignty is not likely to disappear, in the area of

environmental policy, power and authority of the state has clearly been eroded. This is more evident when environmental problems are considered as a trans-national and trans-boundary problem. Therefore, the need to have an international environmental regime both at the regional and global level was strongly felt by the developed and the 'green' countries. It is in the negotiation for such a regime that the rich-developed-green countries set the rules for the regime. In the EU, Germany, during the negotiation of the Maastricht Treaty tried hard and won a stricter provision on environmental protection. It is upon its insistence that the treaty included the "approximation principles" requiring the other members to approximate their national laws with that of the Union. It is on such negotiation that Germany even threatened to withdraw or prevent investment within or outside if other members failed to endorse the environmental provision of the treaty.³⁶ However, future environmental policies in the Union will, to a large extent, depend upon development within the Union. Enlargement, along with institutional reforms, will greatly decide the fate of decision-making in the area of environment. It is to be noted that after the enlargement, the majority of the new members are small and less developed in comparison to Germany, Denmark, or the Netherlands. Therefore, even if decision is to be arrived by a general QMV, it is likely that these new members, along with 'less-green members', will form a bloc to resist any attempt at transferring national sovereignty in key environmental issues to Brussels. As enlargement is at the doorstep, the 'green' Member States are thus lobbying hard for an early EU common policy agreement on the

³⁶ See, Richard H. Steinberg, "Trade-Environment Negotiations in the EU, NAFTA and WTO: Regional Trajectories or Rule Development, *American Journal of International Law* (Lancaster), n. 22, p. 232.

controversial but yet important key issues of carbon/energy tax and general environmental tax. If such attempts succeed, then it is clear that two important results will emerge. First, that the principle of subsidiarity will undermine state's sovereignty and secondly, Member States' role in environmental policy-making will be limited and their role will be no more than a mere enforcer of EU laws.

Moving to the international level, the challenge towards EU is on its ability to perform the leadership role in the initiative for a global environmental regime in climate change and global warming. Its leadership role is more challenging especially when the US has refused to ratify the Kyoto Protocol. Though the Union has indicated its willingness to ratify the treaty even without the US, its challenge will be to convince other developed countries like Japan and the Russian Federation to ratify the protocol. Also developing countries especially Brazil, China, and India, who are the major emitters of greenhouse gases, should be brought along. However, for these developing countries to ratify the Protocol the EU has to develop a mechanism where developing countries' participation in rule-making and financial incentives is acknowledged. Lastly, the EU has to put considerable pressure on the US to ratify the protocol (chapter4).

Similarly, in the trade-environment linkages, the forces of the market will continue to play an important role in the Union's search for sustainable development. However, what is important is that, any policy towards the achievement of sustainable development should not act as a protectionist measure to developing countries. What is needed is that EU market should provide an equal opportunity to developing countries by increasing quotas in potential markets and reducing tariffs to products from developing

countries. Furthermore, the EU though not able to commit to untied financial aid in the initial years of the 1990s, it should take the lead in Global Financial Facility as provided by the Kyoto Mechanism. This should come in the form of untied aid, soft loans with lower interest and long-term payments. Moreover, in the areas of clean technologies, development and assistance opportunity to adopt and joint collaboration should be promoted, for it is only then that developing countries will be able to adapt to new technologies and at the same time promote eco-industries in these countries.

At the international level, such as the WTO and Climate Change negotiations, due representation to developing countries in policy and decision-making should be accommodated. It is only when participation by the developing countries who are affected most by any decision or agreements, that a meaningful multilateral agreement can be arrived at.

APPENDIX

Figure-1: Sectors and themes of the Fifth Environmental Action Programme

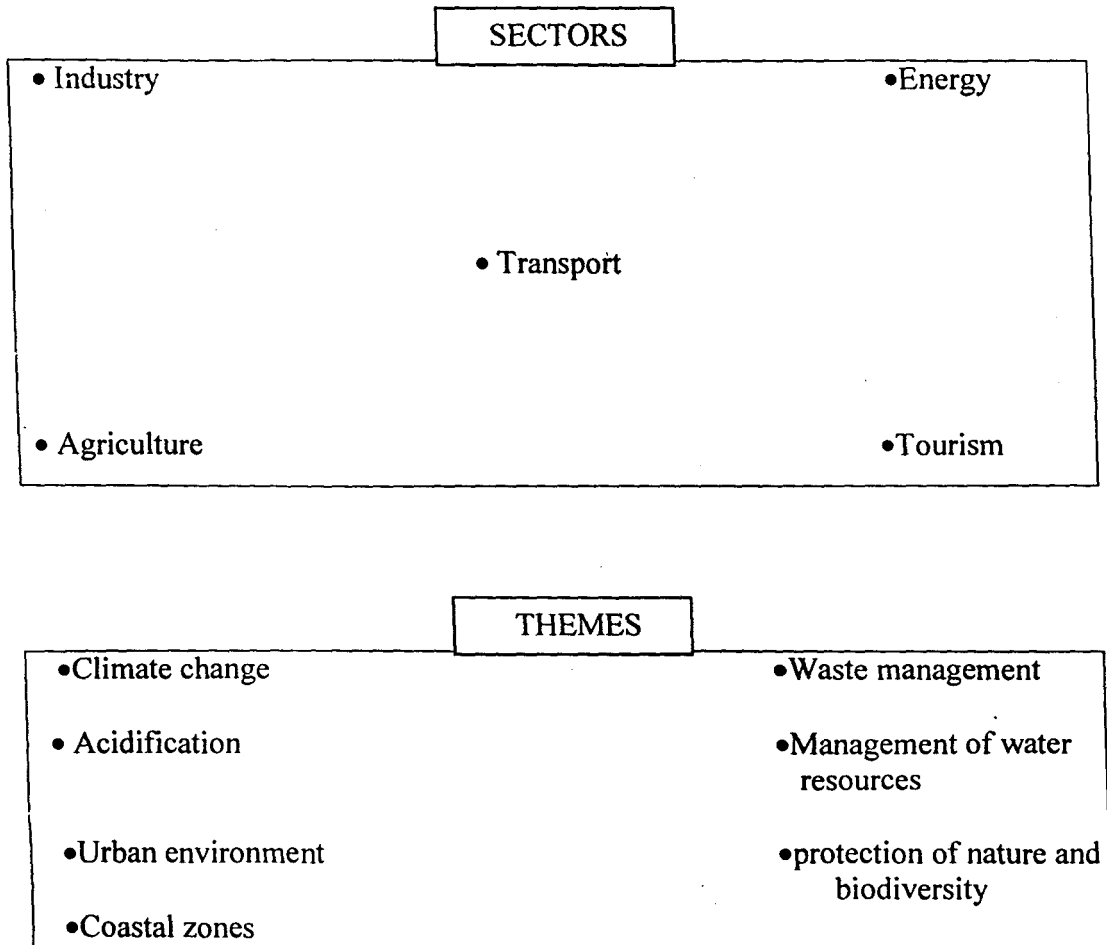
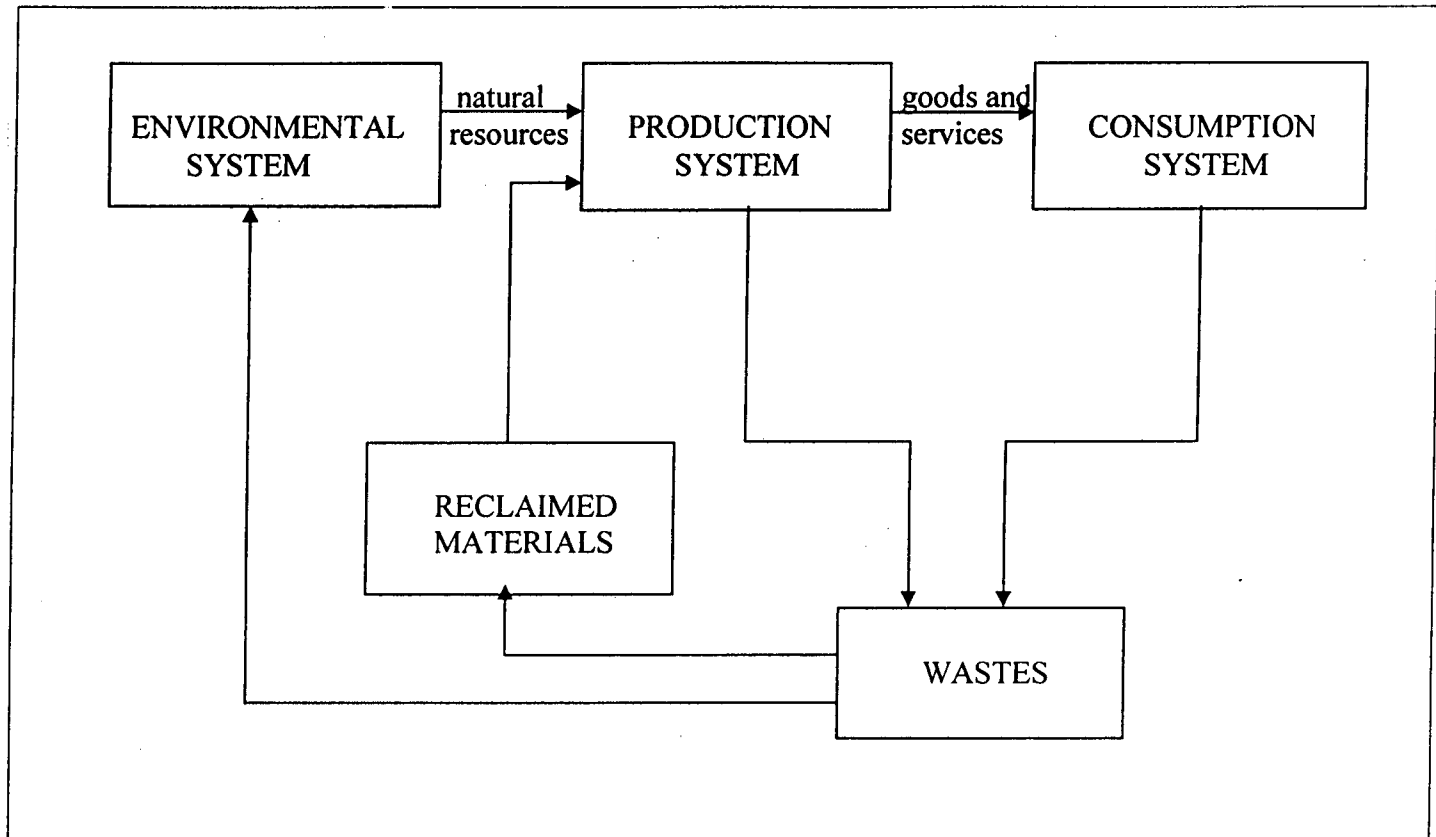


Figure-2: Linkages between environmental and economic systems



Source: As reproduced from Norman Lee, "Environmental Policy" in M.J. Artis and N. Lee, *The Economics Of*

The European Union: Policy And Analysis, (2nd edition) (Oxford: Oxford University Press, 1997), p.240

Figure-3: EU-15 trade in environmental goods

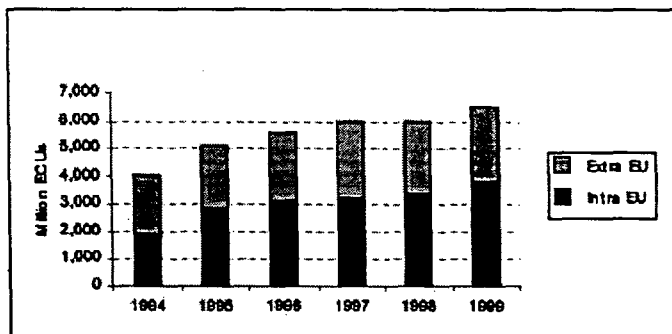
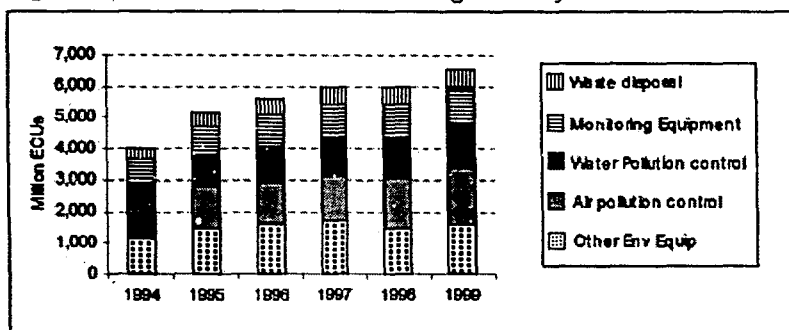


Figure-4: EU-15 trade in environmental goods - by code



Source (Figure 3 & 4): As reproduced from ECOTEC Research and Consulting Limited, "EU Eco-industries: Trade and international markets: A Final Report to DG Environment",

http://europa.eu.int/commenvironment/enveco/industry_employment/ecotech_trade.pdf,

p. 44.

Table-1: Progress in transposition of environmental directives.

Member State	Directives applicable on 31 st December 1997	Directives for which measures have been notified	%
Belgium	139	121	87
Denmark	139	139	100
Germany	141	133	94
Greece	144	140	97
Spain	143	142	99
France	139	133	96
Ireland	139	136	98
Italy	139	135	97
Luxembourg	139	136	98
Netherlands	139	137	99
Austria	135	131	97
Portugal	143	138	97
Finland	137	132	96
Sweden	137	133	97
UK	139	133	96

Source: As reproduced from Pamela M Barnes and Ian G Barnes, *Environmental policy in the European Union* (Cheltenham : Edward Elgar, 1999), p. 100.

Table-2: Summary of progress on environmental problems, 1993-98

Key environmental problems	Progress on policies	Progress on the state of the environment
Climate change	+/-	-
Stratospheric ozone depletion	+	+/-
Acidification	+/-	-
Trosopheric ozone	+/-	-
Chemicals	-	-
Waste	+/-	-
Biodiversity	+/-	+/-
Inland waters	+/-	-
Marine and coastal management	+/-	-
Soil degradation	-	-
Urban environment	+/-	+/-
Technological and natural hazards	+	+

Legend: + Positive development with regard to policies or the state of the environment
 +/- Some policy development but insufficient to deal with the full problem (including geographical coverage), can also indicate uncertain or varying developments in the various areas.
 - little development of policies or unfavourable development of the state of environment, can also indicate continuing pressure or poor state of the environment.

Source: European Environment Agency, *Europe's Environment: The Second*

Assessment: An Overview (Copenhagen: EEA, 1998), P. 6.

Table-3: Progress in achieving key EU environmental targets (index 1990=100) EU 15

	1985 level	1990 level	1995 level	expected level in target year	target	progress?
Greenhouse gases (GHG) and Climate change						
Basket GHG Emissions	-	100	98	106	92 in 2008-2012	☹
CO ₂ emissions	96	100	97	98-102	100 in 2000	☺
Ozone Depleting Substances						
CFC production	160	100	11	appr.0	0 in 1995	☺
HCFCs production	-	100	108	appr.0	0 in 2025	☺
Acidification						
SO ₂ emissions	119	100	65	53* 29	60 in 2000 16 in 2010**	☺ ☹
NO _x emissions	95	100	89	81* 55	70 in 2000 45 in 2010	☹ ☹
Non-methane volatile Organic compounds (NMVOC) emissions	98	100	89	81*	70 in 1999	☹
Regional scale problems						
Municipal waste (per capita)	79	100	103	109	79 in 2000	☹
* based on Current Reduction Plans of Member States						
** proposed targets which may be reviewed in the framework of the combined ozone/acidification strategy						

Source: European Environment Agency, *Environment in the EU at the turn of the century* (Copenhagen: EEA, 1999), and as reproduced in "Reporting on Environmental Measures: Are We Being Effective?", <http://www.eea.eu.int>, p.11.

Table-4: What has been achieved in what areas and what is the outlook?

Pressures		Environmental issues	State and Impact	
Present	Future		Present	Future
☹	☹	Greenhouse Gases and Climate Change	☹	☹
●	☹	Ozone Depletion	☹	☹
☹	☹	Hazardous Substances	☹	?
☹	☹	Transboundary Air Pollution	☹	☹
☹	☹	Water stress	☹	☹
☹	☹	Soil Degradation	☹	?
☹	☹	Waste	☹	☹
☹	?	Natural and Technological Hazards	☹	?
☹	?	Genetically Modified Organism	?	—
☹	☹	Biodiversity	☹	?
☹	☹	Human Health	☹	?
☹	☹	Urban Areas	☹	☹
☹	☹	Coastal and Marine Areas	☹	?
☹	?	Rural Areas	☹	—
☹	?	Mountain Areas	☹	—

Legend: ● positive development ☹ some positive development ☹ unfavourable development but insufficient
 — no quantitative data available ? uncertain (partial quantitative/expert analysis available)

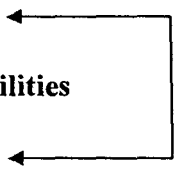
Source: As reproduced from European Environment Agency, *Environment in the European Union at the Turn of the Century* (Copenhagen: EEA, 1999), p. 3.

Table-5: Objectives, actions and targets of the Fifth Environmental Action Programme

Objectives	Actions	Targets
1. Improvement of data	Regional, national and EU statistics	Improvement and development of environmental database
2. Scientific research and technological development	New research and development programme	Extended programme on biotechnology Clean and recycling technologies Measures for recycling and reusing
3. Sectoral and spatial planning	Development and management plans	Integrated socio-economic development plans
4. Getting the price right.		
4.1 Evaluating and accounting	Shadow and formal GNP, internalization of external cost	Modification and development of key economic indicators
4.2 Fiscal incentives	Promotion of fiscal incentives	Fiscal policy
4.3 Charges	Review of levies and charges	Improved charging system
4.4 State aids	Review of state aids	Polluter Pays Principle
4.5 Other economic instruments	Directives on eco-account	Environmental Audit
5. Public information and education	Public access to data bases, eco-labelling, regular reports	Improved level of general and specific information
6. Professional education and training	Pedagogic research, preparation of books	Professional and vocational training programme and seminar
7. Financial support mechanism	Integrate environmental land and rural impacts	Integration of environmental dimension in disbursement of structural funds(FEOGA, New Cohesion Funds)

Source: As reproduced from Pavlos Karadeloglou, Toney Ikwue and Jim Skea, "Environmental Policy in the European Union", in Henk folmer, H. Landis Gabel and Hans Opschoor, *Principles of Environmental and Resource Economics* (Aldershot, Edward Elgar, 1995), p.283

Table-6: EU initiative for job creation

Target area	Potential for jobs Creation
<p>Environmental protection</p> <ul style="list-style-type: none"> • Maintenance of natural and public areas (local waste recycling) • Water purification and clean-up polluted areas • Monitoring of quality standards 	Up to 1 million
<p>Improvements in the quality of life</p> <ul style="list-style-type: none"> • Renovation of run-down areas • Development of local public transport services 	Up to 1 million
<p>Local services</p> <p>Leisure and cultural facilities</p> <p>Audio-visual</p> 	Up to 1million

Source: As reproduced from Pamela M. Barnes and Ian G. Barnes, *Environmental Policy in the European Union* (Cheltenham: Edward Elgar, 1999), p.198.

Table-7: Total Employment in the EU Eco-industries, 1999

	Direct Jobs		Indirect Jobs	Total Jobs
	Operating Related	Investment Related	Operating Related	
Pollution Management				
Air Pollution Control	33,300	80,700	50,400	161,400
Waste Water Treatment	209,100	218,500	132,200	559,800
Solid Waste Management	696,300	64,000	144,300	904,600
Remediation and Clean Up	15,100	8,000	17,700	40,800
Noise and Vibration	21,800	7,000	3,500	32,300
R&D	25,900	2,400	3,300	31,600
Environmental Administration	66,500	9,100	26,100	101,700
Resources Management				
Water Supply	208,800	88,100	135,300	432,200
Recycled Materials	223,600	10,900	46,200	280,700
Nature Protection	66,700	33,100	22,600	122,400
Total (Jobs) (%)	1,564,10059	521,80020	581,60022	2,667,500

Source: As reproduced from ECOTEC Research & Consulting Limited, " Analysis of the EU Eco-Industries, their Employment and Export Potential: A Final report to DG Environment"

http://europa.eu.int/comm/environment/enveco/industry_employment/ecotech_final_report.pdf,

p. 68.

Table-8: Forecasts of market trends for eco-industries by countries

(billion ECU)	1990	2000	Estimated annual growth (%)
Germany	17.0	23.0	4.0
France	10.0	15.0	5.5
UK	7.0	11.0	6.3
Italy	5.0	7.7	6.0
Netherlands	2.7	3.7	4.1
Spain	1.8	3.0	7.4
Belgium	1.4	2.3	6.4
Denmark	1.0	1.2	2.2
Portugal	0.4	0.7	8.3
Ireland	0.3	0.5	6.5
Greece	0.3	0.5	7.4
Total EC	46.9	68.6	4.9
USA	78.0	113.0	5.0
Total world	200.0	300.0	5.5

Source: As reproduced from As reproduced from Christopher M Dent, *The European*

Economy: The Global Economy (London: Routledge, 1997), p. 400.

Table-9: Market in the EU for eco-technology by% of EU output and industrial turnover as % of EU GDP

Market for Eco-technology	%of EU output	Turnover of eco-technology industry	%of GDP
Germany	35	Austria	2.3
France	20	Netherlands	2.3
UK	12	Germany	2.0
Italy	10	France	1.5
Netherlands	8	Sweden	1.5
Austria	4		

Source: As reproduced from Pamela M Barnes and Ian G Barnes *Environmental*

Policy in the European Union (Cheltenham: Edward Elgar,1999), p.194

Table-10: Turnover (billion Euro) of the EU Eco-industries, 1999

Country	Pollution Management		Resources Management		Total turnover	Turnover as % of DP
	Turnover	urnover as % of GDP	Turnover	urnover as % of GDP		
Austria	8	4.2	1	0.3	9	4.5
Belgium	2	1.0	2	1.0	5	2.0
Denmark	5	3.2	1	0.7	7	3.9
Finland	2	1.5	0.3	0.3	2.3	1.7
France	22	1.7	16	1.2	38	2.8
Germany	41	2.1	16	0.8	57	2.9
Greece	1	0.9	1	0.7	2	1.6
Ireland	1	0.6	0.3	0.3	1	0.9
Italy	11	1.0	5	0.5	16	1.4
Luxembourg	0.2	0.9	0.1	0.6	0.3	1.5
Netherlands	7	1.9	2	0.7	10	2.6
Portugal	1	0.9	1	0.8	2	1.6
Spain	6	1.0	3	0.4	8	1.4
Sweden	3	1.2	1	0.3	3	1.5
UK	17	1.3	7	0.5	24	1.8
EU-15	127	1.6	56	0.7	183	2.3

Source: As reproduced from “ An Analysis of the EU Eco-Industries, their Employment and Export potential ” (A Final report to DG Environment from ECOTECH Research & Consulting Limited),

http://europa.eu.int/comm/environment/enveco/industry_employment/ecotec_final_report.pdf,

p. 36.

Table-11: Environmental trade as percentage of GDP.

Member State	1999 GDP (billion Euro)	1999 Export (billion Euro)	Export as % of GDP
Belgium	234	0.56	0.24
Sweden	226	0.44	0.20
Ireland	88	0.13	0.15
Germany	1,982	2.30	0.12
Austria	197	0.19	0.10
Netherlands	374	0.33	0.09
Finland	121	0.10	0.09
Denmark	165	0.13	0.08
United Kingdom	1,353	0.98	0.07
France	1,350	0.84	0.06
Italy	1,108	0.42	0.04
Luxembourg	18	0.01	0.03
Greece	117	0.02	0.02
Spain	563	0.08	0.01
Portugal	107	0.00	0.004
EU-15 average	8,004	6.53	0.08

Source: As reproduced from ECOTEC Research and Consulting Limited, "EU ECO-
industries: Trade and international markets: A Final Report to DG
Environment",

http://europa.eu.int/comm/environment/enveco/industry_employment/ecotec_trade.pdf,

p. 47.

Table-12: The State of Reporting on Policies and Measures – UNFCCC National Communication (EU Countries)

Country	Policy/ measures	Type of Instrument	Objective/ Target	tatus of mplementation	Emissions reduction potential	Monitoring: Indicators of Progress
Austria	✓	✓	✓	✓	✓	✓
Belgium	✓		✓			
Denmark	✓					
Finland	✓		✓	✓	✓	
France	✓	✓	✓	✓	✓	✓
Greece	✓	✓		✓	✓	
Germany	✓	✓	✓	✓	✓	
Ireland	✓	✓	✓	✓	✓	✓
Italy						
Luxembourg						
Netherlands	✓	✓	✓	✓		✓
Portugal	✓	✓	✓	✓		✓
Spain	✓	✓				
Sweden	✓					
UK	✓	✓	✓	✓	✓	✓

Source: As Reproduced from European Environment Agency: Reporting by EU Member States on Environmental Policies and Their Effects: Summary of EU Reporting Requirements and Their Example of CO2 Reduction Programme, <http://www.eea.eu.int>

Table-13: EU Burden sharing agreement of March 1997 and 1998 (distribution between Member States of the European Union agreed changes in the emission of greenhouse gases – essentially CO₂, CH₄, and N₂O – before the year 2010 compared with 1990)

	March 1997: Emission Reduction by 2010	June 1998: Emission Reduction by 2018-2012
Austria	-25%	-30%
Belgium	-10%	-7.5%
Denmark	-25%	-21%
Finland	0.0%	0.0%
France	0.0%	0.0%
Germany	-25%	-21.0%
Greece	30%	+25%
Ireland	15%	+13%
Italy	-7%	-6.5%
Luxembourg	-30%	-28.0%
Netherlands	-10%	-6.0%
Portugal	+40%	+27.0%
Spain	+17%	+15.0%
Sweden	+5%	+4.0%
United kingdom	-10%	-12.5%
EU total	-9.2%	-8.0%

Source: As reproduced from Sebastian Oberthur and Hermann E. Ott, *The Kyoto Protocol: International Climate Policy for the 21st Century* (Berlin: Springer-Verlag, 1999), p.148.

Table-14: Progress of EU “Burden Sharing” on CO₂ emissions reduction programme

Country	hange 998-1999	hange 1990-1999	Target 2008-2012 under Kyoto protocol and EU “burden sharing”	EEA evaluation of progress in 1999
Austria	0.0 %	+2.6 %	-13.0%	☹
Belgium	-3.4 %	+2.8 %	-7.5%	☹
Denmark	-4.6 %	4 % (4.6 %)	-21.0%	☹ (☹)
Finland	-0.8%	-1.1%	0.0%	☺
France	-2.2%	-0.2%	-21%	☺
Germany	-3.7%	-18.7%	+25%	●
Greece	-0.7%	+16.9%	+13%	☹
Ireland	+2.5%	+22.1%	-6.5%	☹
Italy	+0.9%	+4.4%	-28.0%	☹
Luxembourg	+4.6%	-43.3%	-6.0%	●
Netherlands	-2.9%	+6.1%	+27.0%	☹
Portugal	+2.9%	+22.4%	+15.0%	☹
Spain	+6.1%	+23.2%	-1.5%	☹
Sweden	-2.6%	+1.5	-14.0%	☺
UK	-6.5%	-14.0%	-12.5%	●
EU-15	-2.0%	-4.0%	-8.0%	☺

Source: European Environment Agency (EEA), April 2001 (As reproduced from

“implementation of the Kyoto Protocol”,

<http://www.Climnet.org/EUenergy/implementation.htm>,

Table-15: Different types of information requested by reporting requirements in EU environmental legislation.

Types of data / information collected/requested	Main destination	Current use of information
A. Legal transposition: <ul style="list-style-type: none"> • Laws, regulations and administrative provisions 	DG Environment Legal Unit (B3)	To review legal compliance.
B. Collection of baseline environmental data	DG environment technical units;	To assess the need for application.
C. Practical Application <ul style="list-style-type: none"> • Setting of limits, standards, designation of zones, codes of good practices and other measures (more common) • Plans, programmes, strategies and ex-ante assessments (less common, more recent) 	DG Environment technical units; Legal Units?	To review practical compliance.
D. Monitoring of Practical Compliance <ul style="list-style-type: none"> • Environmental data and monitoring + measurement methods used 	DG Environment technical units; EEA (?) EEA Topics Centres (?)	To review practical compliance.
E. Review and/or Evaluation <ul style="list-style-type: none"> • Reasons for non-compliance, description of improvement schemes, proposed plans, etc., projected emissions (more common) • Ex-post evaluation using principles of evaluation (less common) 	DG Environment technical units (?)	To revise and improve policy (?)

Source: European Environment Agency, "Reporting by EU Members States on Environmental Policies and Their Effects: Summary of the EU Reporting Requirements and the Example of CO₂ Reduction Programmes", <http://www.eea.eu.int>.

BIBLIOGRAPHY

Primary Sources:

EC Commission, *First Environmental Action Programme, 1973-1973* (Luxembourg: Office for Official Publications of the European Communities, 1973).

_____, "Council Directive on Waste 75/442/EEC of 15 July 1974", *Official Journal of the European Communities* (Brussels), No L 194 of 25 July 1974.

_____, "Council Directive 75/440/EEC on the Quality of Water Intended for the Abstraction of Drinking Water in the Member States", *Official Journal of the European Communities*, L 194, 25 July 1975.

_____, *Second Environmental Action Programme, 1977-1981* (Luxembourg: Office for Official Publications of the European Communities, 1977).

_____, *Third Environmental Action Programme, 1982-1986* (Luxembourg: Office for Official Publications of the European Communities, 1983).

_____, *The Greenhouse Effects and the Community Commission Work Programme Concerning the Evaluation of Policy option to Deal with the Greenhouse Effects* (Brussels: COM (86), 656 final, 16 November).

_____, *Fourth Environmental Action Programme, 1987-1992*, Official Journal of the European Communities (Luxembourg), C 328, 7 December 1987.

_____, *Europe Without Frontiers: Completing the Internal Market* (Luxembourg: Office for the Official Publication of the European Communities, 1987).

_____, *Treaty on the European Union* (Luxembourg: Office for Official Publication of the European Communities, 1992).

_____, *Proposal for a Council Directive Introducing a Tax on Carbon Dioxide Emission and Energy* (Brussels: COM (92) 226 final, 1992).

_____, *European Community Environmental Legislation* (vol.1)(Luxembourg: Office for Official Publications of The European Communities, 1992).

_____, *Towards Sustainability: A European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development* (Luxembourg: Office for the Official Publications of the European Communities, 1993).

_____, “Council Decision Concerning the Promotion of Renewal Energy Sources in the Community (Altener Program)”, *Official Journal of the European Communities*, CEC, L, 235, 18 September 1993.

_____, “Council, Directive to Limit Carbon Dioxide Emissions by Improving Energy Efficiency (SAVE)”, *Official Journal of the European Communities*, CEC, L 237, 23 September 1993.

_____, “Council Directives 96/61/EC of 24 September 1996 Concerning Integrated Pollution and Control”, *Official Journal of the European Communities*, L 257, 10/10/96.

_____, *European Union: Treaty of Amsterdam* (abridged) (Luxembourg: Office of the Official Publications of the European Communities, 1997).

_____, *The European Union and the Environment* (Luxembourg: Office for Official Publications of the European Communities 1997).

_____, *The European Union and Environment* (Luxembourg: Office for Official Publications of the European Communities, 1997).

_____, Communication from the Commission on Environmental Taxes and Charges in the Single Market (Brussels: COM 97, final, 26.03 1997).

_____, “Business And Sustainable Development”, A speech by Ritt Bjerregaard, Commissioner responsible for Environment, to the EU committees of the American Chamber of Commerce in Belgium, Brussels, 25th November 1997, SPEECH/97/260, p. 3.

_____, *EU Focus on Clean Air* (Luxembourg: Office of the Official Publications of the European Communities, 1999).

_____, *EU Focus on Waste Management* (Luxembourg: Office of the Official Publications of the European Communities, 1999).

_____, *Europe's Environment: What Directions for the Future? The Global Assessment of the European Community Programme of Policy and Actions in*

Relation to the Environment and Sustainable Development, 'Towards Sustainability' (Brussels: COM (1999) 543 final).

_____, *Europe's Agenda 2000: Strengthening and Widening the European Union*, (Luxembourg: Office for Official Publication of the European Communities, 1999).

_____, (DG Energy and Transport), *Green Paper: Towards A European Strategy For The Security Of Energy Supply*, COM (2000) 769, November 2000, http://europa.eu.int/comm/energy_transport/lpi_en.html

_____, *Environment 2010: Our Future, Our Choice, The Sixth Environment Action Programme, Proposal for a Decision of the European Parliament and of the Council* (Brussels: COM (2000)).

_____, "Report Under Council Decision 1999/296/EC for a Monitoring Mechanism of Community Greenhouse Gas Emission, COM (2000) 749, <http://europa.eu.int>

_____, *Proposal for a Council Directives in Introducing Tax on Carbon Dioxide Emissions and Energy* (Brussels: CEC, COM 226, final).

_____, "Guide to the Approximation of European Union Environment Legislation", <http://europa.eu.int/comm/environment/guide/contents.htm>

_____, "COP-7: 'Issues to be Tackled'", <http://europa.eu.int>

_____, "EU Hails Marrakesh Agreement on Operational Rules to Combat Climate Change" (Brussels: Press Release 10.November, 2001), <http://europa.eu.int>

ECOTEC Research and Consulting Limited, "Analysis of the EU Eco-Industries: their Employment and Export Potential (A final Report to DG Environment)", http://europa.eu.int/comm/environment/enveco/industry_employment/ecotec_final_report.pdf

_____, "EU ECO-Industries: Trade and international markets" (A Final Report to DG Environment), http://europa.eu.int/comm/environment/industry_employment/ecotec_trade.pdf.

Council of the European Union, General Secretariat, A press release of the 2194th Council Meeting on Environment held at Luxembourg, 24/25 June 1999, 9406/99 (presse 203).

Department of Statistics and Ministry of Planning, *Compendium of Environmental Statistics 1997* (New Delhi: Central Statistical Organization, Department of Statistics and Ministry of Planning: Programme Implementation, Government of India, 1997).

European Environment Agency, *Europe's Environment: The Second Assessment: An Overview* (Copenhagen: EEA, 1998).

_____, *Environment in the European Union at the Turn of the Century* (Copenhagen: EEA, 1999).

_____, "Reporting By EU Member States on Environmental Policies and Their Effects; Summary of EU Reporting Requirements and the Example of CO₂ Reduction Programme"(Draft Paper 2), <http://www.eea.eu.int>, 4 November 1999.

_____, "Climate Change-Environmental Signals", <http://www.reports.eea.eu.int>

US Senate Foreign Relations Committee, Under Secretary of State, Stuart Eizenstat's Statement delivered before the Senate Foreign Relations Committee, "Eizenstat Prepared Testimony on Kyoto Protocol", <http://www.iitap.istate.edu>.

United Nations, *Agenda 21: The United Nation Programme of Action from Rio* (New York: United Nations, 1992).

United Nations Environment Programme, *Climate Change: The IPCC Scientific Assessment* (Cambridge: Cambridge University Press, 1990).

World Commission on Environment and Development, *Our Common Future* (New Delhi: Oxford University Press, WCED, 1987).

Secondary Sources:

Books

Adams, W.M, *Green Development: Environment and Sustainability in the Third World* (London: Routledge, 1990).

Baker, Susan, Kousis, Maria, Richardsons, Dick and Young, Stephen, eds., *The Politics of Sustainable Development: Theory, Policy and Practice Within the European Union* (London: Routledge, 1997).

Baker, Susan, et.al, "Introduction: The Theory and Practice of Sustainable Development in EU Perspective", in Susan Baker, et.al, eds., *The Politics of Sustainable*

Development: Theory, Policy and Practice Within the European Union (London: Routledge, 1997), pp. 1-42.

Baker, Susan, "The Evolution of European Union Environmental Policy: From Growth to Sustainable Development", in Susan Baker, et.al, eds., *The Politics of Sustainable Development: Theory Policy and Practice Within the European Union*, (London: Routledge, 1997), pp. 91-106.

Barnes, Pamela G. and Barnes, Ian G., *Environmental Policy in the European Union* (Cheltenham: Edward Elgar Publishing Limited, 1999).

Barrow, C.J, *Developing the Environment: Problems and Management* (Edinburgh Gate: Longman Group Limited, 1995).

Blowers, Andrew, "Policy Making For Environmental Change", in Andrew Blowers and Pieter Glasbergen, eds., *Environmental Policy in an International Context* (vol. 3): *Prospect for Environmental Change* (London: Arnold, 1996), pp. 1-20.

Bretherton, Charlotte and Vogler, John, *The European Union as a Global Actor* (London: Routledge, 1999).

Caldwell, Lynton. K, "Environment as a Problem for Policy", in Lynton K Caldwell and Robert V Bartlett, eds., *Environmental Policy: Transnational and National Trends* (Westport: Quorum Books, 1997), pp. 1-18.

Keith, Clement, *Economic Development and Environmental Gain: A European Environmental Integration and Regional Competitiveness* (London: Earthscan Publications Ltd, 2000).

Dent, Christopher. M, *The European, Economy* (London: Routledge, 1997).

Glasbergen, Pieter, *Co-Operative Environmental Governance: Public-Private Agreements as a Policy Strategy* (Dordrecht: Kulwer Academic Publishers, 1998).

Haigh, Nigel, "Climate Change Policies and Politics in the European Community", in Tim O'Riordan and Jill Jager, eds., *The Politics of Climate Change: A European Perspective* (London: Routledge, 1996), pp. 155-85.

_____, "Introducing the Concept of Sustainable Development into the Treaties of the European Union", in Tim O' Riordan and Heather Voisey, eds., *The Transition to Sustainability: The Politics of Agenda 21 in Europe* (London: Earthscan, 1998), pp. 64-75.

- Hession, Martin, "Legal Dynamics of European Integration and Sustainable Development", in Tim O' Riordan and Heather Voisey, eds., *The Transition to Sustainability: The Politics of Agenda 21 in Europe* (London: Earthscan, 1998), pp. 76-99.
- Hession, Martin and Macrory, Richard, "The Legal Duty of Environmental Integration: Commitment and Obligation or Enforceable Right", in Tim O' Riordan and Heather Voisey, eds., *The Transition to Sustainability: The Politics of Agenda 21 in Europe* (London: Earthscan, 1998), pp. 100-12.
- Hanf, Kenneth, "Implementing Environmental Policies", in Andrew Blowers and Pieter Glasbergen, eds., *Environmental Policy in an International Context (vol. 3): Prospect for Environmental Change* (London: Arnold, 1996), pp. 206-21.
- Hinnawi, Essam El and Hasmi, Manzur ul-Haque *Global Environmental Issue* (Dublin: Tycooly International, 1982).
- Holdgate, Martin .W, et al. eds., *The World Environment 1972-1982: A Report By United Nations Environment Programme* (Dublin: Tycooly International, 1982).
- Hulsberg, Werner, *The German Greens: A Social Political Profile* (London: Verso, 1988).
- Jha, Ashok, "Protection of Environment, Trade and India's Leather Export", in Venna Jha, Grant Hewison and Maree Underhill, eds., *Trade, Environment and Sustainable Development: A South Asian Perspective* (New York: St Martin's Press inc, 1997), pp. 117-22.
- Jupille, Joseph Henri, "Sovereignty, Environment, and Subsidiarity in the European Union", in Karen T. Litfin, *The Greening of Sovereignty in World Politics*, (Massachusetts: MIT Press, 1998), pp. 223-54.
- Karadeloglou, Pavlos, Ikwue, Toney and Skea, Jim, "Environmental Policy in the European Union", in Henk Folmer, H. Landis Gabel and Hans Opschoor, *The Principles of Environmental Policy and Resource Economics* (Aldershot: Edward Elgar, 1995).
- Kempel, Willy "Transboundary Movement of Hazardous Waste", in Gunnar Sjostedt, ed., *International Environmental Negotiation* (London: Sage Publications, 1993).
- Lee, Norman, "Environmental Policy", in M.J. Artis and Norman Lee, eds., *The Economics of the European Union* (Oxford: Oxford University Press, 1997), pp. 237-265.

- Liberatore, Angela, "The European Union: Bridging Domestic and International Environmental Policy-making", in Miranda A. Schreurs and Elizabeth Economy, eds., *The Internalization of Environmental Protection* (Cambridge: Cambridge University Press, 1997), pp. 188-212.
- _____, "The Integration of Sustainable Development Objectives Into EU Policy-making: Barriers and Prospects", in Susan Baker, et.al, eds., *The Politics of Sustainable Development: Theory, Policy and Practice Within the European Union* (London: Routledge, 1997), pp. 107-26.
- Litfin, Karen T., "The Greening of Sovereignty: An Introduction", in Karen T. Litfin, ed., *The Greening of Sovereignty in World Politics* (Massachusetts: The MIT Press, 1998), pp. 1-27.
- Macrory, Richard, and Hession, Martin, "The European Community and Climate Change: The Role of Law and Legal Competence", in Tim O' Riordan and Jill Jager, eds., *The Politics Of Climate Change: A European Perspective* (London: Routledge, 1996), pp. 107-41.
- O' Riordan, Tim and Jager, Jill, *The Politics of Climate Change: A European Perspective* (London: Routledge, 1996).
- O' Riordan, Tim and Voisey, Heather (eds.), *The Transition to Sustainability: The Politics of Agenda 21 in Europe* (London: Earthscan, 1998).
- Oberthur, Sebastian and Ott, Hermann. E, *The Kyoto Protocol: International Climate Policy for the 21st Century* (Berlin: Springer-Verlag, 1999).
- Patterson, Mathew, *The Politics of Global Warming* (London: Routledge, 1996).
- Pepadakin, Elim, *The Green Movement in West Germany* (New York: St Martin's Press, 1984).
- Porter, Gareth, et.al, *Global Environment Politics* (third edition) (Boulder: Westview Press, 2000).
- Rugman, Alau, *The End of Globalization* (London: Random House, 2000).
- Schmidheiny, Stephen, *Changing Course: A Global Business Perspective on Development and Environment* (Massachusetts: The MIT Press, 1998).

- Sjostedt, Gunnar (ed.), *International Environmental Negotiation* (London: Sage Publications, 1993).
- Szell, Patrick "Negotiations on the Ozone Layers", in Gunnar Sjostedt, ed., *International Environmental Negotiation* (London: Sage Publications, 1993).
- Tolba, Mostafa. K, and Rummel-Bulska, *Global Environmental Diplomacy for the World: Negotiating Environmental Agreement for the World, 1973-1992* (Massachusetts: The MIT Press, 1998).
- Vig, Norman. J, "Introduction: Governing the International Environment", in Norman J. Vig and Regina .S Axelrod, eds., *The Global Environment: Institution Law and Policy* (New York: Congressional Quarterly inc, 1999), pp. 1-26.
- Vig, Norman. J, and Axelrod, Regina, "The European Union as an Environmental Governance System", in, Norman J. Vig and Regina .S Axelrod eds., *The Global Environment: Institution Law and Policy* (New York: Congressional Quarterly inc, 1999), pp. 72-97.
- Vivekanandan, B, *International Concerns of European Social Democrats* (London: Macmillan, 1997).
- Wapner, Paul, *Environmental Activism in World Civic Politics* (Albany: Sunny Press, 1996).
- Wilkinson, David, "Steps Towards Integrating the Environment Into Other EU Policy Sectors", in Tim O' Riordan and Heather Voisey, eds., *The Transition Towards Sustainability: The Politics of Agenda 21 in Europe* (London: Earthscan, 1998), pp. 113-29.
- Wytt, Christine, "Environmental Policy-Making, Eco-Labeling and Eco-Packaging in Germany and its Impact on Developing Countries", in Venna Jha, Grant Hewison and Maree Underhill, eds., *Trade, Environment and Sustainable Development: A South Asian Perspective* (New York: St Martin's Press inc, 1997), pp. 51-68.
- Weale, Albert, "Vorsprung durch Technik? The Politics of German Environmental Regulation", in Kenneth Dyson, ed., *The Politics of German Regulation* (Aldershot: Dartmouth Publishing Limited, 1992), pp. 159-83.
- Zito, Anthony, "Integrating the Environment Into the European Union: The History of the Controversial Carbon Tax", in Carolyn Rhodes and Sonia Mazey, eds., *The State of the European Union (vol 3): Building a European Polity?* (Colorado: Rienner Publishers inc, 1995), pp. 431-48.

Articles

Andersen, Michael, Skou and Rasmussen, Wise Nordvig, "The Making of Environmental Policy in the European Council", *Journal of Common Market Studies* (London), vol. 36, no. 4, December 1998, pp. 585-97.

Bailey, Ian, "Flexibility, Harmonization and the Single Market in EU Environmental Policy: The Packaging Waste Directives", *Journal of Common Market Studies*, vol. 37, no. 4, December 1999, pp. 549-71.

Bleischwitz, Raimund, "The Impact of the EU on the Global Environment: The Case of Global Warming", <http://www.wupperinst.org/download/global-warming.pdf>

Cable News Network (CNN), "Nations in Standoff Over Issues at Global Warming Conference", www.cnn.com, November 21, 2000.

_____, "No Deal on Global Warming as Climate Talks Collapse", www.cnn.com, November 25, 2000.

_____, "EU Rejects Compromise Climate Deal", www.cnn.com, November 24, 2000.

Cazorla, Marina, "After Negotiation, EU Agrees on Common Climate Policy", <http://www.weathervane.rff.org>

Centre for Science and Environment, "EU Bans Indian Marines Products", *Indian Green File* (New Delhi), vol. 122, February 1998, p. 32.

_____, "Rich and Poor Class Over Trade and Environment", *Global Green File* (New Delhi), vol. 4, issue 2, September 1999, p. 5.

Charnovitz, Steve, "Free Trade, Fair Trade, Green Trade: Defogging the Debate", *Cornell International Law Journal* (New York), vol. 27, no. 3, Symposium 1994, pp. 459-525.

Golub, Jonathan, "Sovereignty and Subsidiarity in the EU Environmental Policy", *Political Studies* (Oxford), vol. 44, no. 4, September 1996, pp. 687-703.

_____, "State Power and Institutional Influence in European Integration: Lesson From the Packaging Waste Directives", *Journal of Common Market Studies*, vol. 34, no. 3, September 1996, pp.313-39.

- Grubb, Michael and Yamin, Farhana, "Climate Collapse at the Hague: What Happened, Why, and Where Do We Go From Here?", *International Affairs* (London), vol. 75, no. 4, October 1999, pp. 261-76.
- Hass, Peter.M, "Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control", *International Organization* (Massachusetts), vol. 43, no. 3, Summer 1989, pp. 377-403.
- Jahn, Detlef, "The Rise and Decline of New Politics and the Green in Sweden and Germany", *European Journal of Political Research* (Dordrecht), vol. 24, no. 2, August 1993, pp. 177-94.
- Jordan, Andrew, "EU Environmental Policy at 25: The Politics of Multinational Governance",
http://www.findarticles.com/cf_0/m1076/n1_40/20330012/p8/articles.jhtm?term,
 January- February 1998.
- Kelemen, R. Daniel, "The Limits of Judicial Power: Trade-Environment Disputes in the GATT/WTO and the EU", *Comparative Political Studies* (London), vol. 34, no. 6, August 2001, pp. 622-50.
- Krasner, Stephen D, "Structural Causes and Regimes Consequences: Regimes as Intervening Variables", *International Organization*, vol. 36, no. 2, Spring, 1982, pp. 215-36.
- Langrock, Thomas, "The Sinks controversy",
<http://www.wupperinst.org/download/sinks-controversy.pdf>
- Lavrysen, L, "The European Context of Flemish Environmental Policy",
<http://allserv.rug.ac.be/~jhegman/II/European%20context.html>.
- Liberatore, Angela, "Problems of Transnational Policymaking: Environmental Policy in the European Community", *European Journal of Political Research*, vol. 19, no. 2/3, March/April 1991, pp. 281-305.
- Lord, Kenneth.M, "Bootstrapping an Environmental Policy From an Economic Covenant: The Teleological Approach of the European Court of Justice", *Cornell International Law Journal*, vol. 29, no. 3, 1996, pp. 571-606.
- Ott, Hermann. E, "The Kyoto Protocol to the UN Framework Convention on Climate Change: Finished the Unfinished Business," <http://www.wupperinst.org>

- _____, "The Bonn Agreement to the Kyoto Protocol: Paving the Way for Ratification", <http://www.wupperinist.org/download/Bonn-Agreement.pdf>
- Ott, Hermann. E, and Oberthur, Sebastian, "Breaking the Impasse: Forging an EU Leadership Initiative on Climate Change (A policy Paper)", <http://www.wupperinist.org/Seiten/climate-leadership.pdf>
- Pearson, Charles. S, "Testing the System: GATT + PPP=?", *Cornell International Law Journal* (New York), vol. 27, no. 3, Symposium 1994, pp. 553-75.
- Robins, Nick, and Najam, Adil, "Seizing the Future: The South, Sustainable Development and International Trade", *International Affairs*, vol. 27, no. 1, January 2001, pp. 49-68.
- Sandbrook, Richard, "Down To Earth: Five Years From Rio", *World Today* (London), vol. 53, no. 6, June 1997, pp. 163-165.
- Sjostedt, Gunnar, "The EU Negotiates Climate Change: External Performance and Internal Structural Change", *Cooperation and Conflict* (London), vol. 33, no. 3, September 1998, pp. 225-56.
- Skjaerseth, Jon Birger, "The Climate Policy of the EC: Too Hot to Handle?", *Journal of Common Market Studies*, vol. 32, no. 1, March 1994, pp. 25-45.
- Steven, Candice, "Interpreting the Polluter Pays Principle in the Trade and Environment Context", *Cornell International Law Journal*", vol. 27, no. 3, Symposium 1994, pp. 577-90.
- Steinberg, Richard, "Trade- Environment in the EU, NAFTA and WTO: Regional Trajectories of Rule Development", *American Journal of International Law* (Lancaster), vol. 91, no. 2, April 1997, pp. 231-67.
- Vaughan, Scott, "Trade and Environment: Some North-South Consideration", *Cornell International Law Journal*, vol. 27, no. 3 Symposium 1994, pp. 591-606.
- Vrolijk, Christiaan, "High Stakes", *World Today*, vol. 56, no.11, November 2000, pp. 25-26.
- Young, Oran, "The Politics of International Regime Formation? Managing Natural Resources and the Environment", *International Organization*, vol. 43, no. 3, Summer 1989, pp. 349-75.

Newspapers

Financial Times (London)

The Hindu (Chennai)

The Pioneer (New Delhi)

Time Magazine (Washington)