



Manual of European Environmental Policy

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

The Manual was published by Earthscan/Routledge from 2010 to 2012. It was designed as an on-line interactive reference work and annual printed versions were also produced.

This section is the text of the Manual as published in 2012. It is therefore important to note the following:

- The contents have not been updated since 2012 and no guarantee is given of the accuracy of the contents given potential subsequent developments.
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Trade

Summary of the issues

Removing barriers to trade, completing the internal market and fostering conditions to encourage economic growth are amongst the key objectives of the EU. Some internal market measures are directly relevant to environmental policy, while economic growth and trade also have indirect environmental effects, for example through increased freight movements, emissions, and the use of natural resources.

The EU has developed a strong internal environmental agenda, including a number of policies aimed at delivering social and environmental protection without causing distortions in internal trade. These internal laws were established following prolonged debate on several issues that are now also being debated at an international level in the context of external trade and the World Trade Organisation (WTO). Particular parallels can be drawn in the application of the precautionary principle and related risk assessment issues, and the ability of Member States to apply stricter standards than those set by the EU in the interest of environmental policy.

Although discussion of the internal market and the environment can be seen as a subset of the larger discussion about free trade and the environment, some aspects will appear differently depending on one's point of view. For example, the [EU eco-label](#) can be seen as promoting synergy between the internal market and environmental protection as it may ultimately replace national schemes (e.g. the German Blue Angel, Nordic swan) which may favour national products. However, critics outside the EU argue that the EU eco-label is an instrument that favours EU goods over goods imported from outside the EU's common market.

Environment and the internal market

Plans for the development of the European single market, or internal market, now defined in Article 26 of the Treaty on the Functioning of the EU (TFEU), has been elaborated in several Commission Communications, such as the 1985 White Paper ([COM\(85\)310](#)). The debate on potential conflicts between the internal market and the environment has advanced over the years, one example being the issue of waste movements where it was feared that the removal of national frontier controls would result in a huge increase in such movements. However, this issue has since been resolved by the adoption of the 'proximity principle' under which movements of waste may be restricted for environmental reasons (see section on [Overview of EU waste policy](#)). Other examples of successful resolutions of potential conflicts between environmental protection and the internal market include the [Packaging and Packaging Waste Directive](#), and chemicals policy (under which acceptance of a new substance in one Member State extends to all (e.g. see [section on Testing new chemicals](#))). Provisions under the Amsterdam Treaty (see section on [Environment in the Treaties](#)) also provide greater scope for Member States to introduce national measures which are environmentally stricter than those agreed by the EU within certain limits. Despite some progress, there have been and still are, concerns as to the environmental impact of the internal market. The Commission Communication on the impact and effectiveness of the single market ([COM\(96\)520](#)) included a section on the environment, highlighting that 'prior to implementation of the single market,

expectations about the potential environmental impact of the single market were quite pessimistic'. In 1997, an 'Action Plan for the Single Market' was published ([SEC\(97\)1](#)) which included a commitment to produce a Communication on how to render both environment and internal market policies more mutually supportive and how to remedy potential problems. The resulting 1999 Communication on the Single Market and the Environment ([COM\(1999\)263](#)) highlighted on-going tensions between the functioning of the internal market and environmental policy objectives, stating that 'environmental standards are sometimes perceived as barriers to market access, open markets as a threat to the quality of the environment'. The Communication went on to list a number of areas, including the free movement of goods, for pursuing environmental integration. Specific measures proposed included guidance on Member States' ability to introduce national environmental measures that go beyond EU standards, and to increase the degree of transposition of environmental Directives.

As part of the Cardiff integration process, a report on the integration of environmental protection and sustainable development into internal market policy was produced in November 1999. The report was to a large extent based on the 1999 Commission Communication. It accepted that conflicts do arise between a high level of environmental protection and free movement of goods and stated that while these should be addressed, more positive efforts should also be made to improve synergies between the two areas. Among the future priorities identified in the report was the effective implementation of environmental legislation, improvements to the regulatory framework, a review of State aid, greater emphasis on environmental agreements and market based measures, and the development of a Green Paper on Product Policy. The Council also invited the Commission to examine areas which could be monitored on the basis of existing statistical data and to report to the Council in the second half of 2000.

A Strategy on environmental integration and trade was agreed at the Council meeting in May 2001. The Strategy identified 13 means of integration, including objectives, actions and indicators. These were:

- Effective implementation of Community legislation (especially environmental).
- An effective and adequate regulatory framework.
- Notification of draft technical regulations under Directive 98/34/EC (national measures taken in the non-harmonized area for reasons of environmental protection).
- The principle of mutual recognition.
- Standardization.
- [Integrated product policy \(IPP\)](#).
- Chemicals strategy.
- Public procurement.
- Community [eco-labelling](#).
- Consumer awareness and knowledge building.
- Taxation.
- State aid.
- Environmental agreements and market-oriented mechanisms subdivided into voluntary environmental agreements, environmental considerations in financial statements and [EMAS](#).

All but three of the mechanisms identified were associated with indicators for measuring progress. The Council stated that it would ‘evaluate progress regularly’, intending to review the Strategy no later than the end of 2002.

In November 2002 the Council adopted a review of the 2001 Strategy in which it accepted that there was a need to take account of the Sixth Environmental Action Programme, and the follow-up to the World Summit on Sustainable Development (WSSD) – particularly the call for the programmes on sustainable production and consumption. It proposed to produce an updated Strategy before the end of 2003. The review also stated that financial support had been provided by the Commission for setting up a consortium of environmental organizations to be known as the European Environmental Citizens Organisation for Standardisation (ECOS) and was to become an associate member of the European standardization organizations in order to facilitate consideration of environmental views in the standardization process.

In July 2001 the Commission issued a interpretative Communication on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement ([COM\(2001\)274](#)). The aim of the communication was to clarify the possibilities Community law offers to public purchasers who wish to integrate environmental considerations into public procurement procedures. The public procurement Directives ([2004/17](#) and [2004/18](#)) adopted on 31 March 2004 consolidated and complemented the legal context. They specifically mentioned, in their recitals and provisions, the possibilities for adopting environmental considerations in the selection of technical specifications, award criteria, and contract performance clauses. In 2004, the Commission produced ‘Buying Green! A Handbook on environmental public procurement’ ([CS\(2004\)12094](#)), setting out how to take forward green public procurement strategies.

In July 2008 the Commission adopted a new general block exemption, Regulation EC No [800/2008](#), consolidating and harmonizing the existing rules on giving automatic Commission approval for a range of aid measures, including a number of categories linked to environmental aid (energy savings, promotion of renewable energy, investment in cogeneration, environmental studies, etc.). In January 2008 the Commission issued new [guidelines on state aids for environmental protection](#). They replaced the earlier 2001 guidelines, which had become outdated. The guidelines allow national support to be given to a range of activities in specified circumstances, including renewable energy, waste management and meeting Community environmental standards. There are a number of new provisions in the guidelines, including for aid for early adaptation standards, aid for environmental studies, aid for waste management and aid involved in tradable permit schemes. Additionally, the levels of aid or aid intensities were increased. Contrary to the 2001 guidelines there is no longer a bonus for aid to assisted regions or for renewable energy installations serving all needs in an entire community.

Environment and external trade

The harmonization of the EU's external trade policy under the Common Commercial Policy is within the exclusive competence of the Community. The EU's external trade policy aims to ‘contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs barriers’ (Article 206 TFEU).

The EU and the World Trade Organisation (WTO)

Trade and environment issues have increasingly become central to discussions within the OECD, GATT/WTO and UNCTAD. The EU has been a strong advocate of environmental issues in these discussions. The Uruguay Round of the GATT negotiations was in many ways a test case for sustainable development, with the EU, on behalf of the Member States, acting as an important force in maintaining the sustainable development agenda. A Council Resolution in May 1993 on environmental protection and international trade listed objectives largely achieved at the Marrakesh Ministerial Conference, particularly by the establishment of a new WTO Committee on Trade and Environment. Council proposals for a clarification of the relationship between GATT/WTO principles and trade provisions in multi-lateral environmental agreements were also largely accepted by the GATT Group on Environmental Measures and International Trade.

The EU's environmental credentials were also reflected in its approach to the WTO Seattle Ministerial Meeting in December 1999, elaborated on the basis of a Commission Communication – The EU Approach to the WTO's proposed Millennium Round ([COM\(1999\)331](#)). Unlike other major players, the EU's approach included an explicit commitment to the environment, as follows:

‘The Council [of Ministers] underlined the need to ensure that an appropriate balance between the further liberalization of trade and the strengthening of multilateral rules contributes towards sustainable development, environmental protection, social progress, the reduction in poverty and consumer health’ (Council conclusions, 26 October 1999).

Trade and environmental policies were to play a mutually supportive role, with environmental considerations to be taken into account throughout the negotiations. In addition to maximizing the potential for positive synergies between trade liberalization, environmental protection and economic development, the EU pressed for a number of specific issues to be addressed:

- Clarification of the relationship between WTO rules and trade measures taken pursuant to Multilateral Environmental Agreements (MEAs) – the WTO should accommodate globally agreed instruments.
- Clarification of the relationship between WTO rules and Non-Product related Process and Production Methods (PPMs) requirements, particularly in relation to eco-labelling.
- Examining the role of core environmental principles in WTO rules, especially the precautionary principle.
- Encouraging cooperation between the WTO and relevant international bodies.

The EU also commissioned a multiphase Sustainability Impact Assessment (SIA) Study, starting in the run up to the proposed Millennium Round of negotiations, in order to ascertain the potential social and environmental impacts of the negotiations for different groups of countries.

Part of the outcome of the Fourth Ministerial Conference in Doha in November 2001 was the agreement to future negotiations on the relationship between existing WTO rules and specific trade obligations set out in MEAs as well as procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the

granting of observer status. The EU had been pushing the WTO for a Decision on observer status for some of the key MEAs and the United Nation Environment Programme (UNEP) at the WTO negotiations on environment. In February 2003 a WTO Decision was taken, which allows MEAs and UNEP to be present at the meetings of the WTO Committee on Trade and Environment.

Integrating environmental considerations in the EU's external trade policy

In September 2000, DG Trade prepared a draft Communication 'Towards a sustainable trade policy', as the Commission's contribution to the '[Cardiff integration process](#)', (see section on [Environmental Policy Integration in the EU](#)). However, the document was drafted without any input from other Commission services and was blocked by DG Environment as its focus was on the WTO and not trade policy in a wider context and its failure to give adequate attention to the environment. The document was subsequently downgraded to an informal DG Trade discussion paper 'The non-trade impacts of trade policy - asking questions, seeking sustainable development'. In March 2001, the Commission released a staff working paper on integrating the environment into the EU's external relations policies (SEC(2001)508). This was a fairly detailed review of the DG Relex portfolio, examining the environmental dimension of the Community's various external policies and outlining some proposals as to what should be done in future.

A set of conclusions on environmental integration was adopted by the General Affairs Council in April 2001 including a report in an Annex which was endorsed by the Council. The conclusions rehearsed the issues that needed to be addressed in an integration strategy, set out objectives and proposed a timetable for completing a strategy. Relatively specific proposals were included under a number of headings in the section that considered the need for further action. With regard to external trade, the Commission could refine a methodology for SIAs of trade agreements and identification of any flanking measures required, while the Commission and Council should give priority to finishing the work on SIA methodologies as soon as possible. It should also continue to work for greater legal clarity on the relationship between WTO rules and trade measures pursued in conformity with MEAs. There were also exhortations to other countries to act, for example to follow the EU's 'Everything But Arms' Regulation (EC) No [416/2001](#) which allows duty-free imports in all products, except arms, from the world's 49 Least Developed Countries.

On the basis of a Commission staff working document 'Environmental Integration in the External Policies of the General Affairs Council' (SEC(2002)271), the General Affairs Council on 11 March 2002 adopted its final integration strategy, in time for the Spring 2002 Barcelona Summit. The trade-related part of the Strategy was limited, simply summarizing the outcomes of the Doha November 2001 talks. There was also a commitment to 'Develop SIAs in order to include in future trade negotiations a much stronger and more integrated sustainable development component'. The strategy also foresaw the creation of a 'Green Diplomacy' network, which was endorsed by Heads of State and Government meeting in Thessaloniki in June 2003. The network held its inaugural meeting in Athens in June 2003, where a draft action plan and work programme were adopted.

The EU has promoted the integration of environmental concerns into its trade policies procedurally, notably by undertaking Sustainability Impact Assessments (SIAs) of trade agreements. SIAs evaluate the likely economic, social and environmental impacts of trade agreements that the EU concludes with third countries and are carried out by independent,

external consultants. All SIAs that have been conducted and the Commission's formal response to them are published [online](#).

A review of the Community's Generalized System of Preferences (GSP) in 1994 resulted in a new system (Regulation (EC) No [3281/94](#)) to integrate special incentives, including those of a social and environmental nature, into the tariff structure offered to countries falling within the scope of the scheme. Environmental clauses became effective in 1998, promoting internationally approved products and production methods consistent with international agreements and initially incorporating criteria set by the International Tropical Timber Organisation. Council Regulations (EC) No [2501/2001](#), (EC) No [2211/2003](#), (EC) No [980/2005](#) and (EC) No [732/2008](#) contain the legal provisions for the GSP scheme applicable for the periods from 2002 to the end of 2011. Through the GSP+, which is part of the GSP scheme, goods from 16 vulnerable developing countries and territories have preferential access to the EU market. In order to qualify, participating countries must have ratified and implemented international conventions regarding human rights, core labour standards, sustainable development, environment and good governance. These environmental conventions include the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Stockholm Convention on Persistent Organic Pollutants, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on Biological Diversity, the Cartagena Protocol on Biosafety, and the Kyoto Protocol. In 2011, the Commission proposed a reform of the GSP scheme to concentrate preferences on those countries most in need ([COM\(2011\)241](#)). The proposal seeks to reinforce incentives for the respect of core human and labour rights, environmental and good governance standards through the GSP+ scheme and introduce a more transparent mechanism for monitoring and evaluating the implementation of relevant international conventions will be introduced , whereby the EU will seek improvement in countries' implementation record over time and beneficiary countries will be required to provide proof that they are implementing relevant conventions. The proposal will be debated in the Council and the European Parliament with a view to having the reformed GSP in place on 1 January 2014.

At the World Summit on Sustainable Development in 2002, the EU confirmed its commitment to strengthening trade and cooperation agreements, and to support trade in environmentally friendly goods and services at the bilateral, regional and international levels. For example, Regulation (EC) No [1005/2008](#) against Illegal, Unreported and Unregulated (IUU) fishing seeks to promote the sustainable management of fish resources by preventing illegal fishery products entering the EU market (see section on Fisheries). In relation to timber, in 2003, the Commission presented an Action Plan: forest law enforcement, governance and trade (FLEGT) ([COM\(2003\)251](#)) which seeks to combat illegal logging in line with commitments made at the WSSD. The Communication was followed by a proposal for a Council Regulation ([COM\(2004\)515](#)) concerning the establishment of a voluntary FLEGT licensing scheme for imports of timber in the EU. The licensing schemes were to be implemented through voluntary partnership agreements (VPAs), which include elements of institutional support, capacity building and technical assistance. The resulting Council Regulation (EC) No [2173/2005](#) established the rules for implementing the [FLEGT scheme](#) (see section on [Forestry](#)). Voluntary Partnership Agreements (VPAs) are the cornerstone of this Regulation. To date, VPAs have been agreed with Ghana, the Republic of Congo, and Cameroon. Stakeholders in Europe have questioned the effectiveness of this scheme, noting that it is not universal, consists only of bilateral arrangements with specific countries, and countries that have not joined the scheme could provide a route for illegally produced timber

from VPA countries to enter the European market. Regulation (EC) No [1024/2008](#) of 17 October 2008 laid down detailed measures for the implementation of Regulation (EC) No 2173/2005. Regulation (EU) No [995/2010](#) laying down the obligations of operators who place timber and timber products on the market was adopted in 2010. The Regulation requires operators to apply a due diligence system to minimize the risk of placing illegally harvested timber and timber products on the EU market (see section on [Forestry](#)).