Balancing Trade and the Environment in the EU:

The importance of non-state actors in emerging policy networks

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The Treaty on European Union (TEU, or Maastricht Treaty), that came into effect in November 1993 includes, in the same sentence, the goals of establishing a common market, an economic and monetary union, and the promotion of "sustainable and non-inflationary growth respecting the environment" (Commission and Council of the European Communities 1992, 11). This could be interpreted as the epitome of the goals of free trade and environmental protection working hand in hand within a highly developed international institution which includes fifteen diverse countries. It has not always been this clear, however, that environmental and trade policies have an impact on each other, or that free trade cannot be pursued without regard to environmental degradation. In fact, the 1957 Treaty of Rome that established the European Economic Community did not mention the word "environment" (European Communities 1961). Environmental policy did not become an "official," Treaty-sanctioned policy of the European Community until the 1987 Single European Act (SEA), which mentions environmental protection as a goal of the Community for the first time (Commission and Council of the European Communities 1986). This did not mean, however, that the Community did not develop environmental policy or attempt to regulate the environment prior to 1987.

The environmental policy of the EU developed in the wake of its trade and competition policy, but has taken on a life of its own and now stands as an integral policy sector in the EU. The EU now regulates almost every area of environmental protection and quality. In some member states, the vast majority of their national environmental legislation consists of European level Regulations and Directives that have become national law.[1] Even in member states such as the Netherlands, where environmental policy has long been an important policy area, up to 40 percent of their national legislation is actually transposed or

[1] EU Regulations are immediately binding on the member states, and supersede national law. Directives, more often used in environmental policy-making, must be transposed into national legislation, but have "direct effect" on

applied European legislation (Interview, member state environmental attaché, Brussels, 18 July 1995). The history of EU environmental policy has been a juggling act between free trade and environment, an avoidance of a "race to the bottom" in environmental standards, and a growing understanding among all policy actors that trade and environment policy are inextricably linked. The goal of this paper is to show how the EU has integrated these policy areas at the European level through past policy outcomes, institutional changes, and the development of new policy communities at the European level which, in turn, continue to shape policy outcomes and the institutional framework in which both state and non-state actors operate.

Beginning with a brief tracing of EU environmental policy from 1972 to the post-Maastricht period, I will show how the EC, and now the EU, has tried to resolve the apparent contradiction between its primary free-trade goals and the protection of the environment. Using the policy network approach of Coleman and Skogstad (Coleman and Skogstad 1990), I investigate the growing role of the EU's non-state institutions (Commission, Parliament and Court of Justice) and non-state societal actors in this balancing act. Evidence from a case study on the 1994 Directive on Packaging and Packaging waste reveals that these non-state actors play an increasingly important role in the environmental policy-making process, which traditional intergovernmentalist approaches to EU policy-making cannot capture. Investigating and describing this interaction between non-state and state actors has become increasingly important for a clear understanding and explanation of day-to-day EU governance, and the use of a policy network approach to "flesh out" the policy-making process can enhance the usefulness and applicability of newer theoretical approaches to the EU, such as multi-level governance (Marks 1993; Marks, Hooghe et al. 1994; Marks, Hooghe et al. 1995a; Marks, Hooghe et al. 1995b).[2] This paper concludes that one must look beyond both

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the member states and actors within the member state if the state fails to adopt the Directive properly, or if the Directive is not properly implemented. See (Rehbinder and Stewart 1988, 38; Zacker 1991, 259).

[2] Some of the basic premises of MLG are: Decision-making competences are *shared* between actors at different levels--not controlled or dominated by state executives and political arenas are *interconnected rather than nested.* This means that states are not the only link between subnational and supranational actors--they "no longer provide

the official language of the Treaty and the actions and preferences of the member states to understand who really holds the ball in the juggling act between trade and the environment in the EU.

The History of Environmental Policy in the European Union

Early European Environment Policy

The European Union is primarily a economic and trading "institution."[3] Of primary importance is the single, or internal market, which has as its goal and ideal a free market for goods, services, capital and persons. Whatever causes a barrier to the movement of one of these is unacceptable under Article 30 of the Treaty of Rome.[4] In theory, any environmental measure by one state that either restricts the import of other states' goods, or makes them more costly, would be incompatible with the internal market. However, the Treaty also provides a provision for member states to restrict trade if such trade poses a threat to the protection of human health, animals and plants. This Article, Article 36 of the Treaty, also states that such restrictions or prohibitions should not "constitute a means of arbitrary discrimination or a disguised restriction on trade" (European Communities 1961).[5] Much of the early experience of the EC in dealing with environment and trade conflicts was centered on walking this tightrope between the legitimate protection of member state(s) environment (through protecting human, animal or plant life), and ensuring that such environmental policy did not become an arbitrary barrier to trade.

During the late 1960s and early 1970s, some of the member states began to introduce or apply environmental legislation within their own borders that had as an effect a barrier to other member states' goods. In addition to posing trade barriers, such unilateral legislation held the possibility that industries

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the sole interface between supranational and subnational arenas, and they share, rather than monopolize control over many activities that take place in their respective territories." (see Marks et al. 1995a, 4-5)

[3] The EU is obviously more than an international institution like the UN, or a trading regime like the GATT/WTO, but it lacks many of the attributes of a state. Since it lies somewhere in between, I've put "institution" in quotes.

[4] Geradin (1993) provides an in-depth analysis of the application and use of Articles 30 and 36 of the Treaty.

[5] Article 36 states, in part: "The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the

within the states with more stringent standards would be left at a disadvantage vis à vis other member states' industries, or result in the scrapping of higher environmental standards in this competition. Since one of the primary reasons for the introduction of stricter pollution control standards, especially in the heavily industrialized areas of northern Europe, was an increase in actual pollution and pollution-related problems, the idea of less rather than more environmental legislation in already polluted areas was one that could not be supported by these governments. This resulted in the first attempts by the EC to regulate the protection of the environment at the European level. The standards set by this early European environmental legislation often reflected the lowest common denominator (LCD) that could be agreed upon by the member states, because unanimity was required in the Council to pass all EC legislation under Article 100 and Article 235, the two Articles that could be applied to environmental policy.[6] While governance of this policy area remained strictly intergovernmental and firmly within the control of the member states, growing public awareness of environmental degradation and an increase in transboundary environmental problems led at the same time to a European-wide movement to create a framework for environmental protection at the Community level.

The Community's Environmental Action Programs, beginning in 1972, provided this framework, and set up the basic principles by which the Community began to regulate environmental policy. The first two Environment Programs, one running from 1973-1976, and the other from 1977-1982, established the notion that the European Community, in addition to the member states, had a responsibility for preserving and protecting the environment. These first two Programs focused primarily on the clean-up of pollution after its occurrence, and did not give the Community a wide mandate for acting in the environmental arena.

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protection of health and life of humans, animals or plants. ...Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade" (European Communities 1961).

[6] Article 100 dealt with legislation affecting the common market, so environmental legislation that had a direct impact on trade was based on this Article, whereas environmental legislation without such trade effects was based on Article 235, a sort of "catch-all" Article that encompassed legislation essential to the functioning of the Community, but where powers were not provided for specifically in the Treaty (European Communities 1961). Legislation could be based on both Articles together, as well.

The Programs were not legally binding on the member states, but they did provide a framework in which they could operate in this new field of policy. The Third Action Program of 1982-1986 was a step forward for the Community in that it introduced new elements which reflected the development of new thinking by the Community regarding the environment. These elements reflected the desire of the Council and Commission to integrate environmental policy into other Community policies, to reduce pollution as close to the source as possible, and to implement a Community level environmental impact assessment procedure (Hildebrand 1993, 21; Johnson and Corcelle 1995, 17).

The difficulty, as noted above, with trying to harmonize environmental policy at the Community level lay in gaining unanimity in the Council of Ministers, which often resulted in LCD environmental policy. With the accession of Britain, Ireland and Denmark in 1973, this became even more arduous. At times, Directives left so much leeway to the member states as to how they were to implement Directives that Britain could say regarding the 1975 Bathing Water Directive (OJ L 1976, 31) that it "believed that the proposal would not entail any significant changes in UK practice" (Golub 1994, 8 note 29). The Commission (which did not even have a separate Directorate for the Environment until 1981) at first responded to this sort of disparate application of Community Directives by including strict and detailed implementation in its proposals in order to try to ensure their uniform application throughout the Community (Dehousse 1992, 392). These stricter requirements often did not take into account disparities in the industrial or environmental circumstances among the member states.[7] In addition, the regulatory traditions of the member states played a role in how well the member states' administrations could transpose and implement Community Directives. After the accession of the Southern member states, where there was no strong regulatory tradition at the national level, as well as no experience in regulating the

[7] Some member states such as Germany, the Netherlands and Denmark had already established stringent environmental standards which they hoped could be replicated at Community level. Other member states like Britain consistently tried to "water down" proposals if they did not actually veto them (Golub 1994, 8). Finally, because of the lack of monitoring of implementation, states such as Italy often voted for a proposed piece of legislation in order to appear "environmental," but had little or no intention, or indeed ability, to implement it (Stewart 1992, 48-49, Interview with member state environmental attaché, Brussels, 28 July 1995).

environment, stricter Directives did not translate into stricter environmental policy on the ground (Dehousse 1992, 392, note 21, Interview with high-ranking DG XI official, 1 August 1995).

During the years prior to the 1987 Single European Act, the tension between environmental protection goals and the economic objectives of the Community was palpable. During this period, the European Court of Justice (ECJ) played a major role in helping to integrate environmental protection into the economic objectives of the Community. Through its judgments on existing Community policy, the Court helped expand the Community's role in protecting the environment. For example, in a case decided in 1985, prior to the Single European Act, France challenged the validity of a Directive on Waste Oils (Dir. 75/439), since the Directive restricted the movement and trade of Waste Oils (Case 240/83). In this landmark case, the Court stated that:

> (T)he principle of freedom of trade is not to be viewed in absolute terms but is subject to certain limits justified by the objectives of general interest pursued by the Community provided that the rights in question are not substantively impaired.... *The Directive must be seen in the perspective of environmental protection, which is one of the Community's essential objectives* (Krämer 1987, 663, italics in original).

It must be remembered that at the time this case was heard, environmental protection was not even mentioned in the Treaty governing the Community. The Court, through this case, established the principle that environmental protection was, in fact, one of the Community's "essential objectives."

Despite the resistance by member states such as Great Britain to the encroachment on their sovereignty in the area of environmental policy, between the early 1970s and mid-1980s the Community issued 120 Regulations and Directives concerning the environment (Vogel 1995, 57-58).[8] For many reasons—greater numbers of environmental disasters and problems, growing public awareness and concern for the environment, increased recognition of the impact of economic progress on the environment, and the economic spillovers from individual member states' environmental policies on other states and the Community—the Community slowly and incrementally gained *de facto*, if not yet *de jure*, legal competence

[8] See Golub for a full account of Britain's resistance to the Community's expansion in this policy area (Golub 1994).

in this policy area. Prior to the SEA, all environmental legislation was issued without any specific legal basis in the Treaty regarding the environment. By the mid 1980s, it became clear that the Community needed a clear legal basis on which to pin its future environmental legislation, since protecting the environment gradually had become inextricably linked with the other policies of the Community (Hull 1993, 146).

Post-SEA Environmental Policy

In July 1987, the Single European Act amended the Treaty of Rome. The primary goal of the Single European Act was the completion of the internal market of the Community by December 31, 1992. This market was defined as: "An area without internal frontiers in which the free movement of goods, persons, services and capital is ensured" (Article 8a) (Commission and Council of the European Communities 1986).[9] The negotiators of the Single Act realized that the establishment of the Single Market would have increasingly harmful effects on the environment, and so sought to heighten the importance of the environment as a policy area in the SEA (Hildebrand 1993, 29-30; Zacker 1991, 264). The Community recognized that the economic growth envisioned under the Single Market would result in "adverse environmental impacts" and so sought to prevent environmentally unsustainable economic growth (Task Force 1990, 34).[10]

The environment received its own section, or Title, within the new Treaty. The Environmental Title stated that the environment was an integral part of all other Community policies—the only policy area so designated (Koppen 1993, 137; Vogel 1995, 60). The Environmental Title, Articles 130r-130t, gave the EC competence for the first time to make environmental policy on its own merit, without having to tie it

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[9] One important factor that helped the Community move forward into a Single Market was establishment of the principle of "mutual recognition" which by the ECJ in the landmark *Cassis de Dijon* Case decided in 1979 (Case 120/78). This principle allowed trade in goods from one member state to another, as long as the goods had been produced in accordance with the laws of the producer state. This meant that the Community would not have to harmonize all national laws to a Community standard in order to achieve the Single Market; rather, harmonization was applied only to national laws that would directly affect the functioning of the internal market (Commission and Council of the European Communities 1992, 23).

[10] For example, one of the most important consequences was seen to be a dramatic increase in transportation, thus increasing emissions of sulphur dioxide and nitrogen oxides (which cause acid precipitation).

explicitly to economic goals. The procedure for legislation passed under Article 130 was identical to that prior to the SEA. The Parliament retained only an advisory role, and the Council still needed to vote unanimously to pass environmental legislation proposed under the Environmental Title.[11]

The environment also received a prominent place in Article 100a, which replaced Article 100. The new article stated that the formation of the internal market would have as its basis "a high level of protection" for the environment (Commission and Council of the European Communities 1986). Environmental legislation having a direct impact on the formation of the Single Market was based on Article 100a. The policy-making procedure for 100a differed from both Article 130 and from the old Article 100. Article 100a called for qualified majority voting (QMV) by the Council.[12] Qualified majority voting meant that one member state could no longer veto a proposal, and thus decreased the probability of lowest common denominator decisions, and improved the efficiency of completing the Single Market.

The SEA reflected the acknowledgment of the differences in member state development through Article 130t which gave the member states the ability to enact environmental legislation stricter than that of the Community, as long as it did not interfere with the internal market or pose a trade barrier to other member states. With the accession of the Southern tier member states, the Community had already begun in the mid-1980s to move away from strict harmonization requirements and towards legislation that would take into account the disparities between member states' industries, pollution levels, and degree of development, often allowing the "greener" member states to set stricter standards as long as they were proportional to the environmental goals to be achieved.[13] The inclusion of Article 130t in the Treaty had

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[11]Unless it had previously voted, by unanimous decision, to pass legislation in a particular area by qualified majority (Commission and Council of the European Communities 1986).

[12]This "co-operation procedure" entailed a second reading by the Parliament, which could then amend the proposal after the Council delivered its common position. If the Council did not wish to take into account the Parliament's amendments, it then needed to vote by unanimous decision on its original common position. If the Council accepted the Parliament's amendments, it voted by qualified majority.

[13] In its judgment in the *Danish Bottles* Case (Case 302/86), the Court upheld a Danish recycling law, establishing the precedent that "the protection of the environment is a mandatory requirement which may limit the application of Article 30 of the Treaty" (Sands 1990, 696). This case in particular made it clear that while

helped reassure states such as Denmark, Germany and the Netherlands which had feared that a more harmonized European environmental policy would endanger their own, strong national environmental policies while they waited for other member states to catch up (Vogel 1995, 60). Unlike the LCD policy that had predominated under unanimous decision rules prior to the SEA, environmental policy could now be flexible—holding the ceiling steady, while raising the floor over time.[14] This approach also prevented the flight of industry to "pollution havens" in the Southern member states, since the higher European standard became the ultimate goal for those states.

In the years after the implementation of the Single European Act, the Community focused much of its effort in the environmental field on the connection between the environment and economics. Until the late 1980s, environmental policy was treated like any other regulatory policy in the Community. Towards the end of the 1980s, however, the Community, especially the Commission, began to look at "market-based" mechanisms for environmental regulation. These would essentially price non-environmental products and industry out of the market by imposing fines or taxes, while rewarding environmentally sound industry with financial incentives or tax breaks. In addition to rewarding individual industries, there was a move toward using regional and development funds to help the Southern member states, along with Ireland, to encourage sustainable economic growth (see for example Stewart 1992).

In 1993, the Community published its Fifth Environmental Action Program, entitled "Towards Sustainability" to address the problems inherent in balancing continued economic growth and environmental protection (Commission of the European Communities 1993). This Program goes further than the previous four Action Programs in its goals and objectives. The legal bases for environmental policy-making institutionalized in

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environmental protection was as a legitimate reason for preventing the importation of non-returnable bottles, the low limits that Denmark had set for these containers were found to be disproportionate to the environmental goals to be achieved.

[14] The "California effect" that occurred in the case of vehicle emissions, where Germany and other environmentally aware states put pressure on the rest of the EC to raise their pollution control standards, and which resulted in a phase in of those standards over time across the Community, has been thoroughly documented (see Vogel 1995).

the Single European Act meant that this program could set out a long-term strategy for the Community that was more than "lists of actions required and vague principles" (Hull 1994, 151). The Program represents a shift away from a top-down Community regulatory approach, to an approach which includes all relevant actors, in many different policy areas, at all levels of European policy-making and implementation. It recognizes that the Community and the member states must work together to establish the framework for sustainability, but that industry, private enterprise, local and regional authorities and individuals must share the responsibility of carrying out the program and its objectives (Commission of the European Communities 1993, 49). These objectives will be met, not by strict environmental regulations that stand alone or conflict with the needs of European actors, but by integrating the environment with all other relevant policies "through a broadening and deepening of the instruments for control and behavioural change including, in particular, greater use of market forces" (Commission of the European Communities 1993, 49). Just as the Fourth Environmental Action Program was developed in conjunction with the SEA, the Fifth Program was developed to coincide with the Treaty changes envisioned by the Maastricht Treaty.

Observers often point to the uneven implementation of EU environmental policy as a failure of that policy, especially if one compares that implementation and environmental progress in general across member states. However, as other scholars have noted, environmental policy is particularly difficult to implement uniformly even in states with strong regulations and oversight systems (see Sbragia 1993, 348, addressing the US case). The EU is not a state, and it does not possess the oversight and enforcement capacity of a state. Considering these factors, most practitioners either in or dealing with the EU concur that the environmental policy of the EU is certainly better than it would be if the fifteen member states had attempted to pursue separate environmental policies. It is also better than it would have been had the EU tried to keep environment as a separate sphere, which it discovered early on that it could not feasibly do, from trade, competition and other fundamental policies of the Union. While some member states may not have been able to proceed as far or as fast as they would have liked, others have the (mainly) progressive

rules and standards of the EU in place, whereas left to their own devices, they may have chosen no environmental policy at all.

Post-Maastricht Environmental Policy

The Maastricht Treaty reflects the lessons learned about balancing trade and environmental policy in the EU. The connection between sustainable economic growth and environmental protection has been strengthened by the TEU, since the Treaty states that environmental protection requirements "must be integrated into the definition and implementation of other Community policies" (Commission and Council of the European Communities 1992, Article 130r(2)). This goes beyond the SEA language of making those requirements "a component" of the Community's other policies, now compelling the Community to include environmental protection requirements as a part of policies such as agriculture, transportation, fisheries, etc., from their inception through their implementation.

Qualified majority voting for environmental policy became the norm after Maastricht with the adoption of the "co-decision" procedure for use with Article 100a, and the application of the co-operation procedure to Article 130s, in the Environmental Title of the Treaty.[15] Both procedures call for a second reading by the Parliament, and co-decision contains provisions for a Conciliation Committee between the Parliament and Council if the Council does not adopt the Parliamentary amendments after the second reading.

Applying a Policy Networks Approach to EU Governance

Thus far, the role of non-state actors, such as the Commission, Parliament and the ECJ, has been only briefly touched upon. The importance of the Commission's role (here, specifically, DG XI) in agenda-setting has increased over time, in part because of the heightened salience of environmental policy in the EU

[15] General action programs for the environment also fall under the co-decision procedure (Article 130s(3)). Under Article 130s, limited areas of environmental legislation are still subject to unanimous voting in the Council under the coordination procedure, which also limits Parliament to one reading. (Commission and Council of the European Communities 1992).

(for an analysis on the Commission's role in agenda setting see Cram 1994; Fuchs 1994; Nugent 1995; Peters 1994). The role of the Parliament has also increased significantly through the new decision-rules of the TEU, and, as noted above, the ECJ has played a major role in integrating environmental protection into the wider goals of the EU. In addition to these institutional actors, European-level interest groups have become both more visible, and more important to the policy-making process. In order to describe the role of these non-state actors in what has become an ever-decreasingly intergovernmental policy process, a framework or model is necessary. One model which can account for and describe the participation of all these relevant interests is a "policy network" model.

This model posits that decision-making power is distributed unevenly throughout the state (here the EU), and that in some sectors, the state institutions or bureaucracy will have more power relative to outside interests than in others. A core hypothesis of this model is that variations in this sectoral distribution of power between the state and society will affect policy outcomes. The distribution of power within the state at the sectoral level is not random. The policy network model posits that the structure of the state and its macro-level institutions will shape the relations between sectoral-level bureaucracies and non-state actors (Atkinson and Coleman 1992: 165-166; Coleman and Skogstad 1990: 17). The sectoral level of state-society interactions can in turn help restructure the macro-level institutions (Atkinson and Coleman 1992: 167). This model can shed light on questions about the EU that cannot be answered simply by looking at the "official" distribution of power among the institutions as dictated by the Treaty. It helps explain why some policy sectors, such as agriculture, have remained so dominated by member state interests over time (Peterson 1995c: 393). It can also help explain why the environmental sector has become so Europeanized that "one cannot analyze the environmental policies of any member state by examining solely EC legislation *or* national legislation" (Sbragia 1993: 344). The two levels of legislation are so inter-linked as to be inseparable, but neither the member states nor the Community's institutions by themselves dictate EU environmental policy.

Although I have thus far referred to "a" policy network model, there are actually several such models. All policy network models, as stated above, focus on the mediation or intermediation of interests between state institutions and societal interests at the meso or sectoral level of governance. How each describes and defines these interactions differs from scholar to scholar. This author has found the most useful policy networks model for describing policy-making in the EU to be that of Coleman and Skogstad (Coleman and Skogstad 1990).[16] The Coleman and Skogstad model most clearly differentiates the actors involved and interested in sectoral policy-making from the kinds of relationships these actors form with each other, leading to greater clarity in the definition of types of policy networks.[17] In this approach, the actors are referred to as the "policy community", and the relationships among them as the "policy network" (Atkinson and Coleman 1989; 1992; Coleman and Skogstad 1990). The policy community includes "all actors or potential actors with a direct or indirect interest in a policy area...who share a common 'policy focus' and who, with varying degrees of influence shape policy outcomes..." (Coleman and Skogstad 1990: 25). While this definition may seem at first glance to include anyone with a passing interest in a policy area, the concept of the policy community is further divided into the "sub-government" and the "attentive public." The former includes government agencies, business firms, industry associations and organized interest groups which actually make policy in the given field (Coleman and Skogstad 1990: 25). The attentive public may include media representatives and interested expert public and private individuals who follow and try to influence policy, but who do not participate in the actual policy-making process (Coleman and Skogstad 1990: 26).

Including the "attentive public" in the policy community is useful in an area such as environmental policy, where there is often a large public interest in the policy, but where there may be a limited amount of participation in the actual policy-making process at the "government" level, whether that level be local,

[16] This model is also used and applied in (Atkinson and Coleman 1989; 1992).

state, or EU. Coleman and Skogstad's definition of the policy community, and the division of that concept into the sub-government and attentive public allows scholars to study the impact of diffuse, but important, social movements or general public interest in a policy area such as the environment. Environmentalism and environmental interest groups in Europe, at both the European and member state level, helped propel environmental protection onto the European agenda and still play an active role in trying to influence EU environmental policy (Vogel 1993a; Vogel 1993b; Vogel 1995). Rather than focusing solely on who actually sits at the policy-making table, this approach to the policy community can incorporate a pluralist approach to policy-making that concludes that such diffuse interests do affect policy outcomes.

New Actors, New Networks

While there is no doubt that the Council of Ministers still holds the preponderance of power among the institutions of the EU, the changing decision rules of the SEA and TEU have given other actors more opportunities for influencing policy, and qualified majority voting has weakened the abilities of the individual member states to block policies with which they disagree. The roles of the other policy-making institutions of the EU, namely the Commission and Parliament, have increased in importance since the SEA. In addition, the fact that environmental policy has become so firmly rooted at the European level has led non-state actors to lobby more intensely at that level in all stages of the policy-making process, rather than concentrating their efforts on influencing the policy position of their member state governments. These institutional changes and changes in environmental policy mean that it is important to assess the role of non-state actors in the environmental policy community, and the different policy networks they form throughout the policy-making process.

As one of the first Directives adopted under the Maastricht co-decision rules, the 1994 Directive on Packaging and Packaging Waste (Dir 94/62, OJ L 365, 10; "Packaging Directive") provides an example of

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[17] The scope of this paper does not allow for a full debate on the usefulness of all the different models that fall into the category of "policy networks models". For elaboration on the debate, and for more information on the various models, see (Kassim 1994; Peterson 1995a; 1995b; 1995c; Rhodes and Marsh 1992; van Waarden 1992).

how the EU has tried to balance environmental protection with the environment.[18] Like many EU environmental policies since the late 1980s, this Directive contains provisions for higher standards for those countries who wish to pursue them, and longer phase-in times and standards for the less developed countries of the EU. Unlike the situation that was emerging before the development of the Directive, the higher standards for recycling and reuse of packaging and packaging waste by the more environmentally aware countries will not pose a trade barrier to other member states, and, perhaps even more importantly, the less environmentally conscious member states will not become the dumping ground for the rest of the EU's packaging waste. The development of this Directive reveals the interplay of the different institutions European level and subnational interests involved in environmental policy-making in the EU.

In the initial stages of the Commission's proposal, as a response to the call for mutual responsibility contained in the Fifth Action Program, DG XI opened up its formal consultations to the member states, industry representatives and environmental and consumer interests, allowing them to consult formally with DG XI through consultation committees, rather than having to lobby and compete for the ear of DG XI officials (Interviews with DG XI officials, and environmental and industry representatives, Brussels 1995, and see Porter 1994). Both the formal consultation and the preponderance of European level industrial association lobbying of DG XI represents a marked change from the past, where, until the early 1990s, industry groups lobbied DG XI on proposed environmental Directives only indirectly, by going through DG III, the Industry Directorate General (various interviews with Commission officials, UNICE representatives, and Laurens Brinkhorst, former Director General, DG XI, Brussels, 1995). DG XI can no longer be said to be "captured" by environmental interest groups, and industry representatives are now included intimately in the environmental policy network at the policy initiation

[18] Space does not permit an in-depth analysis of the development of this Directive. I only use the Directive here to provide a concrete example of the policy-making process for environmental policy having trade impacts, and to show the importance of the different policy networks that develop throughout the policy-making process. (see Cloutier 1996 for an in depth analysis of the Packaging Directive).

stage in the Commission (Interview with Laurens Brinkhorst, Brussels, 1995). While environmentalists later complained that the Directive was a victory for industry, it is important to note that much of this victory came from lobbying and policy participation by industrial groups at the European rather than the member state level, through the inclusion of non-state actors in the sub-government of the policy community in the policy initiation stage of the Directive's development. These new relationships within the environmental policy community reflect the institutional and policy changes that have increasingly linked environment and trade policy in the EU since the mid-1980s.

From the Commission, the proposed Directive proceeded simultaneously to the Parliament for its first reading, and to the Council for its common position. During the Parliament's first reading of the Packaging Directive, members and representatives of industry lobbied the Environment Committee extensively. By one estimate, over half of the lobbyists to the Parliament during this first reading represented associations of industrialists, and another 26 percent of the lobbyists were either from individual companies or were consultants to industrialists (Rigler 1994, 4). In addition to encouraging informal links with members of other EU institutions, the open institutional structure of the Parliament admits a great deal of interest representation. It is interesting to note that, whereas the Commission's proposal seemed to become more favorable to industry as it took form (Porter 1994), the Environment Committee remained committed to a pro-environmental stance, despite heavy lobbying from industry. Despite what could be conceived as a balance between industrial representation in the Commission and environmental representation in the Parliament, by the time the proposal reaches the Parliament, the main components of the Directive have already been set, so the environmentalists' views may still not be well represented in the final legislation (interviews, Brussels, June-August 1995, see also Hull 1993). This was certainly a complaint of the Greens in Parliament and other of environmental organizations concerning the final Packaging Directive.

In the Council, the working group sought a common position based on qualified majority voting, since the Directive was based on Article 100a. QMV for the Packaging Directive resulted in a common position by the Council that went against the wishes of Germany, Denmark and the Netherlands, which voted against it. Since national interest plays such an important role at this stage, it might well be tempting to simply dispense of trying to discuss the policy network at this stage and call the process "intergovernmental." However, even member state representatives agree that the bargaining in the Council is not intergovernmental, but consensual in nature—it has been labeled "the Community process" (Interviews, Brussels, June-August 1995). With the advent of qualified majority voting, the search for policy outcomes is no longer a search for the lowest common denominator policy; the quest is rather for consensus and compromise. Within the Council, negotiation and alliances between states have become very important, either to try and stop a piece of legislation, or to ensure that it passes. Relationships between national representatives in Brussels and the members of the other institutions have become more salient in helping determine final policy outcomes. It is no longer enough to unilaterally block a proposal once it reaches the Council—a state must try to influence it early on, and throughout the process.

While the policy community surrounding Council decision-making remains closed to societal interests (unless a member state's "policy experts" happen to be from a particular industry or sector), the Parliament's second reading re-introduces societal interests into the policy-process at this stage of EU decision-making. The Packaging Directive went into the Parliament's second reading just after the Maastricht Treaty had taken effect, which meant that if the Council were to reject the Parliament's amendments after its second reading, a Conciliation Committee would need to be convened by the Council and Parliament unless the Council could adopt its common position by unanimity. This latter was an impossible situation given the opposition of Denmark, Germany and the Netherlands, and the Parliament, along with industrial, environmental and consumer interest groups, knew it.

The lobbying of the Parliament during its second reading was some of the most vicious and intensive ever seen in that institution, with various lobby groups breaking into MEP offices to steal documents which they could then use to formulate their countering positions (Interviews, Brussels, June-August 1995). In its second reading during the spring of 1994, the Parliament adopted 19 amendments to the proposal, and forwarded the amended proposal to the Commission. The most contentious amendment from the Parliament dealt with economic instruments, such as "eco-taxes." Using this amendment, which stated that member state economic instruments should not create distortions in competition or "obstruct the free movement of goods or discriminate against imported goods" and should "avoid new forms of protectionism" (CEC 1994, 12, 15), the Parliament essentially forced the Council into a Conciliation Committee, where the two institutions could deal with each other on equal footing. The Parliament was not only pushing for the adoption of economic instruments at the Community level, but was also using this amendment as a lever against one of the member states, Belgium, in order to bring it to vote against the proposal. Belgium had adopted an eco-tax on packaging in order to fund its collection and recovery systems for packaging waste. This tax would likely have posed a barrier to trade and competition under the language of the Parliamentary amendment, and Belgium had to reject the Parliament's amended proposal in order not to vote against its own interests.

The Commission, after adding its opinion and the Parliament's amendments, sent the modified proposal to the Council on 25 May 1994. As expected, Belgium, the Netherlands, Denmark and Germany rejected the amended proposal, and the Council and Parliament convened a Conciliation Committee in order to work out the differences between Parliament's opinion and that of the Council. According to both environment COREPER members and Parliamentarians, the Council only rejected five or six of the 19 amendments proposed by the Parliament, but the key disagreement was, as the Parliament had expected, the amendment on economic instruments (Interviews, Brussels, June-August 1995).

At first glance, the fact that the Directive ended up in Conciliation appears to be a power play by Parliament to take its new powers under Maastricht as far as it could. The danger inherent in such a tactic, however, is that if no conciliation had been reached, and the Parliamentary plenary could not muster the votes to reject the proposal outright by an absolute majority, the Council's position would, in fact, have prevailed.[19] Even if the Parliament could have garnered the absolute majority to reject the proposal, the real losers would have been Europe as a whole, since the whole problem of governing packaging and packaging waste would have remained where it was before the whole process for this proposal had begun in 1990. As one environmental attaché noted, the Community's policy-making process is one of coalition-building and compromise, and the Conciliation Committee is no exception to this rule, as long as the ultimate goal is policy *making* and not policy *deadlock* (Interview, Brussels, 28 July 1995).

The primary bargaining in the Conciliation Committee took place between the Chair of the Environment Committee and the President of the Council rather than between twelve members of the Parliament and twelve members of the Council. Thus, the final bargaining on a proposal that reaches the Conciliation phase is not inter-governmental, but rather inter-institutional. Parliament used this Conciliation Committee to push through some of its earlier amendments, including the inclusion of the amendment on fiscal instruments and the five-year versus a ten-year timetable for meeting the objectives of the Directive. They were, however, unable to strengthen the objectives back to the 90 percent of waste for recovery and 60 percent of waste for recycling. The Council was able to reach a compromise on the use of economic instruments which satisfied both the Parliament and Belgium, so that in the end, Belgium voted in favor of the Directive. Some members of the Parliament, (and most environmentalists outside the institution) felt that the proposal should have gone before the Plenary for rejection of the Council's

[19] The results of the Dublin Summit of the 1996 IGC suggest that there is general consensus on eliminating the provision that allows the Council to adopt its common position in the face of a lack of agreement in the Conciliation Committee when the Parliament cannot muster the absolute majority to reject the common position. Such a move would make the Council and Parliament "co-equals" in this final phase of the decision-making stage (Conference of the Representatives of the Governments of the Member States 1996, 93-100).

position, since the Directive did not go far enough in protecting the environment, but the majority of the Environment Committee felt that the compromise position was preferable to having no Directive at all.[20]

The Directive, while not quite the LCD solution that could have been expected in the case of unanimous voting in the Council, does represent a compromise between all the competing interests described above. If any one interest can be said to have won, it would be industry. As described above, industry lobbied both the Commission and Parliament heavily throughout the process, but especially in the policy formulation stage in the Commission. Industry representatives were not fundamentally opposed to a Directive on packaging waste, but they wanted to see a Directive that would be economically workable for them. In fact, extremely conservative positions by industry were unlikely to sway either the DG XI officials or the MEPs in the Environment Committee, but positions of moderation that suggested solutions were listened to and often made their way into the Directive (Porter 1994; Rigler 1994).

Conclusions on the Packaging Directive

It is imperative to account for all the competing interests in the policy-making process when concluding "who won." The policy network account given above described a wide policy community which formed different networks at different stages of the process. The ability of any one group of actors to influence the policy proposal depended heavily on the institutional rules and structure governing the stages of the policy process. In the initiation stage, the openness of the Commission network contributed to the ability of industry, with its concentrated lobbying and vast superiority in numbers, to influence the initial proposal heavily. However, the Commission's development of the consultation committees that pulled environmental interest groups along with those from industry and even the member states, into the sub-government in the first cut of the Directive may have helped the former to be heard without having to

[20] Taking a rejected proposal to the Plenary for an absolute majority vote is a risky business, since at any given time only about 500 of the entire Parliament show up for the Plenary meetings, and an absolute majority vote requires more than 60 percent of these to vote to reject the proposal. Because the Parliament is divided along party lines (both within committees and in the Plenary), and the more conservative parties outweigh the more liberal

compete with the more powerful and influential state and industry actors. This can be seen by the initial targets of the Commission proposal, which were 90 percent recovery and 60 percent recycling.

In the phase of the decision-making stage that centered on the Council, the closed nature of the networks there led to the watering down of the targets, and a compromise that would allow the more environmental states to keep their stricter legislation while allowing the poorer member states to catch up to the requirements of the Directive. While this phase remains relatively closed to societal interests (unless, as noted previously the member state wishes to have consultants from industry or business at the table with them), it is not intergovernmental. The "Community" method of decision making requires consensus building and compromise seeking even under QMV rules, but those rules help structure the bargaining in the Council. In this Directive, particularly, the interests of three of the member states were not realized in the Directive, and they finally voted against it, but must implement it as they would any other EU Directive they had supported.

The Parliament's Second Reading in the decision-making stage allows societal interests to play a role much later in the policy process than was possible before the SEA and Maastricht. In the case of this Directive, some of those societal interest groups may have played extremely dirty pool in order to sway the Parliament against its more "environmental" amendments, such as a strict waste hierarchy. Far from being a non-actor in the policy process, the Parliament has increased in both influence and actual power through the Second Reading and through the rules of the co-decision procedure. If, as has been suggested at the Dublin Summit, the ability of the Council to adopt Directives by QMV if the Parliament and Council cannot reach agreement in Conciliation is dropped, the Parliament will, indeed, become a co-legislator with the Council. A studied reading of this Directive at its different stages reflects the language and positions of the Parliament throughout. While some amendments of the Environment Committee Parliament were not adopted by the Plenary, evidence points to industry and other anti-environmental lobbies, as well as inter-

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"left-wing" parties like the Greens, it was unlikely that the Parliament could have mustered the absolute majority

party rivalry within Parliament during the second reading, rather than the influence of the member states as the reason for this rejection.

As with many other European environmental Directives, implementation is likely to be uneven between the member states; however, the actual member state governments play a small role beyond the initial transposition of the Directive into national law. The less industrialized member states have been given a longer timetable for implementation, reflecting a more general trend in both EU and international environmental agreements that allows them to "raise the floor" of their environmental policy, while not "lowering the ceiling" for the rest of the EU (see for example Vogel 1995). Most importantly, these states will not become Europe's dumping ground for packaging waste from the more heavily industrialized and populated countries of the EU. The implementation of this Directive, as with many other environmental Directives, reveals multi-level governance in action. Regional and local governments and peak industry associations, watched closely by national and European level environmental groups, interact closely with the Commission officials responsible for ensuring the implementation of the Directive.

Industries with plants in more than one member state will likely be the primary implementors for the requirements on the production and marking of packaging, and local authorities for the implementation of recycling and recovery centers. It is the Commission's intention to work closely with both these important non-national representatives to ensure the implementation of the Directive (Interviews with DG XI officials, Brussels, June-August 1995). Interestingly, industry can at times actually be the prime mover in the implementation and even innovation of environmental policy, and this is the case so far with the Packaging Directive. A forum of industry groups has made specific proposals about both the materials and the marking system required by the Directive. Rather than developing new markings, this group proposes using markings already in use in various industries and member states, and applying them at the European

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needed to reject this proposal (Interview with MEP, Brussels, 8 June 1995).

level.[21] This consultation group, representing all levels of the packaging chain, prefers to work with rather than against the Commission in order to ensure that the final requirements will be feasible. Since these industries will be primarily responsible for the marking and identification of material for recycling, re-use and recovery, they have become an integral part of the Packaging policy community at the implementation stage.

Conclusions

An analysis of the historical evolution of EU environmental policy-making, and the application of a policy network model to a specific environmental Directive has revealed the importance of both institutional and societal actors as well as both formal and informal relationships in the EU's policy-making process. There is little doubt that among the EU's institutions, power remains concentrated in the Council of Ministers. However, with the advent of QMV for environmental policy in the SEA, the power of the individual member states to hold back EU environmental policy has been severely reduced. QMV has put the onus on member states not only to try to form coalitions with other member states within the Council, but also influence the Commission very early on in the policy development process. Since its establishment in 1981, the Environment Directorate of the Commission (DG XI) has grown substantially, and has expanded its policy scope to include all areas of environmental policy. Neither the member states, other Directorates General or industrial associations can ignore the importance of lobbying and consulting DG XI as early in the policy process as possible. The Fifth Environmental Action Program has encouraged the use of consultative committees and implementation committees such as those seen in the development of the Packaging Directive. Within the Parliament, the Environment Committee, headed since its inception in 1979 by Ken Collins, an MEP from Scotland, has developed a solid reputation, and is considered one of the most powerful committees within the Parliament. In addition, Collins' relationships, while often informal,

[21] ERRA, the European Recovery and Recycling Association, heads up this task force. ERRA members include some of the largest multi-national manufacturers in Europe in most industry sectors from the beverage industry, to cosmetics, to household products to high-tech electronics.

with member state attachés, industry and environmental organization representatives, and Commission officials are considered important within the environmental policy community at the European level (Interviews Brussels, June-August 1995, and Ken Collins, Brussels, 5 July 1995).

The institutional changes under the SEA and Maastricht, especially QMV and later the co-decision procedure, have opened up the policy area to new societal actors at the European level, who attempt to influence policy both earlier and later in the process than was possible prior to the SEA. These actors, especially industry associations, have recognized that environmental business is often good business, and so competition, trade and the environment are all interlinked in their industrial policies. For example, in addition to lobbying and consulting with DG XI early in the policy process, industry is playing a role in helping implement EU environmental standards even outside the EU. While the Central and Eastern European Countries (CEECs) vying for EU membership have accepted the *acquis communautaire* of the EU, including all its existing environmental standards, policies and principles, they have a 50 year history of extreme pollution, and very low environmental standards that must be overcome. As West European industry has expanded into Central and Eastern Europe, it has chosen, in large part, not to take advantage of the presumed competitive advantage that these low environmental standards would provide in the short term. Instead, when building new plants, industry may refurbish existing plants to meet EU standards, or build new plants to those standards (Interviews with industry representatives, Brussels, June-August 1995). Environmental protection measures, rather than costing these industries more, may actually enhance their competitiveness since their production methods are uniform across borders, regardless of the prevailing domestic laws with which these industries must deal.

Analyzing the EU's environmental policy-making process using a policy network approach provides a needed step in bridging the gap between intergovernmentalist and multi-level governance approaches to the EU. A great deal of EU policy-making is sectoral in nature, and a policy network approach acknowledges that institutional structures, decision-rules and policy networks vary sector by

sector. In the EU, there are policy areas that remain highly intergovernmental, such as the obvious case of foreign and security policy, some that are more "corporatist" in nature, such as agriculture policy which gives a privileged position to farmers' interests, and some that are highly pluralist, such as environmental policy. Rather than pointing to different sectoral processes as exceptions to either intergovernmentalism or multi-level governance, an approach that acknowledges these sectoral differences in the policy process seems to provide a bridge between the two theoretical extremes, as well as providing a better understanding of how the EU actually works in day-to-day policy-making.

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