

Conflict or Cooperation? Transatlantic Relations in the Environmental Field¹

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The US withdrawal from the Kyoto Protocol has brought transatlantic differences over environmental issues into the headlines. Since then, climate change politics has been referred to as a prominent example for the development of a transatlantic rift. However, transatlantic differences over environmental policy are anything but new. Many of these conflicts just have been hidden from public view as they are often concerned with technical aspects of regulation and negotiated on the staff level.

This paper discusses three recent examples of transatlantic conflict over environmental policy. Climate change, environmental standards for export credit agencies (ECAs), and regulation of genetically modified organisms (GMOs) have all proven to be significant sources of transatlantic divergences. This is primarily the case because these topics are not purely environmental issues, but rather cross-cutting policy challenges with substantial impacts on a number of policy areas. These topics entail both complex cost-benefit-assessments and coordination among different domestic and foreign policy bureaucracies. In order to protect the earth's ecosystem, climate change policy calls for adjustments in energy production, transport, infrastructure, industry and economics; climate change, however, also poses critical questions regarding North-South relations, inter-generational equity, and the future of the capitalist system. Likewise, international environmental standards for ECAs do not only address ecological concerns in international investment decisions, they also create a level playing field for international competition. Finally, the regulation of GMOs aims at minimizing the risks of biotechnology for humans and their environment; at the same time, however, regulations can become non-tariff barriers to trade.

The examples in this paper provide only a glimpse into the broad range of transatlantic environmental policy challenges. Yet, each of them represents a pattern for negotiation dynamics in other cases of transatlantic environmental negotiations: International environmental standards for ECAs are based on a U.S. initiative; the result of which can be regarded as an internationalization of U.S. domestic regulation entailing high adaptation costs for other industrialized countries. In GMO politics we find a counterfactual case: here, Europeans have managed to agree on domestic regulation early and create a set of rules

¹ A German-language version of this paper is forthcoming: Ochs, Alexander/ Schaper, Marcus (forthcoming 2005): Konflikt statt Kooperation? Die Transatlantischen Umweltbeziehungen. In: Jäger, Thomas/ Höse, Alexander/ Oppermann, Kai (forthcoming 2005): Transatlantische Beziehungen. This paper is part of a larger project on the role of Europe in transatlantic negotiations. Future iterations will include a cluster analysis of a larger set of transatlantic environmental negotiations.

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which now serves as a de-facto global standard. These rules are contested by the United States which considers them incompatible with its domestic regulations and impeditive to U.S. exports. Perhaps the most interesting case is one which stands in contrast to these two examples of alternating leadership roles: in climate change politics, the EU has increasingly taken over leadership. After negotiations had emphasized the necessity of U.S. participation in the regime for years, the EU now leads this effort without the United States since President Bush's withdrawal from Kyoto.

If the leadership role in transatlantic relations is not always and automatically assumed by the United States, then the central question is: **under which conditions does which of the transatlantic partners take the initiative and place an environmental issue on the international agenda?** The first section of this paper is concerned with the conditions for, and the importance of assuming a leadership role in international environmental policy. In the second part, we highlight the distribution of these roles in the three cases briefly outlined above. Finally, we address the relevance of the lessons learned for the future transatlantic relationship within the environmental field.

On the Role of Leadership in Transatlantic Environmental Relations

Is the EU primarily a weak actor that takes in dominant global rules and retransmits them down to national polities in a coordinated fashion? Or does the EU have a will and power of its own?³

When environmental policy first came onto the agenda, the United States and (Western) Europe often took similar positions. This, however, has changed during the past two decades, and the relationship has been increasingly marked by disagreement. Table 1 provides an overview of environmental issues with the potential for transatlantic conflict and the distribution of roles amongst both actors on these issues.

Historically, the United States can claim most environmental policy innovations, both domestically and internationally. The National Environmental Policy Act (NEPA) of 1969 served as a catalyst and model for environmental regulation in many countries – including most of Europe. Similarly, European states imported U.S. regulations regarding a wide array of particular environmental problems; European automobile emission standards, for example, are a wholesale adaptation of U.S. standards requiring catalytic converters as early as 1974. While some of these regulatory innovations diffused to Europe by imitation, others were intentionally internationalized by the United States.

US leadership on the environment was most visible in the 1970s. Yet, since the beginning of the Reagan administration, the U.S. record has become tainted and less predictable: where the country had been a leader in ozone protection, it was also as the most prominent laggard with regard to the protection of the high seas, international waste and biodiversity management, and climate change. As indicated by the 1990 Clean Air Act amendments or the environmental standards for ECAs discussed below, the United States is

³ Tiberghien, Yves/ Starrs, Sean. (2004): The EU as Global TroubleMaker in Chief: A Political Analysis of EU Regulation and EU Global Leadership in the Field of Genetically Modified Organisms. Paper presented at the 2004 Conference of Europeanists, Organized by the Council of European Studies (CES). Chicago. 3 March 2004. 2.

Table 1 Selected environmental issues with a potential for transatlantic conflict

Issue area	Timeframe	Initiator	Leader	Type	Important Characteristics
High Seas	1982: UN Convention on the Law of the Sea		USA among others	International treaty; in force; not ratified by the United States	Developing countries are to receive profits from seabed mining
Stratospheric Ozone Depletion	1985: Vienna Convention on the Protection of the Ozone Layer 1987: Montreal Protocol	1978: U.S. domestic ban on CFCs in aerosol sprays	First USA since the 1990s	International treaty; in force	Initiative by Toronto Group (USA and others); Europe took over leadership on strict reduction targets
Species Protection	1973: CITES 1992: Biodiversity Convention 1999: Cartagena Protocol	1969: US Endangered Species Act 1987: United States requests UN expert group	USA Europe	International treaty; in force International treaty; in force; not ratified by the United States International treaty; in force; not ratified by the United States	Modeled after UN working group proposal Precautionary Principle similar to EU regulation
Food Safety	1985: EU Ban on growth hormone s in beef 1994: SPS Agreement	EU USA		EC domestic regulation; 1996: WTO panel ruled against EU, but EU does not comply International treaty; in force	Modeled after EU regulation; WTO considers SPS Agreement incompatible with precautionary principle Risk assessment compatible with U.S. regulations; less compatible with EU precautionary principle
Hazardous Waste	1989: Basel Convention	UNEP	African states	International treaty; in force; not ratified by the United States	Definition of hazardous waste not compatible with U.S. regulation
Chemical Safety	1998: Rotterdam Convention 2001: Stockholm Convention (POPs) 2001: Proposed EU Regulation REACH	1976: U.S. Toxic Substances Act EU	Canada, Sweden	International treaty; not ratified by the United States International treaty; not ratified by the United States Proposed EU domestic regulation; non-agreement; ongoing negotiations	United States wanted to exempt more substances Intense U.S. lobbying against REACH in Europe

still active in environmental policy. However, the EU⁴ has caught up in many areas; it has become more innovative domestically, and increasingly initiates and influences international environmental politics.⁵

Taking the initiative in international environmental politics is of key importance. The first party to the table first can set the agenda on a particular issue according to its own preferences and interpretation, as well as determine the parameters for solutions. Alternate proposals and critiques suggested by later parties must be in terms of the original proposal; i.e. they are formed, voiced and evaluated against the benchmark set by the initial proposal. The United States has historically occupied the dominating position within the transatlantic relationship most importantly because it has been able to articulate its interests clearly. Europeans, on the other hand, have often defined their position only in reaction to the U.S. proposal. Consequently, the United States has come to dominate the agenda, timing, and outcome of negotiations, whereas the EU and its member states have only been able to modify American proposals at best.

U.S. influence has been most strongest in the face of fragmented EU reactions to U.S. initiatives – i.e., when there is no joint European position but a number of individual standpoints. This is most often the case when the EU Commission cannot act on behalf of member states due to either their disagreement or a lack of political responsibility for the policy area in question. In such cases, the United States has been able to “divide and reign” by forging ad hoc coalitions with individual European states, and thereby undermining otherwise concerted European resistance to U.S. initiatives. This tactic is well illustrated by the following account of negotiations on environmental standards for ECAs observed below.

Environmental negotiations have often taken this path. However, transatlantic dynamics seem to be changing: the EU is becoming increasingly proactive and increasingly unwilling to shy away from open transatlantic conflict on issues it considers important. Environmental policy has established itself as one sector outside trade in which Europeans act as equal partners to the United States. In the case of GMO regulations, the EU has established strict domestic rules which have evolved to a de facto global standard; the United States, in contrast, has found itself on the defensive, and has been unable to modify European GMO regulation in a way that would make it compatible with domestic U.S. rules.

In discussing the protection of dolphin and turtles in two case studies examining tuna and shrimp fishing, Elizabeth DeSombre identifies U.S. market power as a strong predictor for successful U.S. internationalization of domestic rules. If the U.S. market is of central

⁴ In this paper we treat the United States and the European Union as functionally equivalent with respect to their foreign environmental policy. This is, of course, a gross simplification of political processes; however, we address the EU's supranational character by defining coalition-building among EU member states as a necessary condition for EU initiatives at the international level.

⁵ Some analysts describe this as a flip-flop between U.S. and European leadership while others such as Jonathan Wiener speak more nuanced of a hybridization: Wiener, Jonathan B. (2004): *Convergence, Divergence, and Complexity in US and European Risk and Regulation*. In: Vig, Norman J./ Faure, Michael (2004): *Green Giants? Environmental Policies of the United States and the European Union*. 73-109. A good overview of regulatory innovations is provided by: Vig, Norman J./ Faure, Michael. (2004): *Green Giants? Environmental Policies of the United States and the European Union*. Cambridge, Mass.: MIT Press as well as Schreurs, Miranda (2002): *Environmental Politics in Japan, Germany, and the United States*. Cambridge: Cambridge University Press. For a detailed discussion of transatlantic environmental relations see: Schreurs, Miranda/ Selin, Henrik/ VanDeveer, Stacy D. (eds.) (forthcoming): *Enlarging Transatlantic Relations*.

importance to the producers of the commodities to be regulated, then a domestic U.S. standard can become a de-facto international norm; this is due to its ability to deny products access to the U.S. market if they do not conform to the standard.⁶ DeSombre's argument also seems to apply to European GMO standards up until now; they have become a de-facto global standard because of the importance of the EU market for food producers worldwide.

DeSombre further argues that an American push for international agreements expanding its policies beyond U.S. borders can be expected when environmental activists ("baptists") and industry ("bootleggers") join forces.⁷ A U.S. initiative is most likely when the U.S. has comparatively strict regulation at home, and when an internationalization of these domestic rules would help both the environment abroad and industry at home.

DeSombre's analysis is helpful in identifying conditions under which the United States will internationalize domestic regulations concerning particular commodities. It has the potential to be applied to European initiatives – as in the case of GMOs – if one adds coalitions among the member states as a central condition to agreement among organized interests. DeSombre's model, however, appears to be less helpful when broader environmental regimes are to be created which are not limited to regulating the environmental impacts of certain products and commodities. With regard to international climate change politics and environmental standards for ECAs, neither the United States nor the EU could rely on its market power to achieve their objectives. A solution was only possible through negotiation.

Under which conditions will a government take on the role of initiator in international environmental politics? For Peter Haas, this is not an easy question to answer. He comments on the United States:

[The United States] is widely admired for its record of introducing some of the world's strongest domestic environmental standards, which are emulated abroad, including path-breaking environmental reporting standards and environmental impact assessment requirements for public projects. Yet the US record of foreign environmental policy since 1972 is erratic; seemingly unrelated to administration.⁸

Haas attributes his observations to the specific constellation of a number of factors:

bureaucratic discretion and inertia, scientific consensus, avoiding heavy economic burdens on the US economy from compliance, domestic industries' opposition to expensive pollution control regulation, and organized public concern amplified by NGOs. When consensus exists and executive branch bodies enjoy some discretion then the US is likely to be a leader. When consensus is absent, economic costs are heavy, and industry opposition is powerful than the US will be a laggard.⁹

According to Haas, the question of who will assume a leadership role in negotiations is less a function of different shades of "greenness" on the part of either side, but rather a consequence of the characteristics of the particular issues and the constellation of domestic

⁶ DeSombre, Elizabeth R. (2000): *Domestic Sources of International Environmental Policy: Industry, Environmentalists, and U.S. Power*. Cambridge, Mass.: MIT Press. 247.

⁷ Ibid.

⁸ Haas, Peter M. (2003): *Environment Multilateralism and the United States*. Amherst, MA: University of Massachusetts.

⁹ Ibid.

actors and interests involved. In fact, in two of the cases observed below, the initiator bases its international proposal on broad pre-existing coalitions at home. The U.S. initiative for environmental standards for ECAs was supported by industry and environmental activists; similarly, the EU Commission represented a unified Europe on GMOs.

It seems to be insufficient, however, to seize the initiative on an issue. As will be discussed in the case of climate change politics, in the course of negotiations a particular actor's influence can change as dramatically as the distribution of roles among actors. U.S. leadership on climate change – which had all along determined by the sheer importance of the country rather than its political appetite for action – was eventually severely undermined when the U.S. Senate weakened the U.S. delegation's mandate at the Kyoto negotiations. The climate change negotiations also show how a party can gain increasing leadership; moreover, the joint European position has only evolved and solidified over the years. To the surprise of many observers, the EU has been ultimately able to save the Kyoto agreement, even after the United States had turned its back on the protocol.

Three Examples

Environmental Standards for Export Credit Agencies

Export credit agencies are agencies which support exports into high-risk markets by enabling the financing of high-risk transactions. Some ECAs act as public banks, and offer better terms for high-risk transactions than private financiers could for such projects. Others operate as insurers by absorbing some of the risk, thereby making private bank financing of these transactions viable. All ECAs operate under a public mandate; some (like the U.S. Export-Import Bank) are public agencies, whereas the administration of export credits in other states has been outsourced to private sector companies. The German Hermesdeckungen, e.g., are provided by a consortium consisting of Euler-Hermes and PriceWaterhouseCoopers, under contract with the Federal Government.

Overall impact of ECA support on trade is small; however, this kind of backing is crucial for infrastructure projects with potential environmental impacts. In Germany, 3 per cent of its total export volume is supported with Hermes cover. ECA significance becomes more apparent when considering exports to developing and transition countries: 20 per cent of German exports to these countries is ECA-facilitated.¹⁰ ECAs play an important role in financing large-scale infrastructure projects in those countries typically characterized by a combination of high commercial and political risk. Because of their long repayment terms, financing for such projects is often unavailable on the private market at reasonable terms.

At the same time, large infrastructure projects can also have serious impacts on the natural environment. The contentious Three Gorges Dam in China, for example, could only be built with the support of a number of European ECAs. The U.S. Export-Import Bank, however, refused support this project, citing serious environmental impacts which were not consistent with its policies.

In 1995, environmental standards for the Export-Import Bank came into effect after Congress had demanded the development of such policies in its 1992 reauthorization of

¹⁰ Figures for other industrialized countries are similar.

ExIm. With these unilateral standards, U.S. exporters were faced with a competitive disadvantage vis-à-vis their European contenders; projects for which they sought support now needed to be evaluated for environmental impacts which had to comply with U.S. standards. Consequently, since the mid 1990s, the United States has sought to establish international environmental standards for ECAs which would require other states to implement environmental policies similar to the U.S. ExIm requirements.

Negotiations in the OECD Context

Environmental standards for ECAs are a good example of the successful internationalization of domestic U.S. regulations. The United States first raised the issue of harmonizing environmental conditions for ECA-supported projects in technical OECD committees; the United States then elevated it to the heads-of-state level at the Denver G7 summit in 1997. From 1998 on, the OECD's Export Credit Group (ECG) was tasked with negotiating an agreement on environmental standards and procedures for export credit agencies. In 2001, these negotiations resulted in the *Draft Recommendation on Common Approaches on Environment and Officially Supported Export Credits (Revision 6)* – or commonly referred to as *Common Approaches*. These recommendations were supported by all members of the Export Credit Group, with the exception of the United States and Turkey. All other members voluntarily implemented the Common Approaches from 2002 on. The United States refused support on the grounds that the recommendation fell short of U.S. goals for binding standards and transparency. The agreement called for a revision of the Common Approaches in 2003. Renewed negotiations in the fall of 2003 resulted in a revised version, passed by the OECD Council in December. Since 1 January 2004, the current Common Approaches are providing the international basis for national standard-setting; the next revisions are to take place in 2006.¹¹

European states did not produce a coordinated response to the U.S. initiative and negotiated largely independently of each other. The United States took advantage of these disagreements and pulled individual European states to its side. What resulted was an agreement closely resembling the U.S. initiative, despite the strategic advantage European states had at the outset of negotiations. European companies had a competitive advantage in the absence of an agreement.

In essence, negotiations addressed two related issues: (i) minimum standards for project evaluation, and (ii) transparency of the evaluation process prior to coverage decisions. Negotiations on standards were about establishing binding criteria and processes for assessing the environmental impact of projects. Regarding transparency, different states had very different policies in place prior to the 2003 agreement: only some ECAs, e.g. the U.S. Export-Import Bank, made the results of environmental assessments publicly available or consulted with NGOs; other ECAs, among them most of the European agencies, argued that such transparency was not possible due to commercial confidentiality concerns.

¹¹ For a detailed discussion of transatlantic negotiations on environmental standards for ECAs see: Schaper, Marcus. (2004): Export Promotion, Trade, and the Environment: Negotiating Environmental Standards for Export Credit Agencies across the Atlantic. Paper presented at the Berlin Conference on the Human Dimensions of Global Environmental Change "Greening of Policies - Policy Integration and Interlinkages". Berlin. 4 December 2004.

In the negotiations leading to the Common Approaches, states dealt not only with the U.S. initiative at the international level, but also with demands by constituents at the national level. A number of non-governmental organizations (NGOs) have been active on the issue of ECAs and the environment since the early 1980s; these NGOs have long demanded that ECAs stop support of environmentally destructive projects. Domestic U.S. standards and Swiss policies requiring consultation of civil society actors can be attributed to these early NGO activities. In the 1990s, an international coalition of NGOs active on ECAs grew out of the World Bank reform campaign. These NGOs have influenced the negotiations in the OECD context at both the international and the domestic level. In Paris, they were involved in consultations with the Export Credit Group; domestically, they targeted those government which moved least in the OECD. Results of this second phase of NGO pressure, combined with the ongoing international negotiations, include national environmental standards for ECAs in a number of European states.

These national standards differed in scope and stringency and thus provided NGOs with the opportunity to pit ECAs against each other in comparisons of national standards. However, these divisions were exploited not only by NGOs but also by the United States. Germany on the one hand, staunchly opposed both transparency rules and firm environmental standards throughout most of the negotiations; France and the United Kingdom on the other hand, were more open to the U.S. proposals. The French ECA Coface already had relatively progressive environmental standards in place since 2000; these provided an incentive to establish minimum standards at the international level.

UK negotiators cooperated with their American colleagues by placing proposals on the agenda that the U.S. delegation feared would fail had the Americans themselves been the initiators. This can be explained partially by the composition of the British ECA's (ECGD) portfolio: Since much of ECGD's business is with arms and commercial aircraft (which are not subject to the Common Approaches), standards and transparency rules would have only marginally effects on its own business. Additionally, ECGD had already long required its clients to disclose environmental impact assessment information.

Assessment of the Negotiation Results

During the first part of negotiations, Germany was successful in organizing coalitions against U.S. proposals, thus making possible the stalemate on the 2001 Common Approaches. Later on, the U.S. delegation, with French and British support, managed to secure a stronger position in the Export Credit Group. In fall 2003, this "divide and reign" strategy paid off; it resulted in the adoption of the revised Common Approaches which reflected both major U.S. negotiation objectives: environmental standards and ex-ante transparency. States opposing the U.S. initiative managed to bargain for flexibility in the provisions and thereby create a few loopholes, but overall, the agreement was built around the U.S. proposal. The results entailed significant adaptation to domestic ECA rules on the part of the European states with regard to both standards and transparency; but demanded only little modification from the side of the United States.

Despite this lopsided distribution of gains and losses, the United States managed to push its initiative through negotiations with only minor adjustments. This success was the result of both a clever negotiation strategy and the lack of unity among the European states.

The European states did not manage to forge coalitions against U.S. initiatives, although they would have collectively profited from such a strategy. Failure of negotiations would not have resulted in change to the status quo – i.e. the continued competitive disadvantages for U.S. companies, and the consequent avoidance of adjustment costs for the Europeans.

Regulation of Genetically Modified Organisms

The EU has assumed a leadership role in establishing rules for the approval, labeling, and cultivation of GMOs. However, the EU procedures are in conflict with U.S. regulation which treats GMOs as functionally equivalent with conventional varieties and does not provide for GMO-specific rules. These regulatory differences and their effects on trade in GM-foods have established the issue in a prominent slot on the transatlantic agenda. For the EU, food safety and consumer protection are crucial concerns in this conflict; the United States, however, interprets EU rules primarily as unilateral protectionist measures. From its point of view the safety of GMOs has been established beyond doubt.

This transatlantic conflict does not come as a surprise given the lopsided distribution of acreage cultivated with GM crops. The United States is the world's largest producer of GM crops with 66 per cent of global acreage. In addition to the United States, Argentina (23 per cent), Canada (6 per cent), and China (4 per cent) also have significant GM farming. The remaining 1 per cent of global GM acreage is shared by the rest of the world – including the EU.¹²

European and U.S. GMO Regulation

European Policy on GMOs was anything but unified in the beginning. In the 1980s Commission policy was primarily aimed at supporting the nascent European GMO industry and little regulation occurred. Between 1991 and 1998 the EU approved 18 GM varieties – including the controversial Novartis Bt-11 corn, which eventually led to the open split between the Commission and GM-critical member states. Only in 1997 did the Commission shift its focus to developing GMO regulation in dialog with the member states. The 1998 moratorium on the approval of new transgenic varieties was part of this new Commission strategy and made possible the definition of new unified European rules rooted in the Precautionary Principle. Thus the moratorium facilitated a unified and well articulated European position.¹³

Most countries regulate GMOs under a regime specifically created for these varieties. However, the United States is an outlier (along with Australia) in this regard as it regulates GMOs within the framework created for traditionally bred varieties. Furthermore, most countries start from the assumption that GMOs may carry a potential risk that needs to be disproved before a variety is approved; the United States, to the contrary, starts from the regulatory presumption that GMOs are harmless unless proven otherwise. Vicente Paolo B. Yu III has surveyed GM rules in sixteen different polities and has found the United States

¹² 2000 figures from: Tiberghien/ Starrs. *The EU as Global Trouble-Maker in Chief*. 5.

¹³ Cf. *Ibid.*

to be the only polity that shows both of these regulatory characteristics.¹⁴ In addition to the restrictive approval process rooted in the Precautionary Principle, the EU and many other countries require the labeling of foods containing GMOs. In the United States, voluntary GM-free labels exist (similar to U.S. organic food labels), but the United States considers mandatory labeling a trade barrier. Given its regulatory approach that considers traditional and GM varieties as equivalent it comes as no surprise that the United States consider such labels unnecessary barriers to trade.

Internationalization of EU Regulation

Shortly after finding a common position on GMOs the EU managed in 1999 to internationalize the Precautionary Principle in the Cartagena Protocol on Biosafety. This step institutionalized a basic principle of European environmental policy in an international treaty as a guiding principle for international GMO rules. However, the Cartagena Protocol is mainly concerned with the transboundary movement of living modified organisms (LMOs) in an effort to preserve natural biodiversity but it does not regulate GMOs in food. The protocol establishes the Advanced Informed Agreement Procedure for transboundary movement of LMOs. According to this rule, the importing country needs to consent to the importation of LMOs before they may leave their country of origin. This applies primarily to seeds, plants, and animals, but only indirectly to GMOs that are intended for direct consumption or further processing. Thus, the Cartagena Protocol is not directly applicable to food safety, but it is considered a successful internationalization of EU regulation nevertheless.

In the transatlantic controversy over GMOs, the EU seeks to have the WTO dispute settlement panel consider the Cartagena Protocol as internationally recognized rules for GMOs. The use of grains as either seeds or foodstuffs illustrates how closely rules for LMOs are related to those for GMOs: GM grains, which were originally intended for human consumption can be sown, cross out in the field, and ultimately pollute conventional harvests.¹⁵

The Transatlantic Conflict

The United States is not party to the Cartagena Protocol and it considers the Precautionary Principle to contradict the WTO Agreement on Sanitary and Phytosanitary Measures (SPS) which requires health-related trade measures to be based on sound science. Both the EU and the United States have ratified the SPS Agreement. Though the SPS Agreement contains a weak version of the Precautionary Principle in Article 5(7), it allows such

¹⁴ Yu III, Vicente Paolo B. (2001): Compatibility of GMO Import Regulations with WTO Rules. In: Brown Weiss, Edith/ Jackson, John H. (2001): Reconciling Environment and Trade. 575-672: 586-92.

¹⁵ A report by the North American Commission for Environmental Cooperation (part of NAFTA) on unintentional outcropping of GM maize varieties in Mexico provides an example for such a case CEC Report on GM Maize in Mexico Sparks Controversy. (2004): In: Bridges Trade BioRes 4. 21. 19 November 2004.

precautionary trade measures only under specific conditions and requires them to be provisional.¹⁶

The product of the European regulatory process is a set of rules that are not compatible with American regulation in this field. On top of this domestic regulatory regime, an international one has evolved with the Cartagena Protocol, that is more in line with the European Precautionary Principle than with U.S. risk assessment procedures. Additionally, there is a global dimension to this transatlantic conflict: states in Africa and elsewhere have established regulation that is similarly restrictive as in the EU guided by the motivation to keep their conventional varieties free of GMOs and thus to retain their ability to export their produce to the EU. This has even prompted African states to refuse U.S. food aid which the United States could not or did not want to guarantee to be GMO-free.

The bold EU policy on GMOs left few options for the United States to avert the establishment of a de-facto global standard. The United States and the EU had been in constant discussions concerning EU regulation of GMOs, "including the creation of an EU - US Biotechnology Forum which issued a joint report on the subject in December 2000 as well as a Biotech Working Group within the Transatlantic Economic Partnership."¹⁷ However, the U.S. pressure had little impact on the outcome of the EU regulatory process.¹⁸ Eventually, this led to the U.S. decision to take the matter to the WTO. Taking the matter to the WTO is a measure of last resort. Thus far, the North Atlantic states have refrained from talking high-profile regulatory issues to the WTO out of concern that the rulings and subsequent non-adherence to them could undermine the legitimacy of WTO dispute settlements which have served as valuable tools in removing trade barriers elsewhere.¹⁹

The outcome of the pending WTO case will not only have an impact on the future of GM regulation but it will also substantially affect the global trade regime in its relationship to environmental regulation no matter what the outcome will be. As of this writing little can be speculated about the panel's findings whose final report is scheduled for June 2005. Issuance of the report has been delayed twice (originally planned for September 2004, then for March 2005) in order to hear additional experts. Some analysts interpret this step as a sign for the impact of the EU's submissions on panel discussions. In its submissions the EU had highlighted the complex nature of GMOs for which rules in the SPS Agreement are said to be too narrowly defined.

GMOs are a good example for successful internationalization of European regulation. The EU Commission bundled the member states' interests and represented them internationally. As a consequence the United States had little influence on the development or European rules and their internationalization.

¹⁶ Bernasconi -Osterwalder, Nathalie (2001): The Cartagena Protocol on Biosafety: A Multilateral Approach to Regulate GMOs. In: Brown Weiss, Edith/ Jackson, John H. (2001): 689 -721. 707.

¹⁷ Pollack, Mark A. (2003): The Political Economy of Transatlantic Trade Disputes. In: Petersmann, Ernst-Ulrich/ Pollack, Mark A. (2003): Transatlantic Economic Disputes: The EU, the US, and the WTO. 65-118: 77.

¹⁸ For Mark Pollack this does not come as a surprise: "transatlantic regulatory disputes can be more bitter and intractable than traditional trade disputes, in so far as both sides believe that they are 'doing the right thing'." Ibid. 71.

¹⁹ The Beef Hormone case has shown how little a ruling can do when fundamental regulatory issues for one of the transatlantic powers are at stake. The EU preferred retaliatory measures by the United States over compliance with the ruling.

Climate Change Politics

Climate Change is the issue that has gained most prominence in international environmental politics during the past fifteen years.²⁰ This is a result of both the ecological stakes and the political challenges involved. Climate change is caused by the emission of certain substances which are a byproduct of basic human activities. Especially combustion of fossil fuels for energy generation and some agricultural practices produce so-called “greenhouse gases” (GHGs) which amplify the Earth’s natural greenhouse effect and thus contribute to global warming.²¹ Recently, a number of prominent commentators have characterized climate change as this century’s greatest problem.²²

The UN Climate Change Regime

Climate policy did not become a significant political issue until the late 1970s. Despite a number of high-level conferences and alarming assessments in particular of US scientists it took until 1988 that the Intergovernmental Panel on Climate Change was founded. As a scientific advisory body to the UN, the IPCC surveys and comments on the current state of climate change research. Since its first report in 1990, which led to the UN General Assembly’s decision to initiate negotiations on a climate change protocol, the IPCC has had a strong impact on climate change politics.

Just in time for the 1992 United Nations Conference on Environment and Development in Rio de Janeiro, the UN Framework Convention on Climate Change (UNFCCC) was drafted. Already 154 states signed it at the so-called Earth Summit. The convention entered into force on 21 March 1994. With 190 signatories as of today, it enjoys almost global acceptance.²³ The agreement establishes the basics of future climate change policy. As ultimate goal of climate protection, Article 2, UNFCCC calls for the stabilization of GHGs in the atmosphere at a level which avoids “dangerous” human impact on the climate system. Concrete measures were to be negotiated in follow-up Conferences of the Parties (COPs). Since the first COP meeting in 1995 these have been held annually.

Already, COP-1 passed the so-called Berlin Mandate which called for negotiations on a protocol to amend the convention incorporating concrete and binding GHG reductions for industrialized nations. In December 1997, the unanimous adoption of the

²⁰ This section follows extensively on Ochs, Alexander/ Sprinz, Detlef. (2005): *Europa Riding the Hegemon? Transatlantic Climate Policy*. Paper presented at the 2005 ISA Annual Convention. Honolulu, HI. 3 March 2005, as well as Busby, Joshua/ Ochs, Alexander (forthcoming 2005): *From Mars and Venus Down to Earth: Understanding the Transatlantic Climate Divide*. In: Michel, David (forthcoming 2005): *Climate Policy for the 21st Century*.

²¹ The UN estimates temperatures to rise by 1.4 – 5.8 °C during the 21st century. A good introduction into the subject can be found here: *Climate Change Information Sheet*. (2002). UNEP and UNFCCC, available online: http://unfccc.int/files/essential_background/application/pdf/infokit_02_en.pdf

²² Prominent proponents of the proposition that climate change will be this century’s biggest threat include: Kofi Annan, Tony Blair, Hans Blix, Mikhail Gorbachev, Klaus Töpfer. The chief scientist to the U.K. Government caused a stir when he wrote: “In my view, climate change is the most severe problem that we are facing today—more serious even than the threat of terrorism.” King, Sir David A. (2004): *Climate Change Science: Adapt, Mitigate, or Ignore?* In: *Science*. 303. 2004.

²³ United Nations Framework Convention on Climate Change. *Status of Ratification*. (2004). UNFCCC. 24 May 2004.

Kyoto Protocol established this aim. It requires industrialized states to reduce their GHG emissions by an average 5.2 per cent.²⁴ The parties then needed another four years until the end of 2001 to generate agreement on the details for implementing the Protocol. After another three years of uncertainty the protocol finally entered into force on 16 February 2005. Since the US withdrawal from the Protocol in early 2001 the pivotal role to sign the agreement into force was left to Russia. At least 55 states representing 55 per cent or more of industrialized country emissions were required for the protocol to enter into force. This mark could only be reached if one of the two emission giants signed.

The EU and US Positions

Both the United States and the European Union are members of UNFCCC and have exerted much influence on the evolving climate change regime. However, from the onset of negotiations the USA was criticized for its hesitant stance and was identified as the primary culprit if negotiations were to fail. Still, much effort was placed on bringing the United States on board – participation by the world's largest GHG emitter was considered to be crucial for the success of the agreement. In addition to its ecological significance, the United States was also considered a potential leader in developing technologies to reduce emissions.²⁵

Two primary lines of conflict existed since the UNFCCC negotiations and continued to play a major role in the further development of the climate regime: One separated industrialized countries – and especially the United States – and developing states; the other split the developed world internally – primarily the United States and the EU. With regard to the first controversy, the main cause was the U.S. refusal to consider a global climate protection fund as well as technology transfer from rich to poor countries. Dominating negotiations, however, was the dispute among the industrialized states. Contrary to most European states, the United States vehemently opposed specific targets and timetables for emission reductions.

The divide between the U.S. and European governments continued throughout the regime building process and concerned the most important issues at stake.²⁶ First, the EU considered the IPCC findings as a scientific guidepost for political action and – following the precautionary principle – as evidence for the urgency to act. To the contrary, the US highlighted perceived deficits of the reports and demanded more scientific certainty as a precondition for political action. Second, the United States throughout negotiations argued for less ambitious and more flexible reduction targets, whereas Europeans demanded bolder and binding ones. Finally, the EU supported the application of the so-called common but differentiated principle. Enshrined already in the UNFCCC, the principle attributes

²⁴ The (then) fifteen members of the European Union and some other European countries accepted an 8% reduction target of their average 2008-2012 GHG emissions as compared to emissions in the base year 1990; the USA agree to a 7%, Japan to a 6% reduction. The Russian Federation signed up to a stabilization of emissions on its 1990 levels, whereas Norway and Australia were allowed to increase emissions by 1% and 8% respectively.

²⁵ In 2000, U.S. emissions accounted for more than one-fifth (20.6%) of global emissions. I.e., the U.S. share is about one-third greater than those of the second (China, 14.8%) and third (EU-25, 14.0%) biggest emitters. Cf. Baumert, Kevin/ Pershing, Jonathan. (2004): Climate Data: Insights and Observations. Pew Center on Global Climate Change. Dezember 2004.

²⁶ For a detailed discussion see: Ochs/ Sprinz. Europa Riding the Hegemon?

responsibility for climate change to all states, but requires industrialized states to take the lead on reductions. In contrast, the United States pushed for an inclusion at least of major developing countries into binding commitments.

Overall, the EU managed to prevail on all three issues: The IPCC continues to be regarded as the primary scientific authority for climate change. The Kyoto Protocol contains binding targets and these apply exclusively to industrialized states. With regard to the instruments chosen to achieve those goals, however, the assessment is not that clear; for a long time Europeans favored direct regulation and considered emission-trading – as favored by the United States – as "indulgency trade", the buying off of pollution sins. In this regard, Americans prevailed with their demand for maximum flexibility. Only in the late 1990s did the EU adopt emission trading – today even the key strategy for its climate policy. Implementation of the GHG emission trading system in the EU-15 in January 2005 made the EU the first entity worldwide to have such a legally binding mechanism in place. Although the United States was instrumental in creating the instrument, its own industry cannot partake in this system.

The European Leadership Role

Against the backdrop of U.S. resistance, Europeans finally managed to dominate climate change politics and save the Kyoto Protocol. Three specific dates highlight this European success story:

On 11 December 1997 no agreement could be reached by the official end of negotiations. Still, and despite differences within the European delegation (and pressure exerted by the United States), Europeans succeeded with their objective of binding and ambitious targets for industrialized states and managed to avert further weakening of commitments by the U.S. delegation. Furthermore this date is important since the EU took over the responsibility for GHG reduction as a bubble – i.e., since then the EU is responsible for meeting a joint reduction commitment. Therefore, it has created an internal distribution mechanism that allocates specific reduction targets to its members. As a consequence, the EU gained enormously in authority over the climate change policies of its members.

The second date important for the European road to leadership is the official U.S. withdrawal from Kyoto in the end of March 2001. Up to this point the United States was considered key for the development of an effective international climate change regime. Many believe that President Bush intended to strike a final blow to Kyoto with his rejection of the treaty; the US statement of spring 2001 ("Kyoto is dead") is very clear in this respect.²⁷ To the very least, the question now loomed who was to lead international climate change politics from this point forward. The EU accepted this challenge and soon realized that it needed a more forward- and outward-looking strategy to take on this task. Not only did it manage to generate a higher degree of policy cohesion within Europe; it now also successfully prepared for pending negotiations as a unified actor.²⁸ Many were surprised to

²⁷ Cf. Grubb, Michael (2001): The UK and European Union: Britannia Waives the Rules? In: German Foreign Policy in Dialogue - A German ENewsletter on German Foreign Policy 2. 6. 9. und Shah, Sæed (2004). US States Defy Bush with Carbon Trading Plan. The Independent, 12 November 2004.

²⁸ Grubb: The UK and European Union: Britannia Waives the Rules?

see the November 2001 COP at Marrakech not only survive the U.S. retreat but also result in the long-sought implementation rules for the Protocol.

Most importantly the EU managed to pull Russia on board the Kyoto enterprise. In its rescue mission for the Protocol, the EU did not hesitate to offer Russia and other countries generous credits for GHG sequestration in order to convince them to ratify the Protocol. A combination of continued pressure, the offer of extended cooperation in the energy sector, and support for its WTO bid finally brought Russia in.²⁹ On 16 February 2005, the EU and its climate allies celebrated the protocol's entry-into-force – this is the third important date.

Transatlantic and Inner-American Dissent

Climate change is one of the most contested issues in the transatlantic relationship. Since the US retreat from the Kyoto Protocol, the issue has become a symbol for the underlying transatlantic rift. However, in the embarrassment over George W. Bush's decision it is often overlooked that the Kyoto Protocol never stood a realistic chance of ratification. Contrary to Europe, in the US no domestic consensus for more climate protection exists.³⁰

During both Clinton administrations a rhetorically ambitious White House was consistently blocked by Congress. Half a year before the Kyoto COP the Senate unanimously passed the so-called Byrd-Hagel resolution which laid out the conditions any international agreement on climate change would have to meet in order to be ratified into domestic law.³¹ As a consequence the Clinton administration had to significantly tone down its negotiation position. Congress suspected the president repeatedly of striving for an implementation of Kyoto through the back door.³² At subsequent COPs members of Congress organized press conference to oppose statements by the executive. As a consequence Clinton never submitted the protocol to the Senate for ratification.

With George W. Bush's inauguration as president, the initiative in US climate change policies shifted to the legislative. However, all important proposals still failed due to both resistance within Congress and clear opposition by the President. Bush's Global Climate Change Initiative – announced as an alternative to the Kyoto Protocol – has received disappointed reception internationally. Announced as the U.S. return to leadership in climate change, the plan aims at reducing the carbon intensity of the U.S. economy by 18 per cent until 2012. However, this figure which might sound impressive at first is roughly in line with the business-as-usual scenario of the U.S. economy's decarbonization. In total U.S. emissions, however, the scenario would result in a 12 percent increase over the same period – equivalent to a share more than 30 percent above the Kyoto targets to which the

²⁹ Cf Ochs/ Sprinz. *Europa Riding the Hegemon?*

³⁰ Busby/ Ochs: *From Mars and Venus Down to Earth*.

³¹ Specifically, the US should not commit to a treaty that a) does not “include commitments for countries with developing economies“, and b) “result[s] in serious harm to the [US] economy“. Cf US Senate (1997). *Resolution Expressing the Sense of the Senate Regarding the Conditions for the United States Becoming a Signatory to any International Agreement on Greenhouse Gas Emissions under the United Nations Framework Convention on Climate Change*. 105th Congress, 1st Session, S. RES. 98.

³² To give only one impressive example, Congress Resolution 4194 for fiscal year 1999 explicitly prohibited any measures aimed at achieving Kyoto goals and even put a halt on any publicly financed information campaigns related to climate change.

Clinton administration had subscribed.³³ To Europeans this plan was particularly disappointing because EPA head Christie Todd Whitman had assured them only briefly before that the president would live up to his election promise and enact binding CO2 emission targets for power plants.³⁴

All in all, fifteen years of national U.S. climate change policy have resulted in little more than a few research and technology programs. Internationally, the United States is isolated from the rest of the world. Accompanied only by Australia, Liechtenstein, and Monaco it is one of only four industrialized states, that have not ratified Kyoto. Interestingly, EU domestic politics which finally resulted in a unified position are diametrically opposed to the U.S. standstill. The EU managed to bundle its members' interests and has used this as an opportunity to assume an international leadership role. Most experts agree that the resulting Kyoto Protocol is the single most important international environmental regime. But there is also no doubt that the Protocol only marks a first small step on a long and winding road which will only reveal relatively late whether the globe's climate system can be preserved from a dangerous change.

Equal Partners with Leadership Qualities?

This paper concerns itself with very distinct examples of transatlantic environmental politics. These cases differ substantially with regard to the roles played by the EU and the United States. International environmental standards for ECAs are the result of U.S., norms for GMOs the consequence of EU initiatives. In each case the initiators seized leadership and had considerable influence on the outcome. In climate change politics, however, the Europeans took over leadership only after the United States withdrew from the international arena and only then managed to bring the Kyoto treaty into force.

The extent to which a party can successfully influence negotiations is largely a function of the preferences of its domestic actors. Other authors have identified national coalitions between environmental activists and industry as important preconditions for strong leadership at the international level. The examples discussed above show that agreement between the legislative and executive in the U.S., and among member states of the EU, deserve equal attention.

In the past, the United States was often successful in internationalizing domestic environmental regulation, despite high adjustment costs for European states. This can be attributed primarily to the European tendency to build a "European position" late in an issue and only in reaction to a U.S. initiative. Such attempts of finding a common response in the past often failed, and thus provided the United States the opportunity to pull individual European states to its side and thus preempt strong and concerted opposition to its initiatives.

Climate change politics and GMOs are important experiences for the EU as they can serve as templates for international regime building in the absence of U.S. leadership. Such experiences, however, should not lead Europeans to automatically position themselves as a challenger of the United States. On the contrary, ECAs as well as climate change show that

³³ E.g. Analysis of President Bush's Climate Change Plan. (2002). Pew Center on Global Climate Change.

³⁴ Semple, Robert B. Jr (2005). Christie Whitman Rides to the Defense of Her Grand Old Party. NYT online, 1 February 2005.

most challenges can ultimately only be solved through cooperative negotiations. Good initiatives deserving support can originate on both sides of the Atlantic; the discussion above purposely avoids a qualitative interpretation of the competing positions. In retrospect, however, it is undeniable that in each case the “greener” position finally prevailed – although with some concessions.

The greatest obstacle to cooperative transatlantic solutions is a lack of understanding for the diverging interpretations of a policy challenge of the other side. Although the climate change discourse in Europe was driven by concerns of the ecological threat, in the United States, competitive concerns – especially with regard to China as a potential future rival – played a commanding role. The GMO debate, primarily concerned with consumer protection in Europe, was framed in trade terms in the United States. In contrast, the U.S. case for greening ECA operations was argued in environmental terms, whereas European politicians referred to potential job losses as a consequence of introducing environmental standards. It is not surprising that diverging domestic discourses have led to differing proposals for international solutions. But these differing opinions need not escalate into transatlantic conflict as is often the case due mainly to the short-sighted power calculations by domestic policymakers.

Real solutions to complex problems – such as those currently on the environmental agenda – can be negotiated successfully only when competing interpretations of the problem *as well as* proposed solutions are recognized and accepted by the other side. Only under these conditions will a common win-set of jointly acceptable solutions be identified. Such cooperation could be stimulated through increased transatlantic exchange on the level of expert bureaucrats as well as of key political, societal, and economic actors, guided by the recognition of mutual benefits of cooperation.³⁵

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³⁵ The project INTACT (www.intact-climate.org) is an example for such transatlantic exchange on climate change policy. Cf. Ochs, Alexander/ Venturelli, Aldo (Hrsg.) (2004): Towards a Transatlantic Consensus on Climate Change. Lovenno: Villa Vigoni.

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