Is the World Trade Organization in Need of Ecological Reform? – A Close Look at the Existing Proposals by the European Parliament

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A. Introduction

As of 1998, the debate on trade and environment has been going on for almost ten years. After the successful conclusion of the Uruguay Round[1] in 1993 and in view of the newly created World Trade Organization (WTO) in 1994 many observers thought that the WTO would now approach the existing problems in this field without further delay. These expectations were reinforced by the Ministerial Decision on Trade and Environment on occasion of the signature of the Final Act in Marrakesh[2] on 14 April 1994 and the creation of a Committee on Trade and Environment (CTE) in early 1995.[3]

The reality, however, proved to be different. After some initial enthusiasm, the impetus seems to have slowed down considerably and the work presented by the

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1 The Uruguay Round of multilateral trade negotiations to liberalize international trade in the framework of the General Agreement on Tariffs and Trade (GATT) was started in 1986 and concluded in 1993, leading to the signature of the Final Act in 1994. It led, in particular, to the creation of the new WTO (coming into effect on 1 January 1995) and an extension to trade in services and trade-related intellectual property rights.

2 Marrakesh Decision on Trade and Environment, as adopted by the Heads of Governments and States on occasion of the signature of the Final Act including the Results of the Uruguay Round on 14 April 1994, as reprinted, for example, in GATT, *The Results of the Uruguay Round of Multilateral Trade Negotiations* (GATT, Geneva, 1994).

3 The Committee on Trade and Environment (CTE) replaced in 1995 the old GATT Working Group on Environmental Measures in International Trade (EMIT), as established in 1971, whose work temporarily had been taken up by the Sub-committee on Trade and Environment under the Preparatory Committee for the WTO in 1993/94.

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CTE at the first Meeting of the Contracting Parties[4] of the WTO in December 1996 in Singapore was not up to the high expectations of environmentalists and international lawyers.[5] While the current problems seem to be identified,[6] the solutions suggested by legal writers, NGOs and other actors are not in a form on which any consensus could be reached. On the whole, there are only a few concrete proposals for a reform of the WTO and especially the GATT system. These proposals generally seek the introduction of substantive or procedural provisions into the existing treaties in order to take account of today's regional and global ecological problems.

The European Community, due to its commercial strength, is undoubtedly one of the main actors within the WTO besides the United States. It is therefore interesting to observe that the European Parliament in particular has closely followed the trade and environment debate since the early 1990s and actively participated in the debate on the ecological reform of the world trading system and, specifically, the WTO and thereby constantly pushed the Commission to take action (admittedly with variable success). The following article therefore analyzes the development of the European Parliament's various proposals over time in view of the current debate and places their views and suggestions within the framework of the general debate in order to show which positions are taken by the European Parliament, how much they are backed by the Commission and the Council and to what extent they contrast with the views expressed by other main actors such as NGOs, developing countries and the various international organizations involved.

B. Development of the Trade and Environment Debate

Within the EU the debate on trade and environment has existed since the late 1960s. It was, however, a predominantly internal debate related to the relationship between domestic environmental policies of the Member States and the establishment of the Common Market (later the Internal Market).[7] Within the Community the ecological

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[4] *See* the Singapore Declaration by the Heads of Governments and States, as adopted in Singapore on 13 December 1996 and reprinted, for example, in *WTO Focus* (January 1997), p. 7.

[5] *See also* the European Parliament's Resolution A4-0156/965 (Recommendations 6 and 7) as discussed in detail below.

[6] *See*, for example, Thomas J. Schoenbaum, 'Trade and Protection of the Environment: The Continuing Search for Reconciliation' in (1997) 91 *American Journal of International Law*, at pp. 268–313, for a recent update.

[7] Art. 100a of the EC Treaty, as introduced under the Single European Act in 1986, refers to the Internal Market, while the elder Art. 100 of the EC Treaty speaks of the Common Market. Several authors have tried to show the possible distinction between the two concepts. Nowadays, however, the difference seems merely one of terminology and the concept of the Internal Market has mostly replaced the older term whenever the European Union's market for goods, services, labour and capital is concerned. *See* Andreas

and economic problems encountered over the years and the corresponding political tensions have led to the development of a fine-tuned legal system within the Treaty to co-ordinate national environmental policies and the needs for the establishment of the Internal Market[8] which is supplemented today by a proper Community environmental policy.[9] The latter is growing very fast and takes over more and more areas of traditionally domestic regulations in the field of the environment as well as in the related areas of health protection and consumer policy.

With regard to the global level and the development of an international trading system (which at times can interfere with domestic and Community environmental regulations) the debate is much younger. While the 1971 Stockholm Summit on the Environment led to some work within the GATT[10] and various other institutions on the relationship between global trade and environmental policy and actually was very important for the development of the Community's environmental policy,[11] there was little follow-up work during the 1970s and 1980s in this area. Mostly the two *Tuna Dolphin* decisions of 1991 and 1993[12] (still within the old GATT dispute settlement system) as well as the discussion on the environmental aspects of NAFTA[13] and the preparation of the 1992 Rio Earth Summit[14] have started a new era for the trade and environment debate. It is in this context that several Community institutions, and most prominently the European Parliament, got involved in the debate on the need for an ecological reform of the world trading system.[15]

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R. Ziegler, *Trade and Environmental Law in the European Community* (Oxford University Press, Oxford, 1996), at pp. 155–157 for details.

[8] *See* Ziegler, *supra*, note 7, at chapters 3–6 for details.

[9] *See*, for example, Ziegler, *supra*, note 7, at chapters 7–11.

[10] *See* GATT Secretariat, *Industrial Pollution Control and International Trade – Studies in International Trade No. 1* (GATT, Geneva, 1971).

[11] *See*, for example Ziegler, *supra*, note 7, at chapter 7 and the literature referred to there.

[12] *United States – Restrictions on Imports of Tuna*, not adopted, Basic Instruments and Selected Decisions (BISD) 39th supplement (GATT, Geneva, 1993) 155 (*Tuna Dolphin I*) and *United States – Restrictions on Imports of Trade*, not adopted, reprinted in (1994) 33 ILM 839 et seq. (*Tuna Dolphin II*).

[13] *See*, for example, Bradley J. Condon, 'NAFTA and the Environment – A Trade-Friendly Approach' in (1995) 14 *Northwestern Journal of International Law and Business*, at pp. 528–548.

[14] United Nations Conference on the Environment and Development (UNCED), held on 3–14 June 1992 in Rio de Janeiro (Brazil).

[15] Other institutions also prepared papers and reports on the relationship of the world trading system and the environment in preparation for the Rio Summit, such as most prominently the GATT itself in GATT, 'Report on Trade and Environment' (1991) 1 *International Trade*, 19–44 and the World Bank (International Bank for Reconstruction and Development (IBRD)) which had several working papers prepared, such as reprinted in Patrick Low, 'International Trade and the Environment', *World Bank Discussion Papers*, Vol. 159 (IBRD, Washington, DC, 1992).

C. Underlying Principles of the Parliament's Proposals (1993–1996)

I. Development

Early in 1991 two members of the European Parliament (Pimenta and Muntigh) first called upon this institution to make recommendations on the building of awareness of sustainable development and its impact on trade into the basic statutes and working methods of either a revised GATT or a future World Trade Organization (WTO).[16] The resulting report was tabled on 3 November 1992 and discussed in the Parliament's sitting of 22 January 1993 and a first Resolution on Environment and Trade (Resolution 1993) was adopted.[17]

Subsequently, from 7-9 November 1993 the Parliament was the host of a conference on trade and environment and on 24 March 1994 (in view of the conclusion of the Uruguay Round and the expected signature of the Final Act in Marrakesh in April) the Parliament adopted again a Resolution concerning the envisaged work programme on trade and environment as announced by the GATT Trade Negotiations Committee (TNC) on 15 December 1993 (Resolution 1994).[18] This Resolution confirmed many of the Parliament's earlier recommendations and viewpoints and reminded the Council and the Commission that the Parliament would have to consent to the ratification of any agreement resulting from the Uruguay Round and would use its power under Article 228(3) of the EC Treaty to

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[16] Motion for a Resolution on the Future of Trade and Environmental Issues (B3-0668/91). At the sitting of 13 June 1991 the President of the European Parliament announced that he had forwarded the motion for a resolution by Messrs. Pimenta and Muntigh on the future of trade and environment, pursuant to Rule 63 of the European Parliament's Rules of Procedure, to the Committee on External Economic Relations as the Committee responsible and to the Committee on the Environment, Public Health and Consumer Protection for its opinion. On 17 July 1991 the Committee on External Economic Relations decided to draw up a report and appointed Mr Spencer as its Rapporteur who presented a draft report which was considered by the Committee at its meetings of 15 July, 30 September and unanimously adopted on 15 October 1992. The Committee on the Environment, Public Health and Consumer Protection appointed at its meeting of 27 September 1991 Mr Pimenta as its draftsman. The draft opinion was considered at its meeting of 26 March and adopted unanimously on 7 October 1992.

[17] European Parliament: Resolution on Environment and Trade of 22 January 1993 (A3-0329/92), OJ 1993 C 42/246-50. The Resolution of 1993 had basically three parts, after the traditional reference to existing documents and work done by the Parliament and other bodies, the second part contains 29 remarks taken from the Report presented by the Committee on External Relations (A to Z and AA to AC). Finally, in its third part, the resolution contained 14 Recommendations with regard to the development of environmental issues within the future trading order.

[18] European Parliament: Resolution and Recommendation concerning the negotiations within the GATT Committee on Trade on the Agreement for a Work Programme on Trade and Environment of 24 March 1994 (A3-1050/94), OJ 1994 C 114/35-8.

give effect to its suggestions, a threat that showed no consequences, however, in the European Parliament's decision on the Final Act including the Results of the Uruguay Round on 14 December 1994.[19]

After the establishment of the working programme of the WTO Committee on Trade and Environment, the Parliament again made recommendations with regard to the EU's contribution in view of the upcoming Singapore Ministerial Meeting in December 1996. In its Resolution of 10 June 1996 concerning the Negotiations on Trade and Environment in the Framework of the WTO (Resolution 1996a) the Parliament reiterated many of its former demands but added further details with regard to the areas it considered of primary importance.[20] Immediately before the Singapore Meeting the Parliament adopted yet another Resolution[21] (Resolution 1996b) in response to a communication by the Commission regarding the EU's envisaged position at the Singapore Meeting.[22]

II. The need to act and discontent with the current situation

The Parliament bases its considerations on the general desirability and need to integrate environmental concerns into the world trading order due to the urgent need to protect the global common resources, such as the oceans, the forests[23] and the atmosphere (Resolution 1993E and P). It held from the beginning that all Bretton Woods Institution had to be reviewed in this respect (Resolution 1993 13) and underlined, as early as in its 1993 Resolution, its discontent with the current treatment of the relationship between trade and environment within the GATT. It held that the first GATT panel decision on the tuna/dolphin dispute between the United States and Mexico had been widely, if inaccurately, interpreted as threatening valuable existing environmental legislation (Resolution 1993V).[24] The

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[19] European Parliament: Legislative Decision concerning the Proposal of the Commission for a Decision of the Council to accept the results of the multilateral trade negotiations in the framework of the Uruguay Round of 14 December 1994 (A4-0093/94), OJ 1994 C 18/61-2.

[20] European Parliament: Resolution Concerning the Negotiations in the Framework of the WTO on Trade and Environment of 24 May 1996, OJ 1996 C 16/260-2.

[21] European Parliament: Resolution Concerning the Communication by the Commission to the Council and the European Parliament on Trade and Environment (COM (96) 0054 – C 4-0158/96 of 14 November 1996) (A4-0319/96), OJ 1996 C 362/245-8.

[22] European Commission: Communication by the Commission to the Council and the Parliament – Trade and Environment of 28 February 1996 (C4-0158/96): COM (96) 54 final.

[23] Interestingly the Parliament does not only refer to tropical forests, which are usually referred to because of their fast-advancing degradation and their importance with regard to world biodiversity.

[24] Later, the Parliament felt such criticism by the public also following the *Gasoline* decision of early 1996 (*United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2, Report adopted on 20 May 1996, Appellate Body Decision (AB-1996-1) adopted on 20 May 1996. For comments *see* Andreas R. Ziegler, 'Erste Erfahrungen mit der Berufungs-instanz der WTO' in (1996) 51 *Swiss Review for International Economic Relations*, at

Parliament also expressed its discontent with regard to the ongoing Uruguay Round at that time, considering the failure to place the environment on the agenda to be 'a major error' (Resolution 1993D) and criticizing the fact that the Dunkel draft did not incorporate the necessary environmental provisions (Resolution 1993L). The inclusion of such aspects in the Uruguay Round had been part of the Commission's V Action Programme for the Environment 'Towards Sustainability' without any apparent clear results. The integration of environmental rules should be no longer delayed as 'a trade free for all without rules would be a disaster for the global environment' (Resolution 1993E). While the subsequent establishment of a trade and environment agenda for the WTO by the decision of the TNC Committee in 1993 was welcomed it was not considered a sufficient way of dealing with the current problems (Resolution 1994A).

III. Environment – social and labour rights – human rights

The Parliament considers the protection of the environment to be just one of the common concerns that have to be addressed when looking at international trade today, other such concerns being human rights and social and labour standards. The fact that trade takes place between countries where different legal and factual situations reign generates claims from affected industries that such differences lead to 'unfair' distortion of trade patterns and should therefore be harmonized or counterbalanced. The regulation of what were traditionally considered purely internal affairs (such as domestic environmental policy, human rights standards, labour standards, competition standards) becomes thereby of common concern. Because of the irreversible processes of the destruction of the environment, however, its protection is considered different from other concerns, in so far as it deserves an immediate and direct approach to the existing trade agreements (Resolution 1993A). The Parliament thereby tries to avoid the problems generally referred to as 'slippery slope risk', namely that too many policy areas might be integrated into the WTO system and that the over-regulation of domestic policies will ultimately make free trade impossible.[25]

At the same time the Parliament does not want to rule out completely the desirability of some kind of social standard with regard to the trade and environment debate. The Parliament refers to the link described in the Brundlandt Report[26], between poverty and destruction of the environment, and holds that this particular connection indicates the need for account to be taken of social and human minimum

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pp. 417–32) and warned that such public discontent could jeopardize the future of the WTO (Resolution 1996b 3).

[25] *See*, for example, the considerations made by the GATT Secretariat in its 1991 Report on Trade and Environment.

[26] *World Commission on Environment and Development, Our Common Future* (generally referred to as Brundtland Report) (UN, New York, 1987)

standards, possibly in multinational agreements (Resolution 1993B). While the Parliament still held in 1993 that the protection of the environment had to be considered with priority because of its irreversibility and global implications, the Resolution of December 1996 now states that the issues of human rights and social standards can no longer be treated separately from the environmental questions and should therefore be addressed within the EU (1996b 25).

IV. Financial help and transfer of technology

The Parliament accepts that the setting of minimum (environmental) standards may lead to considerable and continuing financial transfers between contracting parties (Resolution 1993Z), a proposition generally feared by Western industrialized countries and therefore generally rejected as a starting proposition. The Parliament holds, however, that the global destruction of the environment can only be overcome if less developed countries have access to modern technology in order to avoid pollution, reduce cost and be environmentally efficient. The Parliament therefore underlines the need to help ensure within the framework of development co-operation that the best available technologies can be applied (Resolution 1993 10(c)) which by its very nature implies again some sort of financial transfer (trade preferences,[27] unilateral reduction of debt, cost-neutral transfer or technology),[28] as developing countries are usually unable and unwilling to purchase the best available technologies which are usually very costly and protected by the international standards applicable to international property rights.[29]

The Parliament has a full understanding of the concerns of developing countries that the United States and the EU might try to use higher environmental standards to disadvantage them, but calls for closer co-operation in order to include them in the urgently needed action to save the global resources (Resolution 1994 4). It was therefore only logical for the Parliament to ask in its 1994 Resolution that the introduction of environmental considerations in the WTO system should be accompanied by a raise in EU aid to developing countries (Resolution 1994 2). For the European Parliament this seems to be an essential consequence of the special responsibility of the countries of the 'North' for sustainable development at a global level (Resolution 1996b A). Obviously, the Commission is not at all willing to follow

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[27] The Parliament therefore invited the Commission to restructure its system of general preferences in order to grant preferential treatment to goods other than tropical timber which had been produced in an environmentally sound manner (Resolution 1996b 12) and consider a full tariff exemption of products from fair trade such as bananas, coffee, tea, and introduce in the short term so-called fair trade quotas where lower tariffs apply (Resolution 1996b 13 and 14). The Commission seems sympathetic to such measures, *see* Commission Communication (1996), *supra*, note 22.

[28] As outlined in Resolution 1996b. 11.

[29] As just reinforced under the TRIPs Agreement of the Uruguay Round and heavily backed by the Commission. *See* Commission Communication, *supra*, notes 22 and 28.

this approach. While it supports the general idea that technology should be made available to developing countries, it also holds that this should predominantly take place through education, technical support and co-operation in the framework of existing bilateral agreements and the multilateral schemes available within such institutions as the World Bank[30] and related organizations.

V. No green protectionism

In particular, with regard to developing countries, the Parliament constantly addresses the threat stemming from the abuse of trade-related environmental measures for protectionist purposes and therefore underlines again and again the need to avoid the manipulation of the relationship of trade and environment by protectionist acts against the interests of the developing countries (Resolution 1993C, Resolution 1994 2, Resolution 1996a 9, and Resolution 1996b C). The Parliament defends the general principle that parties may use non-tariff barriers to protect the environment, the landscape and natural resources, provided they are not used as a pretext for protectionism (Resolution 1993 10(c)) without, however, addressing the crucial question of how genuine measures can be distinguished from green protectionism.

VI. Mutually beneficial relationship and the need to balance

The Parliament also subscribes to the general wisdom that sensible environmental guidelines do not hinder free trade and that trade can help the environment where specialization uses resources without waste (Resolution 1993F), and accepts the general idea that free-trade induced wealth normally leads to an increase in the proportion of national expenditure on the environment (Resolution 1993M). But, at the same time, the Parliament underlines that economic growth alone cannot protect the environment, for it is also necessary to take into consideration cumulative *per capita* claims on world resources and sustainability (Resolution 1993M and Resolution 1996b B). In 1996, it therefore invited the WTO to consider in its future negotiation rounds the fact that globalization and increased trade also involve more transport needs and energy consumption and that these aspects also have to be addressed (Resolution 1996a 16 and Resolution 1996b 18 and 19). This statement seems particularly interesting in view of the EU's internal problems with its energy[31] and transport policy, as well as with regard to its negotiations of a bilateral agreement with Switzerland and the problems encountered with regard to road transport in 1997.

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[30] Commission Communication 1996, *supra*, note 22.

[31] *See also* the Commission's Greenbook on an energy policy for the EU (COM) (94) 0659 – 4-0026/95, and the reaction by the Parliament, in OJ 1995 C 287/34.

D. Proposed Reform of WTO Institutions and Negotiations Process

I. General environmental principles

On the whole, the general principles underlying the GATT are considered by the Parliament to be unable to solve the current problems. In particular, the Parliament demands that the GATT should take into account the internalization of costs,[32] the polluter-pays-principle, the user-pays-principle, the precautionary principle and the principle of prevention (Resolution 1993R) as well as the principle of sustainability. The Parliament considers that the integration of these principles 'would imply a new structure of world trade because the internalisation of external costs and the careful handling of limited resources would substantially alter global production structures' (Resolution 1993S and 2). After the conclusion of the Uruguay Round the Parliament suggested that also the TRIPs Agreement and the GATS should be reformed in order to integrate ecological principles into the existing agreements (Resolution 1996b 23).

In view of this analysis, already in 1993 the Parliament underlined the need for a final declaration accompanying the conclusion of the Uruguay Round (Resolution 1993 5) and for a political resolution expressing the contracting parties' determinations that the Uruguay Round would be fully consistent with global environmental objectives (Resolution 1993 9). These recommendations were obviously realized in the form of the Marrakesh Declaration on Trade and Environment of 14 December 1994. The same applies with regard to the need, expressed by the Parliament, to integrate an additional recital concerning the environment in the Preamble of the WTO Statute as an integral part of the Uruguay Round negotiations (Resolution 1993 6). The Parliament had suggested that it should read: 'recognising that their trade liberalisation endeavours should contribute towards the promotion of sustainable development in a manner which respects the environment'. While the Dunkel draft had not contained any such reference, the Final Act contained the following statement:

> Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking to protect and preserve the environment and enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development ....

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[32] Here again explicit reference was made to the OECD guidelines of 1972.

This final form of the Preamble only partly convinced the Parliament as is reflected in the Parliament's Resolution of 1994 (Resolution 1994 3). Anyhow, the establishment of a Committee on Trade and Environment, also requested by the Parliament (Resolution 1993 8 and Resolution 1994 D) and finally announced in the Marrakesh Decision on Trade and Environment, seemed only a logical continuation of the work started by the EMIT working group. However, the creation of an Environmental Council, as suggested by the Parliament (Resolution 1993 7 and Resolution 1994 5), was not taken up either in the Final Act or later by the WTO contracting parties. In the Parliament's view this Council should have been empowered to review all future WTO decisions in the context of their impact on the global environment and reported directly to the General Council before such decisions were taken, thereby implementing something similar to an 'environmental impact assessment' of all WTO decisions.

II. Non-discrimination and ecological aspects of products

The Parliament underlines that the existing GATT rules define the national treatment (which normally allows for the restrictions of environmentally undesirable products, provided that imports are treated in the same way as national products) in a way which can cause tensions in the setting of technical standards (Resolution 1993T). This is particularly true in the framework of Article I (Most Favoured Nation Clause) and Article III (National Treatment) of the GATT as well as under the new SPS and TBT Agreements of the Uruguay Round,[33] as was shown again, most recently in the Hormone Dispute between the EU and the United States and Canada.[34] Probably in view of this upcoming dispute the Parliament issued a statement in 1996 (sharing the view of the Commission) that even under the new WTO system trade measures adopted in order to safeguard consumer health and environmental objectives were always available as long as they are product-related and applied without discrimination (Resolution 1996b 20 and 21), a view that was not fully shared by the appointed WTO panel in August 1997 with regard to sanitary and phytosanitary measures falling within the scope of the SPS Agreement.[35]

Only in the Resolutions of 1996 did the Parliament start to underline the need to introduce a general prohibition of exports of domestically prohibited goods (Resolution 1996a 5 and Resolution 1996b 10) and ask for a further development of rules applicable to voluntary and compulsory labelling schemes (Resolution 1996a 5 and Resolution 1996b 5(d) and (e)). But at the same time it called upon the Commission not to consent to any regulations within the WTO which would be in

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[33] Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and Agreement on Technical Barriers to Trade (TBT Agreement), as reprinted in Final Results of the Uruguay Round, *supra*, note 2.

[34] *European Community – Measures Affecting Meat and Meat Products*, Decision of the Panel of 18 August 1997 (WT/DS26/R/USA) and (WT/DS48/R/Canada).

[35] Ibid.

contradiction to the existing regulations within the EU (Resolution 1996 15). In particular, the Parliament held that any labelling rule should be based on a life-cycle assessment of a product (Resolution 1996b 5(d), 16, and 17). In view of this situation the Parliament also called upon the existing working group to elaborate a series of GATT-compatible instruments of environmental policies, focusing on fiscal and economic measures (Resolution 1993, Recommendation 11).[36]

The European Parliament has also stressed that the treatment of processes and production methods (usually referred to as PPM measures) that are environmentally undesirable is more difficult because of problems of definition and enforcement and that labelling can only partly solve this problem (Resolution 1993U). Therefore, it called for a more generous interpretation or even the redrafting of Article XX of the GATT (exceptions from general rules). In its view, such reform is needed for the defence of the Global Commons (Resolution 1993AA and AB). Moreover, Articles XX(b) and (g) of the GATT should be extended to include better 'protection of the environment and the biosphere' and automatically allow for all measures taken according to Multilateral Environmental Agreements (Resolution 1993 10, Resolution 1994 1a, reiterated in Resolution 1996a 11 and Resolution 1996b 5(a)). In its second Resolution of 1996 the Parliament asked even for the redrafting or reinterpretation of Article XX(a) of the GATT (availability of exceptions in order to satisfy public moral) in order to allow contracting parties to take animal welfare considerations into account when adopting trade measures (Resolution 1996b 6). This is particularly interesting and understandable in view of the existing dispute between the EU and various other WTO parties with regard to import bans on products from animals caught by leghold traps.[37]

III. Greening of the dispute settlement procedure (environmental expertise)

In 1993 and in view of the first *Tuna/Dolphin* decision, the Parliament called for a general reform of the dispute settlement system in order to take into account some ecological aspects in the dispute resolution process. It therefore recommended the extension of the consultations between the litigants under Article XXII of the GATT to include considerations with regard to environmental protection and natural resources (Resolution 1993 10(b)).[38] This claim for a better integration of

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[36] In 1994 the Parliament suggested, that besides the aforementioned Art. XX, Art. XVI (Subsidies) should also be reconsidered in view of environmental subsidies (Resolution 1994 1a).

[37] *See* Regulation 3254/91/EEC prohibiting the use of leghold traps in the Community and the introduction of pelts and manufactured goods of certain wild animals originating in countries which catch them by means of leghold traps or trapping methods which do not meet international human trapping standards of 4 November 1991, OJ 1991 L 308/1 et seq.

[38] This had also been suggested by the Committee on the Environment, Public Health and Consumer Protection, in PE 201.431/fin, Annex.

environmental considerations into the WTO dispute settlement mechanism was reiterated in 1996 (Resolution 1996 5 and 14). At the same time the Parliament continues to consider the WTO dispute settlement system the only appropriate forum for all trade and environment disputes, even if comparable mechanisms are available in existing Multilateral Environmental Agreements (MEAs) (Resolution 1996a 14 and 1996b 8). In contrast, the Commission tends to support the development of separate dispute settlement mechanisms within more specialized environmental agreements.[39]

On the whole, the Parliament held that the GATT in general had not sufficiently recognized the mutual influence of trade and environment and does not, so far, have the in-house expertise on the environment for its dispute panel decisions. In order to create greater transparency the Parliament calls for the development of 'Environment and Trade Guidelines' which should be developed in co-operation with environmental experts and INGOs (Resolution 1993AC and 1, Resolution 1994 1(a) and 6, Resolution 1996a 5, 17, and 18 and Resolution 1996b 5b) and recommends that the GATT Secretariat should equip itself with environmental and financial expertise in the form of a consultative body composed of environmental experts (Resolution 1993 3, Resolution 1994 9, Resolution 1996a 14, and Resolution 1996b 9). However, such institutional changes as well as the suggested two year moratorium on all GATT panel decisions concerning the environment, as suggested by the Parliament in view of the existing lack of environmental expertise, have not been realized so far (Resolution 1993 10 and Resolution 1994 5).

IV. Competitiveness issues and proposals for reform

The Parliament also had to address the issue of the competitiveness effects of divergent environmental standards in various jurisdictions trading with each other. The Parliament based its considerations on a World Bank Discussion Paper which estimates that environmental compliance costs rarely exceed three per cent and that few actual examples can be found of relocation in search of weaker environmental rules (Resolution 1993O), as has also been underlined by the OECD in a study of 1995[40] (Resolution 1996b C). The Parliament holds that even higher environmental standards can lead to higher competitiveness thanks to a more efficient use of raw materials and energy (Resolution 1993Q).

Nevertheless, in view of the global problems and the trade distortion resulting from the missing internalization of external costs in many countries the Parliament demands that the GATT should take into account the internalization of costs and that the GATT EMIT working group should therefore have included in its working programme this issue (Resolution 1993R and 2). With regard to energy costs the

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[39] Commission Communication (1996), *supra*, at note 22.

[40] OECD, Report of the Ministers for Trade and Environment (OECD, Paris, May 1995), p. 5.

Parliament even suggests that the fact that the external cost of increased energy consumption is usually not reflected in the price of energy leads to hidden 'dumping', thereby indirectly calling again for some form of energy tax (Resolution 1996b 19).[41] Furthermore, the Parliament holds that the GATT should clarify that 'environmental dumping'[42] is generally prohibited (Resolution 1993 10(c)) without, however, addressing what it considers environmental dumping to be and how this can be defined. This obviously contradicts the views generally expressed by the Commission that differences in regulatory measures (and, in particular, taxes) should not lead to the levy of any kind of eco-duties on trade and that the term 'eco-dumping' is not a valid description of such a situation. At the same time, however, even the Commission has suggested that the WTO should reconsider its current approach to border tax adjustment measures and reconsider whether *taxes occultes* such as domestic taxes on energy (once incorporated in products usually referred to as 'grey energy') could be taken into account.[43]

For the first time in its Resolution of 1996 the Parliament referred to the issue that the ecological behaviour of companies and multinational corporations should be addressed in the framework of a possible regulation of international competition rules under the WTO (Resolution 1996a 10).[44] This idea is particularly interesting, as the introduction of general competition rules is one of the other current key issues in the WTO. In late 1996 the Parliament even asked for a commission-supervised code of conduct for multinational corporations, such as studied in the framework of the OECD and the UN (Resolution 1996b 15).

V. Co-operation with other institutions and integrations of MEAs

When putting forward its own proposals the Parliament always refers to the existing work of other international bodies on the relationship of trade and environment such as undertaken by the OECD, UNCTAD[45] and as developed in the framework of UNCED or the Earth Summit (Resolution 1993G, H, and I), as well as the work done within GATT itself, and especially the World Bank (Resolution 1993 Introduction). The Parliament therefore welcomed the inclusion of the relationship between (MEAs) and the GATT on the agenda of the EMIT working group as early

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[41] Any such tax has encountered resistance so far within the EU and within most other industrialized countries. A few exceptions exist: Denmark, the Netherlands, Sweden etc.

[42] The 1993 Proposal of the Committee on the Environment, Public Health and Consumer Protection had suggested amending Art. VI of the GATT in order to allow that 'where external environmental and resource costs are externalized these may be considered an inadmissible subsidy'. *See* Committee on the Environment, Public Health and Consumer Protection, in PE 201.431/fin, Annex.

[43] *See* Commission Communication (1996), *supra*, at note 22.

[44] The Parliament had expressed on other occasions its view that the integration of general competition rules into the WTO would be desirable; see OJ 1994 C 114/30 et seq.

[45] Whose relevance is however considered 'doubtful', as it is understaffed and ill-equipped to seriously consider environmental protection issues (Resolution 1993H).

as 1994 which should have led to first results at the Singapore Meeting in 1996.[46] It underlined that the working programme of the Committee on Trade and Environment should have also included the continuation of the work started at the Rio Earth Summit (Resolution 1994 1(a)), a proposal that seemed to have no effect during the first two years of the WTO's existence.[47] In 1996 the Parliament called once again for an intensified co-operation and exchange of information between the various bodies involved in the trade and environment debate (Resolution 1996 3 and 5).

The Parliament subscribes to the general statement that there is urgent need to ensure practical coherence between MEAs and the GATT/WTO system (Resolution 1993J, Resolution 1994B and 1(a), and Resolution 1996b 5(c)) and demands that the experience from other negotiations such as in the fields of tropical timber,[48] CFCs, global warming and even animal welfare issues (Resolution 1993K) should be taken into account when addressing trade-related environmental issues under the WTO system. It underlines at the same time that multilateral measures involving trade measures should be compatible with the GATT (Resolution 1993V and W), as was also held in principle in the two *Tuna Dolphin* decisions[49]. In order to address the legitimacy of MEAs the Parliament holds that the WTO/GATT parties should recognize a threshold to be agreed at an international level for the establishment of GATT enforceable multilateral environmental agreements (Resolution 1993 4). The Parliament suggests a qualitative approach: once an agreement has been reached on the participation of states which are responsible for a given percentage of the production of practices concerned, it shall be considered automatically GATT-compatible. Obviously, the Parliament could not hint at where this threshold should lie. Nevertheless, in 1996 the Parliament stated that trade measures taken in the framework of MEAs should be generally available to the WTO parties against WTO contracting parties which are not necessarily members in a particular MEA, provided that the latter country does not comply with the objectives of the MEA at stake and thereby gains 'an inappropriate advantage from this behaviour and jeopardises the effectiveness of the agreement' (Resolution 1996 12). Obviously, in practice the evaluation of such a situation would raise insurmountable problems.

In any case, the Parliament held from the beginning that the GATT should encourage multilateral agreements (1993X) and that the GATT Secretariat should promote actively multilateral agreements amongst contracting parties (Resolution 1993 3). It is in this context that the Parliament recognizes that the conclusion of

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[46] To the Parliament's discontent the CTE work in this field remains without practical effect (Resolution 1996a 5).

[47] *See also* Resolution 1996a 2.

[48] In its 1994 Resolution however, the Parliament showed much disappointment with the outcome of the January 1994 ITTO (International Tropical Timber Organization) negotiations (Resolution 1994 8).

[49] *See supra*, note 12.

such agreements will probably not be possible without some form of financial incentives for countries currently applying lower standards than internationally agreeable (Resolution 1993Z). However, only in its most recent resolution of November 1996 did the Parliament propose the creation of a proper UN sub-organization to supervize the existing international environmental agreements and to undertake work for the improvement of the enforcement and development of such agreements and, in particular, the promotion and the search for solutions to the trade and environment debate (Resolution 1996b 7).

At the same time, the Parliament holds that unilateral measures often play the role of a catalyst to the creation of multilateral agreements (Resolution 1993Y). Their effect should not therefore be completely neglected when addressing their legitimacy. The Commission, on the other hand, remains strongly committed to multilateral solutions[50] and rejects unilateral measures in general. With regard to unilateral PPM measures applied to enforce domestic standards in third countries, however, even the Parliament adopted in 1996 the view that they should not be available in cases where no European, North American or Japanese companies or their subsidiaries were involved or a multilateral environmental agreement existed (Resolution 1996a 13). This does not prevent the Parliament from supporting the availability of border tax adjustment measures for products which do not comply with internationally agreed production processes and methods (Resolution 1996b 22), and the Parliament suggests that the tax revenue from such measures should be administered as a trust by the UN and redistributed to developing countries in order to advance the introduction of environmentally friendly technology.

E. Conclusions

The Parliament is one of the few institutions that dared present complete proposals of reform for the GATT and the WTO system. Their proposed modifications of the WTO are far from being widely accepted and even within the EU they differ considerably from the Commission's views. Nevertheless, they are relatively creative and are drafted in a way that could lead to a slight but effective reform. Apart from those suggestions which seem considerably biased due to internal EC legislation and existing trade disputes (e.g. animal welfare, hormone dispute, EU labelling schemes) they seem a good basis for further discussion.

It is undoubtedly desirable that the WTO equips itself with environmental expertise and conscience in order to settle more accurately trade disputes which involve important environmental aspects. In principle, this is already provided for in the Dispute Settlement Understanding (DSU) of the WTO which gives panels the

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[50] Commission Communication (1996), *see supra*, note 22.

opportunity to call upon (environmental) experts. However, the institutionalization of environmental considerations, be it in the form of the integration of specific environmental principles (such as the polluter-pays-principle and the principle of life-cycle analysis) or an expert body advising the panels and other WTO institutions (e.g. environmental council, hearing of NGOs, etc.), would be a more effective way of guaranteeing the integration of environmental concerns into the WTO decision making. The national treatment principle (e.g. Articles I and III of the GATT) and the related exceptions under Article XX of the GATT should be revised in order to balance domestic needs for product standards and the trade liberalization efforts of the WTO. At the same time, the issue of PPM measures and their treatment under the GATT, the TBT and the SPS Agreement must be approached in a more environmentally conscious way. The acceptance of something like a *rule of reason* (as under Article 30 of the EC Treaty)[51] might be a helpful means to avoiding excessively strict limitation of domestic policy choices without having to allow green protectionism.

Sooner or later the international community will have to address the question whether there should be some form of international harmonization of (minimum) environmental standards with regard to production and product measures. Whether such harmonization is economically and ecologically desirable remains disputed. However, the experience of most domestic and regional free trade areas indicates that this may be the only way to overcome important trade disputes and allow for further liberalization of trade. The financial questions that arise with regard to such harmonization will have to be addressed very soon and it seems unavoidable that there must be some kind of support for those countries currently producing with very low environmental standards. While the Parliament's suggestions may seem too costly to many industrialized countries (including the EU Commission) they at least indicate a general willingness to accept the common but differentiated responsibility for the global environment subscribed to at Rio. Such harmonization could take place by way of MEAs at global and regional level. Therefore, the clarification of the relationship of MEAs and the WTO system seems of primary importance.

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[51] *See* Ziegler, *supra*, at note 7, chapters 3–5.