



Institute for
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**The External Dimension of the
Sixth Environment Action Programme:
An Evaluation of Implementing Policy Instruments**

Final Report

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EXECUTIVE SUMMARY

In order to achieve development that is truly sustainable, the EU must not only address the environmental, social and economic impacts of its policies within its borders, but must also consider impacts outside its borders. This global or 'external dimension' of EU policies was incorporated in the EU's 6th Environment Action Programme (6EAP) through the consideration of certain 'international issues'. These issues mainly relate to the EU's role in global environmental governance. There are also a number of more internal environmental objectives of the 6EAP which have an implicit external dimension. For example, an important objective of the 6EAP is to ensure that the consumption of resources does not exceed the carrying capacity of the environment. While this objective does not explicitly refer to the *global* carrying capacity of the environment, the interlinked nature of ecosystems and the world's resources, coupled with the EU's growing recognition and commitment to the 'external dimension' of sustainable development, necessitates that this objective refers not only to the EU's use of its own resources but also its use of global resources.

This report evaluates the EU's progress on the external dimension of the 6EAP, with a particular focus on the EU's consumption and production of global natural resources. It explores the EU's activities in pursuit of its objectives set out in the 6EAP which relate to the external dimension by examining relevant external and internal policy instruments. In this way, the report covers not only the 'international aspects' of EU activities in relation to the external dimension, ie its activities on the global environmental governance stage, but also 'internal (policy coherence) aspects' of the external dimension, ie the external impact of its internal policies.

The EU has been relatively successful in addressing some of its 'international' objectives of the 6EAP. This is particularly evident in the EU's efforts in relation to MEAs, both in terms of facilitating and moving discussions forward in certain fora and providing financial support and other incentives for the implementation of MEAs in developing countries. The EU has also had some success in integrating environmental concerns in its diplomatic activities through the innovative instrument of the Green Diplomacy Network which has contributed to the increasing effectiveness of European actions at international conferences and within international organisations. Therefore, the EU appears to have made some progress in achieving its intentions to strengthen international environmental governance.

In other areas of external policy, such as trade, investment and development cooperation, there is evidence that the EU is increasingly aware of the need to integrate cross-cutting policy objectives such as the environment into its policies. In many cases, opportunities and tools have been established to facilitate this integration, eg the development of Country Environmental Profiles annexed to Country Strategy Papers, Sustainability Impact Assessments for EU trade agreements and the adoption of 'European Principles for the Environment' by five European-based Multilateral Financing Institutions. However, translating these tools into effective mechanisms to integrate environmental considerations in these sectors has not been particularly successful to date and there remains considerable room for improvement in their implementation. Whether these improvements are made however, will depend not

only on the mechanics of better policy design and implementation but also on the ability of the EU to better coordinate its different (and sometimes competing) policy objectives.

Furthermore, despite a number of positive developments, eg the EU's role in placing the trade/environment relationship on the negotiating agenda of the ongoing Doha Development Round of multilateral trade talks and the introduction of targeted action (and now legislation) to safeguard the environment through EU trade relations under FLEGT; there is evidence of a number of contradictions between the EU's role as a trade power and its aspirations to environmental leadership. This can be witnessed in certain behaviour of the EU at the WTO as well as in the approach adopted in high level trade strategies such as the Raw Materials Initiative which appears to contradict EU environmental and development objectives in favour of EU competitiveness (economic) objectives.

With regard to the EU's approach to the 'internal' aspects of the external dimension, in particular the EU's record on sustainable consumption and production, the EU appears to have failed to ensure that its use of natural resources is kept within the carrying capacity of the global environment. The EU's activities in sustainable consumption and production appear to place more emphasis on eco-efficiency and achieving leaner production rather than on ensuring absolute reduction in resource use and there is little consideration of how to address the EU's (over)use of natural resources. This approach fits well with the Lisbon Strategy for Growth and Jobs as it offers the EU potential to strengthen its economy through new 'green-growth'. However, the approach has been criticised for relying too heavily on technological solutions, and without quantitative targets and indicators, it is unlikely that the EU will start to reduce its resource use. This approach also pays little attention to moral issues such as global justice and equity. Although the EU has some instruments which have the potential to reduce harmful environmental impacts and resource use in third countries (eg EMAS and eco-label), these appear to be hampered by a lack of uptake to date, the need for their further development and the provision of more incentives. Moreover, the external aspect is often not made explicit in the respective texts of these measures and could be enhanced if they were better highlighted and promoted.

The sustainable use of marine resources, both inside and outside the EU, has been one of the weakest areas of EU policy which has failed to halt, let alone reverse, the decline in fish stocks. If the current (and latest) reform of the CFP does not adequately address this, the EU risks not only dangerously reducing its own resources but also increasingly having to rely on the fisheries resources of countries outside the EU through Fisheries Partnership Agreements. This will increase pressure on global fish stocks regardless of whether environmental considerations are better integrated into these Agreements in the future. The Marine Strategy Framework Directive (MSFD) (and to some extent the Integrated Maritime Policy) have the potential to improve the EU's use of its marine resources, mainly through Member States' Marine Strategies to ensure 'good environmental status' of their regional seas. However, the MSFD adds a layer of EU law obligations for EU Member States on top of an existing network of regional multilateral agreements. Over the next few years, the resources Member States devote to marine environmental protection are likely to be absorbed by the work of transposing and implementing the MSFD, thus detracting from international cooperative processes. This may turn out to be detrimental rather

than beneficial to the effectiveness of existing international efforts as third countries may be reluctant to invest in a new, largely duplicative EU process which they have had no role in shaping.

A lack of consistent progress on the external dimension of the 6EAP is a symptom of wider policy coherence issues. There is at times an apparent lack of policy coherence between internal and external policy objectives of the EU as well as between different external objectives. As the EU's high level environmental strategy, the 6EAP should offer some strategic direction for EU environmental policy (ie vertical coordination). However, it does not help EU decision-makers trade off competing objectives and priorities of policy-makers in other sectors which have significant environmental impacts (ie horizontal coordination). Many of the external objectives of the 6EAP require a high level of horizontal coordination across different policy sectors and although the 6EAP promotes the integration of environmental considerations in other sectors, it is not obvious by what mechanisms these environmental objectives are to be picked up and translated into day-to-day policy making in other sectors. Therefore, policy instruments which are rooted in these non-environmental sectors may not (fully) consider the objectives of the 6EAP let alone give them priority. (In)coherence is not only an issue of (bad) governance, which can prevent certain policy objectives from being achieved, it also risks undermining areas of more successful policy by damaging the EU's credibility and legitimacy in its efforts in international environmental governance.

In the next Environment Action Programme, the EU should try to gain coherence by developing an overall strategy for external action which encompasses both the international and internal aspects of the external dimension of environmental protection and sustainable development. Some of the issues relating to the external dimension, which could potentially be addressed by a future Environmental Action Programme include: ensuring better coherence and consistency by explicitly recognising, developing, and defining different aspects of the external dimension and developing and implementing mechanisms to improve coordination between different EU policy objectives and different internal and external policy instruments; enhancing the EU's role in international environmental governance and its external visibility; revising existing activities and policy instruments to (better) take account of the external dimension; ensuring the ongoing reform of the CFP contributes to the objective of ensuring sustainable exploitation of fisheries resources; and complementing the emphasis on resource efficiency with the adoption of concrete targets and robust indicators. This is by no means an exhaustive list of issues; rather it should be considered an initial starting point for discussions on the future EU environmental policy framework.

ACRONYMS

6EAP	Sixth Community Environment Action Programme
ACPs	African, Caribbean and Pacific States
CAP	Common Agricultural Policy
CBD	Convention on Biological Diversity
CEC	Commission of the European Communities
CEP	Country Environmental Profile
CFP	Common Fisheries Policy
CITES	Convention on International Trade in Endangered Species
CLRTAP	Convention on Long-Range Transboundary Air Pollution
COPs	Conference of the Parties
CSP	Country Strategy Paper
CSR	Corporate Social Responsibility
DCI	Development Cooperation Instrument
DG	Directorate General
EAP	Environment Action Programme
EBRD	European Bank for Reconstruction and Development
EEA	European Environment Agency
EEAS	European External Action Service
EEB	European Environment Bureau
EIB	European Investment Bank
EMAS	Eco-management and audit scheme
EMODNET	European Marine Observation and Data Network
ENRTP	Environment and the Sustainable Management of Natural Resources including Energy Thematic Programme

EPAs	Economic Partnership Agreements
EU	European Union
ENP	European Neighbourhood Policy
FLEGT	Forest Law Enforcement, Governance and Trade
FPAs	Fisheries Partnership Agreements
GATT	General Agreement on Tariffs and Trade
GDN	Green Diplomacy Network
GEF	Global Environment Facility
GPP	Green Public Procurement
IA	Impact Assessment
IPP	Integrated Product Policy
IMP	Integrated Maritime Policy
IUU	Illegal, unreported and unregulated fishing
MDGs	Millennium Development Goals
MEAs	Multilateral Environmental Agreements
MNEs	Multinational enterprises
MSFD	Marine Strategy Framework Directive
MSY	Maximum Sustainable Yield
NGOs	Non Governmental Organisations
ODA	Official Development Assistance
PCD	Policy coherence for development
RFMOs	Regional Fisheries Management Organisations
SCP	Sustainable Consumption and Production
SDS	Sustainable Development Strategy
SIAs	Sustainability Impact Assessments

SIP	Sustainable Industrial Policy
SMEs	Small and medium sized enterprises
TEC	Treaty establishing the European Community
TFEU	Treaty on the Functioning of the European Union
TREMS	Trade related environmental measures
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
VPAs	Voluntary Partnership Agreement
WWF	World Wildlife Fund
WSSD	World Summit on Sustainable Development
WTO	World Trade Organisation

1 INTRODUCTION

EU environmental policy has until recently primarily focused on solving specific internal problems. Over the last thirty years, EU legislation has played a vital role in reducing local or regional environmental degradation through the control of environmentally harmful substances such as air pollutants and hazardous wastes. However, in order to achieve development that is truly sustainable the EU must not only address the environmental, social and economic impacts of its policies within its borders but also consider any impacts outside its borders. Countries and sectors are dependent on other parts of the earth for resources and thus sustainable development must be viewed in a global context (Coffey and Baldock 2003). After all, if sustainable development within the EU involves exporting problems to other parts of the world then, by definition, it is not genuinely sustainable.

The EU has already begun to recognise this logic, and in 2001 the Commission maintained that all EU policies ‘must actively support efforts by other countries – particularly those in the developing world – to achieve development that is more sustainable’ (CEC 2001a, 9). This line of thinking was also championed by the then EU Environment Commissioner, Margot Wallström, when she warned that ‘our credibility will suffer if unsustainable trends [in the EU] persist, or if our policies have detrimental impacts outside the EU, in particular on the development opportunities of the poorest countries’ (Wallström 2003). These ‘detrimental impacts’ threaten to undermine the EU’s claim that it is ‘well placed to assume a leading role in the pursuit of global sustainable development’ (CEC 2001a, 6). They also threaten to contravene the legal mandate provided in the Lisbon Treaty for the EU to pursue the objective of sustainable development not only within Europe but also in order to contribute to ‘the sustainable development of the Earth’ (Article 3 of the TEU).

This global or ‘external dimension’ of EU policies (in contrast to the more commonly discussed ‘internal’ dimension) was incorporated in the EU’s Sixth Environment Action Programme (6EAP). Agreed in 2002, the 6EAP sets out priority objectives to be attained by the EU in the field of environmental policy by 2012. In addition to four key ‘priority issues’ of Climate Change; Nature and Biodiversity; Environment, Health and Quality of Life; and Natural Resources and Waste, the 6EAP also contains objectives and priority actions on ‘international issues’ which mostly address the EU’s role in global environmental governance. Furthermore, a number of the ‘internal’ issues addressed in the 6EAP have an important external dimension which should be considered if the EU is serious about addressing the impacts of its policies outside its borders. Among the most notable of these is the issue of sustainable consumption and production, particularly in the context of natural resource consumption. The EU’s renewed Sustainable Development Strategy sought to ensure that the ‘EU’s internal and external policies are consistent with global sustainable development and its international commitments’ (EU Council 2006, 4). However, the ambiguity between the EU’s external objectives and the implications of some of its internal policies is evident in the EU SDS (see for further discussion, Pallemmaerts et al 2006 and Pallemmaerts (ed.) 2009)

The European growth model is based on a high level of resource consumption (EEA 2007) and according to the WWF the EU’s use of natural resources such as timber,

fossil fuels, metals, land surface, precious minerals and fish is around twice its capacity to generate them (WWF 2008). Therefore, the EU is in ecological overshoot and can only meet its natural resource needs by importing resources from other countries. While, some relative decoupling of economic growth from material and energy consumption has been achieved in a number of EU countries during the past decade, this has not led to an absolute decrease in resource use (EEA 2007). The 6EAP itself recognises the limited capacity of the planet to meet the increasing demand for resources and to absorb the emissions and waste resulting from their use and there is evidence that the existing demand exceeds the carrying capacity of the environment in several cases. Promoting sustainable consumption and production is thus a critical concern for the EU, which has introduced a range of policies and tools in this regard. According to the European Commission, promoting sustainable consumption and production is an integral part of the EU's renewed Sustainable Development Strategy (CEC 2008a). Sustainable consumption and production is also addressed in the 6EAP, which includes the objective of ensuring that the consumption of resources and their associated impacts do not exceed the carrying capacity of the environment (Art. 8(1)). While this objective does not explicitly refer to the *global* carrying capacity of the environment, the interlinked nature of ecosystems and the world's resources, coupled with the EU's growing recognition and commitment to the external dimension of sustainable development, necessitates that this objective refers not only to the EU's use of its own resources but also its use of global resources.

This report evaluates the EU's progress on the external dimension of the 6EAP, with a particular focus on the EU's consumption and production of global natural resources. It explores the EU's activities in pursuit of its objectives set out in the 6EAP which relate to the external dimension by examining relevant external and internal policy instruments. In this way, the report covers not only the international aspects of EU activities in relation to the external dimension, ie its activities on the global environmental governance stage, but also internal (policy coherence) aspects of the external dimension, ie the external impact of its internal policies. We deliberately do not focus on the EU's activities in the field of climate change, although these activities are critical, especially in view of a post-Kyoto agreement, this area of the EU's external dimension (even if not explicitly presented as such) is already well addressed in other reports and discussions (eg CONCORD 2009).

The structure of this report is as follows: Section 3 sets the context for the report by outlining the EU's use of global natural resources and how this global natural resource use fits with relevant concepts such as sustainable development. Section 3 also outlines the EU's growing commitment to the external dimension and sustainable development, including the objectives of the 6EAP which are the focus of this report. Sections 4 and 5 set out and evaluate each of the EU's external and internal policy instruments that are available to pursue the external objectives of the 6EAP. This is followed by a discussion in Section 6 of the main findings of this evaluation in relation to a number of concepts in the literature. Section 7 provides some conclusions and recommendations on how the external dimension could be better addressed in the future EU environmental policy framework.

2 SCOPE OF THE REPORT

The 6EAP contains a number of objectives and priority actions in relation to international issues, such as working to strengthen international environmental governance and to integrate environmental protection in the Community's external relations. There are also a number of more internal environmental objectives of the 6EAP, such as ensuring that the consumption of resources does not exceed the carrying capacity of the environment, which have an implicit external dimension through the EU's impact on the environment outside its borders. Both these international and internal objectives (as far as they relate to impacts outside the EU) are considered in this report to comprise the external dimension of the 6EAP.

This report aims to provide a broad overview of the EU's progress in pursuing this external dimension by examining its implementation of the most important strategic frameworks for guiding its environmental policy - the 6EAP. While an external dimension of all four of the key priority areas of the 6EAP is apparent, this report focuses on the issue of resource scarcity. This approach was chosen because the themes of climate change and biodiversity are being discussed intensively in other multilateral policy fora (eg the COP 15 and COP 16 of the United Nations Framework Convention on Climate Change and the COP 10 of the Convention on Biological Diversity); whereas to date the issue of global natural resource scarcity appears to have been relatively neglected by comparison, despite it being a critical issue which lies at the heart of the concept of sustainable development. It is also currently unclear what role the EU could play at a supra-European/global level to address the issue. For these reasons, this report focuses mainly on the issue of resource scarcity. There are also some important aspects of the external dimension of the 6EAP which involve discussion of wider external issues, such as the EU's role in attempting to reduce pollution in neighbouring countries to the EU. When these issues arise, they are discussed briefly in this report.

The time and resources available for this report were not sufficient to provide a comprehensive assessment of all EU policies and initiatives related to the issue of resource scarcity. Rather, a selection of those external and internal policy instruments considered to be most important for pursuing the external objectives set out in the 6EAP has been made. The policy instruments are set out according to which 6EAP objective or priority action they could arguably best implement. External policy instruments roughly equate to implementing the international aspects of the external dimension, while internal policy instruments roughly equate to implementing the internal coherence aspects of the external dimension. However, this categorisation is only for ease of explanation and in practice many external and internal policy instruments have implications for both the external and internal aspects of the external dimension. The number of policy instruments covered in this report is ambitious (over 30). The aim of the report is not to give a definitive account of each policy instrument but rather to provide a broad horizontal overview of EU activities which have significant environmental impacts beyond the EU's borders. The broad scope of the report has the advantage of providing a horizontal cross-section across a number of different EU policy sectors which have external impacts, thus facilitating a discussion on both the international and internal policy coherence aspects of the external dimension.

3 SUSTAINABLE CONSUMPTION AND PRODUCTION AND THE EXTERNAL DIMENSION

3.1 The EU's Use of Global Natural Resources

Between 1980 and 2002, the annual resource consumption of the world economy increased by about one third (Behrens *et al* 2007). The world's ecological footprint currently exceeds its capacity to regenerate by about 30 per cent, if things continue at the current rate by the early-2030s we will need the equivalent of two planets to maintain humanity's demand for goods and services (WWF 2008). The growing global over-use of natural resources is beginning to affect the ecosystems and the services they provide. The Millennium Ecosystems Assessment Synthesis Report (2005, 16) states that 'over the past 50 years, humans have changed ecosystems more rapidly and extensively than in any comparable period of time in human history, largely to meet rapidly growing demands for food, fresh water, fibre and fuel. This has resulted in a substantial and largely irreversible loss in the diversity of life on Earth'. The WWF's 2008 Living Planet Report highlights a requiem of habitat deterioration and resource reductions including a 33 per cent decline in terrestrial vertebrate populations between 2005 and 2007 caused by deforestation and other habitat destruction; a 14 per cent decline in the same period of the marine animal populations caused by rising sea temperatures and pollution, but mainly by overfishing; a decrease of tropical forest animal populations of more than 60 per cent caused by deforestation; and a 36 per cent decline in grassland vertebrate populations due to a decline in grassland quality (WWF 2008).

The ability to produce resources, or biocapacity, is not evenly distributed across the world; 50 per cent of the total world biocapacity is concentrated in eight countries - US, Brazil, Russia, China, Canada, India, Argentina and Australia. There are also large differences in resource consumption between countries. Domestic material consumption between 1970 and 2001 was 12 tonnes per capita in Italy and the UK compared to 37 tonnes per capita in Finland (Weisz *et al* 2006). In a globally interdependent economy, people increasingly use ecological resources from other countries to meet their demands. Therefore the consumption of products often takes place far from the origins of their raw materials (FOEE 2009). Three of the eight countries with the largest biocapacity - the US, China and India - are still ecological debtors, ie their national resource use (ecological footprint) exceeds their biocapacity. The other five countries are ecological creditors (WWF 2008). International trade enables the redistribution of resources across the globe. Over the last 50 years, international trade of raw materials and products has increased dramatically, with international trade volumes growing in monetary units by an average of 6 per cent each year (FOEE 2009). This growth in the global trade system has had significant impacts on the way we use natural resources and brings with it some severe environmental (and social) implications.

Europe is particularly reliant on the global trade of natural resources given that it only has limited supplies within its own borders and is thus dependent on imports for its resource needs, ie it is an ecological debtor. The net import of natural resources to Europe is almost 3 tonnes per person per year (FOE 2009). The EU is one of the world's largest users of metals importing more than 95 per cent of all metals it uses,

the EU is also particularly dependent on imports of high-tech metals such as cobalt, platinum, rare earths and titanium (CEC 2008b). About 50 per cent of all energy consumed in the EU is imported; this could rise to almost 70 per cent by 2030 under a business-as-usual approach. In addition, the European livestock industry is partly dependent on imported cattle feed and much of the EU's seafood is imported (CEC 2008b).

While there has been some progress in decoupling resource use and economic growth in certain EU Member States over the last decade, this has not led to an absolute decrease in environmental pressures as absolute resource use has generally remained steady over the past two decades. In part, decoupling may be due to increased imports of natural resources into the EU substituting for their declining production or extraction within Europe (EEA 2007). Trade is thus being used by some countries and regions to outsource extraction and related ecological rucksacks to other parts of the world thereby successfully maintaining or even increasing their regional and or national environmental quality (Brehens *et al* 2007, 450). At a global level, there is evidence that decoupling of global material extraction and use of natural resources for economic growth is occurring, however at the same time, overall levels of resource extraction are increasing in absolute terms in all regions of the world (*ibid*). Brehens *et al* argue that this is caused by an expansion of economic activities around the world that is outweighing gains made from structural changes towards service sectors and the diffusion of cleaner technologies and products. Efficiency gains from improved technologies have resulted in a rebound effect, ie when lower production costs (resulting from the use of less energy and fewer materials) lead to lower product prices, which in turn enable consumers to purchase more of the cheaper product or other products (FOEE 2009). Thus rising resource efficiency does not necessarily lead to reduced use of resources and can in certain instances result in more demand for natural resources.

3.2 The External Dimension of Natural Resource Use

Many of the natural resources traded globally are from developing countries which tend to rely on exports of primary products for their foreign currency earnings. Therefore many developed countries, such as the EU Member States, have a profound impact on the economy (and consequently the environment) of developing countries. Furthermore, only around 25 per cent of the world's population has a purchasing power high enough to benefit from the system of global resource trade. As people demand further increases in economic wealth and standards of living in the future, they will aspire to consumption patterns of industrialised countries leading to considerable extra demands on resources. Therefore consumption and production patterns will have to change if the needs of people in emerging and developing countries are to be met.

The now famous passage in the report by the World Commission on Environment and Development (WCED) (referred to as the Brundtland Report) defines sustainable development as development that meets the needs of the present without compromising the ability of future generations to meet their own needs (WCED 1987, 43). The Brundtland Report's understanding of sustainable development contains two key concepts:

- *the concept of 'needs', in particular the essential needs of the world's poor, to which overriding priority should be given; and*
- *the idea of limitations imposed by the state of technology and social organisation on the environment's ability to meet present and future needs. (WCED 1987, 43)*

Therefore, sustainable development is presented as a progressive transformation of society where the welfare of the disadvantaged in the present generation (in both the global North and South) are prioritised, while maintaining the ecological systems that the welfare of present and future generations are dependent on. Ultimate limits to growth are critical to the Brundtland understanding of sustainable development and sustainability requires that long before these are reached, the world must ensure equitable access to the constrained resource and reorient technological efforts to relieve the pressure (WCED 1987, 45). Thus, Brundtland appears to advocate a solution to limited natural resources through both a technological fix *and* the reorganisation of society to ensure equitable access. Sustainable consumption and production, therefore, has both a practical technological aspect as well as a social justice element which is based on moral and ethical arguments.

Authors from the social justice field place this equity or social justice aspect *at the core* of sustainable development (Langhelle 2000, 299). In fact both inter (the needs of the future) and intra-generational equity (the needs of the present) are a critical part of Brundtland's understanding of sustainable development that even the narrow notion of physical sustainability implies a concern for social equity between generations, a concern that must logically be extended to equity within each generation (WCED 1987, 43). However, it is this aspect that is least emphasised in many interpretations of sustainable development and sometimes ignored altogether (Jacobs 1999). This is especially true of the most common type of interpretation of sustainable development, ie environmental interpretations. Northern industrialised countries are often seen as being more concerned about addressing domestic environmental problems than alleviating global poverty and social injustices (Carter 2001, 210). The EU for instance has tended to interpret sustainable development as primarily an (internal) environmental concept and one that can be addressed by technological fixes rather than a fundamental reorganisation of society (Baker 2007) (see section 3.3).

3.3 The EU's Understanding of the External Dimension

Recognition of the external dimension has not always been apparent in the EU's interpretation of sustainable development. By the late 1990s and early 2000s a primarily environmental interpretation of sustainable development began to give way to a three pillared approach where environmental considerations were balanced alongside economic and social factors. This change of emphasis can be seen in the appearance (some 15 years after the publication of the Brundtland report) of the EU's first Sustainable Development Strategy (SDS) and a new Impact Assessment (IA) regime governing the appraisal of social, economic and environmental impacts of Commission policy proposals. Henceforth, the EU emphasised that sustainable development is more than an environmental concept (CEC 2001b) and must strike a balance between the economic social and environmental objectives of society (CEC (2002a, 3). However, little guidance was given on how difficult trade-offs between

the three pillars should be made. Therefore, sectoral interests beyond the environment had considerable scope to emphasise their pillar of sustainable development and consequently EU environmental policy has tended to focus on certain win-win technological fixes or eco-innovation to reduce its environmental impacts (Baker 2007). While this approach may be appealing to economic (and certain social) interests and is in line with the Lisbon Strategy for Growth and Jobs, it reduces the problem of the environment to one of resource efficiency, eco-innovation and green growth.

During the 1990s a parallel strand of the EU's interpretation of sustainable development began to form. This focused on the question of *where* the EU's pursuit of sustainable development should take place. Beginning in the early 1990s the EU identified international environmental leadership as important and thus sought to carry the sustainable development flag in the international scene (Baldock 2003, 7). The realisation of the importance of international environmental leadership followed a European Council resolution in 1990 that stipulated that the Community should use more effectively its position of moral, economic and political authority to advance international efforts to solve global problems and to promote sustainable development and respect for the global commons (European Council 1990, 22). Aligning itself to the concept of sustainable development in this way, has arguably allowed the EU to act as a normative (as opposed to a military) power in international politics (Manners 2002) and thereby try to increase its international standing (Vogler 2005).

The 1992 United Nations (UN) Conference on Environment and Development in Rio de Janeiro gave the Community the opportunity to put this leadership into effect, particularly given the US's decision to eschew a leading role (Baker 2000, 308). The EU's leadership aspirations continued through to the 2002 World Summit on Sustainable Development (WSSD) held in Johannesburg where the EU felt it had a responsibility to show leadership throughout the preparations and at the conference itself (CEC 2001c, 2). However, the agenda in Johannesburg raised many problems for the EU in effectively championing sustainable development because it reflected (much more so than Rio) the broader, multi-sectoral demands of sustainable development and thus went well beyond the usual scope of EU environmental policy (Lightfoot and Burchell 2004). Significantly, although the EU had hitherto adopted Brundtland's definition of sustainable development, it had not fully embraced its message about prioritising the needs of the world's poor in countries outside the EU.

In response to both the global poverty agenda discussed at the WSSD and pressure from non-governmental organisations (NGOs) and civil society (Tanasescu 2006), the EU was forced to issue a special Communication on the external dimension of sustainable development entitled *A Global Partnership for Sustainable Development* (CEC 2002a). The document was produced by an inter-service group involving officials from DG Development, DG Environment, DG Trade and the Secretariat General of the European Commission. While the participants were all broadly committed to the principle of sustainable development, it was obvious that they had very different objectives, agendas and territories to defend (Dalal-Clayton 2004, 16). For example, while the original draft of the Communication drawn up by DG Development had poverty reduction at its core, this approach was rejected by the other members of the group (*ibid*). The final document was eventually released in February 2002 and contained six sets of priority objectives and actions which

indicated a new and more global interpretation of sustainable development. These were: trade for sustainable development; fighting poverty; natural resources; policy coherence; governance; and financing sustainable development (CEC 2002a, 19).

While it appears that the international aspects of the external dimension were recognised at least as far back as the early 1990s, it took over a decade for the EU to formally expand and define these more complex aspects of the external dimension to its pursuit of sustainable development. The Commission's 2002 Communication on the external dimension of sustainable development can be seen as the first formal exhibition of the EU's new global interpretation of sustainable development which included both internal and external dimensions. However, there are also references and commitments in other documents published before and after the 2002 Communication, including the 6EAP. These documents show an increasing consideration of the external dimension by the EU, though mainly through the appreciation of the EU's role in promoting sustainable development and environmental protection at an international level.

3.4 The EU's Commitments to the External Dimension

As discussed above the EU has made a number of high-level declarations or commitments relating to the external dimension of its sustainable development and environmental protection objectives. Many of these recognise that, in addition to being a global environmental actor (ie the international aspect); the external dimension implies a consistency between the EU's external and internal policy objectives and instruments (ie the internal coherence aspect). The main examples of these commitments can be found in the EU Treaties, Sustainable Development Strategy and the 6EAP.

3.4.1 The Treaties

The overall objectives of EU environmental policy as set out in Article 191(1) TFEU (ex Article 174(1) EC) are:

- preserving, protecting and improving the quality of the environment;
- protecting human health;
- prudent and rational utilisation of natural resources;
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change

The fourth objective supports the EU's leadership role at the international level in developing global solutions to environmental problems ie the international aspect of the external dimension. The first three objectives do not specifically state if the 'environment' or 'natural resources' to be preserved and protected are on a global or a European scale.

Some clarification of this can be found elsewhere in the Lisbon Treaty. Article 3 of the TEU states that:

'The Union shall (i) work for the **sustainable development of Europe** based on balanced economic growth and (ii) a *high level of protection and improvement of the quality of the environment*' (emphasis added).

However, Article 3 continues to state that:

*'in its relations with the wider world, the Union shall (...) contribute to peace, security, **the sustainable development of the Earth**, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights (...).'*

Article 208 (ex Article 177) on EU development cooperation policy includes the objective to foster the sustainable economic and social development of the developing countries

These provisions imply that the environmental objectives stated in Article 191 (ex Article 174), including the prudent and rational use of natural resources should apply not just to the EU's impact on its own environment but also on the global environment.

In addition under the Lisbon Treaty, Article 10a TEU sets out the general principles of EU external action, including a commitment to multilateralism and specific objectives including:

'The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: (...)

(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty; (...)

(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development; (...)

Article 10a continues to state that:

'The Union shall ensure consistency between the different areas of its external action and between these and its other policies.'

Thus the EU is committed not only to implement action to preserve and protect the environment on a global scale, but it is also committed to ensuring that its internal and external actions are consistent with the pursuit of global sustainable development and the sustainable management of global natural resources.

3.4.2 The Sustainable Development Strategy

Both the EU's original (2001) and renewed Sustainable Development Strategy (2006) included commitments towards the external dimension. As discussed above, the 2001 Sustainable Development Strategy was complemented by a Communication on the external dimension of sustainable development in preparation for the Johannesburg WSSD (though the lack of integration between these two documents was frequently criticised (Tanasescu 2006)). The 2001 Commission proposal for a Sustainable Development Strategy stated that:

'sustainable development should become the central objective of all sectors and policies. This means that policy makers must identify likely spillovers - good and bad - onto other policy areas and take them into

account. Careful assessment of the full effects of a policy proposal must include estimates of its economic, environmental and social impacts inside and outside the EU' (CEC 2001, 6).

Similarly, the renewed Sustainable Development Strategy adopted in 2006 sought to:

'actively promote sustainable development worldwide and ensure that the EU's internal and external policies are consistent with global sustainable development and its international commitments' (EU Council 2006a, 4).

More specifically the 2001 Sustainable Development Strategy also recognised the global dimension of the EU's consumption and production:

'many EU policies influence prospects for sustainability far beyond the borders of the Union, and EU production and consumption increase the pressure on shared global environmental resources. It is therefore important to ensure that measures we take to move towards sustainable development in Europe contribute towards sustainable development in the rest of the world'. (CEC 2001a, 9).

The 2002 Communication on the external dimension of sustainable development also contained a section on 'Sustainable Management of Natural and Environmental Resources' which recognised the relationship between internal and external policies of the EU:

'some of the action included in the European Union's internal strategy will be instrumental in diminishing the ecological impact the European Union has on the rest of the world. By managing natural resources in a more sustainable manner, and decoupling resource consumption and pollution from economic growth, the European Union will also contribute to global sustainable development' (CEC 2002a, 11).

Although sustainable consumption and production is one of the seven key challenges of the renewed Sustainable Development Strategy, it offers little in the way of declaratory commitment to tackling the EU's global impact on natural resources. The opening statement of the renewed strategy claimed that 'the main challenge is to *gradually* change our current unsustainable consumption and production patterns and the non-integrated approach to policy-making' (EU Council 2006, 2 our emphasis). However, the global context behind this objective, explicitly provided in the original Sustainable Development Strategy, is missing.

3.4.3 Sixth Environmental Action Programme

The 6EAP has a whole Article (Article 9) devoted to 'Objectives and priority areas for action on international issues' These are mainly focused on the international aspects of the EU's external dimension of sustainable development. However the Article (Article 9 (1)) does suggest that there are 'international dimensions of the four environmental priority areas of this Programme' The international objectives set out in Article 9 of the 6EAP are:

- *the pursuit of ambitious environmental policies at the international level paying particular attention to the carrying capacity of the global environment;*
- *the further promotion of sustainable consumption and production patterns at the international level;*
- *making progress to ensure that trade and environment policies and measures are mutually supportive.*

The priority actions with which to pursue these objectives are set out in Article 9 (2) (see Box 1) and include integrating environmental considerations in the Community's external policies; strengthening international environmental governance; promoting environmental practices in foreign investment; focusing on the link between trade and environment; promoting cross-border environmental cooperation with neighbouring regions.

Box 1: Priority actions set out in Article 9(2) of the 6EAP

- a) integrating environment protection requirements into all the Community's external policies, including trade and development cooperation, in order to achieve sustainable development by *inter alia* the elaboration of guidelines;
- b) establishing a coherent set of environment and development targets to be promoted for adoption as part of a new global deal or pact at the World Summit on Sustainable Development in 2002;
- c) work towards strengthening international environmental governance by the gradual reinforcement of the multilateral cooperation and the institutional framework including resources;
- d) aiming for swift ratification, effective compliance and enforcement of international conventions and agreements relating to the environment where the Community is a Party;
- e) promoting sustainable environmental practices in foreign investment and export credits;
- f) intensify efforts at the international level to arrive at consensus on methods for the evaluation of risks to health and the environment, as well as approaches of risk management including the precautionary principle;
- g) achieving mutual supportiveness between trade and the needs for environmental protection, by taking due account of the environmental dimension in Sustainability Impact Assessments of multilateral trade agreements to be carried out at an early stage of their negotiation and by acting accordingly;
- h) further promoting a world trade system that fully recognises Multilateral or Regional Environmental Agreements and the precautionary principle, enhancing opportunities for trade in sustainable and environmentally friendly products and services;
- i) promoting cross-border environmental cooperation with neighbouring countries and regions;
- j) promoting better policy coherence by linking the work done within the framework of the different conventions, including the assessment of interlinkages between biodiversity and climate change, and the integration of biodiversity considerations into the implementation of the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

In addition to these explicit external objectives focusing on international issues there are also a number of more internal environmental objectives of the 6EAP which have

an implicit external dimension. These include objectives relating to sustainable consumption and production and marine protection and conservation. Article 6(1) of the 6EAP sets the objective of:

'conservation, appropriate restoration and sustainable use of marine environment, coasts and wetlands'.

Article 6(2) goes on to outline the following priority actions with which this objective should be pursued:

'promoting sustainable use of the seas and conservation of marine ecosystems, including sea beds, estuarine and coastal areas, paying special attention to sites holding high biodiversity value'.

Another objective of the 6EAP as set out in Article 8 (1) is:

'ensuring that the consumption of resources and their associated impacts do not exceed the carrying capacity of the environment and breaking the linkages between economic growth and resource use'.

Article 8(2) sets out a number of priority actions with which to pursue this objective including:

'development and implementation of a broad range of instruments including research, technology transfer, market-based and economic instruments, programmes of best practice and indicators of resource efficiency'.

While it is not explicitly mentioned where these objectives are to be achieved, the EU's increasing recognition of the external dimension means that these objectives at least implicitly have both internal and external dimensions, ie objectives in relation to the carrying capacity of the environment and the sustainable use of the seas should not only apply inside the EU but also outside its borders.

3.5 Conclusions on the External Dimension and the EU

The analysis in this section has shown that the EU has significant impacts on the environment outside of its own borders, especially with regard to its (over)use of global natural resources. The EU has increasingly begun to realise that it must address these external impacts if it is to achieve truly sustainable development in general and its environmental pillar in particular. Consequently objectives and policy priorities relating to this external dimension have been integrated in the framework of the EU's environmental policy including the 6EAP. However, operationalising this external dimension of sustainable development has proved to be difficult. This is particularly the case since the EU realised that the external dimension contains aspects of international environmental leadership and internal policy coherence. However, as suggested by Lightfoot and Burchell (2004, 338) the EU is still grappling with issues of internal policy coordination which prevents it from fully being able to implement its commitments to external development. If the EU's internal policies are incoherent with its external commitments, the EU risks being part of the problem rather than part of the solution (FOEE 2002).

4 EXTERNAL POLICY INSTRUMENTS

In 1957 when the European Community was founded, it had no formal foreign or security policy, nor indeed an environmental policy. However, responsibility for external economic relations was given to the Community and included the formulation and implementation of external trade policy. This task included the external representation and negotiation by the Commission on behalf of Member States (Bretherton and Vogler 2006). The EU was also accorded the right to conclude association agreements with third countries which formed the basis for a vast network of agreements between the EU and third countries and regional organisations including the foundation for the Community's approach to development cooperation (ibid). With the ever closer union of the EU, its functions have continued to evolve and grow so that today the EU is a global actor in many spheres of policy including trade, the environment, and development cooperation. Policy instruments in all of these spheres have significant impacts on the external dimension. This section sets out and evaluates a number of external policy instruments which could potentially help to implement the external objectives and priority actions of the 6EAP, especially in relation to sustainable consumption and production.

4.1 External Policies

Priority actions set out in Article 9 (2) of the 6EAP:

- 1) integrating environment protection requirements into all the Community's external policies, including trade and development cooperation, in order to achieve sustainable development by *inter alia* the elaboration of guidelines;

External policy instruments examined in this section:

- Green Diplomacy Network (GDN);
- Country Strategy Papers;
- Development Cooperation Instrument (DCI);
- Economic Partnership Agreements (EPAs);
- Fisheries Partnership Agreements (FPAs);
- Regional Fisheries Management Organisations (RFMOs);
- Global Europe; and
- The Raw Materials Initiative (Pillar I).

4.1.1 Green Diplomacy Network

The Green Diplomacy Network (GDN) was launched in June 2003, when the Thessaloniki European Council agreed to launch an initiative aimed at promoting the integration of environmental protection in the Member States and the EU's external relations. This informal network brings together national officials dealing with international environmental issues in Member State Ministries of Foreign Affairs and diplomatic missions under the coordination of the EU Presidency and in association with the European Commission. The goal of the network is to promote the use of the EU's extensive diplomatic resources (diplomatic missions, development co-operation offices) in support of environmental objectives, orchestrating campaigns and demarches that bring the EU messages to third parties all over the world, gathering also our partners' views (CEC 2003a).

The first meeting took place in June 2003 where a draft Action Plan and Working Programme were adopted and later endorsed in November. Working guidelines for the Network were also adopted which established that the GDN would base its work on EU positions agreed in the Council. Details of the aims and tasks of the network as set out in the adopted Action Plan are outlined in Box 2 below.

Box 2: Aims and Tasks of the Green Diplomacy Network

Aims

The network should:

- work to implement the Council's environment integration strategy in external affairs,
- assist headquarters in gathering information to formulate an opinion on relevant issues so as to provide third parties (countries and/or international organisations) with explanations of EU policies and its positions,
- strengthen and exploit existing structures and capacities of the MFAs in communicating and implementing the external dimension of the EU's Sustainable Development Strategy, and
- contribute to greater coherence between the EU's external and internal policies.

Tasks

At a **policy level**, the network will, among other things:

- address the main issues in major ongoing or foreseeable negotiations so as to improve communication of the EU's positions to its main partners,
- address the link between environment and security both in conflict prevention activities as well as in post-conflict reconstruction, and
- bring together Member States' analyses of environment and security linkages in different regions,

At a **structural level**, the network will:

- assist headquarters in gathering necessary information to formulate an opinion on international sustainable development issues,
- foster capacity-building within the foreign ministries systems,
- assess the level and nature of integration of environmental concerns in the work of Member States' Ministries of Foreign Affairs, and
- provide a channel for the introduction of the external dimension of EU's Sustainable Development Strategy to acceding countries.

At an **operational level**, the network will:

- help provide third parties (countries and/or international organisations) with explanations on EU policies and on its positions on relevant issues,
- seek to ensure better use of EU delegations, embassies and missions for promoting EU positions on environment and sustainable development issues
- encourage EU diplomatic representations in third countries to either engage actively and collectively in existing bilateral dialogues on environment and sustainable development, or, to the extent necessary, initiate such dialogue in cases where it does not yet exist.

Source: Green Diplomacy Network, 2003

The GDN is an innovative mechanism that allows the conciliation of national and EU interests in the framework of shared competences, as in the case of environment, through informal and pragmatic methods. Its main innovations have been in relation to its working methods, some of which anticipate various features of the External

Action Service (see below) and establish cooperation and coordination to improve the capacities of the EU as a normative power in international forums. The GDN has organised a number of demarches by using the resources of Member States and the Commission to bring EU messages and initiatives to third parties, seeking support and the creation of alliances in preparation for international negotiation rounds. Demarches aim to sensitise third countries to the EU position and gather feedback on their views in preparation of Conference of the Parties (COPs) of various MEAs. However, the temptation to defend national positions and to maintain Member State visibility has in certain cases undermined the position of the EU. The GDN has also provided intelligence on the views of third parties in particular, those experiencing environmental problems and threats such as small island states and has promoted the sharing and distribution of relevant materials to EU Missions thereby contributing to their capacity to engage in discussions on environmental topics.

The GDN is potentially an important tool to achieve complementarity, coherence and consistency between the external policies of Member States and the EU in the field of environmental protection. It has, in particular, contributed to the increasing effectiveness of European actions at international conferences and within international organisations. Its creation can also be considered as revealing:

'an increasing willingness to employ policy instruments in direct support of external environmental objectives. A prominent example is provided by the coordinated diplomatic campaign in support of Kyoto ratification alongside the deployment of trade inducements' (Bretherton and Vogler 2006, 99).

The focus of the GDN to date has been very much outward facing, targeting the better coordination of the EU's activities in international environmental governance, communicating the EU's position to third countries, building alliances and gathering intelligence on the positions of third countries. Diplomats involved in the network have been more focused on transmitting political messages and responses to these messages from their local interlocutors than gathering information on the impact of EU activities on the environment in third countries. However, this impact is bound to influence the perception of EU positions on international environmental issues by those countries and constitutes relevant information in political dialogues with them. Therefore, while the GDN can assist the EU in fulfilling some international aspects of the external objectives of the 6EAP such as integrating environment protection requirements into all the Community's external policies and work towards strengthening international environmental governance by the gradual reinforcement of the multilateral cooperation and the institutional framework including resources it could also more actively help the EU to address the internal (coherence) aspects of its (over) use of natural resources by gathering and transmitting relevant information in this regard.

The role and even the existence of the Green Diplomacy Network need to be reconsidered in light of the new European External Action Service (EEAS), introduced under the Lisbon Treaty. The EEAS is a logical development of the reform started by the Commission in 2000 of the management of its external aid programme, a key component of which was the extensive devolution of aid management tasks and responsibilities to Commission Delegations. The EEAS will transform the current delegations of the Commission in third countries and international organisations into EU Delegations. A major change from the past set-up will be that the EEAS will be

under the authority of the High Representative for Foreign Affairs and Security Policy who in turn presides over the Foreign Affairs Council and at the same time is a Vice-President of the Commission. The draft proposal for a Decision establishing the EEAS (Ashton, 2010) states that the EEAS "shall work in cooperation with the General Secretariat of the Council and the services of the Commission, as well as with the diplomatic services of the Member States, in order to ensure consistency between the different areas of the Union external action and between these and its other policies". Thus it can be expected that a certain degree of coordination between the delegations, the Commission, the Council and the Member States diplomatic services will continue; however the form of this cooperation is still unclear and whether the GDN itself will continue, in its current form or in a new shape, or if it will disappear altogether remains to be seen.

4.1.2 Country Strategy Papers

The decision to launch a European environmental policy taken at the October 1972 Paris summit was part of a broader political agenda of redefining the role of the Community in response to enlargement and a changing international situation, in which it was felt necessary to "confer new responsibilities" on the Community both internally and externally, in order to enable Europe "to make its voice heard in world affairs" as "a distinct entity". Another aspect of this new political dimension was the formulation of a comprehensive policy in the field of development cooperation, to be implemented jointly by the Community and its Member States, which was also called for in the Paris Declaration. Echoing, albeit in less radical terms, another theme of Commission President Sicco Mansholt's speech at the Stockholm Conference, the Declaration referred, in its preamble, to the growing gap between industrialised and developing countries. It announced an increased effort of the Community in the area of development aid, which it presented as a response to the recommendations of the 1971 UNCTAD conference in Santiago de Chile. In retrospect, the simultaneous birth of new EU policies in the field of environmental protection and development cooperation could be seen as another precursor of the EU's later affinity with the theme of sustainable development.

The EU, together with its Member States, is the largest aid donor in the world, providing nearly 56 per cent of global Official Development Assistance (ODA) to a group of countries (CEC 2006a). The European institutions recognised the importance of environmental considerations within its development policies in the 2005 *European Consensus on Development* (2006/C 46/01) which states that "eradication of poverty in the context of sustainable development" is the overarching objective of EU development cooperation. After all "for development to be sustainable, it has to ensure that the building blocks of human wellbeing – natural resources, the environment, biodiversity and ecosystem services – are maintained" (WWF 2009, 5). The European Commission manages between one fifth and one sixth of the EU's ODA, and the European Consensus requires that cross-cutting issues such as human rights, gender and the environment are mainstreamed or integrated throughout development cooperation (*ibid*).

The Commission has also been keen to promote the concept of policy coherence for development (PCD) as a means of enhancing synergies between EU development objectives and actions in other policy areas. There has been a recent rise of political

interest and action in this area (see CONCORD (2009) for an account of recent developments, Carbone (2008) for a more historical and theoretical perspective and van Schaik, L., et al (2006)). In April 2010, the Commission presented The Policy Coherence for Development Work Programme 2010-2013 (CEC 2010d) which translates the PCD concept into specific actions; setting out how the EU will address five global challenges (trade and finance; climate change; global food security; migration and security) in a development-friendly manner. The Work Programme sets targets and indicators in relation to each global challenge and establishes a scoreboard to track progress towards identified PCD objectives. The June 2009 Environment Council called on the Commission to set up an appropriate framework to prepare and monitor the implementation of the EU's approach to integrating the environment in Community development policy and to prepare an 'ambitious EU wide environment integration strategy' to be presented to the Council by late 2011 (Council of EU 2009). Work on this is currently ongoing.

In order to assist the disbursement of ODA through the European Development Fund, the Commission, in partnership with each developing country, prepares a Country Strategy Paper (CSP). These are accompanied by a National Indicative Programme for each country which defines the actions to reach the objectives set out in the CSP. The CSPs should contain an analysis of the political, economic and social situation in and problems faced by each country, followed by an outline of the chosen response strategy (Williams 2007). Therefore, we would expect environmental considerations to be considered in these papers and to be taken into account in the CSP (and Indicative Programme) adopted. One of the policy instruments designed to help ensure environmental considerations are taken into account when creating these strategies is a Country Environmental Profile (CEP) (WWF 2009). A summary of the CEP must be annexed to the CSP. The Commission website states that CEPs are '*A report that includes the analysis of the country's environmental situation, current policies, institutional capacities and environmental cooperation experience with clear recommendations for the integration of the environment during CSP preparation*' (CEC in WWF 2009, 7).

Taking into account environmental considerations (or environmental mainstreaming/integration) in the EU's development cooperation through these CSP is extremely important in order to safeguard the environment and natural resources in these countries. Not only do many developing countries have rich biodiversity and significant natural resources which are important to deliver vital local and global services, these resources may also be needed for the future development of the nation. In addition, environmental degradation often impacts on poor people first, who rely daily on the environment for critical resources. However, despite the recent recognition by the Commission of the importance of cross-cutting issues such as the environment in its development policy, there is evidence that the integration of such issues has not yet adequately taken place in practice.

Williams (2007) evaluated the first generation of CSPs for African countries (ie strategies approximately covering years from 2002-2007) and concluded that these failed to effectively integrate environmental protection measures. More recently an evaluation for WWF (2009) of 19 CEPs and two Regional Environmental Profiles (REPs) revealed numerous and significant gaps in the analysis. For example, many of the CEPs lacked environmental data, such as on where biodiversity was being lost and

what the causes of that loss were (ibid). The reports also said very little about climate change in particular. The CEPs lacked adequate analysis of how environmental legislation and relevant MEAs were being implemented. In addition, the issue of land tenure was not fully recognised (WWF 2009, 14). According to the report, land tenure issues impact hugely on natural resource use and environmental protection. Insecure and uncertain tenure is often the root cause of unsustainable and sometimes destructive natural resource use (WWF 2009, 14). These are worrying omissions in the papers designed to consider environmental issues in countries which the EU operates. If environmental issues are not raised here it will be very difficult for them to find their way into the CSPs and then into the actions set out in the National Indicative Programmes. This planning and programming phase is crucial for environmental integration because key decisions concerning the overall cooperation process are made that can be difficult to adjust in later phases (WWF 2009).

4.1.3 Development Cooperation Instrument

The EU's Development Cooperation Instrument (DCI) established by Regulation (EC) No 1905/2006 provides assistance to 47 developing countries in Latin America, Asia (including Central Asia), the Middle East and South Africa that are not covered by other EU instruments. This instrument adds some coherence to the previous situation when the different geographical areas were treated as a heterogeneous block under the label of Asia and Latin American countries, with little in common other than the same financing instrument (Regulation (EEC) No 443/92) (Fajardo 2005, 156). The new DCI came into operation in 2007 and one of its five Thematic Programmes is dedicated to the Environment and the Sustainable Management of Natural Resources including Energy (ENRTP). This Thematic Programme is complemented by a Thematic Strategy for Environment and the Sustainable Management of Natural Resources including Energy which is to be implemented over five years (CEC 2007a). In addition, environmental concerns appear as cross-cutting issues presented in the regional programmes under the DCI. The actions conducted under this instrument are to follow the principles of complementarity and coordination between the EU and Member States as well as respond to the priorities of the partner countries.

The overall goal of the ENRTP is to promote international environmental governance and Community environmental and energy policies abroad (Regulation (EC) No 1905/2006 Preamble). Its main objective is to integrate environmental protection requirements into the Community's development and other external policies as well as to help promote the Community's environmental and energy policies abroad in the common interest of the Community and partner countries and regions (Article. 1-2). In order to achieve this, the ENRTP focuses on the following actions: work upstream in assisting developing countries to achieve Millennium Development Goal 7 on environmental sustainability; promote the implementation of EU initiatives and help developing countries meet internationally-agreed environmental commitments; promote coherence between environmental and other policies and enhance environmental expertise; strengthen international environmental governance and policy development; and support sustainable energy options in partner countries.

The DCI provides the ENRTP with a budget of €889.5 million for the period 2007-2013. This is implemented through a number of funding instruments including:

- *The Global Climate Change Alliance*: This instrument was allocated €60 million for 2008-2010 to create awareness and jointly address climate change between the EU and the most vulnerable developing countries, in particular, least developed countries and small island developing states. Four countries – Vanuatu, the Maldives, Cambodia and Tanzania- have been chosen to start up activities - mostly in the form of budgetary assistance for the implementation of their Climate Change Action Plans (CEC, 2007d).
- *The Global Energy Efficiency and Renewable Energy Fund (GEEREF)*: The objective of GEEREF is to pool public and private funds through an innovative public-private partnership in order to offer new risk sharing and co-funding options for various investors in the areas of energy efficiency and renewable energy. The ENRTP contributed €20 million in 2008 to this fund (CEC, 2006g).
- *International Environmental Governance*: The ENRTP provided just under €7 million to support a number of activities to improve international environmental governance, particularly conventions that are directly relevant for developing countries.

The ENRTP also complements environmental activities planned and implemented under other programmes, eg the SWITCH-Asia programme which supports green growth and the development of environmental technology through an overall allocation of €100 million (CEC 2009a, 129)

In addition to the ENRTP, the regional or geographic programmes include some relevant environmental cross-cutting objectives and actions, including the promotion of sustainable management of natural resources and sustainable patterns of consumption and production (Article 5 Regulation (EC) No 1905/2006). In particular with reference to Asia and Central Asia the DCI seeks the promotion of: regional cooperation in water and sanitation; regional programmes concerning climate change; forest law enforcement, governance and trade (€6 million for the FLEGT Action Plan); and a switch to more sustainable production and consumption in Asia (€25 million for SWITCH). In China, the EU has financed projects on environmental awareness, nuclear security and fighting against pollution, and climate change. EU environmental cooperation with China took a major step forward with €35 million to support a Clean Energy Centre and an Institute for Clean and Renewable Energy and to promote environmental governance. In Latin America, the first EU-Latin America and Caribbean ministerial meeting on the environment was held in 2008. In the parallel, the EU has established a strategic partnership with Brazil in which cooperation on the environment is one of five pillars.

The ENRTP and the cross-cutting issue of environment and natural resources management play an important role in the context of EU partnerships with third countries, regional groups and organisations, both at political dialogue level and in programming action plans in the framework of Country Strategy Papers. The Thematic Strategy that implements the ENRTP overcomes the heterodoxy of the geographical blocks in the pre-2006 financial instrument and now provides guidelines of action for every region incorporating environmental issues to be addressed, as can be seen in Box 3 below.

Box 3: Geographical scope and proposals of the Thematic Strategy for the environment and sustainable management of natural resources, including energy

EU- African Union

The Thematic Strategy proposes to contribute to building an environmentally sustainable future by managing environmental diversity (forestry, fisheries and water), combating desertification, supporting the sound management of chemicals and countering the effects of climate change, including by supporting the environment observatory initiative "AMESD". The strategy also proposes to establish an EU-Africa Partnership for Infrastructure to support programmes that facilitate interconnectivity at continental level and promote regional integration covering energy, water, transport and electronic communications. In the energy domain, it will help develop cross-border and regional energy infrastructure, including enhanced exploitation of renewable and other sustainable local energy sources and services.

EU- Pacific

The Thematic Strategy proposes that one of the central blue-green themes for this enhanced cooperation should be to deal with the sustainable management of natural resources and to support Pacific ACP countries in their efforts to deal with the consequences of climate change, rising sea levels, diminishing fish stocks, coral bleaching, unsustainable logging, land degradation and increasing pollution and waste.

EU-Caribbean

The Thematic Strategy proposes to support actions to address environmental challenges and build capacity in such areas as climate change, mitigation and adaptation, and sustainable natural resource management. The EU will also share its experience in global environmental issues with Caribbean partners and help increase the region's capacity in natural disaster management at all levels, with the emphasis on risk reduction, preparedness, early warning, prevention and mitigation.

EU- Central Asia

The Thematic Strategy identifies the environment as a key component of regional cooperation including through participation in relevant European Neighbourhood Policy Instrument (ENPI) East regional initiatives; it targets improved and sustainable management of natural resources, particularly water and cross-border water bodies, forests, mountainous areas and other natural areas, climate change adaptation, and reducing the potential impact of natural disasters. Increased awareness and participation of civil society in decision making on these issues is a built-in element of the Strategy.

EU- Asia

The Thematic Strategy aims to build partnerships and alliances with Asian countries to address global, regional and local environmental challenges, working together in international forums to maximise joint efforts in relation to climate change and the deterioration of the global commons, and supporting efforts to promote sustainable resource management and address urban and industrial environmental problems. It also emphasises the need to integrate environmental considerations in all areas of bilateral and inter-regional cooperation, including scientific and technological cooperation efforts.

EU-Latin America

Considering that long-term prosperity is largely dependent on the good management of natural resources and the ability to ensure sustainable economic development, the Thematic Strategy promotes effective sectoral dialogue on the environmental aspects of sustainable development connected to other sustainability dimensions and encourages in-depth discussions in international bodies, particularly on climate change. Moreover, in the context of geographical cooperation for Latin America and Asia, the DCI provides for the promotion of sustainable

development in all its dimensions, with particular emphasis on the protection of forests and biodiversity and seeks complementarity with research cooperation.

The area covered by the European Neighbourhood Policy

The environment is one of the key priorities addressed in Action Plans with ENP partner countries to promote good environmental governance, prevent environmental degradation and pollution, protect human health and achieve more rational use of natural resources. The Thematic Strategy also aims to enhance regional cooperation between the partner countries and promote the ratification and implementation of international agreements.

4.1.4 Economic Partnership Agreements

In addition to being the largest aid donor in the world (see Section 4.2.2) the EU is also the main trading partner of many developing countries, with 47 per cent of its total imports and around 66 per cent (more than €48bn) of its agricultural imports sourced from the developing world in 2003 (CEC 2004a). The most significant aid and trade relationship exists with the former colonial African, Caribbean and Pacific states (ACPs), originally through the Lomé Conventions (1975-2000), then the Cotonou Agreement. However, these earlier agreements are currently being overhauled and replaced with new Economic Partnership Agreements (EPAs) which will gradually phase out old trade preferences and move towards the progressive removal of trade barriers between partners. Ultimately, 80 per cent of the ACP's trade taxes and levies on imports from Europe will be removed. There is some flexibility within this and the 76 ACP countries have been negotiating with the European Commission since 2002 on the terms of individual agreements. This negotiation process has been surrounded by immense controversy and the deadline for introducing these agreements by the 1 January 2008 has been missed.

There have been a number of strong criticisms of the EU's approach in the negotiations on EPAs (eg see Oxfam 2006). However, of most interest to this report are the concerns that the EPAs are being used by the EU to help secure access to natural resources and raw materials. A report on the EPAs entitled *'Undercutting Africa'* commissioned by Friends of the Earth, Hall (2008) claims that:

'the entire agenda [of EPAs] appears driven by the EU's anxiety to maintain competitiveness in relation to emerging economies such as China and India. Securing and maintaining cheap natural resources and energy supplies, especially in order to continue to manufacture and export products (rather than for domestic consumption) is at the heart of the EU's approach' (Hall 2008, 9).

Hall argues that the environmental and social impacts of opening up the markets of these developing countries through trade liberalisation have not been adequately considered by the Commission. The report claims that the Sustainability Impact Assessment (SIA) of the EPAs omits a number of issues relating to environmental concerns, including environmental standards and fails to highlight forests or biodiversity as potential areas of concern despite these being raised previously in similar SIAs including an earlier mid-term report on the final EPA assessment. Previous European Commission SIAs conducted on World Trade Organisation (WTO) negotiations have all identified 'significant adverse environmental trends that may be exacerbated by the trade liberalisation scenario, unless countered by

appropriate mitigating policies (EC 2006, 67 in Hall 2008). Hall criticises the lack of consideration for the environment in the EPAs being negotiated, pointing out that –even though tariff liberalisation in the forest and forest products sector ó in relation to unprocessed timber especially ó is not predicted to have much of an impact on trade in that sector (because tariffs are already low), investment liberalisation could still make a significant difference to deforestation ratesø It seems that there are a range of investment restrictions in place to conserve natural resources and/or promote local and small-scale economic development in countries such as Ghana and Cameroon. These are at risk if investment is included in EPAs.

In addition, many developing countries use export restrictions, including quantitative export restrictions, to protect the environment and natural resources, to promote value-added domestic processing and/or to generate fiscal revenue. Although the EU has failed to achieve the removal of these restrictions in WTO negotiations, it has inserted prohibitions on various export restrictions in the full and interim EPAs. In general, the EU has sought to ban quantitative export restrictions; and to limit the use of export duties. In some interim EPAs certain exceptions are permitted, including for environmental protection, but these are only temporary. The precise nature of the prohibition differs from agreement to agreement. Ghana for example, has managed to avoid a complete ban on its log export restrictions. Hall (2008) suggests that this was secured through adept negotiation. In contrast, the current export restrictions in the forest sector in Cameroon will probably be removed (*ibid*). There is some debate about what the consequences of removing export restrictions would be, both in terms of deforestation rates and the development of value-added processing within the countries concerned. However, numerous studies are cited by Hall (2008) which link trade liberalisation including a reduction in export restrictions with a rise in deforestation.

4.1.5 Fisheries Partnership Agreements

Bilateral fisheries agreements between the EU and third countries are a key component of the Common Fisheries Policy (CFP). The EU has long been one of the worldø largest markets for fish products and some of its Member States, in particular Britain, France and Spain, have substantial deep-water fishing fleets (see Bretherton and Vogler 2008 and Van den Bossche 2009). In addition to the regulation of fishing activities within EU waters (see section 5.2.1), the CFP has also provided for the common external representation of EU fishing interests. The Commission has therefore been responsible for negotiating fisheries agreements with third countries; the first one was negotiated with Senegal in 1979. The specific conditions (technical, financial, type of resources, etc.) of the agreements are laid down in –protocolsø each of which runs for a period of several years (CEC 2000a). However, partner countries are responsible for the control and surveillance of the fishing activities (*ibid*). Currently, bilateral compensatory agreements exist between the EU and 16 countries, most of them in Africa, but others are in the Indian Ocean and the Pacific (see Table 2). The nature of these agreements has evolved significantly in the last decade. Traditionally the EU has been accused of viewing these agreements, especially with sub-Saharan African countries, as –purely commercial deals that are designed to maximise access to coastal state fishery resources, secure employment for European harvesting and processing industries and supply European seafood consumption markets at the lowest possible costø (Kaczyuski and Fluharty 2002, 75; Mahmoud

Cherif 2009). A report on EU fisheries agreements with ACP countries published in 2005 estimated that the EU imports about 60 per cent of its fish requirements and that since 2000, an additional nine million tonnes of fish had been needed to meet the demands of the fish-processing industry and domestic consumers (Gorez 2005). The same report also claimed that in the 1990s, ACP-EU fisheries agreements allowed an average of 800 EU vessels to operate in developing countries waters and provided 35,000 EU jobs mostly in the processing sector (*ibid*). However, other commentators questioned the overall economic benefit of the EU's fisheries agreements since it targeted considerable public funds to essentially subsidise access to resources for private operators (Sporrong *et al* 2002). From the point of view of the recipient country, the payments received were in some cases a significant part of the public budget revenue. For example the EU fishery payments for Sao Tome represented 13 per cent of the budget revenue (IFREMER 1999, 19 per cent in Bretherton and Vogler 2008). However, the agreements were widely criticised for their negative environmental and social impacts on the developing countries concerned. A United Nations Development Programme (UNDP) report published in 2005 stated that in the case of Senegal for example:

'After 15 years of cooperation with European Union, Senegal's fishing sector is in deep crisis. Stocks have been severely depleted, disrupting the artisan sector, pushing up fish prices in local markets and jeopardizing supplies to canning factories producing for export' (UNDP 2005, 145 in Bretherton and Vogler 2008).

While the agreements were aimed to harvest surplus fish of partner countries, sceptics began to claim that with their own waters already overfished the EU had turned its attention to the waters of developing countries, thus exporting the EU's sustainability problems (WWF 2003). Reports of the Food and Agriculture Organisation (FAO) show that this over-exploitation has neither changed nor improved (FAO 2004) and the competition between the European fleet and the traditional local fishery worsened over-exploitation of resources as did the irregular implementation of obligations (Schorr, 2005).

In December 2002, in the context of the reform of the CFP, the European Commission issued a Communication proposing a new approach for the conclusion of Fisheries Agreements including a proposal for EU fisheries bilateral relations to move from access agreements to Partnership Agreements (CEC 2002b). The new agreements were intended to demonstrate the Union's commitment both to sustainable and responsible fisheries policy and poverty reduction in developing countries. In the same year the Commission published an Action Plan for integration of environmental issues into the CFP. The proposed measures were to apply to both the internal and external aspects of the EU's fisheries policy (Bretherton and Vogler 2008).

The Fisheries Partnership Agreements (FPAs) were to establish a sectoral partnership in fishing with developing coastal states in line with the cooperation programmes provided for under the Cotonou Agreement, with the aim of helping these countries to put their own fisheries policies in place and meet their aim of economic development while protecting fish resources. There have been some reported improvements in the newer agreements (ie since 2002) including the increased payment for the agreements and the increased proportion of the payments earmarked for measures to support the development of the fishing sector and the management structure in the third countries

(Sporrong *et al* 2002). There have also been improvements in environmental considerations, for example, some mesh sizes and permitted by-catch limits have been tightened, and access to waters is in many cases more restricted than before (*ibid*). However, criticisms of these agreements continue. Gorez (2005) claims that agreements with ACP countries continue to be hampered by an under-estimation of fishing efforts, the utilisation of destructive fishing practices and the over-exploitation of fish resources. In particular, Bretherton and Vogler (2008) point to the continued under-estimation of the social and economic importance (and hence support) of small-scale fishing communities and the lack of biological data on ACP marine ecosystems (see also Mahmoud Cherif 2009 for further discussion).

In light of these continued criticisms it is perhaps not surprising that these FPAs are now on the agenda for reform again in the context of the latest round of CFP reform launched in April 2009 (CEC 2009b). The Commission's Green Paper proposes that the main objective for activities under the external dimension of the Common Fisheries Policy should be to extend the principles of sustainable and responsible fisheries internationally (CEC 2009b). In doing so, it appears that for the first time the Commission is placing the emphasis on environmental concerns rather than on economic interests or the security of supplies. For example, the Commission considers that objectives that currently guide the external dimension of the CFP, such as maintaining the presence of an EU fleet internationally and ensuring that this fleet supply the EU market may be less relevant today (CEC 2009b, 23). In addition the Commission affirms that:

'Coherence with other EU policies must be ensured within all parts of the CFP. In the case of the external component, the EU development and environment policies have a particular role to play. It is crucial therefore that the objectives of the external dimension be reviewed and redefined so that they meet the needs of the 21st Century.' (CEC 2009b, 23-24).

The Green Paper also advocates the continued promotion of responsible fisheries in international fora such as the UN General Assembly and FAO, as part of the EU's overall responsibility and effort to achieve better global governance of the seas. This change of emphasis towards environmental and social objectives and a renewed commitment to coherence could (potentially) lead to major changes that might shift the basis and current features of the external dimension of the CFP if they are finally endorsed by the Council.

A list of the FPAs that the EU has concluded with third countries has been drawn up by the Commission services and is outlined in Table 1 below.

Table 1: Fisheries Partnership Agreements between the EU and third countries

Country	Duration of protocol	Type	EU contribution per year	Earmarked for support of sectoral fisheries policy (FPA)
Angola	<i>No protocol in force</i>			
Cape-Verde	4 years and 5 months (30/3/2007-31/8/2011)	Tuna FPA	€385 000	100%
Comoros	6 years (1/1/2005-31/12/2010)	Tuna FPA	€390 000	60%
Côte d'Ivoire	6 years (1/7/2007-30/6/2013)	Tuna FPA	€595 000	100%
Gabon	6 years (3/12/2005-2/12/2011)	Tuna FPA	€860 000	60%
Gambia	<i>No protocol in force</i>			
Greenland	6 years (01/01/2007 - 31/12/2012)	Mixed FPA	€15 847 244	€3 261 449
Guinea	4 years (01/01/2009 - 31/12/2012)	Tuna FPA	€1 050 000 1st year decreasing the following years	100%
Guinea-Bissau	4 years (16/6/2007-15/6/2011)	Mixed FPA	€7 500 000	€2 950 000
Equatorial Guinea	<i>No protocol in force</i>			
Kiribati	6 years (16/9/2006 - 15/9/2012)	Tuna FPA	€478 400	30% to be increased to 40% the second year, later to 60%
Madagascar	6 years (1/1/2007 - 31/12/2012)	Tuna FPA	€1 197 000	80%
Mauritania	4 years renewable (1/8/2008 -31/7/2012)	Mixed FPA	€86 million 1st year decreasing the following years	€11 million / year increasing in the following years
Mauritius	<i>No protocol in force since 3.12.2007</i>			
Micronesia	3 years (26/2/2007 - 25/2/2010)	Tuna FPA	€559 000	18%
Morocco	4 years (28/2/2007-27/2/2011)	Mixed FPA	€36.1 million	€13.5 million
Mozambique	5 years (1/1/2007 - 31/12/2011)	Tuna FPA	€900 000	100%
São Tomé and Príncipe	4 years (1/6/2006 - 31/5/2010)	Tuna FPA	€663 000	50%
Senegal	<i>No protocol in force since 1/07/2006</i>			

Seychelles	6 years (18/1/2005 ó 17/1/2011)	Tuna FPA	5 355 000 (as from 17/01/2008)	56% (as from 17/01/2008)
Solomon Islands	3 years (9/10/2006 ó 8/10/2009)	Tuna FPA	400 000	30%

Source: http://ec.europa.eu/fisheries/cfp/international/agreements/index_en.htm

4.1.6 Regional Fisheries Management Organisations

Regional Fisheries Management Organisations (RFMOs) provide a framework for governments to agree on ways of managing the fish resources of the open seas and overlapping stocks. They bring about regional co-operation as a way of guaranteeing both conservation and the sustainable exploitation of fish resources, through the implementation of resource management schemes that seek a better balance between the exploitation and conservation of resources while preventing conflicts of interest between the countries concerned. RFMOs issue recommendations on management and conservation measures based on the best scientific advice available that must be implemented by all the RFMO contracting parties. However, RFMOs lack the required conventional and financial resources to monitor implementation. This feature constitutes one of the key weaknesses of RFMOs and is one of the challenges to be addressed in future reforms, particularly in relation with the key role that RFMOs must play in combating illegal, unreported and unregulated fishing (IUU) and destructive fishing practices (CEC 2008c).

As the Commission in its Communication on Fisheries and Poverty Reduction in 2000 pointed out, the EU supports RFMOs because they could be the instrument for harmonisation of national level measures for promoting the conservation and management of resources (CEC 2000a, 19) and serve to establish a common level playing field. The Commission is committed to supporting the creation and consolidation of sub-regional RFMOs or networks dealing with research, knowledge and resource management, monitoring and supervision of fishing activities, ecosystem protection or restoration (CEC 2000a, 19). The RFMOs to which the EU is a contracting party are set out in the Box 4 below:

Box 4: Regional Fisheries Management Organisations

<p>Atlantic Ocean</p> <ul style="list-style-type: none"> • North-West Atlantic Fisheries Organisation (NAFO) • North-East Atlantic Fisheries Convention (NEAFC) • North Atlantic Salmon Conservation Organisation (NASCO) • International Commission for the Conservation of Atlantic Tuna (ICCAT) • Fishery Committee for the Eastern Central Atlantic (CECAF) • Western Central Atlantic Fishery Commission (WECAFC) • South-East Atlantic Fisheries Organisation (SEAFO)
<p>Mediterranean Sea</p> <ul style="list-style-type: none"> • General Fisheries Council for the Mediterranean (GFCM)
<p>Indian Ocean</p> <ul style="list-style-type: none"> • Indian Ocean Tuna Commission (IOTC)

Pacific Ocean

- Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC)

Antarctic

- Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)

Source: http://ec.europa.eu/fisheries/cfp/external_relations/rfos_en.htm

The EU has an interest in enhancing its presence and participation in RFMOs, in particular to meet its commitments to sustainable resource management in countries with which it has bilateral fisheries agreements. This goal could be achieved by improving compliance with commitments in applying conservation and management measures and by providing more resources and competences to the RFMOs. The Commission has tried to ensure that at least the EU Member States apply the recommendations of relevant RFMOs.

Despite this commitment to RFMOs, the Commission points out their current limitations in its 2009 Green Paper on reform of the CFP which states that:

'Their performance is uneven and they have not always been effective in adopting stringent conservation and management measures or ensuring compliance with these measures or in their means of control. There is a need therefore to strengthen their commitment in this respect as well as their overall performance' (CEC 2009b)

The Commission has, therefore used the current reform of the CFP to launch a debate on how RFMOs should function in the future. Specifically, the Commission has raised the possibility of fishermen paying for access to fish in international waters. The Commission also raises broader questions of how best to promote good maritime governance in the framework of future international fisheries agreements. The EU's credibility as an advocate of international sustainable fisheries management is dependent on its ability to address inconsistencies in its own practices. Other potential issues which the Commission has realised it will need to form a position on (and potentially action) to improve the effectiveness of these RFMOs are set out in the Box 5.

Box 5: Questions presented in the consultation on the reform of the CFP

- Are the FPAs the best instrument to achieve sustainability beyond EU waters or should they be replaced by other forms of cooperation? Should the regional perspective be explored and either substitute or complement a streamlined bilateral one?
- How could we make scientific research to assess the sustainability of fish stocks and the control of the fishing activity more transparent and efficient?
- How could we contribute to increasing the fisheries management capabilities of developing countries, e.g. through targeted assistance?
- Should the integration of European fishing fleets and interests in third countries be actively pursued as an objective of the external dimension of the CFP with a view, in

particular, to support the development of the concerned partner countries?

- How can we reinforce the synergies between the different forms of support and the different partners in the fisheries sector and the development strategies of coastal states?
- Should aquaculture be included in future partnership agreements?
- How could the potential of small-scale fisheries in third countries for sustainability, ecological and social benefits be enhanced?

Source: CEC 2009b, 25-26, (COM(2009)163)

4.1.7 *Global Europe*

In October 2006, DG Trade presented a new international trade strategy in the Communication ‘*Global Europe – Competing in the World*’ (CEC 2006b). The purpose of the Communication was ‘to set out the contribution of trade policy to stimulating growth and creating jobs in Europe’ (CEC 2006b, 2). In other words, the strategy was seen as the ‘external dimension’ of the Lisbon Strategy for Growth and Jobs which had been renewed in 2005. The tone of the strategy was therefore concerned with the EU’s global competitiveness and was based on the EU’s market liberalisation approach to trade. The strategy focuses on the EU’s internal policies which could contribute to its competitiveness (such as the single market, the EU’s openness of global trade and investment) and the EU’s external policies to facilitate opening-up markets abroad. The latter topic is of most interest in this report.

One of the central themes of the external aspects of the strategy was securing enough natural resources to ensure that EU industries can continue to compete globally on a ‘fair basis’, particularly in the face of new ‘global challenges’ such as the rise of China and India. The stated goal here was to reduce export taxes and restrictions on access to natural resources which trading partners use to secure their raw materials for their own use. The Communication stated that:

‘More than ever, Europe needs to import to export. Tackling restrictions on access to resources such as energy, metal and scrap, primary raw material including certain agricultural materials, hides and skins must be a high priority. Measures taken by some of our biggest trading partners to restrict access to their supplies of these inputs are causing some EU industries major problems’ (CEC 2006b).

Therefore, the document characterises the natural resource problem as one of access to resources for industry in the context of increasing global competition for these resources. Neither the strategy, nor its accompanying Impact Assessment², discusses the policy problem in terms of ecological limits or global equity in natural resource acquisition ie in terms of a Brundtland understanding of sustainable development. The strategy does go on to state that ‘unless justified for security or environmental reasons, restrictions on access to resources should be removed’ (CEC 2006b, 7 our

² Since 2003 the European Commission has produced Impact Assessments alongside all of its major policy proposals (ie those outlined in its Work Programmes). These discuss the policy problem, objectives of the policy proposal, policy options as well as anticipated impacts of the various options.

emphasis). However, the examples of possible 'justified environmental reasons' given in the Impact Assessment are narrow, such as restrictions for specific dangerous substances controlled by the Basel Convention on exports of dangerous waste.

Other external policy responses addressed in the strategy include: building a new generation of free trade agreements with both emerging countries and EPAs with ACP countries; a new trade relationship with China; and reducing non-tariff barriers to EU exports and investments. Most, if not all, of these suggested actions might be expected to have significant environmental as well as development impacts on countries outside the EU. However, these are not adequately considered in the Global Europe Communication itself, the accompanying Staff Working Paper or Impact Assessment. For example the Impact Assessment contains a section (right at the end of the document) on the 'Contribution to EU international social and environmental objectives' (CEC 2006c, 22-3) but this merely 'recalls' the few broad references to potential environmental impacts contained in the Communication. These include that economic growth through trade can have environmental implications in particular for biodiversity and climate - but it does not elaborate what these might be or how they might be addressed. The Impact Assessment also refers to the Communication's references on the need for energy efficiency and use of renewable energies, including biofuels, in Europe and globally. However, the suggested measures in relation to environmental impacts are not prescriptive, e.g. they specify the need for further examination of links between trade policy and climate change and note that environmental aspects of globalisation should be part of the future WTO agenda. The only tangible actions suggested by the Commission are 'to strengthen sustainable development through our bilateral trade relations. This could include incorporating new cooperative provisions in areas relating to labour and environmental protection' (CEC 2006c, 23). Policy tools to identify potential environmental impacts such as Sustainability Impact Assessments are also mentioned but mainly in terms of identifying potential negative development impacts.

It is perhaps not surprising that this strategy was heavily criticised by green NGOs for its 'aggressive' approach to market liberalisation and natural resource acquisition which, they argued, favoured EU business in both the contents of the strategy and the process by which stakeholders were consulted in its development (FOE 2007; Seattle to Brussels Network 2006; Corporate Europe Observatory 2008). Friends of the Earth (FOE) claimed that the strategy 'represents a serious threat to the developing countries and their environment' (FOE 2006, 2). In particular, they warned that removing restrictions protecting natural resources to allow greater access to European corporations would severely undermine the livelihoods and food security of indigenous people.

4.1.8 The Raw Materials Initiative (Pillar I)

In November 2008 DG Trade and DG Enterprise jointly presented a Communication '*The Raw Materials Initiative: Meeting our Critical Needs for Growth and Jobs in Europe*' (CEC 2008b). Written amid concerns about global resource scarcity and high import dependency, the initiative outlines EU plans to avoid shortages of raw materials in the future and to ensure access to raw materials both from within and outside the EU for European industry. According to the Commission, '*securing reliable and undistorted access to raw materials is increasingly becoming an*

important factor for the EU's competitiveness and, hence, crucial to the success of the Lisbon Partnership for growth and jobs' (CEC 2008b, 2). The document relates closely to the objectives and measures on natural resource acquisition suggested in the Global Europe Strategy in 2006. More specifically the initiative was developed as a result of the Council's suggestion in May 2007 (EU Council 2007) to develop a coherent political approach with regard to raw materials supplies and aimed to help form a common approach in international discussions on raw materials at the United Nations (UN) and G8 (CEC 2008b, 2).

The policy problem to be addressed by the Communication is not presented as one of ecological limits but of access to resources:

'From a global geological perspective, there is no indication of imminent physical shortage of the majority of raw material in the world. However...fundamental changes in global markets are threatening the competitiveness of European industries'
(CEC 2008b, 4)

The Communication sets out a case whereby the EU is dependent on the import of strategically important raw materials for which it must increasingly compete globally for access with emerging economies such as China and India. According to the Commission *'many emerging economies are pursuing industrial strategies aimed at protecting their resource base to generate advantages for their downstream industries through trade distorting measures'* (CEC 2008b, 4). They suggest that this is apparent in the proliferation of government measures that distort international trade in raw materials such as export taxes and quotas, subsidies, price fixing and restrictive investment rules. At the same time, the Commission claims that emerging economies such as China and India have substantially increased their economic engagement with Africa in recent years (*ibid*).

The Commission proposes to draw up a list of critical raw materials and to develop an integrated European strategy based on three pillars:

- 1) ensuring access to raw materials from international markets;
- 2) fostering a sustainable domestic supply of resources; and
- 3) boosting resource efficiency and promoting recycling to reduce the EU's consumption of primary resources (CEC 2008b).

This section of the report addresses measures associated with the Pillar I of the strategy, many of which are at odds with the 6EAP objective of integrating environmental protection into all external policies and in particular the objective to keep EU consumption within the carrying capacity of the environment. The implications of Pillar II and Pillar III are addressed in section 5.2.9.

In relation to Pillar I, the Commission suggests actively pursuing raw materials diplomacy in the EU's external policies (trade, external relations and development) while promoting international cooperation and initiatives to promote transparency in the extractive sector. The Commission proposes to work towards the elimination of trade distorting measures taken by third countries in all areas relevant to access to raw materials. The Commission proposes forging a link between the opening-up of the EU market and reducing restrictive measures taken by third countries. This includes actions taken by developing countries to restrict the export of unprocessed round logs.

The EU's efforts to remove such export restrictions are evident in negotiations on EPAs where in general the EU has sought to ban quantitative export restrictions and limit the use of export duties. While there is some debate about the consequences of removing export restrictions, numerous studies (as cited by Hall (2008)) link trade liberalisation including a reduction in export restrictions with a rise in deforestation (see section 4.1.4). The Commission also puts forward the idea of establishing a level playing field between companies and countries wanting to access raw materials, as well as increasing lending for investment in extractive industries in ACP countries from the European Investment Bank (CEC 2008b).

The Communication mentions the role of development policy in 'strengthening states' through helping partner countries to improve social and environmental governance as well as establishing a level playing field between companies and countries wanting access to raw materials, increasing transparency of mining agreements, and promoting sound taxation systems (CEC 2008b, 8). However, the section on 'Promoting Sustainable Management of Raw Materials' of Pillar I is less than four lines long, it includes no new measures and only repeats the contribution of EU development policy to 'helping our partner countries improving their social and environmental standards' (CEC 2008b, 9). No further consideration of the environmental impacts of the measures suggested is given. Neither is there an accompanying Impact Assessment for the initiative weighing the positive and negative economic, social and environmental impacts of the proposals. In the absence of any such analysis it appears that the EU's pre-existing development policy is assumed to be adequate to mitigate any environmental impacts of the EU's suggested approach to raw material acquisition. The raw materials initiative also appears to advocate the integration of EU trade policy *into* its development policy. The Commission states that 'there is an obvious case for coherence between EU development policy and the EU's need for undistorted access to raw materials in order to create win-win situations' (CEC 2008b, 8). This appears to indicate the desire by the Commission to link development aid to opening up access to raw natural resources.

In drafting the initiative, the Commission appears to have ignored a non-legislative resolution of the European Parliament (European Parliament 2008) which called for the recognition of the right of countries to restrict access to their raw materials for environmental purposes in its proposals aimed at improving regulation in raw materials markets as well as sustainable resource governance. While safeguarding sovereignty over natural resources does not itself guarantee sustainable use, the aggressive approach for access to other countries resources coupled with the almost total lack of discussion of environmental impacts of the measures proposed leads to the suspicion that the Commission is placing competitiveness objectives above environmental (and development) objectives.

It is perhaps not surprising that critics from developing countries maintain that '[t]he R[aw] M[aterials] I[nitiative], it seems, seeks to perpetuate the old negative relation between Europe and Africa' [w]hile during colonialism Europe used force to extract Africa's resources, today the exploitation is being legalized' (Kabemba 2009, 3). The Communication was also greeted with alarm by green NGOs and characterised as the EU's 'plans to grab other countries resources' with FOE claiming that 'Europe's wish to feed its insatiable appetite for raw material has translated into a direct attack on developing countries' sovereignty over their natural resources' (FOE 2008).

4.2 Multilateral Environmental Agreements

Priority actions set out in Article 9 (2) of the 6EAP:

- c) work towards strengthening international environmental governance by the gradual reinforcement of the multilateral cooperation and the institutional framework including resources;
- d) aiming for swift ratification, effective compliance and enforcement of international conventions and agreements relating to the environment where the Community is a Party;

Policy instruments examined in this section:

- Multilateral Environmental Agreements (MEAs);
- The Thematic Strategy for the Environment and Sustainable Management of Natural Resources, including Energy; and
- The EU's participation in UNEP.

4.2.1 Multilateral Environmental Agreements

Multilateral Environmental Agreements (MEAs) are often used to address global level transboundary issues (such as those agreements negotiated under the auspices of the UN). Depending on the scale of the issue to be addressed, these agreements can also be made at the regional or the sub-regional level (see section 4.5.2). Since the origins of the first MEAs in the early 1970s, a rather ad hoc system of MEA governance has formed. This is partly due to their tendency towards specialization, 'one MEA one problem' which makes it possible to create a tailor-made solution for complex environmental problems involving a loose decentralised network of actors. Most of these MEAs create an organisational system consisting of a Conference or Meeting of the Parties (COP or MOP) and a Secretariat. This soft institutionalisation allows a constant process of revision and elaboration of these agreements.

Initially the EU was more of an observer at the start of this form of international environmental governance in the 1970s, however the EU soon realised that the achievement of many domestic environmental issues involved tackling them at a global level. Therefore, the EU began to view MEAs as a way of promoting the acceptance of European environmental values universally and soon became a strong supporter and even leader of MEAs globally. The EU has thus ratified a number of international environmental agreements (see Box 6).

Box 6: Main international environmental agreements to which the EU is a Party

Air <ul style="list-style-type: none">• Geneva Convention on Long-range Transboundary Air Pollution (CLRTAP)(1979) and its protocols
Biotechnology <ul style="list-style-type: none">• Cartagena Biosafety Protocol (2000) to the Rio CBD Convention on Biological Diversity (1992)
Chemicals <ul style="list-style-type: none">• PIC Rotterdam Convention on Prior Informed Consent (1998)• POP Stockholm Convention on Persistent Organic Pollutants (2001)
Climate Change and Ozone Depletion:

<ul style="list-style-type: none"> • UNFCCC Framework Convention on Climate Change (1992) and Kyoto protocol (1997) • Vienna Convention for the Protection of the Ozone Layer (1985) and Montreal protocol as amended
Governance <ul style="list-style-type: none"> • Aarhus Convention (1998) on access to environmental information • Espoo Convention on Environmental Impact Assessment (1991)
Industry: <ul style="list-style-type: none"> • Helsinki Convention on Industrial Accidents (1992)
Land use: <ul style="list-style-type: none"> • Alpine Convention (1991)
Nature and biodiversity: <ul style="list-style-type: none"> • Rio CBD Convention on Biological Diversity (1992) and Cartagena Biosafety Protocol (2000) • Bonn CMS Convention on the Conservation of Migratory Species (1979) • Bern Convention on European Wildlife and Habitats (1979) • Convention for the protection of Vertebrate Animals used for Experimental and other Scientific Purposes (1986) • Alpine Convention (1991) and its protocols • Convention on the Conservation of the marine fauna and flora of the Antarctic (1980)
Soil: <ul style="list-style-type: none"> • UNCCD Convention to Combat Desertification in Africa (1994)
Waste: <ul style="list-style-type: none"> • Basel Convention on hazardous wastes (1989)
Freshwater and marine environment: <ul style="list-style-type: none"> • Helsinki Convention on Watercourses and International Lakes (1992) • River basin conventions (Danube (1987), Elbe (1990), Oder (1996), Rhine (1999)) • Barcelona Convention (1976) as amended and its protocols • OSPAR Convention(1992) as amended • Bonn Agreement (1983) • Lisbon Agreement (1990) • Helsinki Convention on the Baltic Sea (1992)

Source: http://ec.europa.eu/environment/international_issues/agreements_en.htm

The EU has participated in most MEAs under the formula of mixed agreements that allow the EU and its Member States to participate on the basis of a declaration that defines the scope of the EU's competence. These agreements are incorporated in the texts of the conventions and agreements. In this way a 'Party' of an agreement can usually mean a 'State or regional integration organisation that has consented to be bound by [a] Convention and for which the Convention is in force'. These 'regional economic integration organisations' are allowed to vote with a number of votes equal to the number of its Member States that are Parties to the Convention (as long as none of its Member States exercise their right to vote). There are also some cases where the EU has not been able to adhere to a particular international convention as is the case with the Convention on International Trade on Endangered Species, CITES.

It is important to note that the EU only has a shared competence with its Member States in the field of external environmental protection and Member States have reserved the right to intervene in certain circumstances, at times even competing with the EU itself. To some extent this two-headed representation limits the coherence of the EU's position and gives the EU a blurred visibility in political forums. A major challenge currently facing the EU is how to achieve a satisfactory coordination

between Member States and EU institutions to minimise the losses when national interests interfere with those of the Union as a whole.

One of the paradigmatic cases in which the EU has been a promoter and supporter of a MEA is the Framework Convention on Climate Change and its Kyoto Protocol. As Bretherton and Vogler (2006, 92) maintain, "given the responsibilities of developed countries for the problem of global warming, it would have been unthinkable that the Union should not have been involved from the beginning with the negotiation and development of the 1992 Framework Convention on Climate Change, and in providing financial and other support for the Intergovernmental Panel on Climate Change." The EU led the negotiation process with initiatives that supported the Union's interest but was also able to conciliate the different interests of developing countries, in particular, during the negotiation of the Kyoto Protocol (Campins 1999, 71). Even though the mechanisms that were finally adopted by the Protocol differed from those already adopted in EU law, the EU accepted the challenge of incorporating and conciliating the new mechanisms, acting as an example through virtuous acceptance and implementation. Furthermore the EU has defended the integrity of the Protocol since 2001, while Canada, Australia and Japan have become regular objectors to the measures adopted and the USA has refused to ratify the Protocol (Fajardo 2005, 140).

More recently, the EU supported initiatives to forbid the use of mercury at a UNEP Governing Council meeting in February 2009 at which "after 8 years, or more, of obstruction on any kind of international agreement regarding mercury pollution, the United States and China and India agreed to work towards a legally binding convention on mercury by 2013" (GEG 2009). Reflecting on this historic achievement, the European Council maintained that "the EU considers this result to be a significant step towards the broader form of sound chemicals management that is still a challenge for the international community" (EU Presidency 2009, 2).

In implementing MEAs, the EU has made the best use of its own legislation, pushing MEAs to the limits of their possibilities both at legislative and capacity building levels as in the case of the climate change legislative framework (Fajardo 2005, 132). While the "implementation deficit" by Member States has been discussed (Knill and Lenschow 2002), the reasons for non-compliance by EU Member States are so varied that Perkins and Neumayer (2007, 30-31) consider "the implementation of MEAs [to be] shaped by a combination of rational calculations of domestic compliance costs and reputational damage, locally "embedded" normative obligations, and legal political constraints".

Promoting compliance with the MEAs by developing countries has been one of the priorities of the EU since 1998, when it adopted the first funding channels to promote the necessary support activities for each MEA. For instance, in the Convention on Biodiversity, national plans were designed to take into account the dependence between the different level groups, the creation or strengthening of the institutional capacities for carrying out action plans for biodiversity or participative strategies and for the incorporation of the latter in national strategies for sustainable development (Fajardo 2005, 183). The EU also promotes and funds the participation of developing countries in international conferences.

4.2.2 The Thematic Strategy for the Environment and Sustainable Management of Natural Resources, including Energy

The EU promotes compliance with MEAs by other Parties through its Thematic Strategy for the Environment and Sustainable Management of Natural Resources, including energy. The Thematic Strategy complements the Thematic Programmes dedicated to the Environment and the Sustainable Management of Natural Resources including Energy (ENRTP) under the Development Cooperation Instrument (see section 4.1.3). The Thematic Strategy maintains that the failure to take international action in these areas [climate change, land degradation and desertification, biodiversity protection and sound management of chemicals and wastes] would have a disproportionate effect on the poor in developing countries, who are particularly reliant on the sustainable management of natural resources, including water and energy, for their livelihoods and whose health suffers disproportionately from pollution (CEC 2007a, 4). The Thematic Strategy thus supports compliance with MEAs through two of its themes:

- *Theme II - Promoting implementation of EU initiatives and helping developing countries to meet internationally agreed commitments* Through promoting implementation of Community initiatives and agreed commitments (including those under MEAs) on the environment and sustainable management of natural resources, including resource efficiency, energy, at international and regional level and across national boundaries.
- *Theme IV - Enhancing environmental governance and EU leadership: Promoting EU environmental policies abroad by strengthening international environmental governance, negotiation and monitoring, assisting the operation of MEAs and other processes, and supporting coherent international policy development across the three pillars of sustainable development.* (CEC 2007a).

The Thematic Strategy foresees that support for MEAs will generally be provided through direct grants or joint management targeted at specific institutions such as the Secretariats (CEC 2007a). It also considers the possibility of establishing Partnership Agreements with UNEP and the Secretariats of the three Rio Conventions (the Framework Convention on Biological Diversity (1992), the Framework Convention on Climate Change (1992) and the Convention to Combat Desertification (1994)) in order to provide a framework for long-term flexible relationships. However, no initiatives have yet been presented that match the EU's ambitions.

The Thematic Strategy points out that:

'As the MEAs and other processes have matured, the Secretariats and in certain cases MEA subsidiary bodies have sought to move beyond their basic functions and provide technical support to developing country Parties, especially on issues that are generally ignored by donors. The Commission has provided limited funding for this work while being very conscious of the need not to turn the Secretariats into aid agencies. The EU has started an international debate on how to increase coordination and collaboration amongst MEA Secretariats, UNEP and donor organisations and thus provide more efficient and accessible support' (CEC 2007a, 8).

The Thematic Strategy offers support to the Secretariats of MEAs to fund developing country participation in meetings and aspects of their agreed work programmes that fall outside core operations and therefore rely on donor funding (CEC 2007a).

The ENRTP and the Thematic Strategy proposes to help support the capacity of developing countries to meet their obligations under MEAs, in part, through international NGOs such as World Wide Fund for Nature, World Resources Institute and International Institute for Sustainable Development. The Commission considers that even when environmental objectives are integrated in national strategies for achieving the Millennium Development Goals and the MEAs, they do not feature prominently enough to ensure that modest investments are made in insuring against expensive environmental degradation (CEC 2007a).

4.2.3 The EU's Participation in UNEP

As the main UN body on the environment, United Nations Environment Programme (UNEP) is at the core of the complex international environmental governance framework. It was created following the 1972 UN Conference on the Human Environment. As Tarasofsky (2005, 67) has argued 'UNEP is not an implementing agency (í) but seeks to achieve improvement through the actions of nations and peoples'. The UNGA Resolution 2997 (XXVII) that established its structure created a Governing Council with 58 members selected by the General Assembly for three year terms with seats allocated according to region. The responsibilities and functions of the Governing Council include: promoting international environmental co-operation, providing general policy guidance for the direction and co-ordination of environmental programmes within the UN system, and reviewing the world environmental situation to ensure emerging environmental problems receive appropriate and adequate consideration (UNGA Resolution 2997(XXVII). Since its creation, an average of 10 EU Members has occupied seats, with Germany, the United Kingdom, Belgium and France being regular members. It also created a Secretariat 'to serve as a focal point for environmental action and coordination within the UN system in such a way as to ensure a high degree of effective management'. Its most relevant function is to be the umbrella organisation for the Secretariats of many environmental treaties and over the years it has enhanced synergies among the MEAs. Since its creation, UNEP has seen its agenda widen and diversify as have the environmental problems and it has become more of a cross-sectoral actor in close relation with the UN Development Programme (UNDP). Tarasofsky (2005, 69) has criticised 'these developments, [which] although necessary, have had some undesirable effects, such as increased competition among UN bodies, as well as duplication of functions'.

The EU only has observer status in UNEP structures, however it collaborates with the organisation under the terms of a Memorandum of Understanding between the Commission and UNEP agreed in 2004 which 'upgraded' their relations (EC and UNEP 2008, 7). The EU therefore develops its competences acting through Member States, in particular, through the EU Council Presidency as well as the other Member States with a seat in the Governing Council, acting on behalf of the EU, its Member States and partner countries. In the Global Ministerial Environment Forum (GMEF), established in 1998 by UNGA Resolution 53/242 as an annual ministerial-level forum subordinated to UNEP Governing Council, the EU has developed its environmental

diplomacy and political dialogue and has influenced UNEP's work agenda and list of priorities (Fajardo 2005, 116).

The EU considers that UNEP's tasks have grown steadily over the years without being matched by status, mandate and adequate resources (EU Presidency 2007a) and thus strongly advocates strengthening UNEP. This debate has been underway since the Malmö meeting of UNEP's Governing Council/Global Ministerial Environment Forum and developed by the Cartagena Package on International Environmental Governance in 2002 (Cartagena Package 2002, UNEP/GC SWS.VII/I).¹ The EU supports the transformation of UNEP into a UN Environmental Organization with a strong mandate, based in Nairobi, with stable, adequate and predictable resources that will enable it to adequately address emerging issues and new challenges (EU Presidency 2007b, 2-12). This reform, whether achieved by strengthening and transforming UNEP or by the creation of a UN Environmental Organisation is intended to satisfy the EU's aspirations of representation and those of other UN Members who do not have a seat in UNEP structures. It should provide coherence and unity of leadership to the multi-sectoral myriad of MEAs, programmes and actions, reinforce competences in the field of promotion, and control compliance with MEAs. The reform will have to provide for a budget to match a strengthened mandate, putting an end to the problems of unpredictability of contributions that hinder UNEP's authority and action.

The EU has promoted institutional reform of UNEP based on the following:

- ***Universal membership of the Governing Council/Global Ministerial Environment Forum:*** Such broadening of the membership base would enhance commitments of governments to decisions made through participation of all member countries.
- ***Implementation of the Bali Strategic Plan:*** This plan for technology support and capacity-building was adopted in 2005 by UNEP's Governing Council and seeks to strengthen the capacity of governments in developing countries and transition countries to address their needs, priorities and obligations in the field of the environment. The Plan cuts across all of UNEP's activities.
- ***Strengthening the scientific base of UNEP***
- ***Strengthening the financing of UNEP:*** The EU supports the continued application of the Voluntary Indicative Scale of Contributions but also believes that all donors should further continue to move from short-term earmarked funding to programmatic support for core budget activities to enhance long-term strategic programmatic planning processes and achieve a balance between non-core and core-resources.
- ***Coordination with MEAs:*** A strengthened UNEP should develop guidelines to promote cooperation and coordination among multilateral environmental agreements through a comprehensive consultative process and supporting UNEP's efforts to improve and facilitate compliance and implementation.
- ***Enhanced coordination across the UN System:*** The EU advocates improved coordination between UNEP and UNDP in the implementation of UN programmes.
- ***Coordination and cooperation with civil society:*** The EU advocates UNEP's improved dialogue with civil society actors (EU Presidency 2007b, 17-18).

Although little progress has been made in the last decade on strengthening UNEP and transforming it into a UN Environmental Organisation (this is partly due to the lack of support for such reform among key UN member countries including the USA, China and Australia); the EU continues its attempts to drive the debate forward, as evidenced at UNEP's 10th Global Ministerial Environment Forum in Nairobi (2009). The NGO Global Environmental Governance Project attending this Forum reported that "Environment ministers agreed to establish a one year long consultative process on reforming the international environmental governance system" and underlined its significance because "[a]t the end of 2008, a long and protracted political process for [International Environmental Governance] IEG reform came to a stalemate as the permanent representatives (of UN member nations) in New York could not agree on a way forward to reform the IEG system" (GEG Project, 2009). Moreover, there has been a change in the position of the USA which is now willing to enter into the debate on the creation of an international environment organisation.

4.3 Foreign Direct Investment and Export Credits

Priority actions set out in Article 9(2) of the 6EAP:

- e) promoting sustainable environmental practices in foreign investment and export credits;

Policy instruments examined in this section:

- European Investment Bank;
- European Bank for Reconstruction and Development;
- Foreign Direct Investment;
- Corporate Social Responsibility; and
- Global Environment Facility.

4.3.1 European Investment Bank

The European Investment Bank (EIB) was established in 1958 by the Treaty of Rome as the EU's financing institution (EIB 2010a). It makes long-term finance (loans and guarantees) available to invest in viable projects which further the objectives of the EU. The EIB's resources come from capital subscribed by the Member States and funds borrowed on the world's capital markets. The shareholders of the bank are the Member States, whose Finance Ministers make-up the Board of Governors. The European Commission is also represented on this Board.

The majority of the EIB's lending is within the EU but a significant and growing amount of money is channeled to non-EU countries. The EIB's lending to countries and regions outside the EU is guided by the priorities of the EU's external cooperation and development policies (EIB 2010a). These countries and regions are: Candidate and Potential Candidate countries in the enlargement region; European Neighbourhood Policy (ENP) countries; Africa, Pacific and Caribbean (ACP) countries (including South Africa), Asia and Latin America. Lending to these countries focuses on four areas: private sector development; infrastructure development; security of energy supply; and environmental sustainability.

The EIB has provided around €3.5 billion of investment in ACP countries in the last five years (EIB 2010b), €6.8 billion to Mediterranean ENP countries (EIB 2010c),

and €3.9 billion to Asia and Latin American countries (EIB 2010d). In particular the EIB has been an investor in most ACP countries for 30-40 years mainly supporting the EU's successive trade and aid agreements with these states including the Cotonou Agreement signed in 2000 which is intended to be replaced by EPAs (see section 4.1.4). The EIB invests in ACP countries through a number of instruments:

- The Investment Facility: which is a revolving fund, ie loan amortizations are re-invested in new operations;
- The ACP-EU Water Facility: which aims at achieving the Millennium Development Goal targets in the water sector; and
- The EU-Africa Infrastructure Trust Fund: a financial instrument launched in 2007 supporting the implementation of the Partnership for African Infrastructure in the context of the EU-Africa Strategy. Examples of grants approved under the EU-Africa Infrastructure Trust Fund in 2008 include a €15 million grant to improve the power transition network between Namibia, Zambia and Zimbabwe; and €29 million to re-establish the transport capacity of the port of Beira and the Sena railway line in Mozambique (EIB 2009).

The EIB has obvious potential to influence the environment (both positively and negatively) of the countries in which it lends. Some of the projects that the EIB supports have direct environmental benefits. For example in May 2009 it lent €100 million to Vietnam to part-finance investments that will contribute to the mitigation of climate change (CEC 2009c). However, the EIB claims that *all* its projects have to be acceptable in environmental terms (EIB 2002, 1). EU policies and laws form the basis of the EIB's environmental guidelines and the EIB carries out an environmental assessment of each investment (*ibid*). In addition, in 2006, five European-based Multilateral Financing Institutions (MFIs), including the EIB, adopted the 'European Principles for the Environment' (EPE) in a bid to increase harmonisation of environmental principles, practices and standards associated with the financing of their projects (EIB 2006). These principles are comprised of the guiding environmental principles in the Treaty on the Functioning of the EU (TFEU) and the practices and standards incorporated in EU secondary environmental legislation (see Pallemarts (ed.) 2008). The five MFIs (the Council of Europe Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the Nordic Environment Finance Corporation and the Nordic Investment Bank) consider the EPE as a common legal framework to be promoted and exported in their regions of operation. For investment in projects outside of the EU and candidate countries, projects should comply with appropriate EU environmental principles, practices, and standards 'subject to local conditions' (EIB 2006). Therefore, these principles do not have to be universally applied to EIB-funded projects, but rather serve as a guide of aspirational standards to work towards, while building capacity to meet and enforce the requirements in future.

Despite these claims, the recent environmental record of the EIB is controversial. For example, a report published by CEE Bankwatch claims that €7 billion was invested for energy in the global South by the EIB in the 2002-2008 period, of which 93 per cent went to oil, gas, large hydropower projects and transmissions lines (Husova et al 2009). Looking at EIB lending inside as well as outside the EU, the report found that between 2002 and 2008 the EIB lent €18 billion to the extractive industries sector, for oil, gas and coal projects. This investment accounts for 49 per cent of the EIB's lending to the entire energy sector (that is, the generation and transmission

businesses) during that period. Therefore, while the EIB has started to increase its greener lending practices, especially on climate mitigation, its continued role in financing environmental damaging projects undermines its credibility (*ibid*).

The EIB has also been criticised for its lack of accountability to the EU institutions. It is unclear how accountable the EIB is to the EU institutions and therefore the role of the European Commission in ensuring that the environmental aspirations of the bank are met in practice. According to Stoczkiewicz and Feiler (2001), "the dependence of the EIB on the European Community institutions is not fully defined, rendering notions of the governance and accountability of the EIB problematic". The Commission nominates one member and one alternate to the EIB's Board of Directors and in theory the Commission's opinion as to whether EIB financing is considered consistent with Community's objectives must be sought for every loan (*ibid*, 75). However, even with a negative opinion of the Commission, a loan can be approved by a unanimous vote of the Board of Directors. In practice, Stoczkiewicz and Feiler (2001) warn that the Board merely "rubber stamp" proposed loans, with the EIB being the final arbiter of its financial decisions. In addition, these authors criticise the EIB for not following procedures similar to other international financial institutions (such as the World Bank and the International Monetary Fund) and claim that inside the EU there is a more solid legal framework that the EIB is obliged to follow whereas the EIB has "extensive manoeuvring space with essentially unfettered freedom to interpret the definition of "Community Policy" in any particular loan, outside the EU" (Stoczkiewicz and Feiler 2001, 78-9).

Box 7: The Global Energy Efficiency and Renewable Energy Fund

The Global Energy Efficiency and Renewable Energy Fund (GEEREF) is managed by the EIB and provides global risk capital through private investment for energy efficiency and renewable energy projects in developing countries and economies in transition. It is a response to one of the priorities of the Thematic Programme on Environment, and the Management of Natural Resources, including Energy, which called for the provision of flexible funding mechanisms (CEC 2006d). The fund was proposed by the Commission in 2006 and launched at the UN Climate Conference in Bali in December 2007.

The Fund has an overall investment target of €100 million, €80 million of which will be funded by the EU budget. Depending on the share of private sector involvement, GEEREF's "leverage factor" of the amount of additional capital it can mobilise - is expected to be as high as 10. On the basis of initial funding of €100 million, additional risk capital of up to €1 billion could be also mobilised under ideal conditions (EIF 2010). According to the Commission, funding is market-driven whilst priority is given to investments in those countries or regions with renewable energy and energy efficiency policies that are conducive to private sector engagement (CEC 2006g, 8). Based on mobilisation of €1 billion risk capital, GEEREF will offer a concrete boost to the development and transfer of environmentally sound technologies and know-how. The GEEREF made its first investments in 2009 which included investments totalling €22 million for two commercial renewable energy investment funds, one focusing on projects in sub-Saharan and southern Africa and the other in Asia with a primary focus on India. Both funds will invest equity in renewable energy projects. In the regions where the two funds operate, there is a lack of equity investment available through the market for these types of projects.

Source: (CEC, 2006g); (EIF, 2010); <http://www.geeref.eu/>

4.3.2 European Bank for Reconstruction and Development

The European Bank for Reconstruction and Development (EBRD) is a multilateral financial institution that supports projects in 29 countries from central Europe to central Asia (EBRD 2010). The EBRD is the single largest investor in this region and mobilises significant foreign direct investment into its countries of operation. The EBRD mainly invests in private enterprises, usually together with commercial partners and provides project financing for the financial sector and the real economy. It also works with publicly-owned companies to support privatisation, restructuring of state-owned firms and improvement of municipal services. The bank is owned by 61 countries and two intergovernmental institutions (namely the EIB and the EU). The Board of Governors has a representative from each country, the EU and the EIB.

In 2008, the EBRD adopted an Environment and Social Policy that reaffirms the Bank's commitment to ensure that projects financed meet environmental and social requirements and are designed and operated in compliance with applicable regulatory requirements and good international practice (EBRD 2008). The Policy consists of a set of performance requirements for clients to meet, so environmental and social issues are taken into account at the planning, financing and implementation stages of a project. The EBRD submits all project proposals to an environmental and social appraisal in addition to the usual assessment of financial and reputational risks. Each proposed project is categorised by the Bank's environmental and social specialists according to the level of environmental and social due diligence that is considered necessary (EBRD 2008).

Table 2: Environmental screening categories for EBRD projects signed in 2008

Category A	Projects with potentially significant adverse environmental or social impacts. These projects require a comprehensive environmental and/or social impact assessment, which should examine technically and financially feasible alternatives.	8 (Albania, Azerbaijan, Bulgaria, Bosnia and Herzegovina, and Russia)	Required an environmental impact assessment
Category B	Projects that potentially have some adverse environmental or social impacts. These projects may require a variety of due diligence investigations, depending on their nature, size and location. In addition to assessing the future environmental and social impacts of proposed new installations, an audit to determine the impacts of past and current operations may be required, as may investigations such as hazard analyses.	77	Required an environmental analysis
Category C	Projects with minimal or no adverse environmental or social impacts where there is no need for further appraisal.	45	Required comprehensive due diligence but no environmental impact assessment or analysis

The Bank has also produced internal environmental and social procedures outlining the process by which Bank staff should process and monitor projects within the overall policy framework. The procedures apply to all of the Bank's activities, including direct investment operations, financing intermediaries operations, technical cooperation projects, and projects financed through special funds (EBRD 2008). While the Bank's clients are responsible for implementing projects, including all aspects of the procurement process, the EBRD seeks to ensure that environmental and social sustainability and performance requirements are incorporated in tender documents and taken into consideration when designing the procurement process for a specific assignment. The EBRD is amending its Procurement Guidance Notes to include advice to clients on good practice relating to environmentally and socially sustainable procurement (EBRD 2008). The EBRD is also a signatory to the European Principles for the Environment (EPE) (see section 4.3.1).

In the 1990s, the EBRD was the target of criticism for not incorporating its environmental mandate properly in its project selection process. For example, according to Goldberg and Hunter (1995), the Bank was funding a major polluter, the ZSNP aluminium smelter in Slovakia. The EBRD is now promoting its new greener image through projects such as 'Promoting residential energy efficiency in Bulgaria', 'helping to produce cleaner energy in Romania', 'constructing Turkey's largest wind farm', 'backing a new bid to clean up the Baltic Sea', 'promoting renewable energy and energy efficiency in Bosnia and Herzegovina', 'supporting a new wind farm project in Poland', 'boosting environmental standards for a Romanian Oil firm'. However, it is still too early to undertake an accurate assessment of these new projects.

4.3.3 Regulation of Export Credit Agencies

An export credit arises when a foreign buyer of exported goods or services is allowed to defer payment over a period of time. Export credits tend to be backed by government support which raises potential concerns about free and fair competition. They have therefore been the subject of agreements within the framework of the OECD as well as regulated by EU legislation (CEC 2008d). Institutions dealing with export credits are called Export Credit Agencies (ECAs) and are often government backed. ECAs provide companies with insurance against the main commercial and political risks of operating abroad, in particular, of not being paid by the creditor. ECAs promote national exports and help national industries win business abroad. Without the support of ECAs, a number of projects would not be realised as private sector banks and insurance firms would not be willing to underwrite the high financial risks involved in these transactions (Hildyard and Amalric 2001).

Export credit is a major source of global financing. ECAs' medium and long term loans and credits have doubled from 2002 to 2006 to over \$120 billion (FERN 2010). In 2007, ECAs supported about 10 per cent of world trade (and a greater proportion in developing countries), which represents about \$1.4 trillion in transactions and investments. ECAs are the largest source of official financing for developing countries, supporting large industrial and infrastructure projects, underwriting projects whose value is several times the combined annual funding of all Multilateral Development Banks. ECAs also have significant influence on the environment through the projects that they finance as most ECAs do not have social or

environmental standards (FERN 2010). For example, ECA guarantees support projects that lead to deforestation from palm oil plantations, pulp and paper mills, oil pipelines and large dams.

Export credit has long been a subject of discussion and coordination at the EU level. The Council first set up a working Group on the topic as early as 1960. There has however been a renewed interest in export credit in the wake of the financial crisis as Member States have increased the capacity of their official ECA to step into the gaps left when private finance dried up. The most important EU legislation on export credits to date is Directive 98/29/EC on the harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover. The Directive sets down provisions which companies and institutions in Member States must abide by when providing cover for export credits outside the EU. The provisions aim to harmonise the main principles and definitions of these transactions, increase their transparency and provide a common format for mutual information (CEC 2008e). Most of the provisions of the Directive are based on texts which have been elaborated within the framework of the OECD (CEC 2008d).

OECD work relating to officially supported export credits takes place within two fora: a formal negotiating forum for rules in which participants (which include the EU) administer and further develop the 'Arrangement on Officially Supported Export Credits'. The Arrangement provides an organised framework for the use of officially supported export credits. While the Arrangement is formally speaking not a legally binding OECD act but a 'Gentlemen's Agreement', the rules agreed are considered as binding by the participants and have been largely incorporated in Community law through Directive 98/29/EC. However, the Arrangement does not contain any rules regarding the environmental aspects of ECA-supported projects.

Discussions on environmental requirements take place within the OECD Working Party on Export Credits and Credit Guarantees (ECG) (CEC 2008d). Work has been underway since 1998 in the ECG to ensure that export credit and export credit guarantees originating from OECD countries take into account potential environmental impacts of projects being covered (OECD 2010). An OECD Recommendation setting out common approaches to reviewing projects for their potential environmental impacts was adopted by the OECD Council in December 2003 and subsequently revised in 2007. While OECD Recommendations are not legally binding, they entail an important political commitment for Member governments, including those in the EU. The 2007 Recommendation sets out strengthened environment-related requirements for export deals to qualify for official export credit support from OECD Members (OECD 2007). In particular it states that Members should screen all applications for officially supported export credits for environmental impacts and projects should comply with host country standards and international standards against which they have been benchmarked (such as World Bank Safeguard Policies or EU standards) where these are more stringent. There would be nothing to prevent the EU from adopting internal rules under Directive 98/29/EC to make the provisions of the OECD Recommendation legally binding on EU Member States and their respective ECAs, but this has not been done so far.

Some NGOs claim that European ECAs, unlike ECAs in the US, have not adopted environmental standards. They warn that this is particularly worrying considering the

increasing use of export credit in emerging countries especially the group of BRICS (China, India, Brazil and South Africa) (FERN 2010). While they welcome the progress made on environmental screening of cover in the OECD, they argue that this approach is -full of loopholes, allowing ECAs to deviate from required standards and not preventing support for projects with severe environmental and social impacts (FERN 2010). Although commitments under the OECD framework are steps in the right direction, they are far from sufficient to prevent ECA-backed projects from generating negative impacts on sustainable development and thus fall short of 6EAP objectives in this area.

4.3.4 Promoting Sustainable Practice in Foreign Direct Investment

Foreign Direct Investment (FDI) is a category of international investment when at least 10 per cent of the capital of the target enterprise is acquired. It plays a key role in the globalisation process and is an important element affecting international relations (CEC 2008f). The largest flows of FDI occur between industrialised countries (North America, Western Europe and Japan), however, flows to non-industrialized countries are increasing sharply. The EU is the world's largest investor abroad (CEC 2009d), EU flows of FDI to countries beyond its borders amounted to 260.2 billion in 2006 an increase of 11 per cent from 2005 (CEC 2008f).

A significant flow of FDI is to developing countries and Least Developed Countries for exploiting their natural resources (Gray 2002). Investment in natural resources has traditionally made use of limited regulatory regimes, which are often susceptible to corruption and poor governance, due to the high economic rents derived from the sector (Gray 2002). FDI can offer opportunities to developing countries which do not have the capacity to take advantage of liberalised trade and open markets and are unable to produce items for export. However FDI flows (especially in the mining sector) may have worrying impacts for a host country's ecosystems and social development. In particular, the increase of FDI to developing countries in the last few decades has fuelled a debate on the connection between FDI and environmental policies (Spatareanu 2007). There has been speculation that there is a connection between FDI and environmental policies, ie that polluting industries relocate from developed to developing countries where environmental standards are lower. Additionally, competition for FDI may create a -race to the bottom-of environmental, labour and other standards (ibid). Although empirical evidence to support these speculations has been sparse, there is some evidence to support the -pollution haven concept when taking into account regulations in the host *and* the donor country (Spatareanu 2007).

The rise of FDI has expanded the impact of multinational enterprises (MNEs) on developing countries in particular. This increasing internationalisation of business activity raises concerns about the reach of regulatory control in many areas. The failed negotiations of the Multi-lateral Agreement on Investment (MAI) in 1998 left states without any agreed mechanisms to regulate FDI (Gray 2002). However, a rise in Corporate Social Responsibility initiatives, many of which are focused on the environment, indicate that the rise in public concern is being taken on board by these MNEs (OECD 2002). These initiatives include efforts by companies to develop and maintain internal control systems and to improve their reporting on non-financial performance. While the EU does have a Transparency Directive 2004/109/EC which

is part of a package of Financial Services Action Plan measures (including an International Accounting Standards Regulation, the Market Abuse Directive and the Prospectus Directive), current EU legislation allows companies with subsidiaries abroad to present consolidated accounts, without breaking them down geographically to show where profits have been made or taxes paid (CONCORD 2009). Thus monitoring the impacts of FDI and the sustainability of EU investment is difficult.

4.3.5 The EU's Policy on Corporate Social Responsibility

According to the European Commission, Corporate Social Responsibility (CSR) is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis (CEC 2001d, 1). The Commission has recognised the role of CSR as a contributing factor to the Lisbon Strategy for Growth and Jobs (CEC 2009e) as well as its potential in the pursuit of sustainable development. The EU's role in CSR is limited because as the Commission admits 'CSR is fundamentally about voluntary business behaviour' therefore the Commission considers an approach involving additional obligations and administrative requirements would be counterproductive (CEC 2006d). Consequently, the European Commission has never adopted a proposal for legislative measures on CSR and has instead attempted to work more closely with European business to support CSR by attempting to give it greater political visibility and encouraging European enterprises to be more active in this area (CEC 2006d). While the Commission does not view CSR as a panacea or a substitute for public policy; it acknowledges its contribution to a number of public policy objectives (*ibid*).

The Commission has adopted a number of Communications relating to CSR, has set up a stakeholder forum, and most recently supported the launch of a European Alliance for CSR. Within these Communications and activities the Commission's understanding of CSR appears to contain both an internal and external dimension (ie how EU companies can improve their social and environmental impacts both inside and outside the EU). In 2001, the Commission presented a Green Paper on Promoting a European Framework for Corporate Social Responsibility (CEC 2001d) which launched a debate on how the EU could promote CSR at a European and international level. The Green Paper included the management of environmental impacts and natural resources as one of the concerns of the internal and external dimension of CSR. It highlighted the need for EU companies to carry out activities in a way that considers the environment both inside and outside the EU:

'Through transboundary effects of many business-related environmental problems, and their consumption of resources from across the world, companies are also actors in the global environment. They can therefore pursue social responsibility internationally as well as in Europe. For example, they can encourage better environmental performance throughout their supply chain within the IPP[Integrated Product Policy] approach and make larger use of European and international management and product-related tools. Investment and activities of the companies on the ground in third countries can have a direct impact on social and economic development in these countries' (CEC 2001d, 15).

The latest Communication from the Commission on CSR acknowledges that CSR can contribute to a number of objectives which relate to the external dimension:

- *'A more rational use of natural resources and reduced levels of pollution, notably thanks to investments in eco-innovation and to the voluntary adoption of environmental management systems and labelling'*;
- *'greater respect for human rights, environmental protection and core labour standards, especially in developing countries'*; and
- *'poverty reduction and progress towards the Millennium Development Goals'* (CEC 2006d, 4).

Additionally, in proposed actions to promote further uptake of CSR practices, the Commission included a number of activities under the heading of *the international dimension of CSR* (CEC 2006d, 8) which include:

- continuing to promote CSR globally with a view to maximising the contribution of enterprises to the achievement of the UN Millennium Development Goals;
- encouraging the inclusion of provisions to support internationally agreed CSR instruments and seeking to address CSR issues in bilateral dialogue between parties;
- discussing with partner countries and relevant stakeholders how to promote CSR in the framework of the Cotonou Agreement and the New Strategy for Africa; and
- following other relevant international processes, such as the work of the UN Special Representative on Human Rights, transnational corporations and other business enterprises, as well as sectoral initiatives like the Kimberley Process Certification Scheme for rough diamonds.

This Communication also supported the launch of the European Alliance for CSR which would provide a *political umbrella* for new or existing CSR initiatives by large companies, SMEs and their stakeholders. One of the priority areas for action of the Alliance is *operating outside the borders of the European Union in a socially and environmentally responsible way as companies do inside the European Union* (CEC 2006d, annex, 12). Although the EU aims to play a role internationally to encourage CSR, to date it has been reluctant to support CSR initiatives led by the UN Secretary General including the UN *Global Compact* - a code of conduct which seeks to make business a partner in achieving social and environmental improvements globally (CEC 2001d, 15). This initiative has been criticised for its lack of monitoring and its distortion by many multinationals. Nevertheless, the EU *recalls and commends the UN Global Compact and the environmental principles of the OECD's Guidelines for Multinational Enterprises as examples of initiatives promoting the implementation of environmentally friendly policies* (EU Presidency, 2007b).

4.3.6 The EU's Role in the Global Environment Facility

The Global Environment Facility (GEF) was created in 1991 by donor governments to serve as the financial instrument for international environmental conventions. Thus, it can be considered the most important financial pillar of institutional governance of the MEAs and for those developing countries in need of financial assistance to comply with different MEAs. The purpose of the GEF is *to provide funding of the agreed incremental cost for achieving agreed global environmental benefits* (GEF 2004). In general, programmes and projects are to be *country driven and consistent with*

national priorities designed to support sustainable development (Sjöberg 1996, 154). The funding is to enable countries to meet six critical threats to the global environment: loss of biodiversity; climate change; pollution of international waters; ozone depletion; land degradation; and persistent organic pollutants. The GEF is responsible for the creation of the financial mechanisms linked to MEAs, particularly important ones being the UN Framework Convention on Climate Change (UNFCCC), the GEF Trust Fund, the Developed Countries Fund and the Special Climate Change Fund (Möner, Klein 2007, 2-6).

Box 8: Ten Operational Principles for Development and Implementation of the GEF's Work Program

1. For purposes of financial mechanisms for the implementation of the Convention on Biological Diversity and the UN Framework Convention on Climate Change, the GEF will function under the guidance of, and be accountable to, the Conference of the Parties (COPs). For purposes of financing activities in the area of ozone layer depletion, GEF operational policies will be consistent with those of the Montreal Protocol on Substances that Deplete the Ozone Layer and its amendments.
2. The GEF will provide new, and additional, grant and concessional funding to meet the agreed incremental costs of measures to achieve agreed global environmental benefits.
3. The GEF will ensure the cost-effectiveness of its activities to maximize global environmental benefits.
4. The GEF will fund projects that are country-driven and based on national priorities designed to support sustainable development, as identified within the context of national programs.
5. The GEF will maintain sufficient flexibility to respond to changing circumstances, including evolving guidance of the Conference of the Parties and experience gained from monitoring and evaluation activities.
6. GEF projects will provide for full disclosure of all non confidential information.
7. GEF projects will provide for consultation with, and participation as appropriate of, the beneficiaries and affected groups of people.
8. GEF projects will conform to the eligibility requirements set forth in paragraph 9 of the GEF Instrument.
9. In seeking to maximize global environmental benefits, the GEF will emphasize its catalytic role and leverage additional financing from other sources.
10. The GEF will ensure that its programs and projects are monitored and evaluated on a regular basis.

Source: <http://www.gefweb.org/PUBLIC/opstrat/ch1.htm>

The GEF has a Council of 32 representatives from member states who meet biannually to review GEF projects, future business plans, work programmes, and policies. It also has an Assembly, composed of all 176 GEF member states, which meets every three or four years to review and approve general policies, operations, and amendments to the founding GEF Instrument. The GEF's operations are coordinated by a Secretariat but are carried out by a tripartite partnership between the UN Development Programme (UNDP), the World Bank, and UNEP, which are referred to as the three *Implementing Agencies* (GEF 2007). In 1999, the GEF Council expanded opportunities to seven so called Executing Agencies including the EBRD, the International Development Bank and three UN bodies - the Food and Agriculture Organisation (FAO), the International Fund for Agricultural Development (IFAD), the United Nations Industrial Development Organisation (UNIDO). The

Implementing and Executing Agencies are responsible for project formulation, submission, implementation, and monitoring and evaluation. Projects have to conform to the policies and decisions of the GEF Assembly and Council as well as the COP of the relevant MEAs, and are developed through consultation and dialogue with national governments, local stakeholders, and the GEF Secretariat. NGOs often play a key role in the project identification, formulation and implementation process.

The EU's participation in the GEF is not straightforward given that the EU is not a state, and thus it cannot contribute to the GEF even though it is a party to the MEAs for which the GEF acts as the financial mechanism (CEC 2007a, 8). However, the Commission has co-financed a number of GEF projects and discussions within the EU on policy on the GEF have increased over the past few years (CEC 2007a). Thus, although the EU cannot participate in the GEF, the EU and its Member States are involved in many projects in shared areas of interest that have led to coordination and cooperation in developing projects, in particular, in initiatives related to MEAs and environmental investments.

Donor nations fund the GEF and every four years commit money through a process called the "GEF Replenishment". The EU has argued that increased, stable and predictable funding is needed for the implementation of the MEAs and that a substantial replenishment of the GEF is necessary (EU Presidency 2004). The latest replenishment negotiations showed the extent to which some EU Member States are willing to go further than other donors (CEC 2007a). In August 2006, 32 donor countries pledged \$3.13 billion to the fourth GEF Replenishment, which funds operations between 2006 and 2010. EU donor Member States were: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Slovenia, Spain, Sweden and the United Kingdom. Among these, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom increased their contribution levels to help achieve a GEF-4 replenishment larger than that of the GEF-3, and agreed to provide voluntary supplementary contributions. These contributions have given these countries an important position inside the GEF structures as the rules on replenishment reward contributing participants that intend to contribute the equivalent of at least four million special drawing rights (SDR) with the right to participate in replenishment discussions, while other potential donors are merely invited to attend replenishment meetings as observers.

A number of questions have been raised about the environmental and governance record of the GEF and its activities. Even though the GEF initiatives have achieved the incorporation of environmental principles in the World Bank, the GEF has been widely criticised for its limited resources and the long duration of its processes from the moment of selection to implementation. Meyer-Ohlendorf and Knigge (2007) have also argued that:

'from a governance perspective, the implementation of GEF projects through three different organizations has yielded mixed results generated by recurrent institutional jealousies. Given the sheer importance of GEF funding as part of the environment portfolio for at least UNEP and UNDP, there is a surprising lack of political discussion among governments about the future role of GEF as part of an upgraded UNEP or a UNEO [United Nations Environmental

Organisation] and vis-à-vis the overall environmental institutional structure of the UN system' (Meyer-Ohlendorf, Knigge 2007).

4.4 Trade and the Environment

Priority actions set out in Article 9 (2) of the 6EAP:

- g) achieving mutual supportiveness between trade and the needs for environmental protection, by taking due account of the environmental dimension in Sustainability Impact Assessments of multilateral trade agreements to be carried out at an early stage of their negotiation and by acting accordingly;
- h) further promoting a world trade system that fully recognises Multilateral or Regional Environmental Agreements and the precautionary principle, enhancing opportunities for trade in sustainable and environmentally friendly products and services

Priority actions set out in Article 6(2) of the 6EAP include:

- examining the possibilities to take active measures to prevent and combat trade of illegally harvested wood

Policy instruments examined in this section:

- Sustainability Impact Assessments (SIAs);
- World Trade Organisation (WTO);
- The Environmental Chapter of the Doha Development Round;
- Common Commercial Policy;
- EU Generalised System of Preferences;
- Trade Cooperation Agreements; and
- Forest Law Enforcement, Governance and Trade (FLEGT).

4.4.1 Sustainability Impact Assessments

Sustainability Impact Assessment (SIA) for EU trade agreements were introduced by the European Commission in 1999 on the eve of the WTO Ministerial meeting in Seattle as a response to criticism of the EU's pursuit of trade liberalisation (Ruddy and Hilty 2007). DG Trade launched its SIA programme with a view to assessing the potential economic, social and environmental impacts – both positive and negative- of the WTO negotiations themselves and their subsequent implementation (CEC 2006e).

According to the Commission, an SIA has two main purposes:

- *'to integrate sustainability into trade policy by informing negotiators of the possible social, environmental and economic consequences of a trade agreement;*
- *to make information on the potential impacts available to all actors (NGOs, aid donors, parliaments, business etc' (CEC 2006f).*

Unlike other forms of policy assessment, which take place to assess which of a range of policy options should be pursued, SIAs analyse the development of a policy action that has already been approved (ie a negotiating mandate that has been given by the Council to the Commission). Therefore, SIA is a tool for evaluating *how* an action should be taken (Ruddy and Hilty 2007). One of the main objectives of the SIA is to

provide guidance as to possible accompanying or flanking measures, which according to the Commission are intended to maximise the positive impacts of the trade negotiations and reduce any negative impacts (CEC 2006f).

SIA's are carried out by external consultants for all of the EU's major trade negotiations (bilateral and multilateral) including WTO trade talks and the Economic Partnership Agreements with ACP countries. According to the Commission, transparency is an important part of the SIA process including external consultation (CEC 2006f). The process of formulating an SIA has four steps: 'screening' to determine which measures in the trade agreements can be excluded as they are unlikely to have significant impacts; 'scoping' to determine what components will be assessed and by what methods; 'assessment' of the impacts associated with each measure; and finally identification of 'flanking measures' which may reduce significant negative impacts (*ibid*). The Commission prepares a position paper based on the findings of each SIA which considers what further analysis should be undertaken and what relevant flanking measures implemented. This position paper is discussed with Member States.

Since the development of SIA's in 1999, there has been a great deal of progress made in the implementation and understanding of policy impact assessment. The broader science of impact assessment concludes that this policy instrument has great potential for reducing inadvertent negative impacts of policy. However, often its design and implementation is flawed in a way that reduces its effectiveness (eg see Renda 2006; Wilkinson et al 2004; Turnpenny et al 2008). SIA, an early pioneer of systematic policy impact assessment does not appear to have escaped this scenario. In principle, if the SIA were to meet its stated objectives of integrating sustainable development in the negotiations and increasing the flow of information, or even its implicit objective of identifying flanking measures, it would have the potential to considerably improve the EU's impact on natural resources globally - since trade (which is governed by various trade agreements) is the key means by which these resources enter the EU.

The potential for SIA's to influence the direction of the trade negotiations themselves is limited by certain aspects of the design and implementation process in formulating the SIA's. Firstly, the late formulation of the SIA in the decision-making process (ie after the negotiating mandate has been given) reduces the extent to which their results can truly be integrated in negotiations. There is also no guidance as to whether EU trade objectives or sustainable development objectives should prevail if conflicts are identified. Secondly, many conceivable flanking measures are often limited because they would intrude on the host country's sovereignty (Ruddy and Hilty 2007). Thirdly, there have been many criticisms from stakeholders that information on impacts has not been sufficiently highlighted by the SIA's. For example, FOE in a report on the EPA negotiated between the EU and African ACP countries criticise the final SIA by Price Waterhouse Coopers for not including potential impacts on forests and biodiversity as areas of concern in its final 'Summary of Key Findings, Policy Recommendations and Lessons Learnt' (Hall 2008). This is despite the fact that concerns on the impacts of trade liberalisation on forests were raised in previous iterations of the relevant SIA eg the mid term report on the SIA as well as in previous SIA's eg the dedicated forest product SIA targeted at WTO negotiations (*ibid*).

Therefore, the SIA process has only been partly successful in alleviating concerns of stakeholders about the (negative) impacts of EU trade agreements on the environment of countries outside the EU. SIAs have often been interpreted as “greenwash” by civil society and NGOs (Ruddy and Hilty 2007). The SIAs do however remain an important policy tool, which despite criticisms do at least create a platform for discussion on the impacts of trade agreements between different stakeholders. How these discussions are interpreted and their results implemented in practice remain another issue.

4.4.2 The World Trade Organisation

The Preamble of the Agreement establishing the World Trade Organisation (WTO) recognises that:

‘relations in the field of trade and economic endeavour should be conducted with a view to... expanding the production of 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 both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development’ (WTO Agreement, 1994)

This has had an unexpected legal significance thanks to the WTO dispute settlement system that has examined Trade Restrictive Environmental Measures (TREM)s in accordance with it and taking into account concepts such as renewable and exhaustible resources and sustainable management. The WTO dispute settlement system has evaluated the production processes and products under the scrutiny of trade and environmental interests of Article XX of the General Agreement on Tariffs and Trade (GATT) that contains exceptions to the WTO principles and rules. The Shrimp/Turtle case has been the leading case that judged the legality of TREMs adopted unilaterally by the USA to protect sea turtles. The position defended by the EU in this case, was that “as a general principle, it was not acceptable for a state to impose restrictions on trade in order to force other states to adopt certain measures or face economic sanctions which included the withdrawal of rights enjoyed under the WTO Agreements” (WT/DS58/R, par.355). This argument was in line with the findings of the panel report.

Box 9: General Agreement on Tariffs and Trade (GATT), Article XX

Article XX

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

(b) necessary to protect human, animal or plant life or health;

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption; (í)

The Shrimp/Turtle case shows that the promotion of multilateral negotiations leading to the conclusion of an MEA can be taken into account when applying the exceptions under Article XX as the proper way to protect the environment is through international cooperative action which results in a functional limitation of State sovereignty (Jackson 2000, 222). This limitation is only acceptable when mediated through international environmental agreements and not through unilateral measures trying to impose national standards or policies (Fajardo 2004, 192). The EU considers that the appropriate way for Members concerned with the preservation of globally shared environmental resources to ensure such preservation is through internationally agreed solutions. Measures taken pursuant to such multilateral agreements would in general be allowed under the chapeau of Article XX (WT/DS58/AB/R, par. 72).

The EU has played a relevant role in WTO case law on environment and trade, both as a defendant and as an interested party involved in defending a particular interpretation of the GATT obligations, for example, supporting the concept of exhaustible natural resources justifying trade restrictions. However, its efforts to make the precautionary principle prevail within the WTO have been unsuccessful (see Beef Hormones Case, WT/DS48/R). Furthermore, as noted in Bretherton and Vogler (2006, 93) the link between trade and environment has become increasingly salient and disputed. It has provided much potential for policy incoherence and indeed for well-publicized contradictions between the Union's role as trader and its aspirations to environmental leadership.

The EU has endorsed some of the lessons from the WTO case law, namely that the best measures are not unilateral Trade Related Environmental Measures (TREMS) or sanctions but rather MEAs based on a broad consensus compliance with which is guaranteed by multilateral cooperative action. However, these agreements need to be framed within environmental institutions (rather than trade institutions) and the lack of power of the existing environmental institutions is still an impediment to the achievement of trade related environmental protection objectives. As a consequence, the EU has sought to reinforce UNEP and to green the WTO for a long time, while unilateral initiatives continue to arise as a means of promoting the enforcement of international environmental law.

There are two cases dealt with by WTO panels in which relevant MEAs were not addressed: EC-Sword Fish and EC-Biotech Products. In the first case, Chile and the EU had initiated parallel proceedings before the International Tribunal for the Law of the Sea and the WTO dispute settlement system. However the parties reached an agreement which prevented a decision being made by the WTO panel on the implications of the UN Convention on the Law of the Sea. In the second case, the Panel did not apply the Cartagena Protocol on Biosafety as an interpretation parameter as the USA was not a party to the agreement and it had not entered into force at the time the dispute was submitted to the WTO.

In 2009, the EU, the USA and Mexico presented a complaint to the WTO dispute settlement system against China for its export restrictions on raw materials. This action is in accordance with one of the tasks of the EU Raw Materials Initiative which is to identify and challenge trade distortion measures taken by third countries using all available mechanisms and instruments, including WTO negotiations, dispute

settlement and the Market Access Partnerships' (CEC 2008a, 14). The WTO panel will examine the legality of a range of Chinese export restrictions on raw materials used in manufacturing where China is the world's principal source. The complainants consider China's quotas, export taxes and minimum export prices to be in breach of WTO norms and create an unfair advantage for local industry. In this dispute, which will likely be settled by the panel, it will be important to follow the use of the concept of exhaustible natural resources as protected in Article XXIV relating to the conservation of exhaustible natural resources when the measures taken are made effective in conjunction with restrictions on domestic production or consumption.

The EU, both as a defendant and as an interested party, has pursued environmental protection objectives within the WTO. The EU has contributed to a minimum common understanding on limitations of state sovereignty for environmental reasons, especially when selecting and interpreting 'the circumstances in which Members could take measures to conserve what could be considered to be 'shared global resources' and accepting 'that, in general, the attainment of shared objectives relating to the conservation of global resources, including endangered species, should follow the process of international negotiation' (WT/DS58/R, par. 356-357).

4.4.3 The Environmental Chapter of the Doha Round

The most controversial round of multilateral trade negotiations of the WTO, the Doha Development Agenda (DDA), was launched in 2001. The environment was raised as one of the priorities of the DDA given its substantial importance and the crosscutting link between trade and sustainable development. The Ministerial Conference mandated the WTO Committee on Trade and Environment to study 'the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development' (Doha Declaration 2001).

The Committee on Trade and Environment was further charged with examining the compatibility between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs) as well as procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status. The EU had been pushing the WTO for a decision on observer status for some of the key MEAs and UNEP at the WTO negotiations on environment. In February 2003 a WTO decision was taken, which allows MEAs and UNEP to be present as observers at the meetings of the WTO Committee on Trade and Environment. Although the TREMs of MEAs have never been referred to the WTO settlement system, as pointed out by Sampson (2001, 1133) 'eventual conflict between the rules of MEAs and the WTO remains a real possibility and a collision between regimes as important as those protecting the environment and the trading system should certainly be avoided'. Another issue is the attempt to strengthen the institutions and control mechanisms of MEAs so as to limit the causes provoking unilateral measures by WTO Member States (Fajardo 2004, 194). The EU has highlighted the need for stronger dispute settlement systems within MEAs themselves (Gabler 2005). The environmental provisions of the Doha Declaration (the so-called Environmental Chapter) are reproduced in Box 10 below.

Box 10: Environmental Chapter of the Doha Declaration

31. With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:
- (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question;
 - (ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;
 - (iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

We note that fisheries subsidies form part of the negotiations provided for in paragraph 28.

32. We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:
- (i) the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;
 - (ii) the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and
 - (iii) labelling requirements for environmental purposes.

Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations. The outcome of this work as well as the negotiations carried out under paragraph 31(i) and (ii) shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries.

33. We recognize the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them. We also encourage that expertise and experience be shared with Members wishing to perform environmental reviews at the national level. A report shall be prepared on these activities for the Fifth Session.

Source: Doha Declaration, 2001

While the DDA favours some of the claims of developing countries, it does not tackle the subsidies given by developed states to their agro-industries which are among the most important obstacles to the economic development of developing countries. Only fishing subsidies are explicitly included as they are considered to be environmentally damaging. Any effort that does not contemplate the opening up of agricultural markets would not be taken seriously by developing countries and may be viewed by

some as a disguised form of economic neo-colonialism (Bjornskow and Lind 2002, 543). As Bretherton and Vogler (2006) have pointed out, during the Doha Round the EU has:

'single-handedly attempted to place the trade-environment relationship on the negotiating agenda. There is some evidence that sustainability commitments have allowed environmental and even animal rights provisions to be inserted into the preparation of trade negotiations and actions – a process enabled by significant backing from some Member States and from 'civil society' groups (...). There have also been less obvious actions such as the re-definition of harm in anti-dumping action. Previously there had been an exclusive focus on injury to producers, but 'Community interest' has been re-defined to include environmental harm' (Bretherton and Vogler 2006, 104).

4.4.4 Common Commercial Policy

Common Commercial Policy is an area of exclusive Community competence and implies uniform conduct of trade relations with third countries, in particular by means of a common customs tariff and common import and export regimes (Europa Glossary). In the framework of its Common Commercial Policy, the EU has adopted unilateral measures directed at protecting the environment of third countries, that include import restrictions for environmental purposes to protect threatened species of flora and fauna such as cetaceans, the African lion, seal pups and timber (Demaret 1993, 309; Fajardo 2005, 225) The measures also include the EU's participation in multilateral international conferences to address global problems through trade related environmental measures (TREMs) as in the case of the Rotterdam Convention on application of the prior informed consent procedure to certain hazardous chemicals and pesticides in international tradeⁱⁱ (for a comprehensive discussion of the EU's role in the development of the Rotterdam Convention, see Pallemarts 2003).

The TREMs adopted unilaterally by the EU have not been referred to the WTO dispute settlement system as they could be justified under MEAs such as CITES or Article XX of the GATT. However, other TREMs seeking to adopt humane standards of trapping methods have caused severe criticism and led to rounds of negotiations with the States concerned. In these cases, the EU concluded agreements with Canada and Russiaⁱⁱⁱ and with USA^{iv}, with the aim of adopting common standards of humane trapping on the basis that nothing in [those] understanding[s] affects their rights and obligations under the Marrakesh Agreement establishing the World Trade Organisation^v which meant that the EU would not implement Council Regulation 3254/91 on the use of leghold traps as long as the Agreement has remain[ed] in force and [has been applied according to its provisions]^{vi}. The adoption of a Regulation No 1007/2009 on the trade in seal products has recently provoked a new round of negotiations with Canada in the WTO.

The EU TREMs adopted in the framework of MEAs or linked to other forms of economic or development assistance (as in the case of the EU FLEGT Initiative analysed in section 4.4.7) have been well accepted by countries, especially developing countries. However those imposed unilaterally on products imported from developed countries such as Canada, Russia and United States have been controversial and have been resolved through long and difficult negotiations. The reason for adopting and maintaining those measures óe.g. leg hold traps and seal products restrictions - is

based on continued support from the EU public as expressed in the European Parliament.

4.4.5 The Environmental Clause of the EU Generalised System of Preferences

Since 1971, the EU has granted trade preferences to developing countries, in the framework of its scheme of generalised tariff preferences that offers non-reciprocal preferential market access in the form of reduced tariffs for goods when entering the EU market. These preferences can be withdrawn (≠sticksø) if beneficiaries do not comply with the international agreements whose ratification and implementation the system promotes, as for instance violating core labour standards (Kryvoi 2008, 210) or environmental agreements (Fajardo 2005, 1997)

This system has incorporated environmental clauses in certain adopted Regulations. These environmental clauses act an incentive instrument (carrot) that pays off other countries to cooperate (Charnovitz 1994, 5). Special guidelines on trade and environment were incorporated in Regulation 2501/2001 applying a scheme of generalised tariff preferences for the period 2002-2004. Under this Regulation, the EU granted trade preferences ≠to a country which effectively applies national legislation incorporating the substance of internally acknowledged standards and guidelines concerning sustainable management of tropical forestsø (Article 21.2). However, during the period in which this Regulation was in force, the environmental clause was never applied as there was no demand for it by developing countries which refused to submit to the EUø strict conditions to control compliance with international agreements. China was the only country to apply for it before the European Commission, however the regime was not conceded^{vii}.

This unsuccessful system relied on an environmental clause seeking compliance with international environmental agreements on sustainable management of forests by third states through national measures and capacity building of their administrations in the environmental sector concerned. The EU would have controlled this compliance, however this control exercised a dissuasive effect not on the breaches themselves but on the demand for trade preferences. Following this, the EU reformed the regulations to comply with a WTO panel and adopted Regulation No 732/2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011. The reformed system is based on three regimes: a general arrangement; a special incentive arrangement for sustainable development and good governance; and a special arrangement for the least-developed countries^{viii}. Environmental concerns are incorporated in the special incentive arrangement for sustainable development and good governance that offers additional tariff preferences to those developing countries which ≠due to a lack of diversification and insufficient integration into the international trading system, are considered vulnerable countries and assume the special burdens and responsibilities resulting from the ratification and effective implementation of core international conventions on human and labour rights, environmental protection and good governanceø The beneficiaries of this regime also have to:

‘maintain the ratification of the Conventions and their implementing legislation and measures, and accepts regular monitoring and review of its implementation record in accordance with the implementation provisions of

the conventions it has ratified' (Article 8.1.b. Council Regulation No 732/2008).

Eligible states are those considered to be vulnerable countries which are not beneficiaries of other regimes. To avail themselves of the special incentive arrangement they had to submit a request by 31 October 2008, accompanied by comprehensive information concerning ratification of the relevant conventions, legislation and measures to effectively implement the provisions of the conventions and its commitment to accept and comply fully with the monitoring and review mechanism envisaged in the relevant conventions and related instruments. Relevant conventions relating to the environment are outlined in Box 11 below.

Box 11: Annex III of Regulation No 732/2008

PART B

Conventions related to the environment and to governance principles

17. Montreal Protocol on Substances that Deplete the Ozone Layer
18. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.
19. Stockholm Convention on Persistent Organic Pollutants.
20. Convention on International Trade in Endangered Species of Wild Fauna and Flora.
21. Convention on Biological Diversity.
22. Cartagena Protocol on Biosafety.
23. Kyoto Protocol to the United Nations Framework Convention on Climate Change
24. United Nations Single Convention on Narcotic Drugs (1961)
25. United Nations Convention on Psychotropic Substances (1971)
26. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
27. United Nations Convention against Corruption (Mexico).

The developing countries benefiting from the special incentive arrangement for sustainable development and good governance from 1 January 2009 to 31 December 2011 are: Armenia, Azerbaijan, Bolivia, Colombia, Costa Rica, Ecuador, Georgia, Guatemala, Honduras, Sri Lanka, Mongolia, Nicaragua, Peru, Paraguay, El Salvador^{ix}. The European Commission denied the special incentive arrangement for sustainable development and good governance to Gabon because it failed to meet the criteria, in particular, Gabon has not ratified the Convention on hazardous waste trade.

It has been said that even though the effect of the EU's generalised system of preferences is not always obvious, it has been generally considered beneficial for developing and transitional countries as exports from these countries tend to become more competitive (Kryvoi 2008, 227). However, in contrast it has been argued that a definite positive impact of trade preferences on developing countries is difficult to detect because the special schemes offered to other developed countries can be more beneficial, resulting in *de facto* discrimination against developing countries (Panagariya 2002, 1425). In the case of the environmental clause in the EU system, the criticism results from of a number of reasons, among them the lack of data on its

application, the low economic incentives and the high cost of compliance that can in most cases be higher than the economic incentives offered (Fajardo 2005, 206).

4.4.6 Clauses in Trade Cooperation Agreements

The EU has incorporated clauses on trade cooperation in its cooperation and association agreements with third countries, regional groups and organisations. These agreements assume the commitment of conducting trade in accordance with the WTO Agreement and "within the limits of their respective competence, [consulting] in connection with trade or trade dispute related matters, (í), on any dispute which may arise, in particular, on the issues of tariff, non-tariff, services, health, safety or environmental measures and technical requirements^x. In some of these agreements, the EU has reproduced the wording of Article XX of the GATT, updating it with WTO case law relating to the protection of the environment as can be seen in the following articles of the Cotonou Agreement and the Cooperation agreement with Vietnam.

Box 12: Relevant Articles in Cotonou Agreement and Cooperation Agreement with Vietnam

<p>Cotonou Agreement (as revised in 2005)</p> <p>Article 49 - Trade and Environment</p> <ol style="list-style-type: none"> 1. The Parties reaffirm their commitment to promoting the development of international trade in such a way as to ensure sustainable and sound management of the environment, in accordance with the international conventions and undertakings in this area and with due regard to their respective level of development. They agree that the special needs and requirements of ACP States should be taken into account in the design and implementation of environment measures. 2. Bearing in mind the Rio Principles and with a view to reinforcing the mutual supportiveness of trade and environment, the Parties agree to enhance their cooperation in this field. Cooperation shall in particular aim at the establishment of coherent national, regional and international policies, reinforcement of quality controls of goods and services related to the environment, the improvement of environment friendly production methods in relevant sectors. 	<p>Cooperation Agreement between the European Community and the Socialist Republic of Vietnam, 1996^{xi}</p> <p style="text-align: center;">Article 4.3</p> <p>The provisions of paragraphs 1 and 2 shall not limit the right of either Party to apply measures which are necessary for the protection of its essential security interests or for the protection of public health or morals and the protection of environment and animal or plant life or health. In respect of the latter such measures shall not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.</p> <p style="text-align: center;">Article 4.4</p> <p>The Parties agree to promote the exchange of information concerning mutually beneficial market opportunities and to hold consultations in a constructive spirit on the issues of tariff, non-tariff, services, health, safety or environmental measures, and technical requirements. Training programmes should take place in these fields as part of economic cooperation between the two Parties.</p>
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The EU deals with another area from which disputes could arise in these association agreements, namely cooperation on standardisation, accreditation, certification, metrology and conformity evaluation in several issues, including the basic requirements of health, and safety protection, plant and animal protection, consumer protection and environmental conservation^{xii}. However, these measures have not yet been the subject of disputes. The increasing adoption of stricter environmental standards for products and production that could hinder the exports of developing countries to EU markets is one of the EU concerns. The Thematic Programme on the Environment and Sustainable Management of Natural Resources, including Energy under the EU's Development Cooperation Instrument could provide assistance to producers in developing countries to meet the new requirements (see section 4.1.3).

4.4.7 Forest Law Enforcement, Governance and Trade (FLEGT)

In May 2003, the European Commission adopted the EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) (CEC 2003b) that was subsequently endorsed by the Council in November 2003. The ultimate goal of the Action Plan is to encourage sustainable management of forests by addressing illegal logging and its related trade. This voluntary initiative is the EU's response to the calls of the World Summit on Sustainable Development and the High Level Meeting on Forest Law Enforcement and Governance (FLEG) organised by the World Bank in 2001 for appropriate action in this area (CEC 2003b).

A key element of the Action Plan is the adoption of Voluntary Partnership Agreements (VPAs) with exporting countries to ensure that only legally harvested timber is imported into the EU from these countries. The initiative uses a licensing system to certify that the timber has been harvested in conformity with relevant national legislation and so restricts market access to illegal timber (Beeko and Adelle 2009). In 2005, the Council adopted the FLEGT Regulation (Regulation (EC) No 2173/2005) establishing the legal framework for imports of timber originating in partner countries into the EU and authorised the Commission to launch negotiations with timber producing countries and regional organisations interested in entering into VPAs with the EU. The first VPA was concluded with Ghana in September 2008 and the second with the Democratic Republic of Congo in May 2009. Negotiations with further countries are ongoing.

As the implementation of the licensing scheme progressed, it became evident that the scheme was at risk of circumvention and laundering making VPAs alone insufficient to resolve the direct and indirect causes and consequences of illegal logging. Therefore, various options for EU legislation to complement the VPAs were raised by Member States (including Belgium, see Bodard and Pallemarts 2005) and eventually the Commission including the expansion of this bilateral approach to the multilateral level and the adoption of legislation at the EU level or in individual Member States making it illegal to import, purchase or market timber produced illegally in foreign countries (Beeko and Adelle 2009). However, due to perceived drawbacks in all these options, the Commission proposed another option based on the concept of due diligence which requires companies placing timber and timber products on the market to adopt systems and procedures to ascertain to their best ability that they only place on the market timber and timber products which have been legally harvested (CEC 2008g).

The Commission's proposed Regulation deals for the first time, albeit indirectly, with obligations for operators acting outside the EU. This is a significant step for environmental policy, as the EU has always been reluctant to adopt measures to address illegal actions of EU companies in third countries that infringe on national, EU and international laws. The proposed Regulation is currently progressing through the EU decision-making process. This proposal, if adopted, will act as a pilot legal instrument, which provided it is efficient, could be used more widely to control the legality of certain transnational business activities. Doing so it will achieve three different goals:

1. Induce the private sector outside the EU to comply with international norms.
2. Enhance good national governance, strengthening the local administration's capacity to fight illegal trade and the corruption that it involves.
3. Promote compliance with international agreements, strengthening MEAs or promoting compliance of EU legislation that has been agreed by countries of origin, in order to avoid complaints about extraterritorial application of EU norms.

There has however been some shared criticism within the EU that the proposal is not strong enough, particularly as it does not include a prohibition on the placing of illegal timber on the EU market (see for example the position of the UK Government, see Box 13). In addition, partner countries themselves have also raised some concerns including the continued issue of circumvention and the cost of implementation (Beeko and Adelle 2009).

Box 13: Note from UK Delegation on the Proposed Regulation

(i) The UK welcomes EU legislation to reduce the trade in illegal timber but we regret that this proposed legislation does not include a prohibition on the first placing of illegal timber on the market. Illegal logging is a major environmental issue and threatens to undermine our climate objectives. A prohibition would complement the due diligence approach and enable Member States to take action against operators that place illegal timber on the market. It would incentivise proper application of the risk-based system.

Concerns over the impacts of a prohibition on domestic producers are unwarranted. There will be minimal administrative burden or financial cost to operators in addition to those already required in developing and running their due diligence systems. Operators who are complying with the law will benefit economically from increased confidence in their products and by removing illegal timber which distorts and undercuts the market for legal timber.

The EU must show leadership on this issue and produce strong legislation that will be effective in the fight against illegal logging. The Council will need to reach agreement with European Parliament, and we know that they have supported a prohibition. We urge all Member States to take a flexible approach and work with the European Parliament to achieve an ambitious regulation which ensures that illegal timber cannot be placed on our market.

Source: General Secretariat 2009a, 2

4.5 Cross-border Environmental Cooperation with Neighbouring Countries and Regions

Priority actions set out in Article 9 (2) of the 6EAP:

- (i) promoting cross-border environmental cooperation with neighbouring countries and regions;

Policy instruments examined in this section:

- Regional Multilateral Environmental Agreements;
- European Neighbourhood Policy (ENP); and
- Mediterranean Partnership.

4.5.1 Regional Multilateral Environmental Agreements

Many MEAs are used to address global level transboundary issues, such as those agreements negotiated under the auspices of the UN (see section 4.2.1). However, depending on the scale of the environmental issue to be addressed, the EU and Member States are also involved in MEAs at the regional (eg in the context of the UN Economic Commission for Europe or the Council of Europe) and the sub-regional level (for instance for the management of seas or transboundary rivers).

The flexibility of MEAs in addressing specific environmental problems in particular locations and involving specific states has led to their relative success, or at least proliferation, in dealing with fairly localised environmental issues involving the EU, especially in preventing river and marine pollution (IEEP 2009). Therefore, a number of relatively geographically-focused instruments have been organised around river basins or regional seas, many of which involve neighbouring countries including candidate countries to the EU and potential candidate countries, eg the International Commission for the Protection of the Danube River (ICPDR) and the International Sava River Basin Commission (for a comprehensive overview and analysis of the EU's participation in these agreements see Pallemmaerts 2003).

Similarly, a number of regional MEAs have been introduced to address transboundary environmental issues in regional seas. The Baltic, North East Atlantic and Mediterranean seas all have Commissions and Conventions that contribute to their protection and seek to address water quality issues (for a detailed analysis see Pallemmaerts 2003). These are, respectively, HELCOM, OSPAR, and the Barcelona Convention. In addition, one of the most successful regional MEAs is the UN Economic Commission for Europe Convention on Long-Range Transboundary Air Pollution (CLRTAP) which tackles air pollution issues in Europe.

There is some evidence that not only have these regional MEAs proliferated but have also led to some positive results in terms of improvement of transboundary issues such as water pollution. HELCOM has generally been relatively successful in helping the littoral countries of the Baltic Sea tackle issues of transboundary water pollution and has resulted in a number of positive outcomes (IEEP 2009). Having said this, its ability to influence the only remaining non-EU Baltic State (Russia) has long proved to be problematic. A regional MEA approach appears to be particularly effective in

dealing with regional environmental issues which have point sources of pollution (eg industrial plants) rather than more diffuse ones (eg fertilisers from agriculture).

In addition to being a party to a large number of these regional agreements, the EU has also introduced subsequent internal legislation to strengthen the implementation of the provisions of the adopted protocols. For example, the additional protocols to the CLRTAP dealing with specific pollutants have been effectively implemented in the EU through a framework of air quality legislation. The CLRTAP is generally considered to have been an effective instrument responsible for bringing down both acidification and (to a lesser extent) eutrophication in Europe since the 1980s (IEEP 2009). In other cases the EU has pushed forward regional cooperation on transboundary environmental problems through ad hoc initiatives such as the Baltic Sea Action Plan. Additionally, in June 2009, the Commission published a proposal for an EU Strategy for the Baltic Sea Region and an accompanying action plan (CEC 2009v) which was subsequently endorsed by the Council in October 2009. The Strategy brings together stakeholders from eight EU Member States surrounding the Baltic Sea (Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland and Sweden) and one non-EU country (Russia) and aims to provide an integrated multi-sectoral and multi-level approach to the development of the macro-region. The Strategy is expected to act as a model for EU cooperation in other regions, such as the Danube and the Adriatic. Despite the success of these regional MEAs and resulting internal EU action, the majority of regional MEAs have targeted specific pollution issues rather than the sustainable use of natural resources as such.

4.5.2 European Neighbourhood Policy

The European Neighbourhood Policy (ENP) aims to ensure that the EU is surrounded by good neighbours, namely ones which share its common values in general (eg democracy and good governance) but also work towards approximating their standards in specific areas of economic and social policy (Smith 2005). The ENP was first outlined by the Commission in 2003 in a Communication on *Wider Europe* (CEC 2003c) as 'a new framework for relations with our eastern and southern neighbours'. The Commission proposed that 'the European Union should aim to develop a zone of prosperity and a friendly neighbourhood' with whom the European Union enjoys close, peaceful and co-operative relations. This was followed in May 2004 by a Strategy Paper on the *European Neighbourhood Policy* (CEC 2004b) in which the Commission stated that the objectives of the policy are to:

'Share the benefits of the EU's 2004 enlargement with neighbouring countries in strengthening stability, security and well being for all concerned. It is designed to prevent the emergence of new dividing lines between the enlarged EU and its neighbours and to offer them the chance to participate in various EU activities, through greater political security, economic and cultural cooperation' (CEC 2004b.)

The Commission's Communication also made links between the ENP and objectives set out in the 2003 European Security Strategy. Further proposals to strengthen the ENP were set out by the Commission in December 2006 and December 2007. In addition, from 1 January 2007, a new European Neighbourhood and Partnership Instrument (ENPI) replaced a number of previous funding instruments which supported neighbouring countries. The ENPI for the period 2007-2013 has a budget of

€12 billion to support national, regional, thematic and cross border co-operation involving both EU Member States and neighbouring countries.

The ENP applies to the EU's immediate neighbours by land or sea, which are: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territory, Syria, Tunisia and Ukraine. Although Russia is also a neighbour of the EU, relations between the EU and the Russian Federation are developed through a 'Strategic Partnership' and thus fall outside the scope of the ENP. The central elements of the ENP are Action Plans agreed between the EU and each partner which cover action in specific key areas: political dialogue and reform; trade and measures preparing partners to gradually obtain a stake in the EU's internal market; justice and home affairs; energy, transport, information society, environment, research and innovation; social policy. The Action Plans build on and complement existing agreements between the EU and partner countries (eg Partnership and Cooperation Agreements, Association Agreements in the framework of the Euro-Mediterranean Partnership).

While the main emphasis of the ENP is on social, economic and political issues, it also includes environmental matters. In its Communication setting out the ENP (CEC 2004b), the Commission notes the logic of tackling environmental pollution through a mix of international, regional and national actions. The need to use environmental management to avoid conflicts over scarce resources, such as water, is also raised. Therefore the Commission specifies that Action Plans:

'will promote good environmental governance in partner countries to prevent environmental degradation and pollution, protect human health, and achieve a more rational use of natural resources. Priorities will be identified in key areas such as water quality, waste management, air pollution and the fight against desertification. Regional cooperation between the partner countries needs to be further enhanced and ratification and implementation of international agreements promoted' (CEC 2004b, 18-19).

In addition to explicit environmental issues, cross-border energy issues feature prominently in the ENP, which includes issues of security of energy supply and energy safety and security (CEC 2004b). From an environmental perspective, the promotion of renewable energy sources; energy efficiency; and the reduction of network losses could be considered in this context. In addition, transport issues in the Action Plans could include the promotion of sustainable transport policies and maritime safety, and research and development.

Green NGOs and other stakeholders have recognised the obvious potential of the ENP to contribute to environmental protection outside the EU in general and sustainable management of natural resources in particular. For example, WWF stated that it saw the ENP as 'a major opportunity to ensure *democracy, sustainable development* and environmental protection in the regions to the South and East of the EU' (WWF 2005, 1). Other stakeholders outlined in more detail the potential role that the ENP could play in specific environmental areas. A report by IEEP (2005) pointed out numerous potential benefits in the field of climate change which could be expected from good energy policy resulting from the ENP.

It is difficult to assess whether the ENP has lived up to this potential in the field of environment as there is little detailed empirical evidence to date. In 2005, WWF declared its concern that, while early adopted Action Plans treated environment as an area for enhanced cooperation, few specific proposals were made (WWF 2005). They claimed that the wording makes it clear that environment is regarded as a low priority in relation to economic development, security considerations, migration issues and governance and legal/judicial reform (WWF 2005, 2). IEEP note that despite there being opportunities for the ENP in the field of energy and climate change, the ENP is limited in view and not fully consistent with climate and energy policy (IEEP 2005, 23). The focus of the ENP in the area of energy is on securing fossil fuel supplies, while issues of energy efficiency and renewable energy do not feature prominently (*ibid*). In addition, adaptation issues are not dealt with at all despite this being a more pressing issue in neighbouring countries than in the EU. Further research is therefore needed to fully evaluate the contribution of ENP to achieving environmental objectives. The results of such studies will be critical in evaluating and potentially improving the ENP's contribution to the external dimension of EU environmental policy as steered by the 6EAP.

4.5.3 Euro-Mediterranean Partnership

The EU's relations with countries in the Southern Mediterranean and Middle East have developed through the Euro-Mediterranean Partnership established by the Barcelona Declaration (1995). The Partnership was re-launched in 2008 as the Union for the Mediterranean and covers the following partner countries: Albania, Algeria, Bosnia & Herzegovina, Croatia, Egypt, Israel, Jordan, Lebanon, Libya, Mauritania, Monaco, Montenegro, Morocco, Occupied Palestinian Territories, Syria, Tunisia and Turkey. The network of political and legal links and instruments is as complex as the relationship that it tries to articulate, bearing in mind the lack of integration or even institutional cooperation among the countries involved in this geographical area. In the case of the Mediterranean, the ecological situation is particularly fragile. As Bretherton & Vogler (2006, 100-101) have clearly described, "[t]he Union has been obligated by its presence, by its close ecological interdependence with neighbouring states and, indeed, by the expectations and requirements of their governments, to develop an active regional role. Over the last decades, the EU offered development cooperation for environmental issues which is now channeled through the Union for the Mediterranean and financed by the European Neighborhood Policy (ENP) (substituting the MEDA Programme that financed the implementation of the Euro-Mediterranean partnership). In the pursuit of the protection and improvement of the environment^{xiii}, the MEDA programme with the support of the EIB financed the Short and Medium-Term Action Programme for the Mediterranean (SMAP) that focused on five priority fields: integrated water and waste management, dealing with hot spot areas of heavy pollution and threat to biodiversity, integrated coastal zone management and countering desertification.

The regional Mediterranean allocation of the European Neighbourhood and Partnership Instrument (ENPI) is guided by a Regional Strategy Paper 2007-2013 that establishes three priority objectives to be implemented at regional level, including: *“a common sustainable economic area, with a focus on trade liberalisation, regional trade integration, infrastructure networks and environmental protection”* (ENPI-EUROMED 2007, 3). The Regional Indicative Programme 2007-2013 transposes this

policy response into concrete action programmes representing a total of €343.3 million.

The ENP and the Euro-Mediterranean Barcelona Process (now the Union for the Mediterranean) both emphasise environmental protection as a key sector for cooperation, sharing in particular the most relevant issues of the ENPI-EUROMED Environment Programme, as summarised in Box 14 below. The Union for the Mediterranean has adopted an environmental dimension focusing on critical issues such as marine pollution of the Mediterranean, water scarcity, and renewable energy sources. All these issues are directly or indirectly related to the sustainable management of resources.

Box 14: Environment Programme of the ENPI-EUROMED

Marine pollution of the Mediterranean

One of the main Euro-Mediterranean environmental goals identified by the Barcelona Summit (2005) is to launch an initiative to reduce the pollution of the Mediterranean sea. In a first phase, the main sources of pollution and measures that can be taken to diminish/eradicate these sources will be identified. In a second phase, finance will be mobilised to implement the plan. It is expected that most infrastructure investment requirements will be financed through loans, and assistance may be needed with project preparation to bring priority projects to the point where they can attract finance. These actions will need to be supplemented with region-wide capacity building measures to support the initiative (including in coastal area planning, urban management, information campaigns to raise the awareness of citizens/the private sector, initiatives to promote integration of environmental concerns into other sectors, etc.).

Collaboration with the EEA and the secretariat of the Barcelona Convention

Mediterranean partners are also encouraged to collaborate with the European Environment Agency (EEA), in line with the ENP Action Plans, participate in specific activities under the Barcelona Convention and implement the regional strategies developed under the Mediterranean Action Programme (MAP). This includes involvement in the implementation of the EU Marine Thematic Strategy and Marine Strategy Framework Directive (2008/56/EC).

Regional water initiative

This component supports activities related to the Mediterranean component of the EU Water Initiative, including integrated water resources management, transboundary river basin management and specific instruments dedicated to their implementation.

Capacity building and support to civil society actors

Under this component, activities to develop regional networks and contacts will be pursued so as to strengthen civil society through coherent approaches and sharing of best practice.

Source: http://ec.europa.eu/world/enp/pdf/country/enpi_euromed_rsp_en.pdf

The EU supports other environmental initiatives in the region involving a number of smaller scale and ad hoc environmental actions such as: Horizon 2020 which aims to accelerate ongoing initiatives on cleaning up the Mediterranean for the period 2007-2013; the Mediterranean Solar Plan, one of the major initiatives launched under the Union for the Mediterranean to foster cooperation so as to offer secure and affordable energy (CEC 2009f, 33); and the Mediterranean Strategy for Water.

Despite nearly thirty years of international efforts to protect the Mediterranean environment, it remains fragile and continues to deteriorate as pressures increase (ENPI EUROMED 2009, 9). A number of environmental problems remain, including the excessive exploitation of fisheries, frequent occurrence of natural and man-made disasters and unsustainable land use planning, which have had significant negative environmental impacts and led to instability in certain areas. A major challenge for the Union for the Mediterranean going forward is how to effectively address the issue of environmental protection given the lack of results in the field of institutional cooperation, which has been doomed by the fragmentation and multiplication of political instances.

4.6 Conclusions on External Policy Instruments

The analysis in this section has revealed the high number of external policy instruments which the EU has to pursue its international objectives and priority actions as set out in the 6EAP. A brief summary of the evaluation of implementation in relation to each external objective / priority action identified in the 6EAP is set out in Table 3 below.

Table 3: Summary evaluation of the EU’s implementation of external objectives and priority actions of the 6EAP

Objective/Priority Action	Policy Instruments	Evaluation
Integrating environment into external policies	<ul style="list-style-type: none"> - Green Diplomacy Network; - Country Strategy Papers; - Economic Partnership Agreements; - Fisheries Partnership Agreements; - Regional Fisheries Management Organisations; - Global Europe; - The Raw Materials Initiative. 	<ul style="list-style-type: none"> - Some good progress when the primary objective of the policy instrument is environmental, eg the Green Diplomacy Network, however less progress when the primary objectives are trade or development related, eg Country Strategy Papers. - Although there has been improvement in some instruments eg Fisheries Partnership Agreements, there is still further work to be done (as recognised in the latest round of CFP reform). - Examples remain of trade policies and strategies which directly undermine external environmental objectives, eg Economic Partnership Agreements negotiated with ACP countries.
Strengthening international environmental governance;	<ul style="list-style-type: none"> - Multilateral Environmental Agreements; - Thematic Strategy for 	<ul style="list-style-type: none"> - The EU has ratified a large number of MEAs and is a strong supporter of the multilateral approach. - The EU promotes and funds the

<p>Swift ratification, compliance and effective enforcement of MEAs</p>	<p>the Environment and Sustainable Management of Natural resources, including Energy;</p> <ul style="list-style-type: none"> - United Nations Environment Programme 	<p>participation of developing countries in MEAs mainly through the ENRTP.</p> <ul style="list-style-type: none"> - There have been some implementation issues with MEAs within the EU. - The EU supports the reform and strengthening of UNEP, though little progress has been achieved to date.
<p>Promoting Sustainable environmental practices in foreign investment and export credits</p>	<ul style="list-style-type: none"> - European Investment Bank; - European Bank for Reconstruction and Development; - Foreign Direct Investment; - Corporate Social Responsibility; - Global Environmental Facility 	<ul style="list-style-type: none"> - The EIB and the EBRD have agreed a set of "European Principles for the Environment" but these are not yet universally applied. - Continued evidence of investment in environmentally damaging projects, especially in high carbon projects. - There is some consideration of external environmental objectives in the EU's policies on CSR. - European export credit agencies have not adopted environmental standards. - The EU has pushed for a substantial replenishment of the GEF.
<p>Achieving mutual supportiveness between trade and the environment; Promoting a world trade system that fully recognises MEAs.</p>	<ul style="list-style-type: none"> - Sustainability Impact Assessment; - WTO; - Common Commercial Policy; - EU System of Generalised Preferences; - Trade Cooperation Agreements; - FLEGT. 	<ul style="list-style-type: none"> - Sustainability Impact Assessments are carried out for EU trade negotiations but these have been criticised for their limited influence. - The EU has played a role in case law relating to the environment in the WTO but did not succeed in getting the precautionary principle to prevail. - The EU has adopted measures in the Common Commercial Policy aimed at protecting the environment and certain species in third countries.

		<ul style="list-style-type: none"> - An environment clause has been inserted in the EU Generalised System of Preferences but its effectiveness is questionable. - FLEGT is an example of a targeted action (and now legislation) to safeguard the environment in EU trade relations. - There are still contradictions between the EU's role as a trade power and its aspirations to environmental leadership.
<p>Promoting cross-border environmental cooperation with neighbouring countries and regions.</p>	<ul style="list-style-type: none"> - Regional MEAs; - European Neighbourhood Policy (ENP); - Union for the Mediterranean 	<ul style="list-style-type: none"> - The EU has been a keen supporter of regional MEAs and has implemented many through specific EU legislation. - Cross-border environmental issues are included (particularly energy issues) in the ENP, however the focus is on securing fossil energy supplies, issues of energy efficiency and renewables are not a major feature. - The Euro-Mediterranean Partnership includes environmental considerations, however after thirty years of international efforts, the Mediterranean environment remains under pressure.

As the analysis in this section has shown, there are a number of examples where the EU has attempted to integrate environmental considerations in its external policy. In fact, one of the most successful areas of EU external policy is in the field of the environment (Bretherton and Vogler 2006). This is particularly evident in the EU's efforts in relation to MEAs, both in terms of facilitating and moving discussions forward in certain fora and providing financial support and other incentives for the implementation of MEAs in developing countries. The EU has also had some success in integrating environmental concerns in its diplomatic activities through the innovative instrument of the Green Diplomacy Network which has contributed to the increasing effectiveness of European actions at international conferences and within international organisations.

In other areas of external policy, such as trade and development cooperation, there is evidence that the EU is increasingly aware of the need to integrate cross-cutting policy objectives such as the environment into its policies and in many cases, opportunities and tools have been established to assist in this integration, eg the

development of Country Environmental Profiles annexed to Country Strategy Papers, Sustainability Impact Assessments for EU trade agreements, and moving from access agreements to Fisheries Partnership Agreements. However, translating these tools into effective mechanisms to integrate environmental considerations in these sectors has not been particularly successful to date and there remains considerable room for improvement in the implementation of these policy instruments. Despite a commitment to integration and policy coherence, certain parts of the EU appear to be formulating and adopting policies which undermine some external environmental objectives, eg DG Trade's Global Europe and certain aspects of the Raw Materials Initiative appears to contradict EU environmental and development objectives in favour of EU competitiveness (economic) objectives.

In relation to international environmental governance, the EU has been a strong supporter of the multilateral approach and has ratified a significant number of MEAs. It has played an important leadership role in a number of these MEAs, in particular during discussions on the Kyoto Protocol within the UNFCCC. The EU also funds the participation of developing countries in MEAs and promotes their compliance with obligations under the MEAs, mainly through the Thematic Strategy for the Environment and Sustainable Management of Natural Resources. Incentives to comply with MEAs are also provided through specific clauses in trade agreements. The EU is a keen supporter of reforms to strengthen UNEP, transforming it into a UN Environment Organisation with a strong mandate and adequate and predictable financing. However, to date limited progress has been achieved in this regard due to lack of interest or outright opposition by other UN members.

In terms of promoting sustainable environmental practices in foreign investment, the record of relevant institutions or organisations has been mixed. However it is important to keep in mind that the extent to which the EU can actually influence these institutions is limited. While there has been some progress in integrating environmental concerns in funded projects, with the adoption of 'European Principles for the Environment' by five European-based Multilateral Financing Institutions in 2006; these principles are not yet universally applied. If implemented and monitored properly, these principles could serve as a useful tool to increase environmental considerations in future activities of these institutions. In the area of export credits, European agencies have been criticised for not adopting adequate environmental standards in their activities. In other areas, the EU has only had limited powers, eg with regard to Corporate Social Responsibility and Foreign Direct Investment, nevertheless it has in certain cases tried to advocate more environmentally responsible behaviour in these areas, through for example various Communications on CSR.

Sustainability Impact Assessments (SIAs) were introduced for all EU trade negotiations in 1999 as a response to criticisms of the EU's trade liberalisation agenda. However, their late formulation in the decision-making process, the lack of guidance on what to do when trade and sustainable development objectives conflict, and their selective presentation of information have limited their ability to change the EU's chosen policy direction. In most cases SIAs can only (at best) lead to remedial measures and have done little to alleviate concerns relating to the wider impacts of EU trade agreements. The EU has played an important role in case law relating to the environment in the WTO both as a defendant and as an interested party involved in defending a particular interpretation of GATT obligations. The EU has been active in

placing the trade/environment relationship on the negotiating agenda of the ongoing Doha Development Round of multilateral trade talks. In its Common Commercial Policy, the EU has adopted measures aimed at *inter alia* protecting the environment of third countries and promoting humane standards of trapping methods, in certain cases in the face of fierce opposition by its trading partners. The EU has also inserted an environment clause in its Generalised System of Preferences and introduced targeted action (and now legislation) to safeguard the environment through EU trade relations specifically in reducing imports of illegal timber into the EU under FLEGT. Despite these positive developments, there is evidence of a number of contradictions between the EU's role as a trade power and its aspirations to environmental leadership. This can be witnessed in certain behaviour of the EU at the WTO as well as in the approach adopted in high level trade strategies such as the Raw Materials Initiative.

In terms of efforts to promote cross-border environmental cooperation, the EU has been a key supporter of regional MEAs to address specific transboundary issues and is a party to a number of regional agreements relating to regional seas and river basins. The implementation of some of these agreements has been supported through specific EU legislation. Environmental issues are also highlighted in the EU's relations with its neighbours. For example, although the primary objectives of the European Neighbourhood Policy (ENP) are social and economic, cross-border environmental, energy (notably energy security) and transport issues are also considered. The ENP has significant potential to contribute to environmental protection outside the EU, however further evaluations of the policy are needed to assess its environmental impacts. The Euro-Mediterranean Partnership emphasises environmental protection as a key sector for cooperation and has focused on critical environmental issues in the Mediterranean region. However, despite action in the area over a number of years, the Mediterranean environment remains fragile and under pressure.

5 INTERNAL POLICY INSTRUMENTS

In March 2003, the European Council identified the timely elaboration, at both the international and EU levels, of the ten-year framework of programmes on sustainable consumption and production (with the EU taking the lead) as one of the key priorities for the EU in its WSSD follow-up. Nine months later in December 2003, the European Commission prepared a Communication entitled *The World Summit for Sustainable Development One Year On: Implementing Our Commitments* (CEC 2003d), in which the achievement of sustainable consumption and production is highlighted as a central objective against the backdrop of the EU's efforts to implement the WSSD outcomes, the Doha Development Round of the WTO, the Millennium Development Goals (MDGs) and the outcomes of the 2002 Monterrey Conference on Financing for Development. Thus, sustainable consumption and production in the EU was initially set within the context of international development according to the Brundtland interpretation of sustainable development. However, it is evident in the adopted Sustainable Consumption and Production / Sustainable Industrial Action Plan that the Commission later moved towards framing the problem of sustainable consumption and production as one requiring 'considerable technological innovation' (CEC 2008i). It is also evident that while the sustainable production and consumption of marine resources is not normally considered in the EU debate on sustainable consumption and production; fisheries resources form an important natural resource globally and the EU appears to have a poor record of sustainably harvesting these resources both inside and outside its borders, thus it was considered an important aspect to be included in this report. This section examines a number of internal EU policy instruments which could potentially help implement the external objectives and priority actions of the 6EAP, especially those relating to sustainable consumption and production of resources (including marine resources).

5.1 Sustainable Consumption and Production

*6EAP objectives and priority actions in relation to natural resources*³:

- Article 8 (1): 'aiming at ensuring that the consumption of resources and their associated impacts do not exceed the carrying capacity of the environment and breaking the linkages between economic growth and resource use'
- Article 8(2)(i): 'developing a thematic strategy on the sustainable use and management of resources, including *inter alia*: (c) establishment of goals and targets for resource efficiency and the diminished use of resources, decoupling the link between economic growth and negative environmental impacts; (d) promotion of extraction and production methods and techniques to encourage eco-efficiency and the sustainable use of raw-materials, energy, water, and other resources; (e) 'development and implementation of a broad range of instruments including research, technology transfer, market-based and economic instruments, programmes of best practice and indicators of resource efficiency'
- Article 8 (2) (iii): Developing a thematic strategy on waste recycling including *inter alia*: (a) measures aimed at ensuring source separation, the collection and

³ Article 8 contains a number of clauses which relate to natural resources. The ones given here are those that we considered most relevant for the purposes of this report.

recycling of priority waste streams; (b) further development of producer responsibility; (c) development and transfer of environmentally sound waste recycling and treatment technology.

EU internal policy instruments examined in this section:

- Thematic Strategy on the Sustainable Use of Natural Resources;
- Thematic Strategy on Waste Prevention and Recycling ;
- Sustainable Consumption and Production/ Sustainable Industrial Policy Action Plan;
- Integrated Product Policy;
- Environmental Management Audit Schemes;
- Eco-label Scheme;
- Green Public Procurement;
- Raw Materials Initiative (Pillar II and Pillar III);
- Renewable Energy Directive;
- Common Fisheries Policy;
- Marine Thematic Strategy and the Marine Strategy Framework Directive; and
- EU Integrated Maritime Policy.

5.1.1 Thematic Strategy on the Sustainable Use of Natural Resource

On 21 December 2005 the European Commission published the Thematic Strategy on the Sustainable Use of Natural Resources (CEC 2005a) which it considered as the main policy output of the 'natural resources' chapter of the 6EAP (Decision 1600/2002/EC). The Thematic Strategy⁴ was the first initiative at EU level to tackle environmental aspects of resource use in an overarching fashion and aimed to provide a framework to improve resource efficiency, reduce the negative environmental impact of resource use, and achieve overall improvements in the environment in parallel to economic growth, ie 'decoupling' economic growth from negative environmental impacts. The Thematic Strategy was conceived as a long-term strategy laying the foundations for policy over the next 25 years.

The Thematic Strategy provided for the establishment of a Data Centre for policy makers to enhance and improve the knowledge base on resource use and its environmental impacts. It also aimed to develop indicators to measure progress in efficiency and productivity in the use of natural resources, resource specific indicators to evaluate how negative environmental impacts have been decoupled from resource use and an overall indicators package to measure progress in resource use by the EU. The Thematic Strategy also proposed that each Member State develop national measures and programmes on the sustainable use of natural resources, with the Commission setting up a High-Level Forum to facilitate the development of these national measures. At the international level, the Thematic Strategy suggested setting up an International Panel on the Sustainable Use of Natural Resources in cooperation with UNEP and other international partners (see Box 15 below). The Thematic Strategy noted that the Commission will propose a separate Thematic Programme for

⁴ This Thematic Strategy should not be confused with the Thematic Strategy for Environment and the Sustainable Management of Natural Resources including Energy which falls under the Development Cooperation Instrument and provides support to developing countries (see section 4.2.2).

Environment and Sustainable Management of Natural Resources including Energy under the Development Cooperation Instrument in 2007 (see section 4.1.3 for subsequent developments in this regard).

Box 15: The International Panel on the Sustainable Use of Natural Resources

The Thematic Strategy on the Sustainable Use of Natural Resources proposed the creation of an International Panel on the Sustainable Use of Natural Resources (CEC 2005a). At a pre-panel brainstorming meeting in 2006, representatives of the UNEP, NGOs and some states, such as Brazil, Japan, Canada and China, agreed to: focus the panel's work on issues that have immediate international policy relevance, such as global material recycling and biofuels; and to consider presenting a global vision on alternative scenarios of resource supply and use, taking into account their socio-economic implications (UNEP 2006). The Panel was created by UNEP and the European Commission in November 2007, with the overall objective of providing independent scientific assessment on the environmental impacts of the use of resources over their full lifecycle. The specific tasks of the panel are to:

1. Provide scientific assessment, guidance and policy advice to the EU, interested national governments and international organisations on natural resources in a global context.
2. Monitor and stimulate progress on decoupling on an international level. This includes the gathering of information on resource extraction and use at international level.
3. Develop sustainability benchmarks for materials and products. This includes establishing minimum supply chain standards or guidelines for the extractions, harvesting and processing of natural resources in developing countries and environmental life cycle impact reduction targets for priority resources and selected products.
4. Build knowledge capacity on natural resources in developing and transition countries (CEC 2005a).

The first report of the Panel was dedicated to assessing biofuels (UNEP 2009) as an outcome of its Work Plan for 2008-2010. The report argued that 'the United States and the European Union have coupled subsidies for biofuels with import tariffs that ensure that these subsidies will benefit domestic farmers rather than those in other countries. This has led to the strange irony of virtually unimpeded trade in oil, while trade in biofuels is greatly restricted' (UNEP 2007, 31). In May 2010, the Panel published a report on metal stocks in society and a preliminary report on metal recycling rates which found that recycling rates for common metals like steel was around 50 per cent while recycling rates of key specialty metals was only around 1 per cent (UNEP 2010).

The Thematic Strategy for the Sustainable Use of Natural Resources has some obvious implications for global natural resources as many of the resources used in the EU come from third countries. These implications are recognised in the introductory section of the Thematic Strategy:

'The issue [current patterns of resource use] has a global dimension. The EU is highly dependent on resources coming from outside Europe and the environmental impact of resource use by the EU and other major economies is felt globally' (CEC 2005a).

However, there is little evidence in the Thematic Strategy that the EU will take adequate action to address this environmental impact through a shift in its consumption and production patterns. In particular, the Thematic Strategy fails to meet the objectives set in the 6EAP –to break the linkages between economic growth and resource use– and –to achieve the goal that consumption of resources and their associated impacts do not exceed the carrying capacity of the environment–. As far as the first objective is concerned, the Thematic Strategy does not include quantitative targets for the reduction of resource use and increased resource efficiency as prescribed in the 6EAP. It was felt that this was not possible at the time the Thematic Strategy was developed given the existing state of knowledge. Concrete targets to decouple economic growth from resource use were also absent from the Strategy. However, the Thematic Strategy aimed to set a process in motion whereby the setting of such targets would be possible over the following 5-10 years and committed the Commission to developing a set of indicators to measure progress in resource use efficiency etc. Regarding the second objective, besides a vague reference in the text to –staying below the threshold of overexploitation– in terms of renewable resources, the Thematic Strategy does not commit to reducing resource consumption. The Thematic Strategy focuses on reducing the negative environmental impacts of the resources we already use rather than suggesting a shift to more sustainable consumption patterns. Furthermore, it is unclear whether the initiatives announced in the Thematic Strategy will result in any real changes in how natural resources are used in the EU, and the negative environmental impacts associated with this resource use (Pallemmaerts *et al* 2007).

5.1.2 Thematic Strategy on Waste Prevention and Recycling

The Thematic Strategy on the Prevention and Recycling of Waste (CEC 2005b) was adopted on 21 December 2005 alongside a proposal for an amended Waste Framework Directive (CEC 2005c). The Thematic Strategy concentrates on the issue –waste as a resource– and aims to analyse and assess EU waste policy, simplify and clarify the current legal framework in line with the EU’s better regulation objectives and to set objectives and outline the means by which the EU can move towards improved waste management (especially waste recycling and more generally recovery) and waste reduction. Therefore the Thematic Strategy proposed, amongst others, to modernise the Waste Framework Directive (as codified in 2006), incorporate the lifecycle approach in EU legislation, clarify Member States’ obligations to develop waste prevention programmes, set minimum standards for recycling activities and recycled materials, seek new ways to foster recycling, encourage the diversion of bio-waste from landfills and revise the Sewage Sludge Directive (86/278/EC).

Apart from the clearly waste-related objectives, the Thematic Strategy also contributes to resource-based objectives of the 6EAP, ie to ensure that the consumption of resources and their associated impacts do not exceed the carrying capacity of the environment and breaking the linkages between economic growth and resource use, as mentioned in Article 8 (1). This creates an obvious link with the EU’s global resource use because increased recycling and the eventual use of secondary raw materials could reduce the EU’s consumption of *primary* raw materials. This relationship was recognised in the third pillar of the Raw Materials Initiative (see section 5.1.8). While the Thematic Strategy is to a large extent dedicated to the further

development of recycling and recovery (including setting recycling standards, promoting lifecycle thinking and creating a level playing field for recycling and the marketing of recycled materials), it does not specifically focus on this external aspect. However the logic behind the Thematic Strategy would not prevent it from influencing the level of resource imports if successfully devised and implemented.

An evaluation of the Waste Thematic Strategy found a number of shortcomings which could impede its ability to positively improve the EU's recycling record in general and in meeting the priority actions set out in Article 8 (2) (iii) in particular (see above) (Pallemaerts *et al* 2007). The Waste Thematic Strategy does not include measures aimed at ensuring source separation, collection and recycling of priority waste. It only gives hints on legal modifications or the production of guidelines regarding the treatment of different wastes such as waste oils or bio-waste. As for the further development of producer responsibility, the announcement that an analysis of the long-term feasibility and viability of a material-specific approach will be undertaken has given rise to concerns that the existing waste stream approach - where producers are held responsible - could be replaced by a more complex materials approach where producer responsibility cannot practically be used. For the development and transfer of environmentally sound waste recycling and treatment technology, the Thematic Strategy announces the future development of common recycling standards.

5.1.3 Integrated Product Policy

Integrated Product Policy (IPP) seeks to minimise the environmental impacts of products by looking at all phases of a product's lifecycle and taking action where it is most effective (CEC 2009g). It calls for continuous improvement in product manufacturing and design, and for promoting their uptake by consumers (CEC 2009h). In February 2001, the European Commission adopted a Green Paper on IPP (CEC 2001e) with the objective of launching a debate on the role and possible measures that could be taken at an EU level. IPP was one of the major innovative elements of the 6EAP and the Green Paper proposed a strategy to strengthen and refocus product-related environmental policies to promote the development of a market for greener products. The Green Paper envisaged that a mix of policy instruments would need to be employed including:

- eco-labelling and Green Public Procurement to stimulate demand for greener products;
- eco-design guidelines, the flow of lifecycle information, and environmental standardisation to stimulate business leadership in the supply side of green products;
- reduced VAT rates on eco-labelled products; and
- the use of state aid policy within the New Guidelines on State Aid for Environmental Protection to get the prices right and develop markets for greener products (CEC 2001f).

In June 2003, the Commission adopted a Communication on IPP (CEC 2003e) which elaborated the objective of IPP and established five IPP principles: Lifecycle thinking; Working with the market; Wide involvement of stakeholders; Continuous improvement of products; Coordinated use of policy instruments. The IPP Communication itself did not specify concrete action on particular products but rather provided the conceptual framework, guidance and tools for a large variety of policies

and actors to strengthen and coordinate existing environment related product policy. The Communication highlighted possible areas of action and suggested responsibilities for the main groups of stakeholders (for a critique of IPP, see Pallemmaerts et al 2005).

The Commission implicitly recognised the external dimension of IPP in a recent Communication on implementation of IPP:

'The environmental pressures and impacts of products occur at various stages of their lifecycle (along production chain, during use phase, disposal of end-of-life products). Remedial actions must be designed in a way to avoid that the environmental burden is simply shifted to other stages of the life-cycle, or to other geographical areas' (CEC 2009h).

Therefore, an important aspect of IPP in the EU should be to ensure that the environmental impacts of products are not pushed out or harboured in stages which take place outside the EU. If a product is produced with clean technology inside the EU it is still not sustainable if the natural resources used to produce the product are mined in an environmentally damaging way in a country outside the EU where environmental regulations may be less strict.

According to the Commission's assessment of implementation of the 2003 IPP Communication, the IPP principles are now embedded in many initiatives (CEC 2009h). However, explicit references to IPP in these initiatives are not common and so the uptake of the IPP approach is assessed through recording progress made across a number of related initiatives. For example, the review claims that IPP principles were successfully subsumed into the over-arching SCP/SIP Action Plan in 2008 (see section 5.1.4) and that a number of initiatives put forward by this Action Plan greatly help to further IPP including: revising labelling schemes; improvement of product design; a framework for Green Public Procurement; and the Retail Forum established under the Action Plan. The review also claims that other recent developments exhibit IPP principles, eg the new Waste Framework Directive 2008/98/EC makes several IPP elements legally binding, notably the requirement for waste policy to consider the whole lifecycle of materials in waste policy development.

However, the main focus of IPP to date has been on lifecycle stages carried out inside the EU. Taking the external dimension of IPP into account (ie environmental impacts from lifecycle stages conducted outside the EU) is complex and involves further research on the origins and impacts of products consumed in the EU as well as serious consideration of how the EU could influence impacts outside EU Member States. Some modelling studies include impacts outside the EU (however this is only for a limited number of environmental impacts including abiotic resources ie fossil fuels and minerals not biotic resources ie timber and forest products) (EUSUSTEL 2005).

5.1.4 EU Action Plan on Sustainable Consumption and Production and Sustainable Industrial Policy (SCP/SIP)

In July 2008, the Commission presented its Sustainable Consumption and Production (SCP) package, a joint initiative of DG Environment, DG Enterprise and DG Transport and Energy. This package contained the Action Plan requested by the European Council in the renewed Sustainable Development Strategy and was to be presented by 2007 to identify and overcome barriers for SCP and to ensure better coherence between the different related policy areas and to raise awareness among citizens and change unsustainable consumption habits (EU Council, 2006a). However, due to disagreements within the Commission, in particular between DG Environment and DG Enterprise and their respective Commissioners, the publication of this package was delayed several times. Furthermore, the Action Plan that was finally presented was not on Sustainable Consumption and Production as requested by the European Council and anticipated by stakeholders, instead the Action Plan was on Sustainable Consumption and Production *and Sustainable Industrial Policy* (our emphasis). In accordance with the title, the policy was heavily influenced by DG Enterprise and placed consistent emphasis on the EU's Lisbon Strategy for Growth and Jobs, which was the subject of its opening statement. The objective of the Action Plan, according to the accompanying Impact Assessment, is to contribute to the goals of the Lisbon Strategy and to help achieve the policy aims of the Sustainable Development Strategy of the European Union by rendering product policy in the EU more effective (CEC 2008j).

The Action Plan set out a series of integrated measures to deliver more sustainable consumption and production, while improving the competitiveness of the European economy. Stimulating growth through environmental technology and higher standards was central to the thinking behind the Action Plan. The Commission states that the core of the Action Plan is a dynamic framework to improve the energy and environmental performance of products and foster their uptake by consumers (CEC 2008c, 2). The Action Plan was accompanied by: a proposal for a Regulation revising the Community eco-label scheme (adopted in 2009 - Regulation (EC) No 66/2010 on the EU eco-label); proposal for a Regulation revising the Community eco-management and audit scheme (EMAS) (adopted in 2009 - Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)); a Communication on public procurement for a better environment (COM(2008)400); and a proposed revision to the Directive on eco-design requirements for energy related products (adopted in 2009 - Directive 2009/125/EC establishing a framework for the setting of eco-design requirements for energy-related products). The package was followed by a proposal to revise the energy labelling Directive (COM(2008)778) and a proposal for a Regulation establishing an environmental technology verification scheme.

Apart from the short reference in the introduction to the Action Plan that the impacts of consumption in the EU are felt globally, as the EU is dependent on the import of energy and natural resources (CEC 2008j, 2) there is little to offer hope that this Action Plan will adequately address the EU's use of natural resources (see Adelle and Geeraerts 2009). The measures contained in the package focus on achieving leaner production, rather than ensuring absolute reduction in resource use. Environmental NGOs, such as European Environment Bureau (EEB), were critical of the package

stating that it is lacking in vision or ambition and does not show the way to reducing Europe's ecological footprint (EEB 2008). One symptom of the fact that, despite the rhetoric, the external environmental impacts of the EU's consumption hardly feature on the policymakers' radar screen, can be found in one of the measures adopted pursuant to the Action Plan, the revised Eco-Design Directive 2009/125/EC which provides a legal framework for the setting of eco-design requirements for energy-related products. Though the concept of eco-design, as defined in the Directive, relates to the environmental performance of products throughout their whole lifecycle, starting with the selection and use of raw materials, the provisions of the Directive determining whether implementing measures are to be taken for a particular type of product contain language suggesting that environmental effects outside the EU are somehow less important. Indeed, one of the criteria to be applied is whether the product in question has a significant environmental impact *within the Community* (emphasis added).

5.1.5 The EU Eco-Management and Audit Scheme

The Community eco-management and audit scheme (EMAS), established in 1993 and revised in 2001 by Regulation 761/2001/EC, is a voluntary EU system recognising organisations that strive to continually improve their overall environmental performance. EMAS establishes environmental policies, programmes and management systems, and requires their regular review or audit. The scheme also makes more information on the environmental performance of participating organisations available to the public and encourages the active involvement of employees in the establishment of an environmental management system (EMS). Participation in EMAS is entirely voluntary and was originally restricted to companies in industrial sectors, however since 2001 EMAS has been open to all organisations which have an environmental impact, whether they are a company, corporation, firm, enterprise, authority or institution, public or private (CEC 2010a). In July 2008, a proposed revision of EMAS which aimed to increase the participation of companies in the scheme and reduce its administrative burden and costs for small and medium sized enterprises (SMEs) was presented as part of the SCP package. The revised EMAS Regulation (EC) No 1221/2009 was adopted in 2009.

EMAS contributes to the implementation of the 6EAP by helping to improve collaboration and partnerships with enterprises; improving the functioning of voluntary instruments; and promoting sustainable consumption and production. However, while there is some evidence of positive environmental influence from the scheme, the scheme has not been as popular as the Commission had anticipated in the optimistic aftermath of Rio. Two large-scale studies of EMAS (the EVER study and the REMAS project) evaluated the perception, implementation and impacts of the scheme (CEC 2008n). The studies showed that EMAS has had some success in integrating environmental concerns into an organisation's activities and values as well as improving corporate image. The REMAS project even showed that the overall environmental management can be better under EMAS than under other systems (such as the global ISO 14001). However, the studies also showed that the scheme has not reached its full potential in terms of up-take (in 2008, there were only 4,095 organisations (6,119 sites) (CEC 2008k) registered with the scheme). Potential barriers to the adoption of EMAS were the costs of EMAS, the low management commitment and the paperwork/bureaucracy involved.

Despite these problems (which the revised Regulation seeks to address to some extent), EMAS does provide, at least in theory, a framework which could also include consideration of the external dimension of the EU's environmental impacts in general and consumption of natural resources in particular. Registered companies must conduct an environmental review of all direct and indirect environmental aspects of activities, products and services – past, present and planned which provides the basis for establishing an EMS. Direct environmental aspects cover activities an organisation has management control over including: emissions to air and water, management of waste, use of natural resources, and effects on biodiversity. Indirect environmental aspects cover activities an organisation does not have full control over and includes product related issues, capital investments, and the practices of contractors or suppliers. The operation of the EMS is to be audited regularly and verified and an annual environmental statement prepared.

The requirements of the environmental review are set out in Annex 1 of the Regulation and provide a framework to help companies identify significant environmental impacts of their activities. While these do not contain a specific instruction to include impacts outside the EU, their inclusion could be implicitly inferred (ie it is not specified where these impacts which are to be considered would be). Consideration of the fragility of the local, regional and global environment is also suggested when assessing the significance of an environmental impact (Annex 1 (2) (ii)). Moreover, taking into account the environmental performance and practices of contractors, sub-contractors and suppliers could include those from outside the EU and ensure the inclusion of environmental impacts from parts of a product or service's lifecycle outside the EU (although again this external dimension is not explicitly specified). The 2009 Regulation also extended the coverage of EMAS and made it available to all organisations located inside and outside the Community whose activities have an environmental impact within the Community. Therefore, there is scope in EMAS provisions to include consideration of external environmental impacts; this would be greatly enhanced if these types or locations of impacts were specified in Annex 1 of the Regulation and this aspect of the scheme highlighted and promoted.

5.1.6 The EU's Eco-label Scheme

Eco-labels provide information to consumers in a standardised way, allowing them to make more informed purchasing decisions based on environmental criteria. Widely supported eco-label schemes may influence producers in a similar way to traditional regulatory standards in markets where green consumerism is very strong. The European Eco-label is a voluntary scheme originally established in 1992, extended in 2000, and recently revised through Regulation 66/2010/EC. Products and services awarded the EU Eco-label carry the flower logo. Product groups covered include cleaning products, appliances, paper products, textile and home and garden products, lubricants and services such as tourist accommodation. Eco-label criteria, established according to the product groups, set out the requirements for each of the key environmental aspects which a product must fulfil in order to be awarded the Eco-label.

In practice the EU Eco-label scheme has not been particularly effective. While some national eco-label schemes have been successful, the EU's scheme has suffered from

under-use. Although the number of products and companies issued with certificates has increased year on year, at the beginning of 2009, only around 750 companies were awarded the Eco-label for their products (CEC 2009k). The scheme was deemed to not be achieving its objectives due to low awareness of the label and low uptake by industry resulting from overly bureaucratic processes and management. Consequently, as part of the July 2008 SCP package, the Commission proposed to revise the EU eco-label scheme (COM(2008)401) to simplify and streamline the process of awarding the voluntary label. The revision also proposed to extend the scope of the scheme to products and services for which eco-design and energy-related requirements may not be set, such as food and drink products. The revised Regulation (EC) No 66/2010 was adopted in 2010.

Eco-label criteria set out the environmental criteria a product or service must meet in order to be awarded the EU eco-label logo. The criteria are based on a number of factors which analyse the impact of the product or service on the environment throughout its lifecycle, starting from raw material extraction in the pre-production stage, through to production, distribution and disposal (CEC 2009j). In determining the criteria, the 2010 Regulation also states that the latest strategic objectives of the Community in the field of the environment are to be taken into account. This analysis of the environmental impact of the product or service throughout its lifecycle should in principle include environmental impacts which occur outside the EU. Although the Commission does not specify that this external dimension must be taken into account, in considering the most significant environmental impacts, in particular the impact on climate change, the impact on nature and biodiversity, energy and resource consumption, generation of waste, emissions to all environmental media, pollution through physical effects and use and release of hazardous substances one could also include those impacts which occur in third countries. Therefore, the EU eco-label scheme has the potential to reduce harmful environmental impacts and even the resource-use of products and services for which certain parts of or all of their lifecycle occurs outside the EU. In order to better address this external dimension, the inclusion of impacts in third countries should be more explicitly integrated in the legislation.

5.1.7 Green Public Procurement

Green public procurement (GPP) is a process whereby public authorities seek to procure goods, services and works with a reduced environmental impact throughout their lifecycle when compared to what would otherwise be procured. Public authorities spend around 16 per cent of the EU's Gross Domestic Product (GDP), particularly in sectors with relatively high environmental impacts and significant scope for improvement (transport, buildings and building fittings) (CEC 2008i). The purchase of more resource efficient products can bring direct benefits to purchasers and significantly cut costs for users, even where the initial expenditure is higher. GPP also rewards firms that develop green goods, provides incentives for the future development of technologies, and promotes innovation.

In recent years, there has been increasing interest in GPP at the EU and international level. In 2002, the OECD adopted a Recommendation on GPP. As a follow-up to the Johannesburg World Summit on Sustainable Development (WSSD) (September 2002), a Marrakech Task Force on sustainable procurement was created. Sustainable procurement policies have been launched in many OECD countries (USA, Japan,

Canada, Australia, and South Korea) as well as in rapidly developing countries (such as China, Thailand, and Philippines) (CEC 2008m). The European Commission's Communication on IPP of 2003 strongly recommended that Member States adopt national action plans on GPP by the end of 2006. In 2004 the Commission produced a handbook on environmental public procurement and in 2006 the renewed EU Sustainable Development Strategy set an EU wide target that by 2010 the average level of EU GPP should be up to the standard currently achieved by the best performing Member States. Consequently, in July 2008 the Commission presented a Communication on GPP which was part of the SCP package (CEC 2008m). In this Communication, it proposed a series of new actions aimed at addressing current obstacles to the uptake of GPP. These actions involved establishing a procedure for setting common GPP criteria and providing information on the costing of a product over its lifecycle, legal and operational guidance and political support linked to indicators and future monitoring. In line with the objective for GPP set out in the 2006 renewed SDS, the Commission also proposes that by 2010, 50 per cent of all public tendering procedures should comply with the common GPP criteria. Common GPP criteria are to be endorsed by Member States and included in their national action plans and guidance documents. At the end of 2008, DG ENV launched a process to develop criteria for 10 new priority product groups. Final product sheets and background reports are expected to be available by June 2010 (CEC 2010e).

GPP can shape production and consumption trends towards a more sustainable use of natural resources. This could potentially include benefits in terms of the more sustainable use of natural resources from both inside and outside the EU. However, like other instruments based on complying with environmental criteria (such as eco-labels and EMAS) the extent to which this occurs in practice is influenced by the specific criteria set and whether they explicitly mention environmental impacts outside as well as inside the Union. A preliminary set of criteria has been established in the framework of the 'Training Toolkit on Green Public Procurement' (CEC 2009l) and according to the 2008 GPP Communication, these are to be used as the basis for further development through consultation and the Open Method of Coordination. Neither these criteria nor the Communication itself explicitly recognises the potential contribution that this instrument could make to reducing environmental impacts of EU activities outside the EU. However, the toolkit does contain some relevant environmental criteria which would reduce negative environmental impacts outside the EU. For example, one of the core GPP criteria for the procurement of furniture is that all wood and wood-based materials come from legally sourced timber which can be verified through certificates of custody for the wood which have been certified by for example the Forest Stewardship Council or under the EU FLEGT scheme if a country has signed a Voluntary Partnership Agreement (VPA) with the EU (CEC 2009m)⁵.

⁵ However, this specific requirement may have broader sustainability implications if some developing countries do not have any such certification systems in place and so will be compelled to divert their timber products to less discerning countries and customers. So far, only two countries have signed VPAs (see section 4.4.7 and Beeko and Adelle 2009)

5.1.8 The Raw Materials Initiative (Pillar II and Pillar III)

The Commission's 2008 'Raw Materials Initiative' (CEC 2008b) encourages the development of an integrated European strategy to secure sufficient supplies of raw materials based on three pillars. A large part of the Communication is focused on the elaboration of Pillar I and securing access to raw materials in world markets (see section 4.1.8 above). However, the Communication also recognises the importance of strategies to enhance resource efficiency, recycling and reuse in the context of restricted access to resources. The Communication maintains that resource efficiency, recycling and substitution should be encouraged as a means of easing the EU's dependence on primary raw materials, reducing import dependency, improving the environmental balance and meeting industrial demands for raw materials and should be viewed as part of the transition towards sustainable consumption and production patterns in the EU economy (CEC 2008b).

Pillar III of the initiative addresses the need to reduce the EU's consumption of primary raw materials focusing on boosting resource efficiency and promoting recycling to reduce the EU's consumption of primary resources. The Communication does not specify any new measures to encourage resource efficiency or recycling, but rather mentions previous EU initiatives such as the Thematic Strategy on the Sustainable Use of Natural Resources (see section 5.1.1), the SCP/SIP Action Plan (see section 5.1.4), and the Lead Market Initiative on recycling; as well as the need to ensure better implementation and the harmonised enforcement of existing measures such as the waste shipment Regulation (EC) No 1013/2006 and relevant recycling legislation.

Pillar II of the initiative relates to fostering a sustainable supply of resources from European sources and focuses on putting in place the right framework conditions within the EU. Measures proposed in the Communication include promoting the exchange of best practice in relation to land-use planning and administrative conditions for exploration and extraction, developing guidelines that clarify how to reconcile extraction activities in or near Natura 2000 sites with environmental protection objectives, increasing the EU's knowledge base of mineral deposits, and promoting skills and research.

The impact of the raw materials initiative is still unclear and the Commission is expected to present a report evaluating progress in implementing the initiative in 2010. While much of the criticism of the raw materials initiative has focused on Pillar I and the EU's efforts to secure unfettered access to supplies of raw materials (see section 4.1.8), measures included in Pillar II and Pillar III (depending on how they are implemented) could in fact help to reduce the external environmental impact of the EU. Measures to promote resource efficiency, foster substitution of raw materials and increase recycling under Pillar III have the potential to reduce the EU's demand for raw materials sourced from both within and outside the EU. To the extent that measures to foster a sustainable supply of resources from European sources (Pillar II) are successful in actually increasing the supply of resources from within the EU, there may be a reduced demand for imports of raw materials from third countries. Thus, developments in these two areas have the potential to indirectly contribute to environmental protection outside the EU. However further evaluations of the policy are needed to assess these environmental impacts more fully. Moreover, given that in

the majority of cases minerals and raw materials are sourced from developing countries or emerging economies, the economic development aspects of a reduction in EU demand for natural resources from these countries should also be taken into consideration in such an evaluation.

5.1.9 The Renewable Energy Directive

Although not generally considered as part of the EU's policies in relation to sustainable consumption and production, the new Renewable Energy Directive (2009/28/EC) has obvious implications for the EU's consumption of (imported) biofuels. It also illustrates another example of an internal piece of EU legislation which requires actors within the EU to consider the environment (directly or indirectly) outside the EU (another example being the proposed Regulation for FLEGT – see section 4.4.7).

The Renewable Energy Directive was part of the Climate Action and Renewable Energy (CARE) Package politically agreed by the European Parliament and Council in December 2008 and officially adopted in April 2009. The Directive aims to foster the development of renewable energy. One of the most controversial elements of this Directive has been the adoption of a binding target to deliver 10 per cent of all transport fuels from renewable energy sources by 2020. A significant proportion of this target is expected to come from biofuels. This target applies across all Member States, i.e. all Member States must deliver 10 per cent of transport fuel from renewable sources by 2020 – unlike the broader target for renewable energy delivery for which burden sharing targets are differentiated across the Member States.

The controversy surrounding the adoption of the 10 per cent target focused on the potential environmental and development impacts that might be associated with the massive scaling up in demand for liquid biofuels (IEEP 2010). This EU target along with the growing number of related policies being introduced in other industrialised and developing countries is expected to stimulate an increase in the production of biofuels worldwide - a significant proportion of this production is expected to take place in developing countries. As a consequence of potential environmental consequences, the Directive contains environmental sustainability criteria for all biofuels⁶ and bioliquids⁷ (hereafter the term biofuels will be used to refer to both biofuels and bioliquids) to be used for energy purposes. These are designed to prevent, or at least, mitigate the impacts associated with the expanded use of these substances driven by the targets. The sustainability criteria apply to the cultivation of feedstocks used to produce biofuels both within and outside the EU. Only those biofuels that fulfil these minimum sustainability criteria will count towards the EU and Member State targets and renewable energy obligations and be eligible for certain forms of financial support.

⁶ Biofuels are defined in the Directive to be liquid or gaseous fuel for transport produced from biomass.

⁷ Bioliquids are defined to be liquid fuel for energy purposes, including electricity, heating and cooling produced from biomass.

The sustainability criteria include the following specific requirements. It should be noted that only the first requirement applies to biofuels and liquid products from waste and waste residue (other than from agriculture, aquaculture, fisheries and forestry) (IEEP 2010).

- Greenhouse gas reductions ó these must be a minimum of 35 per cent (applicable only from 2013 for installations operational before January 2008). As of 2017 these savings need to increase to 50 per cent. After 2017 these levels rise to 70 per cent for biofuels/liquids produced in installations whose production commenced from 2017 onwards.
- Biofuels and bioliquids shall not be made from raw materials obtained from land with high biodiversity value after January 2008. These lands include primary forests and other wooded land, protected areas by law, and highly diverse natural grasslands (to be defined later through comitology).
- Biofuels and bioliquids shall not be made from raw material obtained from land with high carbon stock, including: wetlands, continuous forests etc.
- Biofuels and bioliquids shall not be made from raw material obtained from peatland (in Jan 2008), unless it is proven that cultivation and harvesting does not involve land drainage of previously un-drained soils.
- Raw materials cultivated in the EU must be obtained in accordance with environmental requirements under cross compliance.

The debate surrounding the development of these criteria has been heated and in some specific areas the criteria are still under development and there are still fears that they will not ensure sustainability entirely. The criteria fail to address a number of related environmental risks including Indirect Land Use Change (ILUC) (e.g. when crops for biofuels production displace existing agriculture production and this food crop production then moves to other areas which were not in use before) associated with biofuel production which remains the most pressing environmental threat associated with the expansion of biofuel demand. The Directive's sustainability criteria only deals with direct land use change, for example, by prohibiting the conversion of protected or highly biodiverse areas for the growth of biofuel feedstocks. However, there is a significant risk that biofuel feedstocks may displace other agricultural production onto these valuable lands and at present there is no mechanism for controlling these indirect shifts caused by the increased pressure on land (IEEP 2010). In addition, if not properly monitored and reviewed, there is a significant risk that the adoption of targets promoting the use of biofuels will lead to environmental degradation. In particular, with a European wide scheme, there are concerns as to how effective oversight of impacts and rapid adaptation in the event of negative consequences can be delivered.

The EU's sustainability criteria as they currently stand cannot be considered adequate to address all the risks associated with increased biofuels production, particularly in developing countries. Moreover, the EU's sustainability criteria alone are unlikely to guarantee the sustainable production of biofuels in developing countries because certification criteria need to apply to domestic and all export markets in order to prevent negative displacement effects. There is thus the potential that the EU's internal biofuels policy may undermine rather than promote some of its external environmental objectives and commitments. A more comprehensive assessment of the implications of biofuels policies is needed and an integrated approach should be developed, for instance including estimates for the carbon impact of indirect land use

changes (ILUC) and focusing on the capacity for land-use planning and enforcement (Chiavari and Withana 2009).

5.2 Promoting Sustainable Use of the Seas and Conservation of Marine Ecosystems

6EAP Objectives/Priority Actions:

Article 6(1) outlines the objective of ‘conservation, appropriate restoration and sustainable use of marine environment, coasts and wetlands’

Article 6(2 g) goes on to state the following priority actions with which to pursue this: ‘promoting sustainable use of the seas and conservation of marine ecosystems, including sea beds, estuarine and coastal areas, paying special attention to sites holding high biodiversity value’

EU policy instruments examined in this section:

- Common Fisheries Policy;
- Marine Thematic Strategy and Marine Strategy Framework Directive; and
- EU Integrated Maritime Policy

5.2.1 The Common Fisheries Policy

Marine fisheries policy is an exclusive competence of the EU. This means that all decisions are taken at the level of the Union. Member States cannot intervene in fisheries management unless they are explicitly delegated the powers to do so (Van den Bossche, 2009). Therefore, the Common Fisheries Policy (CFP) provides *the* framework for European and national fisheries management activities. The first common measures in the fishing sector were adopted in 1970 when it was agreed that, in principle, EU fishermen should have equal access to Member States’ waters. To ensure that smaller vessels could continue to fish close to their home ports, a coastal band was reserved for local fishermen. Measures were also adopted for a common market in fisheries products and a structural policy was established to coordinate the modernisation of fishing vessels. Despite the CFP’s rather humble beginnings, it has developed into a significant area of Community activity, consisting of a collection of more than seven hundred regulations. Four relatively distinct strands of the CFP can be identified (Van den Bossche 2009):

- *Conservation policy* – governing the direct exploitation of Community fish resources with the aim of conserving and managing living marine aquatic resources, and providing for their exploitation on a sustainable basis;
- *Structural policy* - governing the modernisation of the sector, including expansion of aquaculture, marketing, processing, and vessel building and decommissioning aiming to achieve a balance between fishing capacity and fish stocks;
- *Market policy* - aimed at stabilising markets, guaranteeing supplies of fish products and ensuring reasonable prices for consumers and reasonable incomes for workers; and
- *External policy* - governing activities of vessels active on the high seas or in waters of third countries, and international trade in fish products.

Since the first regulations were adopted, there have been three major reforms of the Community’s fisheries policy: in 1983, 1992 and 2002.

The 2002 reform of the CFP aimed at ensuring the sustainable development of fishing activities from an environmental, economic and social point of view. This in fact became the main stated objective of the CFP which was set out in a new basic Regulation, Regulation (EC) No 2371/2002 (Van den Bossche 2009). Article 2(1) states that:

'The Common Fisheries Policy shall ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions'.

The 2002 reform also aimed to improve the basis of the decision-making process through scientific advice and increased participation of stakeholders (CEC 2009n). Changes included the move towards a long-term management of fish stocks (away from annual decision making on Total Allowable Catches); a new fleet policy to limit and gradually reduce overcapacity with Member States being given more responsibility for fleet capacity management; and a commitment to improve the governance of the CFP. The 2002 reform was followed by a range of implementing legislation with a view to meeting the revised obligations.

However, the problems of overcapacity and overexploitation of fish stocks continued and in 2009, the Commission launched a review of the CFP based on an analysis of the achievements and shortcomings of the existing policy. In April 2009, the Commission published a Green Paper on the Reform of the CFP (CEC 2009b). A legislative proposal is expected in 2011 and a new CFP should be in place from 2013. The Green Paper singles out four structural shortcomings of the current CFP: the lack of precise policy objectives, with respect to environmental responsibility and with respect to general maritime issues; a centralised decision-making system which provides for short-term solutions while undermining sustainability in the long-term; insufficient responsibility granted to the industry; and a lack of a political will to ensure compliance with fishing limitations.

The ongoing CFP reform provides an opportunity to ensure that the CFP achieves its objective of ensuring sustainable exploitation of fisheries resources. However, some of the measures proposed in the 2009 Green Paper risk externalising the internal shortcomings of the CFP towards non-Community waters. Therefore, the external element of the fishing fleet should be managed within the CFP, under the aim of protecting oceans biodiversity and rebuilding third countries ocean ecosystems towards a good environmental status of the oceans.

5.2.2 Marine Thematic Strategy and the Marine Strategy Framework Directive

The Marine Thematic Strategy was published by the European Commission in October 2005 (CEC 2005d). It was preceded by more than two years of consultation which was launched by the Commission's Communication entitled *'Towards a Strategy to Protect and Conserve the Marine Environment'* (CEC 2002c) and included two high level international stakeholder conferences (Pallemaerts et al 2007). The overall objective of the Thematic Strategy is to protect and restore Europe's oceans and seas and ensure that human activities are carried out in a sustainable manner so that current and future generations enjoy and benefit from biologically diverse and dynamic oceans and seas that are safe, clean, healthy and

productiveø The Marine Thematic Strategy was also destined to contribute to the broader aim of developing a new overall EU Integrated Maritime Policy (see Pallemmaerts 2003).

The Thematic Strategy was to be taken forward through new legislation, rather than revisions of existing law. The Marine Strategy Framework Directive (MSFD) proposed by the Commission in parallel with the Strategy, was adopted by the Parliament and Council in May 2008 as Directive 2008/56/EC. The MSFD provides for a set of measures aimed at achieving 'good environmental status' in the marine environment by 2020 at the latest. This is to be achieved through the development and implementation, by each of the relevant Member States, of one or more marine strategies for the marine waters under their jurisdiction. Member States' marine strategies are to include a programme of measures to achieve good environmental status. Programmes of measures should be based on an ecosystem approach, and may include any of a number of approaches set out in an annex. These include 'spatial and temporal distribution controls' ie management measures that influence where and when an activity is to occur; and management co-ordination measures to ensure that different sectoral measures at different institutional levels are coordinated (IEEP 2010). The timetables and targets contained in the Directive are best described as semi-quantitative in that the quantitative elements are largely to be developed by the Member States as they characterise marine waters and develop programmes of measures to deliver 'good environmental status'

The MSFD essentially applies to four marine regions: the Baltic Sea; the North-east Atlantic, including the North Sea; the Mediterranean Sea; and the Black Sea. It has external implications to the extent that the riparian States of these seas include non-member states of the EU. While there is only a single non-EU member bordering on the Baltic Sea (the Russian Federation), the majority of the riparian States of the Mediterranean and the Black Sea are third countries. However, international cooperation for the protection of the marine environment of these regional seas has been established for a long-time through regional multilateral agreements under international law involving all riparian states, whether Member States of the EU or not, which have, with varying degrees of success, developed common programmes of measures, strategies and action plans addressing various threats to the marine environment. The MSFD recognises that '[s]ince marine regions or sub-regions are shared both with other Member States and with third countries, Member States should make every effort to ensure close coordination with all Member States and third countries concerned'ø The importance of the 'existing institutional structures established in marine regions or sub-regions, in particular Regional Sea Conventions'ø is duly acknowledged. The Directive pursues the same objectives as those existing conventions and ostensibly seeks to 'contribute to the fulfillment of the obligations and important commitments of the Community and the Member States under [these] relevant international agreements'ø The operative provisions on marine strategies actually require Member States to 'make every effort, using relevant international forums (í) to coordinate their actions with third countries'ø and to 'build upon relevant existing programmes and activities developed in the framework of structures stemming from international agreements such as Regional Sea Conventions'ø The preamble refers quite explicitly to the external impacts of EU policies where it states that 'the Community needs to reduce its impact on marine waters regardless of where their effects occur'ø

So, on the face of those provisions, the MSFD has fully taken into account the external dimensions of EU marine environment protection policy, and should make a positive contribution to wider international efforts in this area. However, from a political and institutional viewpoint, matters are not as straightforward as they seem. Indeed, the EU is a latecomer to the field. The MSFD quite abruptly adds a layer of EU law obligations for EU Member States on top of an intricate network of cooperative arrangements involving all riparian states which has been put in place under international law as a result of years of effort. For the next few years, the resources which Member States can devote to marine environmental protection will be fully absorbed by the work of transposing and implementing the MSFD and thus distracted from the ongoing work under the Regional Seas Conventions. This may well turn out to be detrimental rather than beneficial to the effectiveness of existing international efforts. The MSFD effectively treats non-member States of the EU in a rather patronising way, where it provides: "Third countries with waters in the same marine region or sub-region as a Member State should be invited to participate in the process laid down in this Directive" Third countries may hesitate to invest in a new, largely duplicative EU process which they have had no role in shaping, as EU Member States withdraw resources from international cooperative processes with third countries which they were themselves involved in establishing.

Since the MSFD aims to improve the environmental status of marine waters, the scope of the Directive to a significant extent focuses on reducing pollution. However, it also includes a focus on the protection, and even restoration, of marine ecosystems so as to safeguard marine biodiversity. Article 13 of the Directive states that in the programmes of measures to be drawn up to achieve good environmental status the Member States "shall include spatial protection measures, contributing to coherent and representative networks of marine protected areas, adequately covering the diversity of the constituent ecosystems" Therefore, the MSFD has a potential to improve the prospects of the EU's fisheries resources, in so far as Member States' efforts to implement those provisions are not counteracted by the CFP. Indeed, the provisions of the MSFD are without prejudice to the CFP. The preamble merely recommends that future CFP reform "should take into account the environmental impacts of fishing and the objectives of this Directive" but in the meantime Member States are prevented by exclusive EU competence from independently taking fisheries-related measures to protect marine ecosystems.

Member States have until July 2010 to transpose Directive 2008/56/EC into national legislation. Therefore, it is too early to examine levels of implementation, especially for the conservation of marine resource elements by Member States. While some green commentators have suggested that, "it certainly sets the scene for EU member states to increase their efforts in marine conservation" (Greenpeace 2010), others seem less enthusiastic. Salamone (2006, 1328), for example, suggests that the strategy "constitutes a highly inadequate approach to long-term protection of the European Seas" He argues, that asking Member States to develop their own strategies is a form of "renationalisation" which is all the more detrimental because it excludes key policy areas like the CAP and CFP in which the EU has centralised powers (*ibid*).

5.2.3 *EU Integrated Maritime Policy*

In October 2007 the European Commission published its proposals for an Integrated Maritime Policy (CEC 2007b) for the EU as well as an accompanying Action Plan on the Integrated Maritime Policy (CEC 2007c). The Communication on the Integrated Maritime Policy stressed the range of problems facing Europe's seas and the need for joined-up decision making to tackle these problems and deliver economic growth. The Communication's suggestions included new working methods, cross-cutting tools and a wide range of specific actions that aimed to benefit the maritime economy, protect the marine environment, strengthen research and innovation, foster development in coastal and outermost regions, address international maritime affairs, and raise the visibility of Europe's maritime dimension. The Communication was not a legislative document. Instead, it suggested an approach and a range of instruments for which subsequent legislative proposals could be made at a later date. The Commission has since developed and adopted a number of measures to implement its integrated vision of maritime policy including: Guidelines adopted in 2008 for Member States to draw up their own integrated Maritime Policies (CEC 2010b); an Action Plan at the end of 2009 towards setting up a European network for maritime surveillance – the European Marine Observation and Data Network (EMODNET) – for monitoring of fisheries, the environment, policing, immigration, etc. (CEC 2010c); and a proposal for a maritime transport strategy in January 2009 (CEC 2009o) which set out the main strategic objectives for the European maritime transport system up to 2018.

While the Communication stressed the importance of the Marine Strategy Framework Directive (see section 5.2.2) as the principle tool to address environmental aspects, it also proposed a number of specific actions including: launching pilot areas to reduce the impact of and adapt coastal zones to climate change; supporting efforts to reduce air pollution and greenhouse gases from shipping and supporting action to reduce environmental impacts from ship dismantling. In relation to fisheries, the Communication stated that fisheries management – must take more into account the welfare of coastal communities – and that – recovery of fish stocks will be energetically pursued –. It stressed the importance of extraction at maximum sustainable yields by 2015, and specifically stated that the Commission would take action to eliminate discards, destructive fishing practices and illegal, unreported and unregulated fisheries.

In October 2009 the Commission presented a progress report (CEC 2009p) on the Integrated Maritime Policy setting out developments over the past two years and outlining priorities for the future. It highlights progress in the areas of maritime governance, cross-sector tools such as maritime spatial planning, actions in particular sectors such as renewable energy and transport as well as the challenge of the MSFD and action at the regional seas level.

The establishment of an Integrated Maritime Policy is seen as one of the key achievements of the first Barroso Commission (CEC 2009q). The progress report claimed that out of 65 actions in the Action Plan, 56 have been completed or launched. In addition, the Commission has launched a number of maritime activities that were not originally foreseen in the Action Plan. In looking to the future, the report set out six – strategic goals – on integrated maritime governance, cross-cutting

policy, defining the boundaries of sustainability, sea-basin strategies, the international dimension of the integrated maritime policy and a renewed focus on sustainable economic growth, employment and innovation. The Commission will set out a policy document detailing projects and initiatives to take forward these six strategic directions in 2010.

With regard to the international dimension of integrated maritime policy, the Commission published a strategy document (CEC 2009u) at the same time as the 2009 progress report which sets out how to ensure that the EU exerts stronger influence in the international arena on maritime affairs so as to strengthen the global governance of the oceans and seas and thus enhance protection of the marine environment. In this Communication, the Commission identified the following key themes that call for international cooperation: international governance based on the rule of law, in particular the United Nations Convention on the Law of the Sea (UNCLOS); protection of marine biodiversity, including in the high seas; climate change; maritime safety and security and freedom of navigation; promoting decent working conditions in the maritime sectors; and understanding the sea better through international research programmes.

The 2009 strategy Communication states that the EU will continue to support UN efforts to ensure that UNCLOS and other relevant international agreements in the maritime field are ratified by partner countries and that international monitoring and law enforcement instruments are strengthened. To this end, the EU will recommend and promote the ratification and implementation of these instruments in relevant bilateral negotiations and agreements. With regard to the protection of marine biodiversity, the Communication states that the EU should continue to support an integrated approach to the conservation and sustainable use of marine biodiversity, particularly in areas beyond national jurisdiction. The Communication recognises that fishing activities have a major impact on biodiversity and notes that the EU is continuously working to curb fleet overcapacity, eradicate IUU fishing and outlaw fishing practices which cause serious damage to marine ecosystems while supporting efforts in developing countries that are highly dependent on sea resources to use these resources sustainably. The Communication also notes that the Commission is developing regional cooperation approaches within shared sea basins (eg for the Arctic, the Baltic and the Mediterranean) and aims to promote regional cooperation in the development of cross-cutting tools for integrated policy-making, eg integrated surveillance of maritime activities, improvement of marine knowledge, maritime spatial planning and integrated coastal management zones. The EU also aims to establish high-level dialogues on maritime affairs with key partners.

These proposed approaches have the potential to increase dialogue and collaboration between the EU and key partners on marine issues. Promoting the ratification and implementation of UNCLOS and other relevant international agreements in the maritime field in the EU's bilateral negotiations and agreements with third countries and measures to strengthen international monitoring and law enforcement instruments will also help promote a more sustainable use of marine resources. However, it is unclear how some of the proposed approaches will be implemented in practice and it is still too early to assess the eventual impact of the proposed approaches on the environment.

5.3 Conclusions on Internal Policy Instruments

This section has outlined the main internal policy instruments which the EU could use to pursue the external dimension of its internal objectives and priority actions set out in the 6EAP relating to sustainable consumption and production. A brief summary of the evaluation of the implementation of each of the 6EAP's objectives/priority actions considered in this report is set out in Table 4 below.

Table 4: Summary Evaluation of the EU's Implementation of Internal Objectives / Priority Actions of the 6EAP with an Implicit External Dimension

Objective/ Priority Action	Policy Instrument	Evaluation
<ul style="list-style-type: none"> - Ensuring that the consumption of resources and its impacts do not exceed the carrying capacity of the environment; - Decoupling the link between economic growth and negative environmental impacts; - Promotion of extraction and production methods and techniques to encourage eco-efficiency. 	<ul style="list-style-type: none"> - Thematic Strategy on the Sustainable Use of Natural Resources; - Thematic Strategy on Waste Prevention and Recycling; - Sustainable Consumption and Production/ Sustainable Industrial Policy Action Plan; - Integrated Product Policy; - Environmental Management Audit Schemes; - Eco-label Scheme; - Green Public Procurement; - Raw Materials Initiative (Pillar II and Pillar III); - Renewable Energy Directive. 	<ul style="list-style-type: none"> - The Natural Resources Thematic Strategy addresses the negative environmental impacts of resource use but not the need to reduce the EU's absolute use of resources (no quantitative targets for reduction of resource use or resource efficiency). - A number of shortcomings of the Waste Thematic Strategy impede its ability to positively improve the EU's recycling record. - The measures in the SCP/SIP Action Plan focus on achieving leaner production rather than ensuring absolute reduction in resource use. - The IPP framework set up by the EU offers the potential (yet to be realised) for considering lifecycle stages outside the EU of products consumed within the EU. - EMAS and eco-labels also provide a potential framework to consider the external dimension but their low up take to date has limited their capacity to deliver benefits in practice. - The Commission's GPP toolkit offers some useful criteria which could reduce negative environmental impacts outside the EU. - Pillar II and Pillar III of the Raw Materials Initiative have the potential to indirectly contribute to environmental protection outside the EU. However further evaluations of the policy are needed to assess these environmental

		<p>impacts more fully.</p> <ul style="list-style-type: none"> - Sustainability criteria have been developed for the cultivation of feedstocks to produce biofuels both within and outside the EU. However, these criteria as they currently stand are not adequate to address all the risks associated with increased biofuels production, particularly in developing countries.
<p>Conservation, appropriate restoration and sustainable use of marine environment, coasts and wetlands;</p>	<ul style="list-style-type: none"> - Common Fisheries Policy - Marine Thematic Strategy and Marine Strategy Framework Directive - EU Integrated Maritime Policy 	<ul style="list-style-type: none"> - The CFP has not led to sustainable fishing inside the EU, instead political factors have led to continued declines in fish stocks and the overcapacity of fishing fleets. - The current reform of the CFP offers yet another opportunity to improve upon this situation. - The MSFD adds an additional layer to the existing network of international cooperative arrangements may turn out to have a detrimental rather than beneficial impact on the marine environment in certain marine regions. - The EU's increasingly integrated and active approach to marine resources may offer further opportunities to better manage those resources (both in the EU and in third countries).

The Thematic Strategy for the Sustainable Use of Natural Resources has obvious implications for global natural resources as many of the resources used in the EU come from third countries. However, the Thematic Strategy fails to meet the objectives set in the 6EAP -to break the linkages between economic growth and resource use- and -to achieve the goal that consumption of resources and their associated impacts do not exceed the carrying capacity of the environment- The Thematic Strategy tends to focus on reducing the negative environmental impacts of the EU's resource use rather than suggesting a shift to more sustainable consumption patterns. It is also unclear whether the initiatives in the Thematic Strategy will result in any real changes in how natural resources are used in the EU, and the negative environmental impacts associated with this resource use.

The Thematic Strategy on the Prevention and Recycling of Waste also contributes to the 6EAP's resource-based objectives, ie to ensure that the consumption of resources and their associated impacts do not exceed the carrying capacity of the environment and breaking the linkages between economic growth and resource use. This creates an obvious link with the EU's global resource use because increased recycling and the eventual use of secondary raw materials could reduce the EU's consumption of

primary raw materials. While the Thematic Strategy does not specifically focus on this external aspect, the logic behind the Thematic Strategy does not prevent it from influencing the level of resource imports if successfully implemented. However, in practice, there are a number of shortcomings with the Waste Thematic Strategy which impede its ability to positively improve the EU's recycling record in general and in meeting the priority actions set out in the 6EAP.

A number of EU instruments offer some potential (if not yet fully realised) to consider the external environmental impacts of EU resource use. For example, Integrated Product Policy (IPP) seeks to minimise the environmental impacts of products by looking at all phases of a product's lifecycle and taking action where it is most effective (for a detailed discussion of IPP, see Pallemmaerts et al 2006). There is an obvious external dimension of IPP and an important aspect is to ensure that the negative environmental impacts of products are not pushed out or harboured in stages which take place outside the EU. However, the main focus of IPP to date has been on lifecycle stages within the EU, while environmental effects outside the EU are considered to be somehow less important. Taking the external dimension of IPP into account is complex and involves further research on the origins and impacts of products consumed in the EU as well as serious consideration of how the EU could influence impacts outside EU Member States.

The 2008 Sustainable Consumption and Production (SCP) package set out a series of measures which aim to deliver more sustainable consumption and production while improving the competitiveness of the economy. However, the measures contained in the package focus on achieving leaner production, rather than ensuring absolute reduction in resource use and there is little consideration of how to address the EU's (over)use of natural resources. While some of the measures included in the package (eg EMAS and eco-label) have the potential to reduce harmful environmental impacts and resource use in third countries, this external aspect is not made explicit in the current legislative texts and could be enhanced if they were better highlighted and promoted. Green public procurement can shape production and consumption trends towards a more sustainable use of natural resources and could potentially ensure more sustainable use of natural resources from both inside and outside the EU. However, like other instruments based on complying with environmental criteria (such as eco-labels and EMAS) the extent to which this occurs in practice is influenced by the specific criteria set and whether they explicitly mention environmental impacts from outside as well as inside the Union. A preliminary set of criteria established in the framework of the 'Training Toolkit on Green Public Procurement' does not explicitly recognise the potential contribution that GPP could make to reducing environmental impacts of EU activities outside the EU. Although it does contain some relevant environmental criteria, which would reduce negative environmental impacts outside the EU.

Certain measures included in Pillar II and III of the 2008 'Raw Materials Initiative' could in fact help to reduce the external environmental impact of the EU (depending on how they are implemented). Measures to promote resource efficiency, foster substitution of raw materials and increase recycling under Pillar III have the potential to reduce the EU's demand for raw materials sourced from both within and outside the EU. To the extent that measures to foster a sustainable supply of resources from European sources (Pillar II) are successful in actually increasing the supply of

resources from within the EU, there may be a reduced demand for imports of raw materials from third countries. Thus, developments in these two areas have the potential to indirectly contribute to environmental protection outside the EU, however further evaluations of the policy are needed to assess these environmental impacts more fully.

One of the most controversial elements of the new EU Renewable Energy Directive (2009/28/EC) has been the adoption of a binding target to deliver 10 per cent of all transport fuels from renewable energy sources by 2020. A significant proportion of this target is expected to come from biofuels and there has been much debate over the potential environmental and development impacts that might be associated with the massive scaling up of demand for liquid biofuels, particularly as a significant proportion of this production is expected to take place in developing countries. To allay these fears, the EU introduced sustainability criteria for the cultivation of feedstocks used to produce biofuels both within and outside the EU. However, these criteria as they currently stand cannot be considered adequate to address all the risks associated with increased biofuels production, particularly in developing countries. There is thus the potential that the EU's internal biofuels policy may undermine rather than promote some of its external environmental objectives and commitments.

To date, the framing and implementation of the CFP and the achievement of sustainable outcomes has been dogged by the avoidance of some tough decisions, increasing regulatory complexity, the struggle to balance long and short-term thinking and the challenges presented by the political process. This has resulted in continued declines in fish stocks, overcapacity of fishing fleets. The ongoing reform of the CFP provides an opportunity to ensure that this policy finally achieves its objective of ensuring sustainable exploitation of fisheries resources. However, some of the measures proposed in the 2009 Green Paper risk externalising the internal shortcomings of the CFP towards non-Community waters. The external element of the fishing fleet should be managed within the CFP under the aim of protecting oceans biodiversity and rebuilding third countries ocean ecosystems towards a good environmental status of the oceans. A significant move towards better environmental outcomes could consist in reframing the CFP objectives so that the environmental sustainability dimension is given prior consideration in emergency cases or at least equal consideration alongside the economic and social dimensions when adopting conservation measures.

The Marine Thematic Strategy and the Marine Strategy Framework Directive (MSFD) (as well as to some extent the EU new Integrated Maritime Policy) have the potential to improve the EU's use of its marine resources, mainly through Member States' Marine Strategies to ensure 'good environmental status' of their regional seas. The MSFD has external implications to the extent that the riparian States of the four marine regions covered in the Directive include non-member states of the EU. However, international cooperation for the protection of the marine environment of these regional seas has been established for a long time through regional multilateral agreements under international law involving all riparian states, whether Member States of the EU or not, and the MSFD adds a layer of EU law obligations for EU Member States on top of this intricate network of cooperative arrangements. Over the next few years, the resources which Member States can devote to marine environmental protection are likely to be fully absorbed by the work of transposing

and implementing the MSFD, thus detracting resources from international cooperative processes. This may well turn out to be detrimental rather than beneficial to the effectiveness of existing international efforts as third countries may be reluctant to invest in a new, largely duplicative EU process which they have had no role in shaping.

The Commission's Communication on developing the international dimension of the EU's Integrated Maritime Policy has the potential to contribute to the sustainable use of global marine resources. For example efforts to ensure that UNCLOS and other relevant international agreements in the maritime field are ratified by partner countries (through their promotion in relevant bilateral negotiations and agreements); strengthening international monitoring and law enforcement instruments; the development of regional cooperation approaches within shared sea basins and establishment of high-level dialogues on maritime affairs with key partners. Despite the potential of these approaches, there are also some grounds for criticism in that they do not go far enough in certain respects while it is unclear how some of the proposed approaches will be implemented in practice. It is still too early to assess the impact of the proposed approaches on the environment.

6 DISCUSSION

6.1 Reflections on the EU's Pursuit of Sustainable Consumption and Production

The EU has made great advances in the last four decades through its environmental *acquis* to reduce the negative environmental impacts of resource use. However the absolute amount of resources used by the EU continues to grow and is one of the key environmental challenges currently facing the EU. Chapter 4.3 of Agenda 21 states that 'the major cause of continued deterioration of the global environment is the unsustainable pattern of consumption and production, particularly in industrialised countries'. The environmental consequences of this overuse of resources are already clear. While climate change linked to the use of fossil fuels is perhaps the most high profile example, other critical environmental problems (eg halting the loss of biodiversity) can only be tackled if the consumption of resources is addressed.

While the EU has recognised the external dimension of its (over)use of natural resources, most notably in its Thematic Strategy on Natural Resource Use, the EU's measures to address this issue have been limited to date. The Thematic Strategy deals more with reducing the negative environmental impacts of the resources we already use rather than suggesting a shift to more sustainable consumption patterns. Very little action has been devoted to reducing the EU's absolute consumption of natural resources, especially those sourced from outside its borders. The Thematic Strategy did not propose many innovative approaches to decouple resource consumption and economic growth, nor did it contain quantitative targets for the reduction of resource use or resource efficiency. The EU's SCP/SIP Action Plan offered some concrete legislative proposals to add to or amend some existing (but fairly low impact) schemes. However, these were also mainly aimed at encouraging leaner and cleaner production rather than reducing overall resource use (with some potential for reducing negative external environmental impacts not yet fully realised).

The EU's activities in relation to sustainable consumption and production appear to place more emphasis on eco-efficiency than absolute resource reduction. This approach fits well with the Lisbon Strategy for Growth and Jobs as it offers the EU potential to strengthen its economy through new 'green growth'. However, the approach has also been criticised for relying too heavily on technological fixes while not having any concrete reduction targets (FOEE 2009). The focus on environmental impacts and efficiency allows the reduction of impacts in a situation of high or even growing overall amounts of resource use. SERI (2009, 2) warn that:

'this technology-optimistic position is not justified by empirical evidence. At current high levels of resource consumption in Europe, substituting a significant share of high impact resources for lower-impact resources is difficult to implement in an environmentally benign way'.

The SERI report goes on to argue that concrete targets for increasing resource productivity and decreasing resource use and related environmental impacts are missing in all main EU policies, as are indicators of absolute EU resource use (*ibid*).

The EU's technological approach to sustainable consumption and production is in line with an 'ecological modernisation' approach. Baker (2007) argues the EU has adopted

this 'ecological modernisation' approach in its environmental practices while at the same time declaring its commitment to the broader concept of sustainable development, which includes a social justice element and thus an external dimension. The concept of ecological modernisation implies that 'it is possible through the development of new and integrated technologies to reduce the consumption of raw material, as well as the emissions of various pollutants, while at the same time creating innovative and competitive products' (Andersen and Masse 2000, 337). Ecological modernisation is both a political programme and an ideological discourse that emerged in Western countries and international organisations around 1980 and which nowadays dominates environmental politics. At that time, it denied the validity of assumptions underlying the pollution control strategies of the 1970s (and/or reacted to the radical environmental movements of the 1970s) and 're-conceptualised' the relationship between the economy and the environment.

Whereas the first wave of environmental policy assumed there was a zero-sum trade-off between economic prosperity and environmental protection, the 'ecological modernisation' ideology sees environmental protection no longer as a burden on the economy, but rather as a potential source of future growth (Weale 1992). In other words, environmental management is seen as a positive-sum game. Thus the core assumption of the ecological modernisation approach is that environmental problems can be solved within the context of the main institutional arrangements of society (Hajer 1995), ie that no structural change is needed to solve the environmental crisis.

A number of authors, including Baker (2007) warn that ecological modernisation is not compatible with sustainable development. Langhelle (2000) argues that:

'The different ways in which these concepts frame various approaches to environmental policy have important implications. They affect not only the scope but also the goals, targets and level of ambition that environmental policy makers should aim at. Ecological modernisation should be seen as a necessary but not sufficient, condition for sustainable development.'

Therefore ecological modernisation reduces the policy problem of sustainable consumption and production to concerns about resource efficiency, waste and pollutant emissions. Thus, it appeals to high consumption societies (especially in the North) as it minimises the degree of social and cultural change. The EU's approach to sustainable consumption and production thus gives some grounds for concern.

Both the ecological modernisation approach and sustainable development prescribe the more efficient use of energy and resources, that is 'to produce more with less'. The ecological modernisation stops here, whereas 'producing more with less' is a necessary but not sufficient condition for sustainable development (Langhelle 2000). The Brundtland Commission indeed stated that economic development can only be environmentally and socially sustainable if the content of growth would change so that it is made more equitable in its impact, ie if the distribution of income would be improved (WCED 1987). Thus, the ecological modernisation approach needs to be complemented by the strategy to change the content of growth, ie by reducing energy and resource intensive activities or reducing the total consumption of environmental resources (Rasmussen 1997, in Baker 2007).

This brings us to one of the most important differences between these two concepts for our purposes: an ecological modernisation approach is more likely to exclude consideration of the external dimension as it is relatively silent on issues of social justice, on the distribution of wealth, or of society-nature relations. These are issues on which Brundtland's understanding of sustainable development places emphasis (Baker 2007). Ecological modernisation relates primarily to the concerns of Northern industrialised countries (Mol 1996; Dryzek 1997) and is not generally concerned with global environmental problems which take place elsewhere, such as tropical biodiversity loss, nor with intra- and inter-generational (social) justice. Ecological modernisation only relates to a specific set of environmental problems, ie 'normal' environmental problems such as water pollution, chemical waste and acidification, which can be solved by the use of science and technology. Global environmental problems, such as loss of biodiversity, seem to fall outside its frame of reference (Mol 1996), as does the global consumption and fair allocation of natural resources, which are at the heart of a social justice interpretation of sustainable development as conceived by Brundtland.

The EU's practice of ecological modernisation may help explain seemingly incoherent policies such as its approach to acquiring access to raw materials. The 2006 Global Europe paper characterises the policy problem not in terms of the ultimate ecological limits of the earth and the needs of the world's poor (as in Brundtland's understanding of sustainable development), but in terms of securing the EU's 'fair share' of resources in the context of increasing international competition for these resources. The need to remove trade restrictions on access to natural resources is highlighted as particularly important and is elaborated in the Raw Materials Initiative as well as in EPA negotiations and the FPAs. Although environmental and development issues are mentioned, these issues are not adequately considered and too much confidence is placed on the assumption that existing provisions in the EU's development policy and SIAs of trade agreements will safeguard these considerations.

It is clear that these two approaches to the use of natural resources (ecological modernisation and raw materials acquisition) are linked. Both allow the EU to pursue its competitive agenda and 'marry' economic and environmental factors. Ecological modernisation calls for the technological solution to the issue of resource scarcity and highlights the role of energy and resource efficiency. Such an approach does not threaten economic growth and can spur 'green growth' and a virtuous circle of eco-innovation and the design, production (and consumption) of more and more efficient products. Ultimately such green innovations will be one part of the solution to the sustainable consumption and production issue. Technological efforts can help to reduce resource use, and resulting pollution, to within ecological limits but only if coupled with a fundamental change in consumption patterns to ensure the equitable access to resources. Resource efficiency is not enough if it is coupled with an increase in absolute resource use⁸. Therefore, ecological modernisation is a necessary but not

⁸ For example, it is not enough just to produce more energy efficient electrical devices if the electricity used in domestic households is increasing overall due to the increased number and diversity of devices. The European Environment Agency (2008) found that although energy consumption of households per m² decreased annually by about 0.4 per cent, between 1990 and 2005 the absolute level of final household energy consumption in the EU-27 rose by an average of 1 per cent a year.

sufficient component of sustainable development. It answers the need to reorient technological efforts as argued by Brundtland (WCED 1987, 45) but does not go far enough to address Brundtland's call for a transformation of society so that social organisation better facilitate the environment to meet present and future needs. One of the social changes which Brundtland highlights to operationalise sustainable development is the better integration or coordination of environmental matters in other sectors of policy making. In the next section we reflect on how and why the EU is struggling in this area and what the implications are for the implementation of the 6EAP.

6.2 Reflections on EU Policy (In)Coherence

The EU's understanding of the external dimension of its environmental policy has increased considerably in the last decade especially around the time of the Johannesburg WSSD and during discussions on the 6EAP. However, it is clear that the concept is still evolving and its conceptualisation remains blurred. In this report we have highlighted two different but related aspects of this external dimension: an international aspect in which the EU aspires to exhibit leadership in international environmental governance; and an internal aspect in which internal EU policies have impacts (sometimes negative) on the environment outside the EU. Both aspects contain an issue of policy coordination and coherence - first, between external policy objectives and instruments and second, between internal and external policy objectives. Both aspects of coherence are proving difficult for the EU to address and this has implications for the implementation of the 6EAP.

The EU has been relatively successful in dealing with some of the international aspects of its external commitments in the 6EAP, at least in policy instruments where the EU's objectives are primarily environmental such as the Green Diplomacy Network and MEAs. Therefore, the EU appears to have made some progress in achieving its intentions to strengthen international environmental governance. The EU also emphasises environmental protection in its relations with neighbouring countries, in particular through the Euro-Mediterranean Partnership. While the main emphasis of the ENP is on social, economic and political issues, it also includes environmental matters and has the potential to steer neighbouring countries towards a more sustainable future. The EU will gain some immediate and obvious environmental benefits if it is successful in persuading its neighbours to adopt EU environmental values as well as significant parts of its environmental *acquis*.

There are still however, some areas of the EU's record on the international objectives of the 6EAP where improvements can be made. These can especially be found in the implementation of policy instruments which are not primarily environmental and where there is no win-win between economic and/or social primary objectives and external environmental ones. Environmental objectives are, after all only one set of (sometimes competing) objectives of the EU. Competitiveness objectives have been boosted not only by the high political profile of the Lisbon Strategy for Growth and Jobs, but also the recent economic crisis. Specific sectoral objectives eg jobs in the EU fisheries sector and energy security concerns also compete for priority. For

They gave two key factors which influenced this finding: fewer people living in larger homes and the increasing number of electrical appliances (EEA 2008).

example, despite the increased integration of social and environmental considerations in the EU FPAs with third countries, significant criticisms remain, many of which are on environmental grounds. Bretherton and Vogler argue that this may be because:

'The external dimension of fisheries policy suffers from deficiencies in...coherence. Their source lies in the fundamental contradiction between the needs and demands of the EU-based fishing industry and its customers, and the sustainable development objectives of the Union.' (Bretherton and Vogler 2008, 414)

The EU also struggles to achieve its (more implicit) objectives related to the internal aspects of the external dimension of the 6EAP. This report has focused on the EU's attempts to pursue sustainable consumption and production in general and in relation to fisheries. The EU's policies in neither area have been particularly successful, so far. Lutchman *et al* (2009, 7) argue that:

'Of all the European policies that govern the exploitation of natural resources there is none that attracts the same level of criticism and public bafflement as the Common Fisheries Policy'

While the current reform of the CFP offers fresh opportunities to redeem this, past experience of CFP reforms caution against expecting too much action with regard to the sustainable future management of fish stocks as claimed to be on the agenda by the Commission.

This lack of progress on internal aspects of the 6EAP as well as areas of concern in the more challenging areas of the international aspect of the external dimension leaves the EU with an issue of incoherence between its objectives and its actions as well as between its internal and external objectives and policies. The issue of coherence and consistency of course is not a new one to the EU, or any other system of governance, nor is it peculiar to the environmental or sustainable development field. Ensuring policy consistency is in fact a legal requirement laid down in the Treaties - Article 7 of the TFEU states that 'The Union shall ensure consistency between its policies and activities, taking all of its objectives into account' However, sustainable development is a cross-cutting issue *par excellence* that necessitates a high degree of policy coordination. Cross-cutting issues 'do not fit the ministerial boxes into which governments and policy analysts tend to place policies' (Peters 1998, 296). Instead, they tend to be spread across a number of decision-making bodies. Sustainable development spans many sectors including transport, energy, agriculture, trade and fisheries. Consequently, it cannot be effectively dealt with by one sector alone such as environment, as was attempted in the 1970s and 80s. In addition, the external dimension of sustainable development makes the issue even more cross-cutting. In this globalised world, actions taken in one part of the world can have significant impacts on the environment in other parts. This makes sustainable development, and especially its external dimension, a particularly difficult issue to coordinate since not only does it span several different policy sectors, but its impacts are spread over different geographical areas.

Achieving policy coordination is a perennial quest for all political systems (Perri 6 *et al* 2002; Jennings and Crane 1994). Since 'governing structures began to be differentiated into departments and ministries there have been complaints that one organisation does not know what another is doing and their programmes were contradictory, redundant or both' (Peters 1998, 295). Therefore, coordination is vital

to allow competing demands to be reconciled (Jennings and Crane 1994; Peters 1998a). Without coordination or (in more fashionable terminology), 'joining-up' (Pollitt 2003, 36), different parts of government may pursue their interests to the detriment of the system as a whole and efforts to achieve system wide goals may be jeopardised. There are a number of reasons why coordination is such a particularly difficult thing for the EU to achieve (see Jordan and Schout 2006). For instance, its multi-level, open and complex institutional nature, as well as the broad scope of its policy agenda requires a great deal of both horizontal and vertical coordination (Peters and Wright 2001). In addition, fragmentation and internal differentiation of the EU institutional landscape leads to strongly pronounced sectorisation (Kassim 2003).

Policy coherence problems are often acknowledged within the EU - most notably with the recent rise of political interest and action on 'Policy Coherence for Development' (see CONCORD (2009) for an account of recent developments, Carbone (2008) for a more historical and theoretical perspective, and van Schaik, L., et al (2006)). Various attempts have also been made within the EU to address the issue of coherence in the environmental field - eg the Cardiff process of integration, the renewed Sustainable Development Strategy etc. As the EU's high level environmental strategy, the 6EAP should offer some strategic direction for EU environmental policy (ie vertical coordination). However, it does not help EU decision-makers trade off competing objectives and priorities of policy-makers in other sectors which have significant environmental impacts (ie horizontal coordination). Many of the external objectives of the 6EAP require a high level of horizontal coordination across different policy sectors and although the 6EAP promotes the integration of environmental considerations in other sectors, it is not obvious by what mechanisms these environmental objectives are to be picked up and translated into day-to-day policy making in other sectors. Therefore, as we have seen in this report, policy instruments which are rooted in other sectors, eg the EIB or FPAs may not (fully) consider the objectives of the 6EAP let alone give them any priority.

(In)coherence is not only an issue of (bad) governance, which can prevent certain policy objectives from being achieved, it also risks undermining areas of more successful policy by damaging the EU's credibility and legitimacy. For example, in the context of the EU's leadership position in international environmental governance Vogler and Hannes (2007) point out that 'if the EU is to be a credible leader in the eyes of developing world in particular - the Union has to get its internal policies right and create linkages with a coherent set of external policies'. Therefore it is crucial that the EU addresses this aspect of its external dimension if it is to achieve its broader environmental objectives and aspirations for environmental leadership. Ex-Environment Commissioner Wallström repeatedly stressed that her priority was 'policy coherence between external commitments and internal policies' (Wallström 2003 in Vogler and Hannes 2007). However this aspect can often be forgotten or only referred to implicitly as has been the case with the 6EAP. Without addressing this problem of coherence face on; it will be difficult for the EU to achieve all (or at least most) of its environmental policy objectives.

7 CONCLUSIONS AND RECOMMENDATIONS

7.1 Conclusions

The 6EAP addresses the external dimension of EU environmental policy through explicit international objectives and priority actions and more implicit internal objectives and actions such as those relating to the EU's sustainable consumption and production. This report has shown that the EU's approach to the international aspects of its environmental policy has been mixed. While the EU has been able to fly the flag internationally and achieve some of its intentions to strengthen international environmental governance, it has had difficulties integrating environmental issues into other areas of its external activities. While there has been growing awareness of the importance of environmental factors across most relevant policy areas (eg trade, development cooperation, investment and neighbourhood policy) and various tools and instruments have been set up to facilitate a consideration of environmental matters, evaluations of many of these tools and instruments show that there is ample room for improvement in their effectiveness. Whether these improvements are made however, will depend not only on the mechanics of better policy design and implementation, but also on the ability of the EU to better coordinate its different (and sometimes competing) policy objectives.

The EU's approach to the internal aspects of the external dimension of the 6EAP has been examined in this report through the EU's record on sustainable consumption and production. To date, the EU's approach to this issue appears to place more emphasis on eco-efficiency than on absolute resource reduction. This approach fits in well with the Lisbon Strategy for Growth and Jobs as it offers the EU potential to strengthen its economy through specialising in green technology. However, without quantitative targets and indicators, it is unlikely that the EU will start to reduce its resource use. Although the EU has some potentially useful instruments to encourage more sustainable consumption and production (including external environmental impacts), these appear to be hampered by a lack of up take, the need for their further development and the provision of more incentives.

The EU's fisheries resources, although not normally considered alongside traditional sustainable consumption and production issues, is one of the weakest areas of EU policy which has failed to halt, let alone reverse, the decline in fish stocks. If the current (and latest) reform of the CFP does not adequately address this, the EU risks not only dangerously reducing its own resources but also increasingly having to rely on the fisheries resources of countries outside the EU through Fisheries Partnership Agreements. This will increase pressure on global fish stocks regardless of whether environmental considerations are better integrated into these Agreements in the future. Therefore, in the absence of more determined efforts, it seems almost inevitable that the EU will continue to use more than its fair share of the world's resources and thus fail to address this internal aspect of its commitment to the external dimension of environmental policy as set out in the 6EAP.

7.2 Recommendations

During the timeframe of the 6EAP, the EU has been a promoter and supporter of numerous international initiatives. This period has seen the UN and other international organisations produce a set of ambitious sustainable development aspirations such as the Millennium Development Goals (MDGs) and the Johannesburg Plan of Implementation. These global ‘mission statements’ which the EU is signed up to, include goals such as changing unsustainable patterns of consumption and production and protecting and managing the natural resource base of economic and social development. Even the WTO has launched the Doha Development Agenda with a set of challenges which include the compatibility of MEAs with WTO principles, environmental subsidies, environmental services and environmental standards of protection. The EU has attempted to play a role in many of these initiatives as well as make changes to its external and internal policy instruments with which to realise these ambitions. This has led to the EU accumulating a set of strategies and instruments by aggregation. This incremental approach does not help the international visibility of EU action which often appears fragmented.

In this report we have tried to analyse part of this complex architecture, focusing on relevant instruments that have been introduced. In the next Environment Action Programme, the EU should try to gain coherence by developing an overall strategy for external action which encompasses both the international and internal aspects of the external dimension of environmental protection and sustainable development.

Some of the issues relating to the external dimension, which could potentially be addressed by a future Environmental Action Programme are set out below. This is by no means an exhaustive list of issues; rather it should be considered an initial starting point for discussions on the future EU environmental policy framework.

- *Ensure better coherence and consistency*

The EU needs to build on its current understanding of the external dimension and more explicitly recognise, develop, and define the different aspects of this. This will help ensure that the external dimension is not reduced to its ‘international’ aspect, but that ‘internal’ coherence aspects are also addressed in a consistent and comprehensive manner. Mechanisms to improve coordination between different EU policy objectives and different internal and external policy instruments need to be better developed and implemented. The Commission’s Impact Assessment process offers opportunities to raise issues of the likely external impacts of ongoing policy developments, eg the reform of the CFP. The Impact Assessment ‘Guidelines’ explicitly state that these impacts should be included, yet this is not always implemented and/or the depth of coverage of these impacts is often insufficient for adequate consideration.

The new institutional architecture of the Commission services also poses new challenges for policy coherence. Important environmental issues such as climate change, GMOs, civil protection etc now fall outside the remit of DG Environment. Thus, not only is there a need to ensure better coherence between EU environmental policy and other sectoral policies, but there is also a need to ensure

consistency between different DGs with responsibility for different aspects of environmental policy.

- ***Improve the EU's external visibility***

A recent report by the High Level Reflection Group on the Future of Europe notes among other things that the EU is poorly represented in environmental debates taking place beyond its borders (Reflection Group 2010). There is a need to enhance the EU's role in international environmental governance and its external visibility. Mixed representation in international organisations and conferences should be carefully re-evaluated under the new structure of the EU Presidency and the High Representative in order to clarify the respective competences and the role to be played by Member States. The EU needs to take a decision on the Green Diplomacy Network either strengthening it to increase its functioning or to incorporate it within the new European External Action Service under the direction of the High Representative. If the Green Diplomacy Network is maintained, its local versions should be strengthened as promoted by the Portuguese Presidency. The Green Diplomacy Network could also be used to facilitate dialogue with global competitors and producers of natural resources.

- ***Revise existing instruments to take account of the external dimension***

Certain areas of EU external activities/policy instruments with significant external impacts need to be highlighted and prioritised for improvement. For example the credibility of the EU in international environmental governance will be undermined if Fisheries Partnership Agreements continue to be seen as unsustainably exploiting fisheries resources of developing countries or if Economic Partnership Agreements are used to ensure access to raw materials of developing countries without any environmental limits. These agreements should be amended to include appropriate provisions to protect the environment.

The external dimension should also be explicitly recognised and included in some of the EU's existing sustainable consumption and production policy instruments such as Green Public Procurement, Integrated Product Policy, EMAS, and eco-labelling. This would increase the potential of these instruments to reduce harmful environmental impacts and resource use in third countries.

- ***Reform of the CFP***

The ongoing CFP reform provides an opportunity to ensure that the CFP achieves its stated objective of ensuring the sustainable exploitation of fisheries resources. However, some of the measures proposed in the 2009 Green Paper risk externalising the internal shortcomings of the CFP towards non-Community waters. Therefore, the external element of the fishing fleet should be managed within the CFP, under the aim of protecting oceans biodiversity and rebuilding third countries ocean ecosystems towards a good environmental status of the oceans. Illegal, unreported and unregulated (IUU) fishing both within and outside Community waters and by Community vessels is to be eliminated. Therefore, the European market should be closed for IUU caught fish and seafood. Depleted stocks should be restored to Maximum Sustainable Yield (MSY) by 2015 and as

required by the CBD, a minimum of 10 per cent of the oceans should be designated Marine Protected Areas by 2012. Marine reserves should be expanded from 20 per cent to 30 per cent as recommended by the IUCN. The management of all fisheries through TACs should not be abandoned but rather effectively enforced. Furthermore, the elimination of environmentally harmful fisheries subsidies and the introduction of legally binding goals for a substantial capacity reduction of the fleet should be considered in the next reform.

The chances for a more environmental outcome of international negotiations on fisheries issues, e.g. tuna, would be enhanced when based on the rule of law, in particular the United Nations Convention on the Law of the Sea (UNCLOS) which also comprises the protection of marine biodiversity, including in the high seas. A significant move towards better environmental outcomes could consist in reframing the CFP objectives so that the environmental sustainability dimension is given prior consideration in emergency cases or at least equal consideration next to economic and social dimensions when adopting conservation measures.

- ***Increase emphasis on resource efficiency***

In relation to sustainable consumption and production in general, the emphasis on resource efficiency needs to be complemented by concrete quantitative targets to reduce the absolute amount of resources used within the EU. Attention will also then need to be focused on adopting indicators to measure EU resource use.

The Europe 2020 Strategy include a flagship initiative entitled "Resource efficient Europe" which aims to support the shift towards a resource efficient and low-carbon economy that is "efficient in the way it uses *all* resources". How this initiative will be implemented in practice is unclear and given past experience it seems unlikely that the external dimension of resource use will be truly taken into consideration or afforded sufficient priority. The next EAP could provide a means to articulate what is meant by these terms and to ensure the external dimension is adequately taken into consideration.

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Endnotes

ⁱ UNEP IEG Cartagena package identified the five key recommendations that the UE has backed since then: Improved coherence in international environmental policy-making; Strengthening the role and financial situation of UNEP; Improving coordination among and effectiveness of MEAs; Capacity building, technology transfer, and country-level coordination for the environmental pillar of sustainable development, and Enhance coordination across the UN System (Cartagena Package 2002, UNEP/GC SWS.VII/I).

ⁱⁱ *OJ L 63*, 6.03.2003, p. 29-47

ⁱⁱⁱ Agreement on international humane trapping standards between the European Community, Canada and the Russian Federation, *OJ L 42*, 14.02.1998, p. 43-57.

^{iv} International Agreement in the form of an Agreed Minute between the European Community and the United States of America on humane trapping standards, standards for the humane trapping of specified terrestrial and semi-aquatic mammals, *OJ L 219*, 7.08.1998, p. 26-37.

^v Point 6 of the Agreed Minute and Preamble

^{vi} Declaration by the European Community annexed to the Agreement with Canada and the Russian Federation.

^{vii} Notice regarding the request submitted by the People's Republic of China in order to benefit from the special incentive arrangements for the protection of the environment, *OJ C 143*, 15.6.2002, p.4.

^{viii} Council Regulation (EC) N° 732/2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to 31 December 2011

^{ix} Commission Decision of 9 December 2008, on the list of the beneficiary countries which qualify for the special incentive arrangement for sustainable development and good governance, provided for in Council Regulation (EC) N° 732/2008 applying a scheme of generalised tariff preferences for the period from 1 January 2009 to December 2011, *OJ L 334*, 12.12.2008, p. 90.

^x Art. 3 of the Cooperation Agreement between the European Community and the Republic of Yemen, *OJ L 72*, 11.03.1998, p. 18-29, as well as in the Sri Lanka Agreement 1995, India 1994.

^{xi} *OJ L 136*, 7.06.1996, p. 29-36.

^{xii} See Art. 6 of the Framework Cooperation Agreement leading ultimately to the establishment of a political and economic association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, *OJ L 209*, 19.08.1996, p. 5-21, as well as article 3 of Cooperation Agreement between the European Community and the Kingdom of Nepal, *OJ L 137*, 8.6.1996, p. 15-22, as well in Vietnam 1996.

^{xiii} Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership, *Official Journal L* 189 of 30.07.1996.