

The Global Agri-food Sector and the Case of the Tuna Industry: Global Regulation and Perspectives for Development

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Employing the case of the global tuna fish industry the paper investigates the effect of globalization on political institutions and social agents. Three interrelated points are argued. First, it is maintained that while the process of globalization is pervasive, it is also flexible, i.e. the outcomes of globalization are contested and no particular agent has total control. Second, in the domestic arena the regulatory ability of the nation-state has to be redefined. Third, despite possibilities for some subordinate groups to advance, weak segments of the labor force, particularly in developing countries such as in Latin America, continue to be marginalized. A possible alternative strategy call for attempts to establish international solidarity. The latter, however, should be based on awareness of the limits of protectionist and/or domestic center strategies in the global era.

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Introduction

Through the use of the case of the tuna-dolphin dispute this study investigates the relationships among capital (tuna processors, tuna fleets, and related trade associations), labor (tuna boat workers and processing plant workers), the State (represented by the Mexican State, the Venezuelan State, and the US State), and US environmentalists. For the last thirty years these actors have interacted to define the regulation of tuna fishing. Environmentalists have fought and won legislation that mandated the elimination of dolphin kills associated with current techniques of tuna fishing. The tuna industry has disputed the implementation of the law from the beginning with injunctions and restraining orders. The US executive branch and associated departments worked to weaken pro-environmental legislation and stalled its implementation.

The first part of the paper provides our theoretical framework and illustrates relevant literature on globalization, the transition to Post-Fordism, and the role of the State. In this context, three hypotheses are formulated. First, the process of globalization is contested terrain. The concept of contested terrain refers to the fact while the process of globalization is pervasive, it is still flexible. Globalization opens opportunities to some classes or groups

and closes some to others. This is not to say that the competing agents have equal power, but to imply that domination is not absolute. Second, within the process of globalization, the regulatory abilities of a nation-state to manage its affairs are weakened as internationalized capital makes domestic accumulation and legitimation more problematic. Third, while some social movements, such as environmental movements, do have some opportunities to gain, weak social groups (e.g. labor, particularly in the third world labor) are increasingly marginalized as transnational capital sources the world for the lowest costs of production, docile labor, favorable regulation climates, and better access to important markets. The second part of the study presents the tuna-dolphin case through which the above-mentioned hypotheses are analyzed. The conclusions illustrate some developmental alternatives for Latin America and present some observations on the global patterns of regulation of actors in the agri-food sector.

Part One

Economic Growth and the Creation of Free Spaces

From its outset, capitalism has generated both intense fragmentation and extensive interdependence. Marx, for instance, made this point compellingly by stressing, on one hand, that capitalism instituted highly complex modes of social cooperation in the firm, inter-firm cooperation, the much enlarged regulatory State, and world market (Marx, 1977:439-454). Yet, Marx also argued that constant revolutionizing of the means of production generates an unrelenting destruction and regeneration of social organization, association, culture, and identity (Marx, 1981). Durkheim (1984) attacked reductionist, market-centered ideas of society even more directly, arguing that expansive and unregulated individual in-

terest and utility maximization results in social disintegration rather than spontaneous order. He held that the capitalist market itself depends on social interdependence in noneconomic facets of culture, association, and social organization. In different ways, Simmel, Weber, Gramsci, and many other classical social theorists recognized that completely unrestricted markets would destroy their own socio-cultural foundations.

Even the early advocates of the "laissez-faire," from Adam Smith to Herbert Spencer, contended that market societies depend on "interdependence" and altruism, which ensure that the atomistic and individualistic aspects of capitalism have positive social outcomes. Following the classical sociological tradition, it can be argued that capitalism depends on a combination of flexibility and control. Capitalism requires a structure of accumulation that provides opportunities for economic dynamism without socially unbearable consequences. The State has been the primary mechanism for mediating the relationship of market and society (O'Connor, 1986; Offe, 1985).

The historical existence of control of the flexibility of accumulation of capital through the action of the State opens the possibility for the creation of "free spaces" in the political sphere. Corporations have historically counted on the support of the State to enhance accumulation of capital and legitimize this action to the rest of the population (Block, 1980; Offe, 1985). For instance, the State has been instrumental in the control of labor, in generating the legal and social instruments for the availability of labor and in constraining the actions of subordinate classes seeking the satisfaction of their needs. In the historical implementation of these actions, however, the State has been forced to extend concessions to subordinate classes. In this respect, the action of the State in favor of subordinate classes has

partially limited its ability to assist corporations in their pursuit of capital accumulation (Offe, 1985). More importantly, the State has allowed, in various degrees and according to historical and geographical contexts, the societal incorporation of norms which represent gains for members of subordinate classes. The establishment of social programs, consumer-oriented programs and programs in defense of the environment are all cases in point. In essence, the State has maintained "free spaces" accessible to subordinate classes which allow the participation of the public in decision-making processes and the establishment of democratic contexts which have been used historically by subordinated classes to exercise their participatory rights in public life.¹

In terms of the agricultural and food sector, the role of the State in favor of subordinate classes has been established both in the sphere of the supply of agricultural and food products and in that of demand. As far as the former is concerned, despite important historical and geographical differences, the State has established protectionist systems which have guaranteed minimum levels of income to farmers around the world as well as access to markets (Bonanno et al. 1990). Notwithstanding the fact that protectionist systems have often benefited large farms, overall they have guaranteed relatively long periods of price stability and have ensured income to portions of medium and small producers (De Benedictis et al., 1990). With respect to the demand for agricultural and food products, legislation imposed by the State has established rules for the protection of consumers, for the improvement of the quality of products, for the availability of food to needy segments of society and, more importantly, for the protection and enhancement of the quality of the environment.

The Post-Fordist Globalization of the Economy and Society and the Crisis of the State

A significant number of studies (e.g., Harvey, 1990; Lipietz, 1987; Friedmann and McMichael, 1989) have underscored the fundamental changes in the organization of production which took place in the early portion of the 1970s. In essence it is argued that the crisis of accumulation of the 1970s was addressed by replacing Fordist "rigidity" with "Post-Fordist" global flexibility (Harvey, 1990; Bonanno et al., 1994). Although the attempt to diminish rigidity and increase flexibility involves many multi-sided processes, operating in a relatively autonomous fashion in different spheres (i.e. spatial, cultural, ideological, organizational etc.), the most decisive dimension is the effort to eliminate all constraints to the free mobility of capital and to maximize its speed of movement. Above all, this is the central meaning of flexibility. This process is manifested in the enhanced capacity of capital to weaken or even eliminate local, regional, and national controls and blockages. Indeed, in the U.S. in the 1980's, the politics at each of these levels formulated "economic development" plans and measures that facilitated this movement. However, this core economic dimension of post-Fordism also became a central feature of global political economy and in the emergence of a new international division of labor.

Post-Fordist flexibility also significantly reduced the State's capacity to mediate and organize the relations between capital and society and establish social limits to the mechanisms of accumulation. During the later 1970s and 1980s, the State was not able to maintain growth and, at the same time, contain capitalist dynamism within socially acceptable limits. In particular, post-Fordism substantially reduced the (local, regional, and national) State's control over its economic and noneconomic

environments. This does not mean that all dimensions of the State have been necessarily weakened (e.g., police and military power and assistance to financial segments of society have often been increased [Pitelis, 1991]). However, post-Fordism destroys the spatial-temporal unity of the polity and economy, characterizing the earlier phases of capitalist development. The conception of democratic capitalism presumed this unity; the State's capacity to establish socio-cultural limits to capitalist development provided community and national institutions a relative autonomy and safety from the forces of economic rationalization.

Capitalism operates increasingly without spatial boundaries, while the State remains confined to finite jurisdictions. This gap restricts the State's regulatory role. The fact that it can not effectively mediate economic growth and social stability gives rise to important contradictions. Most notably, its ability to provide infrastructure and coordination for stable or longer-term profit seeking and corporate planning is limited in decisive ways. The State's capacity to defend social "rights" (e.g., of workers, minorities, alternative social movements) is also attenuated. Such public protections and provisions for needs are devalued by economic actors by-passing State regulations and legislation (e.g. Bonanno et al., 1994; Friedmann and McMichael 1989; Constance and Heffernan 1991; Harvey 1990). For instance, the tendency of TNCs to seek less expensive labor abroad jeopardizes the State's effort to maintain adequate wage levels within the national territory. The implications for labor interests are manifold. For domestic labor, the result is a net loss of employment and/or the existence of lower paying jobs; for foreign labor, one implication is the creation of low wage employment. For the entire international labor community there is the constant threat of job elimination through relocation

and the decreased possibility of labor mobilization for economic claims. In terms of regional development, there is a decreased possibility of long and sustained economic growth, as local demand and the emergence of external economies are hampered by a system of low wages.

Post-Fordist globalization involves limitations to the State in other areas, as well. Among these are State action in favor of the protection of the health and safety of workers, the protection of consumers and the preservation of the environment. State implemented measures in these areas can be significantly diminished and/or eliminated by the simple relocating of production to regions where they do not exist or are less stringent than in the original country of operation. The well documented relocation of agricultural related production processes to Mexico is a case in point (Barkin, 1990; Wright, 1986). In Mexico the pressure to attract foreign investments has given a very low priority to environmental protection, as well as to practices which enhance the quality and safety of agricultural products and the safety and health of workers. As reported by numerous studies (e.g. Restrepo and Franco, 1988; Wright, 1986) industrially polluted soil and water are used for the manufacture of agricultural products which are then exported world-wide through TNCs, including to the United States. Similarly, agricultural inputs banned in many advanced countries, such as DDT, are still permitted in agricultural production in Mexico. The international commercialization of products treated with these substances nullifies other countries' existing laws against their use. The case of tuna fish also illustrates capital's strategy to move around State regulations.

In essence it can be said that post-Fordist globalization has activated processes which jeopardize the availability of "free spaces" for public participation in the decision-making

processes. Capital's strategy of flexible accumulation or restructuring has forced nation-States with protectionist policies to deregulate or risk capital flight. Deregulation implies the closing of "free spaces." In the event that these spaces are closed, the possibility of participation on the part of subordinate classes is severely compromised. Consumer protection, product quality, and the protection of labor and the environment pertain to this issue as well. Indeed, they all represent instances in which the political forum, where the interests of subordinate classes have customarily been articulated, is greatly devalued of its function. The inability of public institutions to enforce measures which directly affect these sectors of socio-economic life represents, then, a shift of decision-making processes from the public domain to the private sphere. In the public domain the possibility of participation in the decision-making process is available, at least in principle, to all segments of society. In the private domain, however, this possibility does not exist. It follows that such a change jeopardizes the continuous existence of effective spaces in which the subordinate classes can exercise their right to participation in the management of society.

Part Two

The Case of the Global Tuna - Dolphin Controversy

The diminishing of free spaces associated with the consolidation of post-Fordist globalization can be viewed as a progression toward the permanent de-democratization of society. Indeed a number of scholars (e.g., Borrego, 1981; Ross and Trachte, 1990) have argued the totalizing dimension of global capitalism and the inability of subordinate classes to respond to the establishment of restrictive forms of democratic social arrangements. Neo-liberal views of globalization, conversely, have

stressed the beneficial effects of a minimal State and market-dominated "opportunity society" (e.g. Kindleberger, 1986; Bullock, 1991). In their analyses the unrestricted mobility of capital generates greater and renewed opportunities for accumulation which are then transferred, albeit in differing rates, to various segments of society.

These two opposing views stand in contrast with a third interpretation which underscores both the limits to democracy as well as the possibilities of resistance associated with the contradictions of post-Fordist global capitalism. In this third view, the domination of TNCs at the global level is limited by their inability to surrogate the action of the State apparatus, to legitimize international competition and to satisfy the demands for homogenization of production and international relations. Furthermore, this position stresses the power that subordinate classes have at the global level to counter the action of TNCs. For instance, subordinated classes have established a presence in some emerging transnational political institutions such as the European Community. Simultaneously, new movements have emerged worldwide with regard to issues such as the protection of the environment, food security and safety, and consumer rights along with the development of international labor solidarity (McNally, 1991:244-245). Albeit limited, this power constitutes a significant obstacle to total domination by TNCs.

The case of the global restructuring of the tuna-fish industry illustrates an example of this latter posture and of the contradictions embedded in the evolution of post-Fordist global capitalism. Over a thirty year period segments of the tuna industry, environmental groups, and fractions of the US State and other nation-states have struggled to advance their agendas regarding tuna fishing and dolphin safety.

For the purpose of this analysis we focus

on three themes. First, the outcomes of globalization are contested and no particular agent, i.e. industry, labor, the State, or other societal groups, has total control. Second, within the process of globalization, the traditional notion of the regulatory abilities of the nation-State to manage its domestic agenda are weakened as internationalized capital makes national accumulation and legitimation more problematic. Transnational corporations employ global sourcing to obtain the lowest costs of production, the use of docile labor, and favorable regulatory conditions. Accordingly, TNCs bypass higher labor costs and/or more stringent regulations mandated by particular nation-States. Third, within the process of globalization, more often than not, the weaker social groups (i.e., labor in developing regions) continue to be marginalized.

The Case

Since the 1960s environmental groups, segments of the tuna industry, and fractions of the US State have interacted to define the regulations of tuna fishing. Environmentalists fought and won legislation that mandated the elimination of dolphin kills associated with current techniques of tuna fishing resulting in the Marine Mammal Protection Act of 1972 (MMPA). The tuna industry responded by disputing the implementation of the law from the beginning with injunctions and restraining orders. At the same time, the US executive branch and associated departments worked to weaken MMPA and stalled its implementation, which forced environmentalists to obtain court orders to force implementation of the MMPA. After the tuna fleets reflagged under foreign ownership to avoid US regulations, the environmentalists organized a consumer boycott and found congressional support to force foreign fleets to honor MMPA. The tuna processors responded to the consumer boycott by vowing to buy only dolphin safe tuna, effec-

tively abandoning the US and Latin American fleets. The tuna industry also scaled back US and Latin American processing plants and moved to Asia. Environmentalists won lawsuits forcing embargoes on Mexico, Venezuela, and Vanuatu who still caught non-dolphin safe tuna. Fighting back, Mexico filed under GATT accusing the US of protectionism. Even though, GATT found in favor of Mexico, Mexico didn't press the GATT charges in order to keep the NAFTA talks going. Environmentalist lawsuits extended the boycott to "transshipping to third party countries," an action which affected over 20 countries. Several countries, including the EEC, filed under GATT. The US, Mexico, Venezuela and GATT all called for an international forum to resolve the tuna-dolphin dispute. A tuna accord was finally signed in late 1992 by Mexico, Venezuela, and the US establishing a five year moratorium on purse-seine fishing, thereby avoiding a GATT showdown.

The three themes identified above will be analyzed in regard to the events of the case. Their presentation will follow an analytical scheme rather than a chronological one. First, the contested terrain theme is examined, to be followed by the themes of the limits of the State and labor and global restructuring respectively.

The Contested Terrain

New Technologies, Increased Accumulation, and a Legitimation Crisis

Prior to the 1960s tuna fishing technology consisted of a pole and bait method that was relatively labor intensive. In the Eastern Tropical Pacific (ETP), a triangle which stretches from San Francisco, to Hawaii, to Peru, large yellowfin tuna swim under dolphin. Fisherman use the dolphin to find the tuna. During the 1950s San Diego fishermen

developed purse-seine fishing which involves the use of a large net that encircles the tuna (and dolphins) and allows the capture of a large number of tuna in one setting of the net. The purse-seine method was developed in response to the high numbers of US tuna boat seizures by foreign nations over territorial fishing rights and to counter the low-cost dumping of tuna in the US by Japanese tuna fishermen (Tennesen, 1989; Kraul, 1990).

Territorial fishing rights and tuna markets were contested by competing nations and their tuna fleets resulting in new technologies utilizing large nets and dolphins. The new technologies based on "setting on dolphins" facilitated huge tuna catches (Tennesen, 1989; Brower, 1989). By 1976, the US tuna fleet had grown to 130 huge purse-seiners (Kraul, 1990). The new technology provided very high levels of accumulation - the problem was that it systematically killed hundreds of thousands of dolphins a year (Brower, 1989:37).

In 1972, public indignation over dolphin killing associated with tuna fishing brought passage of Marine Mammal Protection Act of 1972. The MMPA mandated that over a period of time "commercial operators' marine mammal kills be reduced to insignificant levels approaching zero" (Godges, 1988:24). The MMPA banned the killing of marine mammals but contained an exception for commercial tuna fishing. The American Tunaboat Association, a trade association of U.S. fishermen, was accorded a general permit to kill dolphins in the course of its commercial fishing operations (Trachtman, 1992). As part of MMPA the National Marine Fisheries Service (NMFS) under the US Department of Commerce organized an observer program which placed observers on one-third of US tunaboats to document the number of dolphin kills associated with tuna fishing (Holland, 1991). At the time of the 1972 MMPA, the US tuna fleet was responsible for 85% of dolphin

kills in the ETP (368,600 of 423,678) (Godges, 1988).

The intent of the law was to reduce dolphin kills to insignificant levels approaching zero which became the basis for the conflict among various collective actors, both domestically and internationally. In fact, as stated by an observer, "bowing to industry pressure, Congress granted the US tuna fleet a two-year grace period to develop new procedures to minimize dolphin mortality. No new techniques were forthcoming, but in those two years 500,000 more dolphins died in U.S. tuna nets" (Davis, 1988). Even though environmental groups had won a legislative battle, the war over who would get to define the regulations of tuna fishing was far from over. The tuna industry and fractions of the US executive branch contested the implementation of the law from its inception.

Environmental Lawsuits and Amendments to the MMPA

Responses to the perceived inadequacy of the implementation of the law prompted lawsuits from the environmental community during the late 1970s. Congress responded by adopting a quota system for reducing dolphin kills. To implement the law, the NMFS set yearly dolphin-mortality quotas that dropped rapidly from 78,000 in 1976 to 20,500 in 1981 (Godges, 1988). Under President Reagan, industry pressure ended the managed decline in dolphin quotas (Brower, 1989:38). In 1980, the NMFS issued a five-year permit which set an annual quota take of 20,500. In 1984, the MMPA was amended to extend this quota indefinitely (Holland, 1991). Instead of abolishing the intentional netting of dolphins, the MMPA's quota system institutionalized the practice (Davis, 1988:486). Under the Reagan Administration, the US tuna industry was able to more effectively contest the 1972 MMPA and thereby significantly weaken, and even al-

ter the intent and language of the MMPA: insignificant dolphin kill levels approaching zero were redefined by industry and fractions of the US State to be equal to 20,500 per year.

In an attempt to control the foreign tuna fleet, in 1984 the US Congress added two amendments to the 1972 MMPA. The amendments stated that tuna caught using purse-seine nets in the ETP may only be imported if the government of the foreign country of origin demonstrates that it (1) has implemented a dolphin protection program "comparable" to that of the U.S. fleet, and (2) has an average incidental dolphin kill rate "comparable" to that of the U.S. fleet (Trachtman, 1992). Under environmental group pressure, Congress ordered the NMFS to close the U.S. tuna market to nations failing to require dolphin protection measures comparable to those in the U.S. (Levin, 1989).

By 1988 the foreign tunaboats killed about four times as many dolphins as the did the U.S. fleet (Audobon, 1988). While Congress had ordered the NMFS in 1984 to ban tuna imports from countries that did not have comparable dolphin kill ratios, these rules were not published until 1988 and gave other nations until 1991 to achieve the comparable kill rate. In 1988 the NMFS came under strong congressional criticism for delaying sanctions against foreign fleets that failed to reduce their dolphin kill. In a lawsuit in federal court in San Francisco, conservation and environmental groups accused the agency (NMFS) of failing in its legal duty to protect the mammals. The NMFS responded that any quicker action would have forced the foreign fleets to sell to other markets (Davis, 1988). Early in 1988, at the request of the conservation groups, a federal judge ordered the fisheries service to place observers on all US tunaboats, instead of on only a certain percentage to better monitor the dolphin kill (Levin, 1988:35; New York Times, 1989a; 1989b).

"The federal government is supposed to ban the import of tuna from nations that ignore the quota, but has yet to do so" (Audobon, 1988:16). Earth Island Institute (EII) and the Marine Mammal Fund filed a lawsuit that sought to force the U.S. Department of Commerce to impose a ban on imports from foreign violators and to properly enforce the dolphin quota on US boats and also urged Heinz and Ralston Purina to voluntarily end tuna purchases from nations that violate the quota. The National Audobon Society joined the EII to amend MMPA to reduce quota to "0" (Audobon, 1988). The Cetacean Society, Earth Island Institute, Greenpeace, Sierra Club, the Whale Center and other groups pooled their resources as the Marine Mammal Protection Act Reauthorization Coalition to push of needed improvements in the law and at the same time ask for boycotts (Godges, 1988).

In 1988 EII sponsored Sam LaBudde's investigative work on a Panamanian tunaboat. An 11-minute edited version of the video "where dolphins squealed in pain as they succumbed - in some cases being ground up alive in the gears of the nets - was first aired in March of 1988, to horrified audiences" in the US (Kraul, 1990:d6). This video make the issue of dolphin killing terribly real to millions of Americans (Kraul, 1990). When Sam LaBudde showed his film before the Congressional hearing on MMPA in 1988, he stated that:

The U.S. industry has fought every regulation intended to reduce the dolphin kill. In 1980 an NMFS prohibition against 'sundown' sets - implemented because the kill rate is up to four times as high at night as it is in daytime - was dropped, under pressure by U.S. industry lobbyists, after being in effect for just eight days. In 1981 the American Tunaboat Association sued to scrap the NMFS observer program. The observer's data, they argued, should not be used for enforcement.

They won an injunction that kept all NMFS observers off U.S. tunaboats from 1981 to 1984, when the injunction was overturned on appeal. In the late 1970's, when forced to do so, the U.S. industry demonstrated considerable inventiveness in coming up with gear and techniques to minimize dolphin kills. That research has stalled, and the U.S. industry has done nothing favorable to dolphins lately (Brower, 1989:58).

Labudde's testimony illustrates that the MMPA regulations were contested at every juncture by the tuna industry. Environmentalists used the courts and sympathetic legislators to force compliance from the NMFS and Department of Commerce. At the MMPA reauthorization hearings in 1988 several US senators expressed displeasure with the NMFS and its parent, NOAA, for their failure to implement the regulations that would keep that can off the shelf.

Senator Kerry of Massachusetts pointed out that the MMPA was amended in 1984 to require foreign nations to meet comparable dolphin kills to US rates or face a ban on imports, "Why had the NMFS taken four years to formulate 'interim final regulations' to that end?" (Brower, 1989:58). According to Charles Fullerton of NMFS,

It's a very delicate operation to get those regulations. We developed some over a year ago which were not acceptable either to the tuna industry or to the foreign nations. So we went back to the drawing board and developed a whole new set, the ones that are now in interim phase. We'd like to give these a try" (Brower, 1989:58).

"How could a bureaucrat in a regulatory agency so lose track of his mission? The proposed NMFS regulations were not acceptable to the tuna industry or the foreign nations - the regulatees - so of course the regulators scrapped them" (Brower, 1989:58). The environmentalists continued their battle in the judicial and legislative branches to reduce dol-

phin kills to "0" while the US tuna industry used its influence in the NMFS and Commerce Department to block implementation of the MMPA.

The Consumer Boycott of the BIG 3 Tuna Processors

The limited effect that US legislation had on reducing dolphin mortality generated further responses from the environmental groups which supported the MMPA. Having failed to win legislation mandating a phase-out of purse-seine netting, environmental and animal-rights groups attacked the problem at the consumer level. In January of 1988, they launched a boycott of the three major tuna producers in the US (i.e. Chicken of the Sea owned by Ralston Purina, Star Kist owned by Heinz, and Bumble Bee, then owned by Pillsbury) which processed about 70% of the tuna consumed in the US (Newsweek, 1990; Sharecoff, 1990).

First Embargo and Calls for an International Forum

In early 1990 Federal Judge Thelton Henderson of San Francisco ordered the Bush Administration to impose an immediate embargo on imports of tuna caught by foreign fleets until they prove they were reducing the number of dolphins killed. This affected mostly Mexico, Venezuela, Panama, Ecuador, and Vanuatu (Morain, 1990). Judge Henderson said that the Bush Administration was taking too long in determining whether foreign fleets were complying with US law (New York Times, 1990). Again, environmentalists had to use the justice department to get the Commerce Department to obey the law. Judge Henderson charged the NMFS of the Commerce Department with not enforcing a 1988 MMPA provision ordering foreign fleets to prove that they are reducing their dolphin kills to comparable levels in the US. Judge

Henderson accused the foreign nations and the US government of "foot-dragging" (Morain, 1990:A3).

The Commerce Department appealed the judge's decision in district court. In August of 1990, the district court found in favor of the environmentalists and ordered the US Secretary of Treasury to impose embargoes on imports from Mexico, Venezuela, Vanuatu, and other countries which still relied on purse-seine nets fishing techniques. The next day the NMFS made positive findings for Mexico, Venezuela, and Vanuatu allowing the embargo to be lifted on them (Trachtman, 1992). EII then sought a restraining order on Mexico because the NMFS had not counted their dolphin kill rates correctly. In October of 1990 the district court granted the temporary restraining order, and converted it into a preliminary injunction reinstating the embargo on Mexico. The US Government appealed the injunction, arguing that it was the Government's discretion (the Commerce Department's) to interpret MMPA. The US Court of Appeals found in favor of the Commerce Department and removed the embargo on November 14, 1990. In February of 1991, the appellate court vacated the "stay" of the appeals court, and reinstated the embargo. In March the embargo was extended to include Venezuela and the tiny island nation of Vanuatu (formerly New Hebrides). The appellate court held on April 11, 1991 that the NMFS's interpretation conflicted with the statutory language and congressional purpose (Trachtman, 1992). The US Department of Commerce lost its appeal. This is another example of the fractional nature of the State which is the forum for the contest to define the interpretation and implementation of the law.

Judge Henderson stated that the failure of Commerce Secretary Robert Moshbacher to enforce the 1988 provision to the MMPA "assures the continued slaughter of dolphins"

(Morain, 1990:A19). "The statute was intended to use access to the US market as an incentive for foreign nations to reduce marine mammal deaths. The Secretary, contrary to Congressional intent, has not provided that incentive," wrote Judge Henderson (Morain, 1990:A19). "This is a stunning rebuke for the government's position," said David Phillips, Director of EII (Morain, 1990:A3). "Basically, the State Department has been categorically against enforcing these embargoes," Phillips continued. "They have put dolphin protection at the bottom of the priority list in dealing with these countries" (Morain, 1990:A19). The Commerce Department disagreed with Judge Henderson and argued that the 1988 amendments to MMPA only require the Commerce Department to collect information on foreign fleet dolphin kills and not initiate embargoes (New York Times, 1990). Here again is another example of the conflictual relationship between branches of the US State (i.e., the US Commerce Department and the Judiciary system) over the interpretation of MMPA and the resulting contest to control the definition of the law.

The embargo on Mexico prompted accusations of US protectionism. According to Mexico's Secretary of Foreign Relations, "In accordance with international law, no country has the right to impose their own criteria on others, much less apply sanctions" (Scott, 1991b:6). Several prominent Mexican politicians and business leaders saw the embargo as a ploy to protect the US market share by forcing a poor, developing nation to meet unreasonably high ecological standards. "This is a particularly severe warning for the free-trade agreement negotiators of the loop-holes to watch out for," said Hermenegildo Anguianos, a congressman belonging to the Institutional Revolutionary Party or PRI (Scott, 1991:6).

A spokesman for President Salinas de Gortari stated the official Mexican position

was that the disagreement on the tuna issue should be handled outside the free-trade talks. Both Salinas and Bush administration officials agreed that standards for protecting dolphins should be set in international forums, as has been done with the whales (Scott, 1991a). Both countries called for an international mediator to settle the dispute, a form of an international State.

Environmentalists Call For An International Tuna Policy

In late 1990 EII reported that Bumble Bee had lied about accepting only dolphin-safe tuna and had accepted a shipment of non-dolphin safe tuna in Thailand. Bumble Bee first said that the buyers were not actually Unicord companies (Parrish, 1990a:d2), then later admitted that it did buy the tuna without checking papers (the observers' document) but that it was a mistake (Meier, 1990b). In a move to monitor the global tuna fishing industry and verify the dolphin-safety of tuna products such as in the Bumble Bee incident, Greenpeace and the Dolphin Coalition drafted a five-point corporate policy that they wanted the international tuna-packing industry to adopt an international code of ethics. A canner's claim to be selling only dolphin-safe tuna, "must be binding worldwide, including all subsidiaries, controlled bodies....enterprises which purchase, process or sell canned tuna or tuna products for export" (Parrish, 1990b:d4). The environmentalists call for an international body to regulate the industry globally is an embryonic attempt to surrogate failing nation-State actions at the world level.

Mexico, GATT, and NAFTA

Faced with further losses or potential sanctions for its \$450 million export fishing sector, Mexico began proceedings against the US at GATT (General Agreements on Trade and Tariffs) (Uhlig, 1991). In March of 1991,

Mexico was granted a panel before GATT (Trachtman, 1992). The GATT hearings occurred when Mexico and the US were trying to negotiate the NAFTA accord. The tuna issue threatened the Bush Administration with a volatile trade battle with Mexico at the very moment they were trying to defend Mexico as a major trading partner. Mexican critics of the free-trade accord seized upon the conflict as an example of American domination under any such pact. Latin American tunaboat competition with US tunaboats is highest in the ETP. But out in the Western Pacific where US fleets can go, Latin American boats do not have the same access to ports or fishing rights. In Mexico there was suspicion that the law was to protect US fishermen, not dolphins and raised the issue according to GATT of whether the US had the right to unilaterally enforce a limit on third countries (Economist, 1991).

American conservation groups cited the behavior of the Mexican tuna fleet to emphasize what they said was the need for tough environmental scrutiny of all aspects of a free-trade accord (Uhlig, 1991). According to environmentalists, even with sanctions and embargoes, foreign fleets in Mexico, Venezuela, and Vanuatu continue to use the "dolphin set on" method. "In terms of sheer numbers, Mexico kills the most dolphins of any country by far," said David Phillips of EII (Uhlig, 1991:D2).

In August of 1991 the GATT panel found in favor of Mexico and stated, "regulations governing the taking of dolphins incidental to the taking of tuna could not possibly affect tuna as a product" (Trachtman, 1992:146). In essence, this meant that countries could not embargo a product based on production practices. The three-man GATT committee ruled the US law is contrary to the GATT's equal-treatment provisions. Moreover, the committee drew conclusions that went beyond the dolphin case. In its confidential (but quickly leaked) report, the GATT panel concluded that "a con-

tracting party may not restrict imports of a product merely because it originates in a country with environmental policies different from its own" (Economist, 1991:31). The GATT ruling throws into doubt all kinds of environmental laws that impose restrictions or penalties on foreign countries.

The Secondary Embargo

In January of 1992 Judge Henderson ordered the US Commerce Department to ban \$266 million worth of imports (about 1/2 of US tuna imports) from about 20 countries who buy tuna from Mexico, Venezuela, and Vanuatu and then import it to the US (Bradsher, 1992). The new countries embargoed could remove themselves from the embargo by providing "certification and proof" that they had prohibited the import of tuna from the three target countries (Bradsher, 1992:d16). While US environmentalists applauded the secondary embargo, US fishermen opposed it because it would raise the cost of tuna (Facts on File, 1992). David G. Burney, executive director of the US Tuna Foundation, said the tuna industry would lobby for new legislation in Congress that would effectively overturn Judge Henderson's ruling. The Bush Administration tried to overturn the embargo, claiming the action went well beyond the intent of the environmental law upon which it was based (Wastler, 1992:3a).

In February of 1992 the NMFS began to enforce the secondary embargo. The embargo was targeted at Mexican and Venezuelan tuna processed in other countries and included the countries of Britain, Canada, Columbia, Costa Rica, Ecuador, France, Indonesia, Italy, Japan, Malaysia, Panama, the Marshall Islands, The Netherlands Antilles, Singapore, South Korea, Spain, Taiwan, Thailand, Trinidad, Tobago, and Venezuela (New York Times, 1992a).

EEC officials protested the US embargo of yellowfin tuna before GATT in February of

1992. The US ruling affected \$4 to \$5 million in tuna exported to the US from France, Italy, and Britain (Maggs, 1992). EEC officials maintained that the EEC had regularly protested the trade penalties under MMPA and would renew this effort before GATT. The EEC stated that they would press for the adoption of the Mexican GATT ruling even though the Mexicans seemed reluctant to push to ruling while negotiating NAFTA (Maggs, 1992).

According to Eli's Phillips,

The Bush Administration is taking intentional steps to create a kind of crisis situation they need to get the embargo overturned and protect their free-trade policy. The whole question involved here between trade and the environment is a potential deal-breaker in the Uruguay Round (of GATT)....

It represents a head-on collision between the Bush Administration's free-trade policy and environmental issues that have been ignored by the Bush administration," said Craig Merrilees, western director for the Fair Trade Campaign, a group promoting the environment and health laws in US trade agreements (Wastler, 1992:3a).

To recapitulate, the events illustrated above support the hypothesis that TNCs don't have absolute power in domestic and international arenas. First, pro-environmental legislation was created and partially implemented countering the interests of TNCs. Second, attempts by TNCs, supported by the US executive branch, to combat pro-environmental legislation fell short of their proposed objectives. More importantly TNCs were not able to create an international system in which they could continue to profit from fishing in the ETP using conventional technology. Simultaneously, however, subordinate groups have also encountered strong opposition regarding the implementation of pro-environmental legislation. These situations matured in

a context in which fractions of the US State opposed each other and the State apparatus as a whole was increasingly unable to fulfill its role as mediator between various social groups. Indeed, GATT calls into question the durability of MMPA and the ability of the US State to enforce MMPA. The limits that the State encounters in controlling and regulating TNCs' actions and in satisfying demands stemming from others social groups (i.e. environmentalists) are analyzed in the following section.

The Limits of the State

In the attempt to by-pass US State legislation, TNCs shifted their operations to foreign fleets while still using conventional technology based on purse-seine nets in the ETP. This action can be viewed as an example of the limited ability of individual States to control activities of economic actors which are increasingly global in scope. Simultaneously, as indicated above, the State embodies conflicting demands stemming from both TNCs and environmentalists which require some forms of organization and control of economic activities. TNCs are interested in maintaining a business climate conducive to further capital accumulation. Environmentalists, in this case, are interested in the enforcement of anti-dolphin killing legislation. The control and regulation of global economic activities, therefore, are pursued through efforts to establish new forms of transnational regulatory agencies.

Industry Moves and Tuna Boats Reflag

Between 1981 and 1987 at least 21 US tunaboats reflagged under other nations to avoid limits imposed by MMPA (Brower, 1989; Davis, 1988; Levine, 1989). These limits included, among other things, a low number of dolphin kills allowed and the presence of observers on one-third of U.S. tunaboats which translated into higher costs of production. The

NMFS reported that US dolphin kills went down from 368,600 in 1972 to less than 20,000 in 1987 - mostly due to the fact that the US fleet had shrunk dramatically from 93 boats in 1981 to 35 boats in 1988. Although the kill rate decreased on U.S. tunaboats, dolphin kill rates were still very high in the ETP because of increased use of the purse-seine method by foreign fleets there and the transfer of U.S. fleet tunaboats over to foreign flags (Levin, 1989). According to Joshua Floum, lawyer for EII, the foreign flagged vessels are responsible for most of the current dolphin kills (New York Times, 1989:a17)². "Many of the departed seiners have reflagged to avoid high U.S. operating costs and to escape the MMPA and other U.S. regulations" (Brower, 1989:57).

In addition to reflagging the tunaboats, the by-passing of US laws was carried out through a process of relocation of the tuna industry. In November of 1988 Ralston Purina sold its Van Kamp Chicken of the Sea division to Mantrust of Indonesia. In August of 1989 Pillsbury sold its Bumble Bee subsidiary to Unicord of Thailand. Pillsbury's decision to sell Bumble Bee was motivated by the increasing costs of operating facilities in the United State. Simultaneously, Unicord's purchase of Bumble Bee was made "to counter stiff US tariffs and quotas on imports of canned tuna and to protect Unicord's stake in the US market" (Handley, 1989:108). The tuna industry restructuring is a classic example of capital avoiding dependence on high cost labor, by-passing State regulations that restrict accumulation, and sourcing low cost production sites. In this case the tuna industry found it beneficial to have some production within the US for tariff and market access purposes, but also to have other lower cost production sites elsewhere.

Industry analysts stated the relocations reflected the food industry's increasing concerns

about costs. According to Naomi Chez, an analyst with Goldman, Sachs & CO. in New York, "The food business is consolidating on a worldwide basis and there is a lot of production in the Far East. It's a labor intensive business and labor costs are low there" (Kraul, 1989:2). Tuna caught by Asian fleets in the western Pacific Ocean and Indian Ocean do not associate with dolphin. Transnational tuna firms are by-passing the increased costs of fishing in the ETP by moving to the western Pacific where regulations are minimal and labor costs are low. One such firm is Unicord.

Unicord was established in 1978 and was Thailand's largest canned-tuna exporter by mid-1980s. "Bumble Bee was acquired at auction in the first step by Unicord to form a global tuna organization" (Handley, 1991a:48). Unicord's global strategy foresees a network of factories in five continents that will give the company easy access both to fish and to its main markets. At the core of the strategy is a new tuna-handling process which cuts transport costs and enables Unicord to avoid high import duties in the US and Europe. Unicord sells tuna to the US under its own brand labels and also sells under Bumble Bee. Bumble Bee has canneries in San Diego and Santa Fe Springs, Calif, Puerto Rico, and Ecuador. Despite their higher wage rates, the US canneries are at an advantage because they allow Unicord to avoid import duties on canned tuna and are also relatively close to fishing grounds in the Atlantic and ETP. The new technology removed the loins which were then cooked, frozen and shipped for canning within the US and saved large amounts of money on shipping costs. Unicord was also setting up a loin operation in Ghana to serve the Europe market (Handley, 1991b).

US State Action, Counteractions and Compromises

The US State's action to counteract TNCs by-passing of State powers consisted primarily of attempts to enforce MMPA beyond national boundaries, i.e. the first and second embar-

goes. This action was resisted by foreign nations, which as indicated above, viewed it as limiting their sovereignty. GATT rulings support their positions.

In September of 1991 US officials (State, Commerce, and Trade Depts.) reached an understanding with Mexico over the embargo on Mexican tuna. To avoid undercutting NAFTA talks, Mexican President Salinas de Gortari backed off the complaint lodged with GATT over the tuna dispute. In late September, Salinas announced as "a show of good faith" that Mexico would "postpone" the final GATT decision and pursue a bilateral solution (Scott, 1991a). In exchange for the Bush Administration's pledge to try to change the MMPA, Mexico issued a 10 point plan to reduce dolphin kills. The promise to try to amend the law was "brokered" in Mexico by Secretary of State James Baker, Secretary of Commerce Robert Mosbacher and US Trade Representative Carla Hills (Maggs, 1991:3a).

According to some US officials, any attempt to change the law, short of major new commitments from Mexico to reduce dolphin kill rates in tuna fishing, would rile wildlife protection groups, that have already won a round in court against the Bush Administration (Senzek and Maggs, 1991). The Bush Administration promised not to change any environmental law as a result of NAFTA. "There is zero interest in making big changes to MMPA," said one congressional aide, and "anything that has the effect of removing the embargo would be very unpopular" (Senzek and Maggs, 1991:3a). Congressman Waxman lambasted the Bush Administration for thinking it could negotiate away the teeth of MMPA (Economist, 1991). Critics of NAFTA and GATT argued that free trade was an indirect way of forcing environmental backsliding that could not be achieved directly (Mathews, 1991).

Mark Ritchie, a Minneapolis trade analyst,

who has organized consumer and environmentalist groups against GATT, called the dolphin controversy a "symbol." Even if the US and Mexico worked out that dispute, he said, environmentalists would still oppose a new GATT agreement because they fear GATT could override some US laws barring imports that don't comply with US environmental standards. GATT officials "have the power to judge and condemn US law from a very limited and undemocratic view," said Ritchie (Davis, 1992:B10).

Environmentalists argued the GATT ruling in favor of Mexico could set a precedent that could undermine their efforts on a range of fronts. "If the GATT ruling goes through, international trade sanctions designed to halt trade of endangered species, trade in rare hardwoods, and shipments of toxic wastes could be declared illegal. It would be a very serious blow," said a spokesman with EII (Scott, 1991a:8).

"The administration is working behind the scenes to achieve some of the deregulation that it was not able to get in the open," charges Lori Wallach, a lawyer at Congress watch, a group founded by Ralph Nader (Magnusson et al, 1992:130). The US Congress, especially Representatives Waxman and Gephardt, was strongly opposed to amending MMPA to suit the US Government and the US tuna industry or to any Mexican deal that imperils US health, safety, labor or environmental laws (Magnusson et al, 1992). According to Chief William K. Reilly of the US Environmental Protection Agency, "If this becomes the basis of GATT policy, it would unravel all the strings" of US environmental policy (Magnusson et al, 1992:130). If the GATT decision prevails, US trade officials said it might also weaken enforcement of international environmental accords, e.g. sea turtles, ozone, rain forests, endangered species, whaling, ivory and elephants. According to GATT,

such problems concerning the "global commons" should be solved through "international environmental agreements" (Brooke, 1992a:7). Even GATT called for an international forum to resolve "global commons" issues such as MMPA.

GATT's call for an international forum to resolve "global commons" issues highlights the contradictory position nation-States confront. On one hand, GATT's statements acknowledge the inability of domestic bodies to face the demands stemming from this case. On the other hand, GATT becomes the forum where transnational regulatory functions are proposed. It is interesting to note that the political agenda established by GATT during the 1980s has been aimed at deregulation. Accordingly, GATT becomes a political terrain where regulating and deregulating forces and demands confront each other.

The Second Compromise and the IATTC Accord

In March of 1992 the US, Mexico and Venezuela reached a preliminary agreement to protect dolphins. GATT officials reported that the three countries had agreed to a five-year moratorium, beginning in 1994, on purse-seine nets (Davis, 1992:B10). According to Representative Seade of Mexico, "The main message that should sink in (for environmentalists) is international cooperation" and he hoped other nations would adopt the accord (Davis, 1992:B10). EII attacked the pact and congressional aides said the agreements would face a tough time winning approval. Phillips of EII, said the agreements represented a "bad approach" because it would lift trade pressures that had led to sharp declines in dolphin kills. "The current regulatory mechanism is resulting in significant conservation of dolphins" said Phillips (Davis, 1992:B10). The agreement failed to obtain US congressional backing and failed.

In April of 1992 an agreement negotiated by the Inter-American Tropical Tuna Commission (IATTC), the first major international accord to save dolphins, the 10 nations that fish for tuna in the ETP agreed to cut killing dolphins by 80% during the 1990s. "The resolution sets into motion a program to reduce dolphin mortality to insignificant levels, to levels approaching zero," according to Dr. James Joseph, director of the IATTC (Brooke, 1992b:C4).

EII argued that the accord was too little, too late. "The reduction is way too little, and the killing of dolphins will continue way too long. In the US, consumers, companies, and Congress are saying: eliminate the setting of nets on dolphins," says Phillips of EII. "We do not believe that you can chase down and encircle 1000 dolphins in a mile-long net and avoid killing them" (Brooke, 1992b:C4). According to Richard C. Atchison, Executive Director of the American Tunaboat Association, the accord is "reasonable, practical, and achievable" (Brooke, 1992:C4).

The Third Compromise

In June of 1992 the US, Mexico, and Venezuela agreed to stop the setting of nets around dolphins and tuna. The Stubbs Bill was introduced to US Congress on June 16 and was supported by EII (New York Times, 1992b). The unlikely alliance of the Bush Administration, Congress, environmentalists, and the governments of Mexico and Venezuela forged a tentative agreement to stop the killing of thousands of dolphins. After months of negotiations, the Bill had bipartisan support and had already been agreed to by the Mexican and Venezuelan governments. The agreement would end the embargo on Mexico and Venezuela and place a 5 year moratorium on purse-seine fishing in the ETP and possibly end purse-seine fishing in the ETP forever (Parrish, 1992a).

According to EII, it was only these "incredible constraints on the market" which brought Mexico and Venezuela, the last countries with big fishing fleets in the ETP, to the bargaining table. "The market for dolphin-unsafe tuna is collapsing. They can't find places to sell the tuna... the US won't buy it. England, France and Germany won't buy it. Thailand won't process it, and now very recently some of their last remaining markets in Spain and Italy are collapsing" (Parrish, 1992a:A20).

Mexico and Venezuela agreed to halt the killing of dolphins by their tuna fishers by March of 1994. The formal agreement with Mexico and Venezuela is expected to be signed after the bill - The International Dolphin Conservation Act - is ratified. In a key concession to environmentalists, Mexico and Venezuela agreed to face stiff penalties if they resume killing dolphins - a US embargo of all seafood products, except for shrimp (Maggs, 1992). In the last hours of the congressional session, the US Senate passed the International Dolphin Conservation Act of 1992 (IDCA), which President Bush signed in late October (Parrish, 1992b). Though President Bush signed the IDCA, "the IDCA will only go into effect if Mexico agrees to comply with its terms, a step which Mexico has so far refused to take" (Public Citizen, 1993:9).

From the illustration of the events mentioned above, it can be concluded that the action of the US State in response to demands from social groups is problematic when lodged in a transnational arena. The by-passing of State action through tunaboat re-flagging and industry relocation demonstrated that the ability of the State to perform its historical roles has been weakened. The State is increasingly unable to regulate TNCs' actions (i.e. enforce compliance of MMPA), to enhance TNCs interests (defeat pro-environment groups) and to respond to demands stemming from other so-

cial groups such as the environmentalists (implementation of MMPA). Also problematic are attempts to extend State regulation of economic activities at the international level. The various compromises reached by the US, Venezuelan, and Mexican States have been designed to respond to the global hyper-mobility of TNCs (i.e. the move to Asia which will be further discussed in the next section) and to foster legitimated and accumulative actions at the domestic level (respond to environmentalists' demands in the US and loss of employment and economic opportunities in the US, Venezuela and Mexico).

These territorially limited accords do not match the spatial sphere of action of economic actors. More specifically, TNCs did escape the pro-environmental regulations associated with them by moving to Asia where they continue to use the existing purse-seine method and therefore can avoid the costly adoption of new environmentally sound technology. The present situation indicates that TNCs' activities can be regulated when in the ETP. Yet they are, at least temporarily, out of reach when operating outside that area. Moreover, despite the existence of multinational accords, TNCs have no immediate interests in re-shifting their operations back to the American continent.

Labor and Global Restructuring

Effects of Restructuring on the US Tuna Industry

The transnational move of the tuna fish industry had important repercussions in terms of employment and overall economic well-being of fishing communities. First, the introduction of the purse-seine net technology in the ETP expanded employment and economic opportunities in the US. Later, the passage and contested implementation of MMPA fostered the shift of tuna industry operations to Latin

America with the consequential growth of employment in those regions and economic decline among tuna fishing communities in the US. Finally, the secondary embargoes on Latin American producers stimulated a shift of the industry to Asia curtailing employment and economic growth in Latin American fishing areas.

In response to the Big 3 tuna processors' decision to not accept dolphin unsafe tuna, boat owners in San Diego maintained that this decision was tragic and that they had been fighting it for twenty years along with boat seizures, the closing of US tuna canneries, and foreign fleets slashing prices to capture the US market. According to Peter Schmidt, President of Marco Seattle, whose Campbell Industries subsidiary in San Diego is one of the world's leading builders of the purse-seine boats, "This could be the last nail on the American tunaboats" (Kraul, 1990:d1). The last of six canneries once located in San Diego closed in 1984 and local tunaboat owners "must now unload their fish at cannery plants in American Samoa and Puerto Rico" (Kraul, 1990:d6).

As a result of the dolphin unsafe consumer boycott, the Big 3 US tuna canners turned to Asian suppliers such as the Philippines and Thailand to assure that the tuna they buy has not been caught with purse-seine nets that can kill dolphins. These actions decreased the volume of tuna caught by the US fleet (Thurston, 1990). In the year following the Big 3 boycott of ETP tuna, the number of US fishing boats in the ETP dropped from 30 to 9 (Wallace, 1991). By 1993, forty percent of the US owned canneries in Puerto Rico had shut down (Kroman, 1993). Since the environmentalist victories of the early 1990s, several boats in the US tuna fleet, once the world's largest, have gone broke and others have been sold to foreign interests. Tunaboat captains had to relocate to the Western Pacific and have

shouldered \$1 to \$2 million retrofits for larger nets, bigger hydraulics, and new engines (Kroman, 1993).

Prices paid to tuna fishermen dropped 22% to the lowest in 10 years. Within days of the US boycott, the bottom fell out of the tuna market. Yellowfin from the ETP, the best tuna in world, fell from \$1,075 a ton to \$835 a ton (Kroman, 1993). The shift of 16 US boats to the Western Pacific and abundant supplies of skipjack tuna and yellowfin increased yields and depressed prices. Dolphin-safe policies benefited newcomers on the tuna scene, notably Korea and Taiwan, who built boats and canneries as fast as they could. Those nations were already blessed with being close to waters that provide dolphin-safe tuna, not to mention low overhead and regulatory costs that US fishermen bear (Kroman, 1993). Economic opportunities and employment opened for Asian processors and closed for US and Latin American processors as the MMPA was increasingly enforced. The industry moved to Asia to source dolphin-safe tuna and low cost labor which marginalized labor, both tuna fishermen and tuna processing workers, in the US (especially Puerto Rico) and Latin America.

Although Heinz's Star Kist operates the world's largest tuna cannery in Mayaguez, Puerto Rico, US tuna marketers are increasingly importing canned tuna to take advantage of lower labor costs in developing countries. US and foreign tuna firms are increasingly using non-US labor for processing (Thurston, 1990). Except for Star Kist's Puerto Rican plant which employs 4,300, the local tuna industry is virtually controlled by Asians. Unicord of Thailand - Bumble Bee, Mantrust of Indonesian -Chicken of the Sea (Mantrust's National Packing Plant with 600 workers), and Japanese (Caribe Tuna of Mitsubishi Corp. of Japan and Neptune Packing of Mitsui and Co.) dominate the Puerto Rican tuna canning in-

dustry. For all of these firms tax benefits under Section 936 of the US Internal Revenue Code are crucial to their remaining in Puerto Rico (Luxner, 1990).

Bumble Bee in Puerto Rico employs 2,200 workers and processes between 200 and 300 tons of tuna a day and accounts for more than 50% of Bumble Bee sold in US mainland. "Bumble Bee started out in Astoria, Ore. We had plants in Hawaii, Maryland and San Diego, but currently operate tuna canneries only in Puerto Rico," according to Mr. Dan Sullivan, president of Bumble Bee (Luxner, 1990:4A).

When the ETP was profitable and legitimate, the TNCs set up operation in Puerto Rico and Latin America to process for the US market. When MMPA made the ETP illegitimate, Puerto Rican and Latin American processing facilities became less convenient and the industry moved operations to the western Pacific.

The Move to Asia

The move to Asia is a strategy designed to decrease the costs of production. However, the shift to Asia jeopardizes the access to affluent markets such as the US and Europe. Accordingly, this strategy is complemented by another one which attempts to secure footholds in these markets. Unicord for example is Southeast Asia's largest investor in the US. Before Unicord bought Bumble Bee, it was the world's largest supplier of tuna, but was at the mercy of industry middlemen who bought the fish for resale to major brands. "Now Unicord can be assured of a distribution network in the United States, while Bumble Bee is sure of its supply," said Unicord Chairman Kamchorn Sathirakul. "Now we've become a truly integrated, global business" (Wallace, 1992:H3).

Unicord's strong point has been low wages at its Thailand factory, where it employs 7,000 people to process raw tuna. "Thai companies,

especially in the food-processing business, are aggressively seeking out US companies which control their markets in order to lock up a foothold in fortress Europe and fortress USA," said Graham Catterwell, an analyst at Crosby Securities in Bangkok (Wallace, 1992:H3). These are good examples of globally sourcing markets before protectionist policies may arise.

Impact on Latin America: Mexico and Venezuela

Mexican and Venezuelan tuna related economic activities were damaged by negative publicity and declining exports. Under the MMPA, Venezuelan and Mexican industries couldn't export tuna products to the US because in 1991 their boats had a dolphin kill rate higher than 1.25 percent of the US fleet average. Venezuela contends that the US set standards that are impossibly high for third world fleets in order to protect the American fleet at a time when tuna demand is flat (Brooke, 1992a:7). In response to the embargoes, both countries joined the IATTC and opened their tuna fleets to inspection by IATTC observers. Mexico pledged \$1 million and Venezuela \$500,000 for research on dolphin safe fishing (Brooke, 1992b).

Mr. Covian, a Mexican tuna fisherman, says that he has risked his life for dolphins, even leaped into shark-infested waters to free them from the nets. Now he has to look for a new job because of the Tuna Wars and industry wide setbacks worsened by a US embargo of Mexican tuna. The conflict threatens hundreds of Mexican fishing and canning jobs. According to US environmentalists, free trade must imply shared values, and that Mexico cannot keep pleading lack of resources as an alibi for wreaking the environment. Mexican partisans call the embargo a ploy, in the name of Flipper, to sabotage Mexico's tuna industry before it challenges US jobs and markets (Ellison, 1991).

Years of highly publicized campaigns and boycotts by environmental groups forced most of the US fleet out of the ETP, westward to near New Guinea where tuna and dolphin stay apart and where the US has fishing treaties with surrounding islands. Mexico and Venezuela lack such treaties to gain access to other fishing waters and the Latin American boat owners are not eager to pay the \$1 million deemed necessary to equip each boat for such long voyages. Mexico's tuna industry was extremely vulnerable due to the Tuna Wars and a tuna glut on foreign markets. The price per ton fell more than 30% in the first half of 1991 (Ellison, 1991). Claiming to be prisoners of geography, Venezuela says it is too far for them to fish in the western Pacific where they do not have fishing rights (Brooke, 1992).

As a result of the US tuna embargo, in Cumana, Venezuela, more and more tunaboats are at dock and more sailors and canners are out of work. Sealed off from the world's largest market since August of 1990, Venezuela's tuna fleet has shrunk from 118 boats in 1988 to 34 boats in 1992. As a result of the depressed economy, a crime wave is sweeping Cumana due to high unemployment from the embargo (Brooke, 1992a). According to Laura Rojas, Director General of Venezuela's Institute of Foreign Trade, "The US has passed domestic legislation that has jurisdiction outside the US. Environmental protection can't be had at the cost of another country" (Brooke, 1992a:7).

In February of 1992, Venezuela joined members of the EC and 23 other nations in urging the US to abide by a GATT ruling that the unilateral American ban on tuna imports from Mexico and Venezuela is illegal. According to David Phillips of EII, "They are kidding themselves if they think GATT can force the US to abandon laws to protect the global environment. In the 1990s free trade and efforts to protect the environment are on a collision course" (Brooke, 1992a:7). According

to Oliver Belisario, a Caracas based consultant for Venezuela's tuna industry, "Tuna is the debut for a great debate between environmentalists and traders" (Brooke, 1992a:7).

With Venezuelan and Mexican tuna shut out from the US, Australia and most of Europe, tuna landed in Venezuela sells at a steep discount from world prices, e.g. \$600/ton versus \$1000/ton if "dolphin-safe." Cans labeled "dolphin-safe" account for 95% of US sales and the US has half of the world's consumer tuna market. According to John M. Werner, president of the local subsidiary of the H.J. Heinz company in Venezuela, "We don't even can tuna in Venezuela for Venezuelan consumption any more. Heinz [now] has a worldwide "dolphin-safe" tuna policy" (Brooke, 1992a:7).

US and foreign tunaboat owners say the ban on purse-seine nets in the ETP would cripple their livelihood. "Our vessels and, I believe, the international fleet, would not be able to fish" in the ETP without purse-seine nets, says Richard Atchison, Executive Director of the San Diego Based American Tunaboat Assn.. "It's not technically feasible or economically feasible" (Parrish, 1992a:A20).

Conclusion

The tuna-dolphin case demonstrates the contested nature of the transnational arena as neither the TNCs nor the environmentalists and the various States' officialdoms were able to fully assert their agendas. It also shows the limits of the regulatory capacity of the nation-State along with the difficulties which exist in the development of larger-than-national forms of regulation. The accords among the US, Venezuelan, and Mexican governments, the various appeals to GATT, and domestic attempts to implement policy are all cases in point.

In this respect, it can be concluded that the regulatory situation at the transnational level is extremely unsettled and characterized by a combination of old forms of regulation paralleled by emerging new ones. The former refers to the various nation-States' attempts to continue their mediative and organizational roles both domestic and internationally. New forms of regulation are embodied in the increasingly important role performed by transnational organizations which in this particular case refer to GATT and the IATTC. The unsettled character of this situation is supported by the inability of these institutions to maintain levels of control which encompass the sphere of action of TNCs and which address the demands from other social actors.

The case further demonstrates that issues concerning the protection of the environment and labor cannot be addressed unless some forms of regulation are carried out. More specifically, this case points out the validity of the assumption held by some of the most prominent classic social thinkers, such as Marx, Durkheim, Weber, Spencer, Smith, and Gramsci, indicating that unrestricted development of capitalism creates unbearable consequences for society. Accordingly, this case study speaks directly against the neo-liberal assumption maintaining that unregulated capitalism can successfully address economic growth, employment, and protection of the environment. The constant attempts by TNCs to avoid pro-environmental legislation, the waves of negative consequences for labor in the US and Latin America, and the use of global sourcing by TNCs to avoid the task of developing environmentally sound fishing technologies point out the limits of the neo-liberal proposal.

Unrestricted capitalist development and its current reliance on flexible accumulation also speaks against the maintenance of "free spaces." The Fordist accord provided "free

spaces" for labor which characterized the expansion of the living standards of the working and middle classes in the US and in many other advanced and developing nations in the world. During the post-Fordist restructuring, "free spaces" for labor contracted, while some new "free spaces" concerning the protection of the environment were established. The tuna industry abandoned US and Latin American processing plants which serviced their ETP operations. The case study illustrates, however, that even in the case of the environment, the availability of democratic control appears increasingly problematic, especially in light of future possible GATT rulings. It is evident that the enforcement of pro-environmental legislation pushed TNCs to reconsider their plans of action. At the same time, TNCs were not forced to alter their methods of production, although the TNCs were compelled to move their operations out of the ETP.

If the scenario is correct, then the task of regulating global capitalism assumes central importance. There are two general categories of alternatives which have been recently discussed. The first is protectionism. Protectionism has been advocated to limit the transnational mobility of capital and labor and to enhance the ability to control undesirable consequences of economic activities. In recent years, protectionist strategies have called for items such as the adoption of increased import tariffs, tougher controls for commodities and labor at the border, and various incentives to enhance domestic production and consumption of domestic products (i.e., buy American).

The limits of the protectionist strategy can be synthesized into two objections. The first is that protectionism counters global capital's post-Fordist strategy of flexible patterns of accumulation. Flexible patterns of accumulation are keys in overcoming the crisis of Fordism and expanding the avenues for the expansion of capital. Accordingly, protectionist strategies

would involve hampering the functioning of a system that is increasingly interrelated globally and which finds in its global character its ultimate strength.

The second objection refers to the decreasing capacity of the nation-State to enforce local legislation. In this case, as documented above, there is no reason to justify the conclusion that protectionism would enhance the State's capacity to enforce effectively its regulations in the international arena.

The other general alternative is to be found in international accords aimed at regulation. This alternative is based on the principal that the unity of the polity and the economy must be reconstructed. This reconstruction implies that the global sphere of action of the economy must be matched by equally globally sphere of action of politically regulatory forces. This alternative would involve the creation of transnational polity forms, such as the IATTC, which would act as surrogates for the functioning of the nation-State at the transnational level. In essence, this alternative would involve the creation of international alliances and/or organizations which would control capital flexibility. The modalities and forms with which these alternatives can be constructed are to be found in the historical conditions of the present era.

In order to do so, one of the major aspects that needs to be overcome is the fragmentation emerging in production and cultural spheres. As indicated in the case study, progressive movements such as the environmentalists and pro-labor organizations, as well as local communities, are pitted one against the other. Accordingly, the commonalities shared by these movements and communities, both at the economic and solidarity levels³, are weakened by the emphasis on locality and particularity of interest. This situation matures in a context in which the interests of transnational capital are not fully criticized.

The case of the tuna industry shows that while the US national controversy centered on the banning of established fishing techniques, it ignored domestic labor issues. Alternatively, the international controversy barely touched the issue of the industry restructuring around new technologies but instead focused on the localized impacts of labor dislocation. The international discourse centers on local advantages and gains of local groups without questioning the tuna industry's insistence on purse-seine technologies. Gains are framed in a taken-for-granted discourse which addresses immediate concerns but never embraces the more probing issue of long-term social arrangements. In other words, the objective of profit generation is ultimately maintained along with the "alternative" goals of constructing a sound environment and developing poor world regions.

In conclusion, these contradictory elements point to the historical difficulties of bridging environmental, labor, local and global interests around common goals. Therefore, the alternative of creating international attempts (i.e. organizations and/or accords) to control economic activities, while perhaps more desirable than protectionism, is certainly no less problematic. The 30 year struggle between the tuna industry and environmentalists richly captures the problematic character of national regulation within an international arena. Although the environmentalists appear to have won the latest battle, the onus of GATT casts significant doubts over the eventual outcome of the war.

Notes

1. To be sure, it would be erroneous to equate the establishment of "free spaces" with formal democracy. As illustrated by the voluminous literature in political sociology (e.g. Offe, 1985; Habermas, 1975; Marcuse, 1964), the availability

of democratic spaces within the sphere of the State is the outcome of confrontations among various social groups which establish the separation between the State's formal and substantive dimensions.

2. It also important to note that according to the environmental group, Earth Island Institute (EII), federal agencies are not enforcing the law to require foreign fleets to maintain comparable kills as the US fleet. Furthermore, the EII maintains that fines and penalties for violations of MMPA are so low that skippers of tunaboats accept the low fines in order to maintain higher levels of returns.

3. This should not be interpreted as a stand against diversity. On the contrary, it speaks to the shattering of common experience which constituted in the past the backbone of collective movements such as unions and political organizations of the working class.

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