

Lead Author  
Mark A. Pollack

*The Political Economy of  
the Transatlantic Partnership*



Robert Schuman Centre  
for Advanced Studies  
EUROPEAN UNIVERSITY INSTITUTE



**EUROPEAN UNIVERSITY INSTITUTE  
ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES**

**The Political Economy of  
the Transatlantic Partnership**

**Lead Author: Mark A. Pollack**

**Report prepared by the Transatlantic Programme  
for and with the contribution of:**

**Her Majesty's Treasury (United Kingdom)  
Ministry of Finance (The Netherlands)**



HM TREASURY



*ministry of Finance*

All rights reserved.  
No part of this paper may be reproduced in any form  
without permission of the  
Robert Schuman Centre for Advanced Studies.

© 2003 Authors and the  
Robert Schuman Centre for Advanced Studies  
Printed in Italy in June 2003  
European University Institute  
Badia Fiesolana  
I - 50016 San Domenico di Fiesole (FI)  
Italy

## **Table of Contents**

<b>Executive Summary</b>	<b>iii</b>
<b>About the Authors</b>	<b>vii</b>
<b>1. The Transatlantic Marketplace and the Changing EU/US Economic Agenda</b>	<b>1</b>
<b>2. Institutions for Transatlantic Economic Governance: Origins and Effectiveness</b>	<b>5</b>
2.1 Transatlantic Economic Agreements in the 1990s	
2.2 An Overview of Existing Transatlantic Institutions	
2.3 An Effective Framework for Economic Cooperation?	
<b>3. Trade and Regulatory Disputes in the Transatlantic Economic Partnership</b>	<b>17</b>
3.1 Classifying Disputes: Traditional Trade Issues vs. 'Behind-the-Border' Regulatory Disputes	
3.2 Case Study: Airplane 'Hushkits'	
3.3 Case Study: Hormone-Treated Beef and Genetically Modified Organisms	
3.4 Public Procurement: The Massachusetts/Myanmar Case	
3.5 Intellectual Property Rights: The Irish Music Case	
3.6 Dealing with Trade and Regulatory Conflicts	
<b>4. Transatlantic Regulatory Cooperation</b>	<b>32</b>
4.1 Why Cooperate?	
4.2 Case Study: Transatlantic Competition Policy Cooperation	
4.3 Case Study: EU/US Mutual Recognition Agreements	
4.4 Case Study: Data Privacy and the Safe Harbour Agreement	
4.5 The Challenge of Transatlantic Regulatory Cooperation	

<b>5. The European Union and the Americas</b>	<b>47</b>
5.1 The EU and Latin America: Trade and Investment	
5.2 EU Trade Agreements with Latin American Countries	
5.3 Challenges for EU/Latin American Economic Relations	
<b>Conclusion: The New Transatlantic Economic Agenda</b>	<b>61</b>
<b>Appendix 1: EU-US Barriers to Trade in Goods, Services and Foreign Investment</b>	<b>65</b>
<b>Appendix 2: WTO Cases by the EU against the US (excludes cases as a third party)</b>	<b>70</b>
<b>Appendix 3: WTO Cases by the US against the EU and Its Member States (excludes cases as a third party)</b>	<b>78</b>
<b>References and Recommended Reading</b>	<b>87</b>
<b>Notes</b>	<b>94</b>



## **Executive Summary**

The European Union and the United States are the largest economies and the largest trade and investment partners on earth, and the interdependence of these two economies has grown rapidly in the course of the past decade. During the 1990s the volume of transatlantic trade more than doubled, making the EU and the US each other's most important trading partners. Foreign direct investment between the US and the EU has grown even more rapidly, doubling in value during the last three years of the 1990s alone; indeed, it is estimated that some 3.5 million American jobs rely on foreign investment from the European Union, with a similar number of Europeans employed by US firms.

These developments, reviewed briefly in Section 1 of this report, have created a *de facto* transatlantic marketplace, yet they have also led to new strains on the transatlantic partnership and to a new and challenging economic agenda for EU/US cooperation. Prior to the 1990s, much of the transatlantic economic relationship was dominated by traditional trade questions such as tariffs, quotas, and other direct barriers to trade typically imposed at US and EU borders. With the decline in tariffs and quotas in most areas of transatlantic trade, however, non-tariff barriers to trade - most notably, 'behind-the-border' domestic regulations adopted in response to legitimate public concerns about the environment, consumer protection, food safety and data privacy - have emerged alongside traditional trade barriers as the primary challenges to a mutually beneficial EU/US trade and investment relationship.

In an effort to meet these challenges, the United States and the European Union have put into place an increasingly well developed institutional machinery for bilateral economic as well as foreign and security policy cooperation. These institutions, examined in detail in Section 2, have fostered a regular dialogue between EU and US authorities across a full range of issue-areas, and have provided the framework for increasing efforts at regulatory cooperation and trade dispute resolution. Nevertheless, recent studies have demonstrated the uneven performance of these institutions across issue-areas as well as the uneven development of the various transatlantic 'civil-society dialogues,' and have suggested reforms to allow the EU and US to focus more effectively on joint long-term objectives.

The transatlantic relationship has come under repeated strain during the past decade as a result of both traditional and new-style regulatory disputes. Such disputes, the European Commission has pointed out, concern only an estimated 1-2% of the total value of transatlantic trade and investment, yet these disputes could potentially spread to other areas of the transatlantic relationship; it is therefore in the interests of both sides to ensure that such disputes are prevented from arising through timely consultations where possible, and settled efficiently and amicably in other cases. Many of these disputes—especially traditional tariff, quota, antidumping and subsidies disputes—are dealt with effectively through the dispute settlement procedure of the World Trade Organization (WTO) to which the EU and the US are both parties. New-style regulatory disputes, however, often involve domestic laws adopted for legitimate purposes following democratic deliberation, and these disputes can place considerable strain on the WTO system, particularly in cases where the losing party would have difficulty complying with an adverse WTO ruling.

In such cases, both the United States and the European Union should strive proactively to consider the WTO compatibility of national regulations prior to adoption, cooperate on common regulatory problems, and seek to settle regulatory disputes through consultations within the WTO dispute settlement procedure wherever possible. Section 3 of the report therefore examines a range of potential reforms in US and EU domestic regulatory procedures, in the bilateral relationship, and in the multilateral WTO dispute settlement procedure.

- At the domestic level, the US and the EU could commit themselves to conducting ‘Trade Impact Assessments’ of draft regulations, so that legislators are made aware of the potential trade implications of proposed regulations *before* they are adopted.
- At the bilateral level, both partners can engage in more extensive early warning of new rules, as well as greater regulatory cooperation and greater contact among legislators to increase their awareness of the external impact of domestic laws. Far from weakening the multilateral trading system, bilateral economic cooperation can and should *strengthen* the WTO by preventing difficult regulatory disputes before they occur, and by acting as a laboratory for the resolution of such disputes at the global level.
- At the multilateral level, finally, the EU and the US could commit themselves to modest reforms in the WTO and its dispute settlement procedure, including a clarification of the ‘precautionary principle’ in WTO law and a possible move from retaliation to compensation as the primary means of enforcement of WTO law.

Of the aforementioned proposals, the EU and the US have arguably made the most progress in promoting cooperation among their respective domestic regulators, with a growing number of formal regulatory agreements adopted since 1997 and an even larger number of informal contacts among EU and US regulators taking place on a regular basis across a full range of issue-areas. Such regulatory contacts hold significant promise, allowing regulators on both sides of the Atlantic to learn from each other, coordinate their regulatory efforts, and avoid transatlantic regulatory disputes before they begin. However, as Section 4 of this report demonstrates in detail, successful regulatory cooperation is not a 'magic bullet' for trade disputes, but rather a 'hothouse flower' which must be carefully nurtured and can be easily frustrated by any of a number of potential obstacles, including the persistence of distinctive European and American regulatory philosophies and procedures, the multi-level nature of the EU and US political systems, and the insistence by both sides on maintaining domestic regulatory sovereignty. Overcoming these obstacles will require the identification of 'best practice' in regulatory cooperation, gradual increase in regulatory trust among EU and US regulators, and a careful balancing by political leaders of domestic regulatory aims on the one hand and the importance of the transatlantic economic relationship on the other.

The EU's ever-closer economic relationship with the United States has not developed in a vacuum, but rather coincides with a second major development, namely the rapid increase during the 1990s of EU trade and foreign direct investment with the countries of North and South America, analyzed in Section 5 of the report. Concurrent with its greater economic presence in the Americas, the Union has pursued a wide range of trade and economic agreements with the countries of the region, including an increasingly close trade and regulatory relationship with Canada, a free trade agreement with Mexico, and other agreements with Chile, Mercosur and other Latin American countries.

In May 2002, leaders of the European Union and Latin American countries met in Madrid for their second summit meeting, confirming the conclusion of negotiations on an EU/Chile Association Agreement and calling for further development of bilateral ties, including the eventual conclusion of a similar association agreement with Mercosur. In these and future negotiations, the EU should give special attention to expanding market access for Latin American goods and services, especially for so-called 'sensitive products' currently subject to high EU tariffs, as well as focusing on the reduction of other means of protection, such as tariff quotas, that are applied trade in goods, services, investment, public procurement, intellectual property rights, technical standards, and rules of origin.



The European Union's economic relationships with the countries of the Americas, like its bilateral relationship with the United States, is nested in turn within the multilateral trading system of the World Trade Organization, the further development of which is a shared priority for both the European Union and the United States. During his recent trip to Argentina, EU Trade Commissioner Pascal Lamy stressed the importance of ensuring that bilateral and inter-regional trade agreements with the United States, Canada, and the countries of Latin America rest on the multilateral foundation of WTO trade law. For this reason, he argued, bilateral and interregional negotiations 'must not be allowed to detract our attention from the pursuit of the Doha Development Agenda.' Such a commitment should remain a central tenet of EU trade policy in the years to come.

Within the multilateral rules-based trading system, finally, the European Union and the United States should also seek to develop further their bilateral relationship, the health of which is vital to the global economy as a whole. Addressing the full range of challenges to the transatlantic economic partnership will, in turn, require a careful and extensive study, not only of traditional trade issues such as the liberalization of tariffs and quotas, but also and especially the domestic sources of transatlantic regulatory disputes and successful means of preventing and settling such disputes. More specifically, such a study would have to undertake three essential tasks:

- A comprehensive listing and analysis of EU and US regulations capable of restricting trade and investment in the transatlantic marketplace;
- A comprehensive survey and analysis of formal and informal regulatory cooperation, focusing on both the obstacles to such cooperation and instances of 'best practice' in overcoming those obstacles; and
- A systematic analysis of various means of bilateral and multilateral dispute resolution, with a particular emphasis on the specific challenges of transatlantic regulatory disputes.

The insights generated by such a study would inform not only the further development of the transatlantic economic partnership but also the development of the rules-based multilateral trading system of the World Trade Organization.

## **About the Authors**

This report was prepared by the Transatlantic Programme of the Robert Schuman Centre for Advanced Studies at the European University Institute, Florence.

The following persons contributed to the writing of one or more portions of this report:

*Rebecca Steffenson* (European University Institute) contributed to Section 2;

*Alasdair Young* (University of Glasgow) contributed to Section 3, including the preparation of Tables 5-7, as well as Appendices 1-3;

*Gregory C. Shaffer* (University of Wisconsin School of Law) contributed two case studies in Section 4;

*Mariam Camarero* (Universidad Jaume I), *Cecilio Tamarit* (Universidad de Valencia), and *Andrea Ribeiro Hoffmann* (University of Tübingen) contributed to Section 5; and

*Mark A. Pollack* (European University Institute/University of Wisconsin-Madison) served as lead author for the report and contributed to the writing of various sections.

The Transatlantic Programme is also grateful to the following persons for comments on early drafts of the report:

*Helen Wallace* (Director, Robert Schuman Centre for Advanced Studies);

*Patrick Messerlin* (Institut de Sciences politiques, Paris);

*Claus-Dieter Ehlermann* (European University Institute);

*Ernst-Ulrich Petersmann* (European University Institute); and

*Michael Artis* (European University Institute).

The Transatlantic Programme was established in 2000 with a major gift from BP.

## **The Transatlantic Marketplace and the Changing EU/US Economic Agenda**

The European Union and the United States are the largest economies and the largest trade and investment partners on earth, and the interdependence of these two economies has grown rapidly over the course of the past decade. Taken together, the US and the EU account for roughly one half of both world GDP and global trade.

*Table 1: Transatlantic Trade, 1980-2000, in millions of Euros  
(share of EU total)*

	<b>1980</b>	<b>1990</b>	<b>2000</b>
<b>EU imports from US</b>	50,733 (18.1%)	88,957 (20.5%)	197,992 (19.3%)
<b>EU exports to US</b>	29,543 (14.0%)	82,004 (20.0%)	232,037 (24.7%)

Source: DG Trade, [http://europa.eu.int/comm/trade/pdf/bilstat/econo\\_usa.xls](http://europa.eu.int/comm/trade/pdf/bilstat/econo_usa.xls)

The European Union and the United States are also each other's most important trading partners. As Table 1 illustrates, the volume of EU/US trade more than doubled during the 1990s, and the two countries are currently each other's largest trading partners. Indeed, recent data on trade in services, summarized in Table 2, demonstrates even more clearly the importance of the transatlantic trade relationship, with the United States accounting for some 40% of the EU's total imports and exports of services, which in turn account for between one-third and one-half of total transatlantic trade. Furthermore, EU/US trade has been largely balanced over the decade of the 1990s.

**Table 2: Transatlantic Trade in Services, in millions of Euros  
(share of EU total)**

	<b>1998</b>	<b>1999</b>	<b>2000</b>
<b>EU imports from US</b>	79,874 (36.0%)	99,042 (40.9%)	116,474 (40.7%)
<b>EU exports to US</b>	77,039 (33.4%)	92,199 (37.3%)	117,403 (40.3%)

Source: DG Trade, [http://europa.eu.int/comm/trade/pdf/bilstat/econo\\_usa.xls](http://europa.eu.int/comm/trade/pdf/bilstat/econo_usa.xls)

Notwithstanding the impressive growth of EU/US trade, it is the investment relationship that most clearly distinguishes the contemporary transatlantic marketplace. As Table 3 makes clear, the European Union in 2000 was far and away the largest investor in the United States, its €794 billion in foreign direct investment (FDI) constituting 65% of total FDI in the US.<sup>1</sup> The United States is similarly the largest source of FDI in the European Union, with some €561 billion invested in 2000. These high levels of EU investment are estimated to provide roughly 3.5 million jobs in the United States, with a similar number of European jobs relying on US investment in the Union.<sup>2</sup> The large and growing investment relationship also explains a considerable portion of the recent growth in bilateral US/EU trade, since an estimated 20-30 percent of all bilateral trade takes the form of intrafirm trade within firms operating on both sides of the Atlantic.

**Table 3: Transatlantic Foreign Direct Investment, in millions of Euros  
(share of EU total)**

	<b>1998</b>	<b>1999</b>	<b>2000</b>
<b>US FDI flows into EU</b>	60,697 (57.1%)	83,798 (75.4%)	121,271 (68.8%)
<b>EU FDI flows to US</b>	133,416 (60.2)	196,794 (63.2%)	172,027 (47.5%)
<b>US FDI stocks in EU</b>	366,462 (60%)	439,928 (60.9%)	561,199 (62.5%)
<b>EU FDI stocks in US</b>	398,190 (48.3%)	622,496 (52.4%)	794,523 (51.3%)

Source: DG Trade, [http://europa.eu.int/comm/trade/pdf/bilstat/econo\\_usa.xls](http://europa.eu.int/comm/trade/pdf/bilstat/econo_usa.xls)

With the simultaneous growth of transatlantic trade and investment and the gradual decline in EU and US tariffs and quotas following successive waves of trade liberalization, the transatlantic economic agenda has been transformed. Prior to the 1990s, much of the EU/US economic relationship was dominated by trade questions, and specifically by cooperation and conflict over tariffs, quotas, and other direct barriers to trade typically imposed at US and EU borders. With the decline in tariffs and quotas in most areas of transatlantic trade, however, non-tariff barriers to trade have increased in importance as potential sources of international trade tension. Such non-tariff barriers have been addressed in the European Union for decades, through the use of regulatory harmonization and more recently through the mutual recognition of national standards. Similarly, the GATT system began as early as the Tokyo Round (1973-1979) to address non-tariff barriers to trade, most notably through the Technical Barriers to Trade (TBT) Agreement and more recently through the 1994 Sanitary and Phytosanitary Standards (SPS) Agreement, both of which apply international law disciplines to trade-distorting national regulations.

Notwithstanding these new rules, however, 'behind-the-border' US and EU regulations on a diverse array of topics—ranging from the environment and food safety to consumer protection and data privacy—have emerged during the past decade as significant obstacles to transatlantic and global trade and investment.<sup>3</sup> In some cases, such domestic regulations have led to trade disputes between the United States and the European Union, and to increasing demands from businesses on both sides of the Atlantic for cooperation among US and European regulatory authorities to prevent and settle such disputes and facilitate access to the European and American markets.

In sum, the ever-increasing levels of transatlantic trade and investment have created a *de facto* transatlantic marketplace, and with it an increasing incentive for the European Union and the United States to cooperate in an effort to manage that marketplace, facilitate mutually beneficial economic exchange, and prevent or settle the trade and economic disputes that inevitably arise in such a close relationship. In that context, this report aims to summarize the state of our scholarly understanding about the political economy of the transatlantic economic relationship, with an emphasis on the institutions for joint economic governance, the new challenges posed by regulatory disputes, and the promise and limits of transatlantic regulatory cooperation. Accordingly, Section 2 of the report examines the development and growth of post-Cold War institutions for the management of the EU/US economic partnership, while Section 3 examines the persistence of trade and economic disputes between the EU and the US, including the rise of new and potentially intractable regulatory disputes, and Section 4 examines the prospects and limits of transatlantic regulatory cooperation as a possible solution to such

conflicts. The fifth section of the report places the EU/US bilateral relationship in the broader context of the relationship between the European Union and the various countries of the Americas, and the sixth concludes with a review of potential areas for further transatlantic cooperation and promising areas for further study.

## **Institutions for Transatlantic Economic Governance: Origins and Effectiveness**

Transatlantic relations between the United States and the countries of Western Europe have long been based on common values and interests in terms of both security and economic interdependence. Throughout the Cold War, transatlantic cooperation took place largely through the North Atlantic Treaty Organization (NATO) in the area of security, and through common US and European participation in various multilateral economic forums including the Organization for Economic Cooperation and Development (OECD), the G-7 (now G-8) group of highly industrialized economies, and the World Trade Organization.

Cooperation between the United States and its European partners is therefore not new, but the *character* of the relationship changed substantially during the 1990s, with an ever-greater emphasis on economic as well as security cooperation, and a greater recognition by the United States of the European Union (in addition to its member states) as an important interlocutor. Three transatlantic agreements signed in the 1990s underpin this new transatlantic partnership and the increasingly liberalized EU/US economic relationship. The Transatlantic Declaration (1990), the New Transatlantic Agenda (NTA, 1995) and the Transatlantic Economic Partnership (TEP, 1998) have each played an important role in creating a transatlantic framework for economic co-operation and introducing formal transatlantic institutions to manage the relationship. This upgrading of the EU/US relationship, in turn, can be traced to several interrelated developments during that decade, including the end of the Cold War, the maturation of the European Union as an economic and political actor, and the relentless expansion of transatlantic economic exchange which created pressures for joint management of the emerging transatlantic marketplace.<sup>4</sup>

The end of the Cold War was clearly a precipitating cause for the upgrading of the transatlantic relationship. As early as 1990, the US presidential administration of George H.W. Bush proposed a Transatlantic Declaration to reaffirm US/European solidarity following the fall of the Iron Curtain and the collapse of the Soviet Union. While that Transatlantic Declaration itself focused largely on security issues rather than economic cooperation, the diminution of the security

threat from post-Soviet Russia facilitated an increasing emphasis on economic issues by the Clinton Administration, reflected in both the 1995 New Transatlantic Agenda and the 1998 Transatlantic Economic Partnership.<sup>5</sup>

This economic focus has in turn been reinforced by the maturation of the European Union, which emerged during the late 1980s and early 1990s as the world's largest internal market and the most important trading partner of the United States. Simultaneous with the development of the EU's internal market came the increasing influence of EU political institutions, including the European Commission (which plays a vital role in the EU legislative process as well as serving as trade negotiator and economic regulator in fields such as competition policy) and the Council of Ministers and European Parliament (which collectively adopt an increasingly large portion of European economic legislation). Although the powers of the respective EU institutions still varies considerably across sectors, the Commission has clearly emerged as the Union's primary interlocutor with the United States on economic issues, while the legislative activities of the Council and the Parliament have the potential to influence economic interests in the United States. The institutions of the New Transatlantic Agenda have therefore attempted to incorporate the Commission and the Council presidency through biannual summits and other high-level meetings, as well as members of the European Parliament through the Transatlantic Legislators' Dialogue (see below).

Beyond the end of the Cold War and the maturation of the European Union, finally, lies the relentless increase of transatlantic economic exchange. Increased transatlantic trade and investment have created new demands for market access and economic cooperation from producer groups such as the Transatlantic Business Dialogue, while other consumer, labour, and environmental groups have sought to ensure that transatlantic cooperation takes into account their diverse interests. Indeed, as we shall see below, the increasingly close economic relationship between the EU and the US has created new prospects for both trade conflicts and regulatory cooperation, and has resulted in what might be termed 'scuttle diplomacy'—the scurrying of EU and US government authorities to cope with the incessant conflicts which, although they compose only a small fraction of EU/US economic exchange, threaten to poison a mutually advantageous economic relationship.<sup>6</sup> Largely for this reason, the United States and the European Union have established an increasingly complex institutional structure designed to facilitate economic and security cooperation, resolve and prevent disputes, and integrate civil-society groups into the process of transatlantic economic governance.



## **2.1 Transatlantic Economic Agreements in the 1990s**

### **2.1.1 The Transatlantic Declaration**

The process of institutionalizing the EU/US relationship began simultaneously with the end of the Cold War in 1989, when US President Bush and EU Commission President Jacques Delors agreed to work to ensure regular meetings between high-level EU and US officials. On 27 February 1990, this agreement bore fruit in the shape of a 'Transatlantic Declaration,' pursuant to which the US and EC agreed to establish an institutional framework 'for regular and intensive consultation.' Specifically, the Declaration called for biannual EU/US summit meetings between the presidents of the United States, the European Commission, and the European Council, as well as regular meetings between the US Secretary of State, the EC Commission and the US Cabinet. These meetings, it was hoped, would open lines of communication, create networks, facilitate information sharing, and reduce the impact of disputes in transatlantic relations.

In substantive terms, the Transatlantic Declaration identified three major goals:

- economic liberalization;
- educational, scientific and cultural co-operation; and
- cooperation in fighting international crime, terrorism and environmental degradation.<sup>7</sup>

While these policy areas were identified as priorities, the agreement failed to provide a more detailed agenda for meeting its goals. The content of the agreement has been described as cosmetic, minimalist and lacking in substantive innovations, and would soon be supplemented by other, more detailed economic agreements.<sup>8</sup>

### **2.1.2 The New Transatlantic Agenda**

The next stage in developing the transatlantic economic relationship came with the New Transatlantic Agenda (NTA), which was signed at the EU/US Summit in Madrid in 1995, and established four priority areas for closer cooperation:

1. promoting peace and stability, democracy and development around the world (in particular, in Central and Eastern Europe, Russia, and the Middle East);
2. responding to global challenges (with a focus on international crime, drug trafficking, terrorism, migration, and health and environmental issues);
3. 'contributing to the expansion of world trade and promoting closer economic relations' (including both bilateral and multilateral liberalization of trade and investment); and

4. building bridges across the Atlantic (specifically, direct contacts among 'business people, scientists, educators and others').<sup>9</sup>

In addition to the six-page NTA itself, the two partners also adopted a much more detailed Joint Action Plan (JAP) which outlined specific policy areas where deeper cooperation could be pursued. The economic chapter of the JAP was arguably the most ambitious of the four, calling for both the strengthening of the multilateral trading system and the creation of liberalized 'transatlantic marketplace,' with a special focus on bilateral regulatory cooperation.<sup>10</sup> The NTA itself also acknowledged the role of the Transatlantic Business Dialogue, which would later prove to be influential in setting the agenda for transatlantic economic cooperation.

In institutional terms, the New Transatlantic Agenda established new transatlantic governance mechanisms and a more established policy process. First, it created a Senior Level Group of EU and US officials, together with a lower-level NTA Task Force to help drive, coordinate, monitor and implement the agenda of transatlantic relations between the continuing EU/US summits. Although this framework has since been criticized as excessively bureaucratic and focused on summit-driven 'deliverables' (see below), the NTA framework has proven useful in coordinating EU and US responses to both economic and security issues, and remains the overarching framework for transatlantic relations today.

### ***2.1.3 The Transatlantic Economic Partnership***

The drive for an ever-closer transatlantic economic relationship was revived in 1998 amidst revelations that cooperation in many policy areas had fallen short of initial expectations.<sup>11</sup> Despite the NTA and its institutions, high-profile trade disputes over bananas, beef and extraterritorial sanctions continued, highlighting the need for further transatlantic commitment to facilitate economic exchange and contain conflict. In that context, the European Commission took the initiative in April 1998, calling for negotiations on a 'single comprehensive agreement' to implement a 'New Transatlantic Marketplace.' The Commission's proposal had four central objectives:

1. the 'removal of technical barriers to trade in goods through an extensive process of mutual recognition and/or harmonization';
2. the elimination 'by 2010 of all industrial tariffs on an MFN basis';
3. the formation of a 'free trade area in services'; and
4. further liberalization in the areas of government procurement, intellectual property rights, and investment.<sup>12</sup>

The United States had little time to respond, however, as the initiative failed to secure the support of the Council of Ministers. In its place, the US and the EU agreed in May 1998 to a somewhat less ambitious

Transatlantic Economic Partnership (TEP), which aimed to tackle bilateral regulatory barriers to trade and to identify common positions within multilateral trade negotiations. In substantive terms, the TEP and its accompanying Action Plan focused more directly than the NTA on regulatory cooperation and on the possible harmonization of standards as a means of removing technical barriers to trade, and it committed both sides to negotiations in specific issue-areas including services, intellectual property, food safety and biotechnology.<sup>13</sup>

In addition, the TEP created a new set of institutions to manage the economic aspects of the relationship, including a 'TEP Steering Group,' charged with monitoring, implementing and reviewing TEP objectives, as well as expert-level working groups. The TEP also emphasized the importance of early warning of potential trade and regulatory disputes, and fostered the creation of an institutionalized 'early warning system' following the Bonn EU/US summit in June 1999. Finally, the TEP explicitly encouraged the participation of not only business but other civil society groups, which would lead in time to the creation of the transatlantic consumer, environment, and labour dialogues.

*Table 4: Transatlantic Cooperation Agreements at a Glance*

<b>Transatlantic Agreement</b>	<b>Year</b>	<b>Impact on the Economic Relationship</b>
<b>The Transatlantic Declaration</b>	1990	Contains a broad commitment to economic liberalization.
<b>The New Transatlantic Agenda (NTA) and Joint Action Plan (JAP)</b>	1995	Includes a chapter on contributing to the expansion of world trade and promoting closer economic relations; JAP discusses building a 'new transatlantic marketplace' through increased regulatory co-operation.
<b>Transatlantic Economic Partnership (TEP)</b>	1998	Outlines three main goals for the transatlantic economic relationship: <ol style="list-style-type: none"> <li>1) market access gains for goods, services, and agricultural products;</li> <li>2) multilateral and bilateral trade liberalization of goods, services and capital;</li> <li>3) deepening dialogue between non-governmental organizations, parliamentarians, and government.</li> </ol>

## **2.2 An Overview of Existing Transatlantic Institutions**

Today's transatlantic economic relationship is managed largely by a set of institutions that were created in stages by the Transatlantic Declaration, the NTA and the TEP. Combined, these institutions constitute a framework for long-term as well as day-to-day economic cooperation and dispute resolution.

### ***2.2.1 EU/US Summits***

The biannual EU/US summit is the primary forum for intergovernmental exchange in the NTA process, consisting of the highest level of contact between the Presidents of the US, the EU Commission and the Council Presidency. The transatlantic policy cycle begins and ends with these biannual summits, where decisions are 'made' about the general scope for co-operation and where 'deliverables' - in the form of new bilateral agreements about regulatory cooperation or the resolution of specific disputes—are announced. The summits encourage policy co-ordination because they create deadlines for progress reports and exert pressure on lower-level officials to produce results.

### ***2.2.2 Senior Level Group and the NTA Task Force***

The Senior Level Group serves as a contact point between the EU/US Summit and the working level of the transatlantic dialogue. It has roughly six formal members including the US Undersecretary of State for Economic Affairs, Commission delegates from the Directorates-General for external relations and trade, Council Presidency representatives, and representatives of the 'Article 133 committee' dealing with international trade matters. The primary tasks of the SLG are to prepare the agenda of the biannual summits, 'shopping for deliverables' to be announced on those occasions, and to monitor the implementation of the NTA and the TEP.

Logistically, the SLG typically meets twice during each Council Presidency, with the first meeting used to assess potential areas of cooperation and conflict, and the second meeting finalizing the agenda for the EU/US summit and confirming the contents of its progress report, which is presented to summit leaders. Below the SLG, an 'NTA Task Force' meets somewhat more frequently (often through videoconferencing) to follow specific dossiers in both the security and economic realms.

### ***2.2.3 TEP Steering Committee and Working Groups***

The TEP institutions, including the Steering Group and working groups, bring together policy experts to deal with economic issues in greater detail. The Steering Group consists of the US Deputy Assistant

Secretary of State for Economic Affairs, Commission officials at the Head-of-Unit level, and a Council Presidency representative. Originally designed to coordinate negotiating approaches within the WTO and to act as an 'early warning system' to identify possible trade disputes, the TEP Steering Group has evolved into the primary coordinating body for transatlantic economic relations, including negotiations about regulatory cooperation in specific areas.

The Steering Group is assisted by the TEP working groups which are sector-specific and thus mirror the sectors laid out by the TEP including agriculture, biotechnology, trade, services, and global electronic commerce. Their main task is to find areas where the EU and the US can work together under the TEP framework and to report any progress or problems to the Steering Group.

#### ***2.2.4 The Transatlantic Early Warning System***

The 1998 TEP declaration highlighted the need to identify potential trade disputes before they emerge. At the Bonn EU/US summit in June 1999, the two sides announced plans to formalize an Early Warning System for this purpose.<sup>14</sup> Essentially the transatlantic early warning system sparks an inter-agency process to identify potential economic disputes at an early stage, most notably with regard to domestic EU or US legislation that might act as a barrier to transatlantic trade and investment. The task of spotting such potential disputes is delegated to the TEP Steering Group, which reports early warning items to the Senior Level Group, which in turn may take them into account when preparing the EU/US summit agenda. The TEP Steering Group also assigns contact points, facilitating consultations and agreeing on timelines for reporting back on items highlighted as potential transatlantic policy frictions. Unlike similar early warning systems within the European Union, however, the transatlantic early warning system does *not* require that either side pause or reconsider its proposed legislation or regulations. The result is a system which, while respecting the regulatory sovereignty of both sides, does not guarantee prevention or resolution of potential conflicts.

Figure 1: The Transatlantic Early Warning System



### ***2.2.5 The Transatlantic Legislators' Dialogue***

An underlying feature of the early warning concept is the desire to get both EU and US domestic policy makers to consider the external implications of internal policies. However, the Early Warning System is a bureaucratic tool. The important task of raising awareness between EU and US legislators lies with the Transatlantic Legislators' Dialogue (TLD), another product of the NTA's 'building bridges' chapter. The TLD brings together members of the US Congress and the European Parliament so as to create awareness on each side of the transatlantic trade impact of EU and US legislative acts.

Thus far, however, the TLD has not lived up to initial expectations, for three reasons. First, TLD participation is largely limited to members of the US House of Representatives and the European Parliament with a particular interest in transatlantic relations, and may not include members of committees drafting legislation with transatlantic repercussions; the US Senate, moreover, is thus far excluded from the TLD. Second, there is insufficient contact between the TLD and other parts of the transatlantic dialogue, for example the SLG. Third, meetings of the TLD have been held only rarely, and typically with weak attendance on the US side, and the Dialogue has yet to engage in or settle any serious economic disputes between the United States and the European Union.

### ***2.2.6 The Transatlantic Civil Society Dialogues***

The fourth and final chapter of the NTA encourages the establishment of 'people to people' links as a way of building bridges across the

Atlantic and bringing a civil-society component to transatlantic cooperation. In addition to supporting ad hoc exchange between educators and scientists, the EU and the US have encouraged and in some cases subsidized the establishment of formal dialogues among European and American business, consumer and environmental groups, and labour unions. The 1995 NTA made specific mention of the Transatlantic Business Dialogue (TABD), while the 1998 TEP invited civil society input 'on issues relevant to international trade as a *constructive contribution to policy making*.' In practice, however, not all dialogues have been created or function as equals.

### *The Transatlantic Business Dialogue*

The TABD is the oldest, best organized, and most influential dialogue in the transatlantic economic relationship. Launched in 1995 at the initiative of the US Commerce Department and the EU Commission, the TABD brings together some 200 European and American CEOs for annual meetings which make joint recommendations on the transatlantic policy issues.<sup>15</sup> From the beginning, the TABD focused the attention of US and European legislators and regulators on the importance of non-tariff barriers to trade, calling explicitly for EU/US regulatory cooperation and mutual recognition of standards—an approach it has labelled 'approved once, accepted everywhere.'<sup>16</sup> In keeping with this approach, the TABD has been active in pressing for the adoption and implementation of specific agreements, including the 1997 Mutual Recognition Agreements and the 2000 Safe Harbour Agreement on data privacy (examined below). In addition, the TABD participates actively in the transatlantic early warning system, identifying in its annual reports those domestic laws and regulations that might create obstacles to transatlantic trade and investment.<sup>17</sup>

One result of this process is that the TABD has become a valuable source of information for EU and US policy makers. Sixty percent of the TABD's original recommendations resurfaced in the NTA and the Joint Action Plan.<sup>18</sup> Some members estimate that one-third of its recommendations have been taken on board by transatlantic policy makers.<sup>19</sup> Nevertheless, there is an increasing perception within the TABD that much of the 'low-hanging fruit' has been picked, in terms of transatlantic trade liberalization and regulatory cooperation, and a fear that governments 'can't deliver' regulatory reforms demanded by business.<sup>20</sup> In addition, the TABD faces the challenge of interacting with the other officially recognized dialogues, with which it may not always agree.

### *The Transatlantic Consumer Dialogue*

The decision to include consumers, environmentalists and workers in the transatlantic dialogue was the result of pressure from NGOs, the European Commission and eventually the US State Department. The

success of the TABD sparked criticism from the NGO community, which argued that the influence of the TABD was unbalanced by an absence of civil society input. In response to these concerns, the State Department and the European Commission both agreed to provide funds to establish a new Transatlantic Consumer Dialogue. There was some objection to government sponsorship of the groups, particularly in the US, where it was feared that the consumer dialogue was a way to 'greenwash' the TEP. There was also a divide among its members over the issue of trade liberalization, most notably at the first meeting of the TACD, which was overshadowed by a dispute between groups such as Public Citizen which generally oppose trade liberalization, and other groups such as Consumer Union which support trade liberalization as a means of increasing consumer choice.<sup>21</sup>

Despite this rocky start, the TACD has become an efficient organization, with a secretariat in London and a Steering Committee that has organized its roughly 60 members into working groups on food, electronic commerce and trade. In its working groups, annual meetings, and recommendations, the TACD has focused largely on transatlantic regulatory issues—in areas such as data privacy, food safety, and the application of the 'precautionary principle' in risk regulation—because many consumer groups feared a downward spiral of regulatory standards as a result of increasing trade liberalization. Nevertheless, despite its high level of activity, some members of the TACD feel that they have not had a sufficient impact on the NTA process, which they regard as being dominated by a free-trade agenda.<sup>22</sup>

### *The Transatlantic Environmental and Labour Dialogues*

Attempts to forge a functioning dialogue between the European and American environmental and labour movements have been the least successful. Despite initial attempts to create an environmental dialogue, the TAED suspended its activities in 2000, citing a lack of funding from the US side.<sup>23</sup> The TAED had, until this point, held three meetings and established a Steering Committee as well as Working Groups on Climate Protection, Bio-diversity and Forest Conservation, Food and Agriculture, and Industry. The TAED also offered a number of official recommendations on safe energy sources, biotechnology, waste management and emissions standards, although TAED members, like their TACD counterparts, argued that the TABD continued to enjoy privileged access to EU and US policymakers.<sup>24</sup>

Finally, while the Transatlantic Labour Dialogue is officially still a functioning forum, it is the least developed of the transatlantic civil-society dialogues. The TALD is little more than a modest exchange between the European Trade Union Confederation (ETUC) and the American Federation of Labour and the Congress of Industrial Organizations (AFL-CIO), with no organizational structure, secretariat



or formal objectives. The TALD did hold several meetings in 1998 and 1999 and 2000, but produced only six recommendations from those meetings. Simplifying only slightly, the ETUC and AFL-CIO have chosen to emphasize their shared interests in a global labour dialogue, and have demonstrated little commitment to a specifically transatlantic agenda within the framework of the NTA or the TEP.<sup>25</sup>

In sum, the transatlantic civil-society dialogues have arguably served a useful purpose in fostering transatlantic discussion among businesses and non-governmental organizations (most notably in the business and consumer sectors), and in producing concrete recommendations for transatlantic economic cooperation. However, the relative weight of these organizations remains highly uneven, and the current arrangement is highly segmented and marked by a lack of any 'dialogue among the dialogues,' which might lead to the creation of a genuine transatlantic public sphere.

### **2.3 An Effective Framework for Economic Cooperation?**

In recent months, both official reviews and academic studies have focused on the institutions of the NTA and the TEP, asking whether these institutions are an adequate framework for transatlantic economic as well as security cooperation. In its 2001 review of the NTA, for example, the European Commission argued that institutions such as the TEP Steering Group, the NTA Task Force and the Senior Level Group serve useful purposes in fostering dialogue and cooperation between EU officials and their US counterparts, but also noted a number of weaknesses in the current structure, including the summit-driven demand for often artificial 'deliverables' at six-month intervals, and the difficulty in focusing on medium- to long-term priorities given the inevitable demands of pressing short-term issues. The Commission therefore proposed a number of reforms to the current institutions, including the establishment of explicit medium-term priorities and the possible reduction of the number of EU/US summits to one per year.<sup>26</sup>

By and large, the Commission's recommendations were welcomed by the United States government, which agreed to the establishment of a set of medium-term priorities in the context of the June 2001 Göteborg summit. By contrast, no progress has been made on the suggestion of reducing the number of transatlantic summits, largely because of the difficulties posed by the rotating six-month presidency on the EU side. In addition, as we have seen, a number of calls have been made in recent years for a more transparent and accountable process of transatlantic economic governance, with more balanced input from civil society and with a greater role for democratically elected legislators. Thus far, however, these calls have met with no systematic response from either the US or the EU.

Moving from institutions to ‘deliverables,’ a recent study by Eric Philippart and Pascaline Winand has attempted to measure the policy outputs of the NTA, by examining the joint reports of the Senior Level Group since 1995 in order to determine to what extent, and in which areas, the goals of the Joint Action Plan had been missed, met, or exceeded. Summarizing a complex analysis, Philippart and Winand find that the extent and level of cooperation varies both across and within the four chapters of the NTA, with genuine joint action in some areas and lower levels of cooperation (such as the exchange of information) or inactivity in others. In the area of foreign policy cooperation, for example, the authors find that EU/US cooperation has been most successful and resulted in the most extensive joint action within Europe itself, while yielding fewer and less binding outcomes in other regions. In the area of economic cooperation, the authors find that the NTA has been most active in the establishment of a ‘transatlantic marketplace,’ with relatively extensive trade and regulatory cooperation, but far less active and successful in coordinating economic policies in the World Trade Organization and other multilateral fora.<sup>27</sup> In the following two sections, therefore, we turn from a discussion of institutions and process to a more explicit analysis of specific economic issues relating to the management of trade disputes as well as bilateral efforts at regulatory cooperation.

## **Trade and Regulatory Disputes in the Transatlantic Economic Partnership**

Despite the obvious importance of EU/US trade and investment relationship—or indeed because of it—economic disputes have been and remain an important feature of the transatlantic partnership. Indeed, the settlement and, where possible, prevention of such disputes was a large part of the motivation behind the establishment of the New Transatlantic Agenda, and retains an important place in bilateral economic relations.

### **3.1 Classifying Disputes: Traditional Trade Issues vs. New, ‘Behind-the-Border’ Regulatory Disputes**

Transatlantic economic disputes arise from various sources, and can be settled—or left unsettled—by a similar variety of means. In terms of their sources, we can distinguish between two broad categories of transatlantic trade disputes: (1) ‘traditional’ trade disputes regarding discriminatory national measures such as tariffs and quotas imposed at the border, as well as subsidies, antidumping actions and safeguard measures which discriminate explicitly between domestic and foreign producers; and (2) ‘new-style’ disputes about the trade-distorting effects of ‘behind-the-border’ regulations that act as non-tariff barriers to international trade in goods, services, and intellectual property.

With the gradual decline of tariffs and quotas as direct barriers to investment, and the simultaneous increase in domestic economic regulation on both sides of the Atlantic in response to concerns about the environment, consumer protection, public health and the like, the frequency of these new-style disputes has increased drastically during the course of the 1990s and early 2000s. Some of these disputes, like the ongoing conflicts over the regulation and marketing of hormone-treated beef and genetically modified organisms (GMOs), have generated considerable controversy on both sides of the Atlantic and placed strains on the transatlantic economic partnership.

The rise of such transatlantic regulatory disputes, in turn, has prompted questions about what Miles Kahler and others have termed ‘system friction’ between the respective regulatory systems of the

European Union and the United States. In a survey of transatlantic economic relations conducted in 1995, Kahler concluded that there existed at best partial evidence of system friction between the United States and the European Union, noting that some issues (e.g., agriculture and audiovisual services) did indeed divide the US and EU systems fundamentally, while on other 'new' issues like labour standards and the environment the EU and the US generally shared common views.<sup>28</sup>

Surveying the landscape of transatlantic economic relations seven years later, it remains true that the European Union and the United States are united by many common values and common interests. Nevertheless, in a growing number of issue-areas including food safety, data privacy, copyright protection, taxation, accountancy standards and others, the United States and the European Union have arguably experienced 'system friction,' in the form of a large number of simmering regulatory disputes, summarized in Appendix 1 at the end of this report.

Table 5: Classifying US-EU Trade Disputes

		<b>Agriculture</b>	<b>Industrial goods</b>	<b>Services</b>
<b>Traditional</b>	Border-measures	Bananas (also GATS). Belgian rice duties. Tariff-rate quota corn gluten feed.	Harbour tax. Anti-dumping (steel, uranium). CVD (steel). Safeguard actions (steel).	
	Subsidies	Export subsidies.	Airbus. FSC.	
<b>New style</b>	Regulatory barriers	Beef hormones. GMOs.	Hush kits. Public procurement.	Audio-visual. Professional services. Telecommunications. Data privacy.
	IPR		Havana Club.	Irish Music/ copyright. Greek protection of movies.

As Table 5 makes clear, the contemporary transatlantic relationship is characterized by *both* traditional trade conflicts and new-style regulatory disputes. Indeed, traditional disputes about tariffs and quotas (e.g. bananas), subsidies (e.g. Foreign Sales Corporations), anti-dumping measures and safeguard actions (e.g. steel) constitute some of the most high-profile disputes between the United States and the European Union. With a few exceptions, however, these disputes primarily concern traditional trade measures that are within the 'core business' of the multilateral trading system, which has well established rules and an effective, functioning dispute settlement procedure within the World Trade Organization. Put simply, the WTO Dispute Settlement Understanding provides a body of multilateral rules governing the permissible use of tariffs, quotas, and other trade-restrictive practices; a forum for consultation and, if necessary, litigation among the parties to a dispute before WTO panels and the Appellate Body; a binding requirement for member states to comply with DSU panel and Appellate body decisions; and authorized retaliation in the event of prolonged noncompliance with those decisions.<sup>29</sup>

By contrast, regulatory disputes implicate national laws and regulations that are often adopted for legitimate reasons of consumer and environmental protection or public health, and after extensive democratic or administrative processes. For this reason, transatlantic regulatory disputes can be more bitter and intractable than traditional trade disputes, insofar as both sides believe that they are 'doing the right thing,' and insofar as domestic political actors resist subordinating domestic regulations to the exigencies of international trade. Such regulatory disputes also create particularly difficult questions for the WTO dispute settlement procedure, insofar as they call for a politically sensitive balance between the economic imperative of liberalized international trade on the one hand, and the economic and non-economic motivations behind domestic regulations on the other hand.

Largely for this reason, both the United States and the European Union have generally avoided bringing such regulatory conflicts before the World Trade Organization, preferring in most instances to manage their regulatory differences through bilateral consultation and cooperation. Table 6, which summarizes EU/US WTO disputes by subject matter, demonstrates clearly the continuing dominance of traditional trade issues (tariffs, subsidies, countervailing duties, and antidumping) and the effort by both sides to keep politically sensitive regulatory issues away from the WTO. (For more information about the subjects and status of all EU/US trade disputes before the WTO, see Appendices 2 and 3 at the end of this report.)

Simplifying slightly, existing regulatory as well as traditional trade disputes can be addressed in any one of three ways (summarized in

Table 7, page 22). First, the EU and the US may engage in direct consultations about regulatory barriers to trade and resolve the dispute without resorting to WTO dispute resolution; examples include the dispute over airplane 'hush kits,' resolved through a negotiated settlement between the EU and the US, and the public procurement case involving a Massachusetts state law imposing sanctions against firms doing business in Myanmar, which was resolved unilaterally through the application of US federal law. Second, one party may challenge the legality of the other's regulations before the WTO, as in the case of the US challenge to the EU ban on hormone-treated beef, or the EU challenge to a provision of US copyright law; in cases where the disputed regulation is ruled to be in violation of WTO requirements, however, compliance has proven difficult. Third and finally, given the difficulties of resolving such disputes through either bilateral negotiations or WTO litigation, the bulk of regulatory disputes are allowed to simmer indefinitely, with periodic consultations and exchange of information among the two sides, but no resolution of the resulting trade tensions. As Appendix 1 makes clear, the overwhelming majority of current transatlantic regulatory disputes fall into this third category.

*Table 6: Transatlantic Trade Disputes in the WTO: Overview and Context*

	<b>Tariffs, quotas, customs duties rules of origin, retaliatory measures</b>	<b>Trade defence instruments (a-d, CVD, subsidies)</b>	<b>Technical TBTs (classi- fication, labeling, testing)</b>	<b>Substantiv e TBTs (process &amp; product require- ments)</b>	<b>Subsidies</b>	<b>GATS</b>	<b>TRIPS</b>	<b>TRIMS</b>	<b>GPA</b>	<b>Other</b>
<b>EU - US (EU as third party)</b>	6	9 (11)		1 (1)	1		3		1	2
<b>EU - Rest of World (RoW)</b>	14	6			1	1	3	4	3	4
<b>RoW - EU</b>	12	3	4	2			1		1	
<b>US - EU (US as third party)</b>	8	(1)	(1)	1 (1)	8	1	8			
<b>US - RoW</b>	10	7	3	2	7	2	6	3	1	
<b>RoW - US</b>	7	21		5			1		1	1
<b>RoW - RoW</b>	17	30	1	6	10			3		

Sources: Adapted from DG Trade 'WTO - Dispute Settlement' (updated 15/1/02), <http://europa.eu.int/comm/trade/pdf/cases.xls>, accessed 15/2/02; and the WTO's dispute database ([http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm)), accessed 15/2/02.

**Table 7: Methods of Dispute Resolution, with Examples**

<b>Negotiated Agreement or Unilateral Action</b>	<b>WTO Dispute Settlement</b>	<b>Simmering Disputes</b>
Hushkits; Massachusetts/Myanmar (public procurement)	Beef hormones (EU not in compliance); Irish Music/copyright (EU/US compensation agreement).	GMOs.

The sources of such regulatory disputes, and the difficulties they pose for traditional dispute settlement procedures, are illustrated below in four brief case studies focusing on: (1) the US challenge to EU legislation prohibiting the use of airplane ‘hush kits’; (2) the US challenge to the EU’s ban on hormone-treated beef and the related dispute over the EU’s moratorium on the approval of genetically modified foods and crops; (3) the EU’s challenge to the aforementioned Massachusetts public procurement law; and (4) the EU’s challenge to a provision of the US Copyright Act. Although not a thorough review of the entire universe of EU/US regulatory disputes, these four cases do illustrate the types of regulations adopted and challenged by both the EU and the US, as well as the various methods of dispute resolution mentioned above. The policy implications of these cases are discussed in Section 3.6.

### **3.2 Case Study: Airplane ‘Hushkits’**

Many EU/US disputes concern the technical barriers to trade (TBTs) caused by divergent national regulations setting technical standards in areas ranging from the specifications for industrial machinery and emissions standards for motor vehicles to nutritional labeling requirements for packaged foods. As Kenneth W. Abbott has pointed out in a recent study, many such national regulations are identified by business or governments as TBTs within the transatlantic relationship, and a far smaller percentage of these have emerged as high-profile trade disputes.<sup>30</sup> To date, no disputes have been litigated between the EU and the US under the TBT Agreement, although one particularly prominent case did create significant tensions in the transatlantic relationship, namely the US challenge to the EU’s ban on airplane ‘hushkits.’

Hushkits are equipment packages designed to reduce the noise emissions of aircraft through the use of sound-absorbing materials, with the aim of bringing particularly older planes into compliance with the so-called ‘Chapter 3’ noise pollution standards adopted within the International Civil Aviation Organization (ICAO). In 1999, the European Union, which had long pressed unsuccessfully for the adoption of stricter standards within the ICAO, adopted a Regulation



establishing a ban on the registration of older aircraft fitted with hushkits, on the grounds that such aircraft only barely complied with Chapter 3 standards, and were substantially more polluting than newer planes. The ban on new registrations was to enter into force in May of 2000; from April 2002, moreover, hushkitted aircraft registered in third countries would not be allowed to operate within EU territory.

Although nominally intended to decrease noise pollution around airports in heavily populated regions of Europe, the EU's hushkits Regulation met with howls of protest in the United States, where the use of hushkits had been encouraged by US authorities as a cost-effective way of meeting Chapter 3 standards. A ban on the registration of hushkitted aircraft, the US argued, would therefore impose a disproportionate burden on US airlines, which estimated that the Regulation cost them some \$2 billion by depressing the value of their existing fleets while benefiting European carriers that had relied more extensively on the purchase of new aircraft designed specifically to meet Chapter 3 specifications. In legal terms, moreover, the United States argued that the Regulation violated the terms of the ICAO agreement, which simply set a performance standard for planes and did not authorize parties to set more demanding standards or to mandate a specific design standard (e.g., a ban on the use of hushkits). The US accordingly lodged a formal ICAO complaint against the 15 EU member states in March of 2000.

After extensive bilateral discussion as well as multilateral negotiations within the ICAO, in October 2001 the US and the EU reached a settlement of the case. The first step in this settlement was the multilateral resolution adopted on 4 October in the ICAO assembly urging states to pursue a 'balanced approach' to noise reduction, adopting local operating restrictions only where supported by an assessment of the costs and benefits, and only after fully assessing alternative measures to reduce noise. At the same time, the ICAO agreed to a new and stricter set of 'Chapter 4' standards, to take effect beginning in 2006.

Consistent with the provisions of the ICAO agreements, the EU agreed on 25 October to withdraw the original Hushkits Regulation by April 2002 (the date when it would have applied to third-country aircraft), in return for which the US agreed to withdraw its complaint before the ICAO. In place of the original Regulation, the Commission issued a proposal in November 2001 for a new Directive replacing the general ban on hushkitted places with a more discriminating provision allowing noise-sensitive airports in congested urban areas to limit the use of planes that are 'marginally' compliant with Chapter 3 standards.<sup>31</sup> This draft Directive was approved by the European Parliament in its first reading in March 2002, and at this writing is pending adoption by the Council of Ministers and the Parliament.

Despite the initial acrimony between the US and the EU, the hushkits case represents a successful effort at bilateral dispute resolution in a broader multilateral setting. In this case, the European Union agreed, after receiving assurance and guidance from the ICAO, to adopt a more discriminating and less trade-distorting regulatory approach which satisfies the trade concerns of the United States while allowing the EU to address the problems of noise pollution around the Union's most congested urban airports. As we shall see presently, however, not all such regulatory conflicts have proven so amenable to negotiated agreement.

### **3.3 Case Study: Hormone-Treated Beef and Genetically Modified Organisms**

EU and US food-safety regulations constitute some of the most important regulatory barriers to international trade, and have been the source of some of the most politically difficult and intractable transatlantic regulatory disputes, pitting each side's sovereign right to regulate the safety of its food against its international obligations under WTO law.<sup>32</sup> Within the United States, regulation of food safety was among the earliest and most politically sensitive tasks of the federal government, which has delegated much of the power for domestic regulation to agencies like the Food and Drug Administration (FDA), which has jealously guarded its reputation as an independent and impartial regulator, making decisions on the basis of scientific tests rather than political pressures. In the EU, by contrast, food safety regulation is carried out in part by national regulators, and in part by the EU's political bodies, including the Council of Ministers, the European Parliament, and the Commission. The deficiencies of this patchwork regulatory process was painfully revealed, however, by a series of food safety crises during the latter half of the 1990s, including most notably the BSE crisis of 1996, and the Union has responded forcefully with the creation of a European Food Safety Authority, and with an insistence on the application of the so-called 'precautionary principle,' justifying regulatory action in the absence of clear scientific evidence and on the basis of consumer concerns and social and economic criteria.

Precisely because food safety regulations can act as non-tariff barriers to trade in agricultural products, the EU and the US have agreed to subject their domestic regulations to the discipline of international guidelines such as the United Nations Codex Alimentarius Commission which establishes international standards for food safety, and more recently through the 1994 WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement). The SPS Agreement does not establish binding international standards for food safety, nor does it automatically preempt the adoption of domestic standards that might constitute

non-tariff barriers to trade. The agreement does, however, incorporate and promote the adoption of international standards as well as establish trade rules that limit the ability of states to adopt food safety regulations that are not scientifically grounded. The terms of the SPS Agreement are, moreover, enforceable under the WTO dispute settlement procedure.

The consequences of the divergent EU and US regulatory processes, and the difficulties of resolving disputes through the WTO dispute settlement procedure, can be illustrated most clearly by the long-standing EU/US dispute over the issue of hormone-treated beef. The conflict began in 1989, when the European Union announced a ban on the sale and marketing of beef treated with any one of six growth-promoting hormones that had been tested and certified as safe by the FDA. In 1995, following the entry into force of the SPS Agreement, the United States took legal action before the WTO, alleging that the EU ban was inconsistent with the terms of the SPS Agreement since it was not based on scientific evidence, risk assessment, or international standards. After a protracted legal battle involving the issuing of a panel report and a subsequent appeal, the WTO Appellate Body held with the United States that the EU had failed to base its ban on a scientific risk assessment, and ordered the EU to bring its domestic regulations into compliance with WTO law.

Despite the clear ruling against it, the European Union, faced with opposition from public opinion and hopeful of producing additional scientific findings that would eventually justify the maintenance of the ban, failed to comply with the Appellate Body's decision. The United States therefore retaliated against the EU in May of 1999, imposing tariffs of \$116.8 million against EU agricultural products such as *foie gras*, Roquefort cheese, and Dijon mustard. These U.S. tariffs in turn sparked protests among French and European farmers, who seized on the beef-hormones case as a symbol of the threat posed by Americanization and globalization to European regulations and traditions. Since 1999, the United States and the European Union have continued to consult regularly about this case, but the Union remains firm in its refusal to alter its domestic law, and the United States persists in the application of retaliatory sanctions against the EU.

The transatlantic dispute over the regulation of genetically modified organisms (GMOs)—or, more precisely, genetically modified foods and crops—is analytically similar to the beef hormones case, although the potential economic stakes in this area of GMOs are potentially far greater. Here again, the US Food and Drug Administration decided in the early 1990s that genetically modified foods were not substantially different from conventional foods, and therefore required no special procedures for approval or marketing, and on that basis US farmers and seed producers have quickly embraced the use of genetically

modified foods and crops. By contrast, the European Union has taken a more cautious approach in a series of Directives and Regulations, requiring specific approval procedures for genetically modified crops as well as labeling of foods from genetically modified varieties. Since 1998, moreover, the Council has maintained a *de facto* moratorium on the approval of new GM varieties, even though the EU's scientific committees have continued to formally approve a number of varieties as posing no health risks to consumers.

The GMO issue has been the subject of intense consultation between the US and the EU in recent years, including the creation of an EU-US Biotechnology Forum which issued a joint report on the subject in December 2000<sup>33</sup> as well as a Biotech Working Group within the Transatlantic Economic Partnership. Such fora have provided for a useful exchange of information among regulators as well as trade officials, yet the positions of the two sides remain far apart, with at best modest signs of convergence in the EU and US approaches. Thus far, the United States has refrained from bringing a case against the EU before the WTO, partly of fear that the European Union, facing a potential backlash against both GMOs and the WTO, would be unable to comply. The issue therefore remains a simmering irritant in the transatlantic relationship, with the potential to flare into a major dispute should the United States eventually decide to litigate the issue before the WTO.

### **3.4 Public Procurement: The Massachusetts/Myanmar Case**

The previous two cases involved US challenges to EU regulations setting requirements for the marketing and use of industrial or agricultural products. Regulatory disputes can, however, be directed at US as well as EU regulations, and they can concern regulations governing questions other than product standards. An excellent example is the EU/US dispute over the 1996 Act adopted by the state of Massachusetts regulating state contracts with companies doing business in Myanmar (formerly Burma). The law in question was adopted in June of 1996 by the Massachusetts State Legislature, with the avowed aim of securing human rights and democratic elections in Myanmar, which was then under military rule and subject to sanctions from the US federal government as well as the EU. Specifically, the Massachusetts law imposed sanctions on foreign as well as domestic firms doing business in Myanmar, with the aim of motivating such firms to withdraw from activities in that country.

As Matthew Schaefer points out in an excellent analysis of the case, the Massachusetts/Myanmar dispute illustrates two recurrent tensions in EU/US trade relations.<sup>34</sup> First, the case illustrates the problems encountered when individual US states like Massachusetts, which are not directly party to the WTO, adopt laws and regulations in

possible contravention of WTO law. Anticipating such problems during the negotiation of the 1994 Government Procurement Agreement (GPA), the European Union had emphasized the importance for the US of binding the states, and the US federal government responded by asking each of the states to submit a voluntary 'letter of commitment' agreeing to be bound; 37 states, including Massachusetts, submitted such letters, resulting in a substantial, but incomplete, mechanism to ensure state-level compliance with the GPA.

Second, the Massachusetts law in question also represents the extraterritorial application of US (state or federal) laws which employ trade and other economic provisions to secure a foreign policy aim (in this case, the cause of democracy and human rights in Myanmar). Specifically, the Massachusetts law attempted to penalize not only American firms but also foreign firms for investing in Myanmar, even if such investments were legal in those firms' home countries. In this latter sense, the Massachusetts/Myanmar case bears a striking similarity to the extraterritorial sanctions applied by the US in the well-known Helms-Burton and Iran-Libya Sanctions Acts, in which the US federal government adopted extraterritorial sanctions against corporations doing business in Cuba, Iran and Libya. (The latter cases were resolved, at least temporarily, when President Clinton agreed in 1998 to waive such sanctions in a bilateral agreement with the leaders of the European Union.)

In the Massachusetts case, the law was challenged before the WTO by the European Union (joined by Japan), which sought to have the law ruled incompatible with US obligations under the GPA. Before the WTO panel could rule, however, the law was successfully challenged and overruled *under US federal law* when the US Supreme Court held that federal action in this area (i.e., the federal sanctions law against Burma) had pre-empted such sanctions by the State of Massachusetts, whose law was therefore held to be unconstitutional.

The successful resolution of the Massachusetts/Myanmar dispute suggests several lessons for the prevention and settlement of similar cases in the future, according to Schaefer. In terms of dispute prevention, he argues, this case points to the importance of informing state governors and legislators about the constitutional limitations on the extraterritorial use of economic sanctions, as well as their obligations under WTO agreements (at least insofar as the states themselves agree to be bound by them). In terms of dispute settlement, finally, the Massachusetts case suggests that litigation in domestic courts under US law may be more a more effective and comprehensive constraint on state sanctions than WTO law, which should therefore be employed with restraint in such cases.

### **3.5 Intellectual Property Rights: The Irish Music Case**

In addition to trade in goods and services and public procurement, national laws and regulations regarding intellectual property rights can also have international trade repercussions, even when those regulations apply without discrimination to domestic as well as foreign producers. Indeed, protection of intellectual property has been the subject of no fewer than 11 WTO disputes between the United States and the European Union since 1995. The challenges posed by intellectual property disputes are illustrated most strikingly by the so-called 'Irish music case,' in which the European Union challenged provisions of US copyright law before the World Trade Organization.<sup>35</sup>

The US law in question was the 1976 Copyright Act, as amended by the 1998 Fairness in Music Licensing Act. Specifically, Article 110(5) of the amended Act included a 'business exemption' according to which establishments such as bars, shops and restaurants below a certain size (i.e. 2,000-3,750 square feet) were allowed to play radio and television music without paying fees to royalty-collecting bodies. The relevant provisions of the Act had been adopted only after long and difficult negotiations between the representatives of US performing rights organizations on the one side, and the National Licensed Beverage Association on the other, and sought (however successfully) to balance the rights of copyright holders with the interests of small restaurant and bar owners.

Although the US law applied equally to domestic as well as foreign copyright holders, in 1997 the Irish Music Rights Organization (IMRO), a collective music management company representing Irish musicians such as the rock group U2, filed a complaint about the law before the European Commission. IMRO claimed that the derogation in the law was in violation of US commitments under both the International Agreement on Trade Related Aspects of International Property Rights (TRIPS) as well as the Berne Convention for the Protection of Literary and Artistic Works, since it failed to protect authors' rights, resulting in an estimated loss of € 1.21 million annually for IMRO's members. The Commission, having investigated the case, agreed with IMRO that the law violated US obligations under the TRIPS agreement, and initiated a formal complaint before the World Trade Organization in 1998.

In June 2000, a WTO panel issued a decision in favour of the European Union, calling on the US to bring subparagraph (B) of Section 110(5) of the Copyright Act (the aforementioned business exemption) into conformity with the TRIPS agreement. In response to the panel's report, the United States announced that it would not appeal the panel decision, but also that it would require time to amend its existing copyright legislation. In the interim, the United States and the European Union agreed to establish a WTO arbitration panel,

which would decide on the level of compensation to be granted by the US to the EU pending modification of the Act. In November 2001, the arbitrators accordingly assessed the annual losses suffered by EU copyright owners, and hence the level of compensation to be paid by the United States, at some \$1.08 million. In light of this finding, EU Trade Commissioner Pascal Lamy and US Trade Representative (USTR) Robert Zoellick agreed the following month to a temporary solution, whereby the USTR would seek authorization from Congress to establish a special fund worth \$3.3 million over three years to finance projects and activities for the benefit of EU music creators, pending revision of the US law.

The December 2001 agreement between the US and the EU was presented by EU Trade Commissioner Pascal Lamy as ‘a good example of how we can manage our problems in a cooperative manner, while keeping in mind our international commitments.’<sup>36</sup> However, while the US and the EU have indeed reached an amicable three-year agreement on this issue, the Irish Music case also serves as an additional example of the difficulties encountered by both sides in amending domestic regulations in response to trade concerns and WTO rulings. Although the European Union side insisted on the US obligation to amend its law, and explicitly retained its right to return to the WTO in the event of noncompliance, at this writing there is no sign of any imminent US effort to bring its domestic law into compliance, and an extended US agreement to compensation remains a probable alternative for the foreseeable future.

### **3.6 Dealing with Trade and Regulatory Conflicts**

Transatlantic trade disputes—both traditional disputes and new-style regulatory conflicts—are inevitable in a relationship as close as EU/US relationship, and are not likely to disappear anytime in the near future. Many of these disputes—especially old-style tariff, quotas, antidumping and subsidies disputes—are dealt with effectively by WTO dispute resolution. New-style disputes, however, often involve domestic laws adopted for legitimate purposes after democratic deliberation, and litigation in such cases can place severe strain on the WTO system, particularly in cases like beef-hormones, copyright, and potentially GMOs, where the losing party would have difficulty complying with an adverse WTO ruling.

In light of these challenges, scholars and practitioners have recommended a range of potential reforms in US and EU domestic politics, in the bilateral relationship, and in the multilateral WTO system to prevent and settle regulatory disputes. Although a complete

review of these recommendations is beyond the scope of this report<sup>37</sup>, some of the most promising proposed reforms include the following:

- **Changes in Domestic Regulation.** Perhaps the most promising suggestions for reform are those that require no formal international agreement, but rather domestic reforms that could be undertaken either unilaterally or through an informal process of mutual coordination. The Transatlantic Business Dialogue, for example, has proposed that the United States and the European Union both undertake to conduct ‘Trade Impact Assessments’ of draft regulations, so that legislators are made aware of the potential trade implications of proposed regulations *before* they are adopted. Such a procedural change could be undertaken within the respective domestic systems of the US and the EU, and without compromising the regulatory sovereignty of either side, and would have the advantage of implicating legislators who thus far have been largely absent from the NTA process.<sup>38</sup> In a similar vein, US observers have advocated the adoption by the EU of some form of advise-and-consent procedures for the adoption of regulations, which would provide domestic as well as foreign stakeholders with advance warning of proposed regulations and improve the quality of EU governance more generally. Finally, as we have seen in the Massachusetts/Myanmar case, it has been proposed that the United States should do more in the future to implicate subfederal states in international trade agreements, and to inform them of their obligations under US constitutional as well as international trade law.
- **Changes in the Bilateral Relationship.** Notwithstanding their increasing complexity, the institutions of the NTA and the TEP have not prevented the rise of new regulatory disputes, nor have they been able consistently to settle amicably all those that do arise, given the difficulty for both sides of changing domestic regulations adopted in response to legitimate public concerns. Nevertheless, a number of bilateral reforms have recently been proposed, including most notably the further development of the bilateral early warning system, increased regulatory cooperation, and the expansion of the Transatlantic Legislators Dialogue. With regard to the first, interviews with policy-makers on both sides of the Atlantic reveal that the early warning system has proven useful in identifying obscure technical barriers to trade; but the same policy-makers emphasize that increased early warning does *not* provide a guarantee that legislators or regulators will be willing or able to adjust domestic regulations, and indeed the survey of regulatory disputes undertaken above suggests that increased early warning would *not* have been capable of resolving disputes over beef hormones or copyright, where the primary impediment to resolution of the disputes was not lack of information but the regulatory sovereignty of legislators and regulators on each side. For this



reason, particular emphasis has been placed on the promise of enhanced regulatory cooperation (examined in detail in the next section) and on the further development of the TLD (where the primary challenge will be to provide an incentive for domestically oriented parliamentarians and congressmen to participate in transatlantic consultations).

- **Reform of WTO Dispute Settlement.** The WTO Dispute Settlement Understanding establishes a binding and efficient system for the resolution of international trade disputes, and most WTO member states are broadly satisfied with the operation of the system. Nevertheless, the WTO dispute resolution system is placed under particular strain in regulatory disputes, such as the beef-hormones and Irish music cases reviewed above, where it is called to balance trade and regulatory objectives, and where compliance is politically difficult for the losing parties. In light of these weaknesses, various scholars and practitioners have suggested reforms to both WTO rules and to the DSU, including most notably the clarification of the 'precautionary principle' in WTO law, and moving from retaliation to compensation in cases of noncompliance with DSU rulings. Both of these proposals merit further discussion in the coming review of the Dispute Settlement Understanding (scheduled to be completed in May 2003) and in the ongoing Doha Round of trade talks. In the meantime, the EU and the US would do well to continue their general pattern of restraint in addressing regulatory disputes bilaterally and avoiding any potential 'overloading' of the WTO dispute settlement procedure.

Future negotiations between the EU and the US, as well as future studies designed to inform those negotiations, would do well to explore the viability of these proposed reforms.

## **Transatlantic Regulatory Cooperation**

One of the most striking features of the period since the 1995 New Transatlantic Agenda has been the dramatic increase in both formal and informal cooperation among the regulatory authorities of the United States and the European Union. In the past five years alone, the United States and the European Union have signed nine formal regulatory cooperation agreements in areas as diverse as competition policy, data privacy, customs procedures, veterinary standards, and the mutual recognition of testing and certification procedures (Table 8). These formal regulatory agreements, moreover, represent only a fraction of the contacts that occur among US and EU regulators both bilaterally and in various multilateral fora.

### **4.1 Why Cooperate?**

The incentives for US and EU regulators to engage in formal and informal cooperation vary across different issue-areas, but can generally be classed into two broad categories.<sup>39</sup> First, regulators may cooperate because they view such cooperation as useful in carrying out their essential rulemaking responsibilities in an increasingly integrated transatlantic and global marketplace. Such cooperation need not, and typically does not, involve joint rulemaking activities, but focuses instead on exchanges of information, identification of best practice, and early notification of new regulations being considered within either polity. In the area of food safety, for example, the European Commission and the US Food and Drug Administration have not identified or implemented common standards, for the reasons discussed above, yet the two regulators do engage in an ongoing dialogue both bilaterally and within the Codex Alimentarius (the global body for the establishment of food safety standards), and the Commission consulted extensively with its US counterparts in the design of the newly created European Food Safety Authority. Similar bilateral exchanges occur regularly in other issue-areas, as well as within multilateral standard-setting bodies such as the International Standards Organization (for industrial standards) and the International Conference on Harmonization (for registration of pharmaceuticals).

*Table 8: Transatlantic Regulatory Cooperation Agreements*

<b>Agreement</b>	<b>Targeted Regulations</b>	<b>Year</b>
<b>Competition Policy Agreement</b>	Competition regulations.	1991
<b>EC/US Agreement on Drug Precursors</b>	Illicit drug regulations.	1997
<b>EC/US Customs and Cooperation Agreement</b>	Customs certifications.	1997
<b>EU/US General Mutual Recognition Agreements</b>	Conformity assessment testing in six sectors: telecommunications equipment, electromagnetic compatibility, electrical safety, recreational craft, medical devices, and pharmaceutical good manufacturing practices.	1997
<b>EU/US Positive Comity Agreement</b>	Competition relations.	1998
<b>EU/US Agreement Concerning the Establishment of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts</b>	Technical regulations.	1999
<b>EU/US Veterinary Equivalence Agreement</b>	Animal export certifications.	1999
<b>EU/US Safe Harbour Agreement</b>	Data protection regulations.	2000
<b>Joint Declaration on US/EU Cooperation in the Field of Metrology and Measurement Standards</b>	Measurement equivalence in product certification.	2000
<b>EU/US Agreement on Mutual Recognition of Certificates of Conformity for Marine Equipment</b>	Mutual recognition of marine equipment regulations.	2001
<b>EU/US Guidelines on Regulatory Cooperation and Transparency</b>	Non-binding guidelines for cooperation among EU and US regulators regarding technical barriers to trade.	2002

Source: European Commission, DG TRADE,  
<http://europa.eu.int/comm/trade/bilateral/usa/usa.htm>.

A second and partially overlapping motivation for regulatory cooperation, already touched on in Section 3 above, is to avoid, or resolve, bilateral disputes about the potential trade-distorting effects of national regulations. As we have seen, domestic economic regulations can become a source of transatlantic economic tension, in two distinct ways. First, domestic regulations in areas such as consumer or environmental protection, food safety, or copyright protection can create non-tariff barriers to international trade and investment; examples include the recent disputes over the EU's Data Privacy Directive and its ban on hormone-treated beef, as well as exemptions to the US Copyright Act. Second, US and EU domestic regulators may apply their domestic regulations in an extrajudicial fashion, as for example when EU and US competition authorities insist on the right to review mergers among firms in the other constituency insofar as the proposed merger creates effects in the regulator's domestic jurisdiction, or when the US (or its constituent states) employs trade and economic sanctions as an instrument of foreign policy. In such cases, George Bermann has pointed out, 'the line between simple regulatory [cooperation] ... and the settlement of trade disputes can become highly blurred.'<sup>40</sup>

The full range of regulatory cooperation agreements and practices between the United States and the European Union is beyond the scope of this preliminary report. Indeed, interviews with practitioners from the United States and the European Union reveal that considerable informal cooperation takes place across virtually every conceivable area of US and EU regulation, with little attention from the press, scholars, or political actors. Even in the absence of a full-scale, cross-sectoral analysis, however, we can nevertheless undertake three brief case studies of regulatory cooperation in the fields of competition policy, the negotiation of EU/US Mutual Recognition Agreements, and the Safe Harbour Agreement on data privacy regulation. Taken together, these three cases illustrate the range of incentives for regulatory cooperation, as well as the various means for such cooperation and the significant obstacles that often stand in its way.

#### **4.2 Case Study: Transatlantic Competition Policy Cooperation**

One of the earliest regulatory cooperation agreements signed between EU and US authorities, and one of the most successful, concerns cooperation in the enforcement of each side's respective competition policy laws, including most notably the examination of proposed mergers and acquisitions.

The incentives for cooperation in this area are substantial.<sup>41</sup> First, as in other areas of regulation, EU and US regulators confront similar problems, and are increasingly called upon to rule upon the same cases, placing a premium on the sharing of information. Second, both

US and EU courts have ruled that their respective regulators—namely, the Department of Justice and the Federal Trade Commission on the US side, and the Directorate-General for Competition on the EU side—may enforce domestic competition laws extraterritorially against firms based outside their domestic jurisdiction, if and insofar the behavior in question (e.g. a proposed merger) produces effects on competition in the domestic market. Such extraterritorial application of both EU and US competition law raises serious issues about the duplication of effort by the two sets of regulators, not to mention the adverse economic and political impact of inconsistent or conflicting decisions on the same case by EU and US regulators.

These concerns increased substantially in the early 1990s, moreover, with the rapid rise in cross-border mergers and acquisitions that accompanied the completion of the Union's '1992' internal market initiative. At approximately the same time, moreover, the European Union adopted the 1990 Merger Control Regulation, which gave the Commission regulatory authority to review mergers above certain size thresholds and made the Commission an important interlocutor for the EU in this area. It was in this context of increasing cross-border mergers and increasing EU authority over such mergers that Competition Commissioner Leon Brittan proposed in 1990 to expand EU competition policy cooperation with third countries, beginning with a formal agreement with the United States. US regulators responded positively to Brittan's proposal, and US and EU regulators agreed in 1991 to adopt an agreement committing them to cooperation in the area of competition policy, including the sharing of non-confidential information and coordination of enforcement activities. This agreement was later supplemented by two secondary agreements: the 1998 Positive Comity Agreement (which seeks to restrict the extra-territorial application of antitrust laws in non-merger cases, but has been formally invoked only once) and by the 1999 Administrative Arrangements on Attendance in Hearings (which provide guidelines for the participation of EU and US regulators in each other's hearings).

In the decade since the signature of the first Competition Policy Agreement, EU/US competition policy cooperation has generally operated smoothly and successfully, with regulators from the Commission, the Justice Department and the FTC sharing information and coordinating enforcement activities on a daily basis and cooperating successfully on over 600 cases during the course of the 1990s, including almost 500 merger decisions. The general success of EU/US competition policy cooperation in the area of merger control can be attributed to the broad transatlantic agreement among EU and US regulators about the basic scope and tools of policy, which has facilitated the task of coordinating enforcement actions and generating mutual trust among regulators.

Nevertheless, as Youri Devuyt points out in an excellent review of transatlantic competition policy cooperation, successful cooperation and conflict prevention between US and EU regulators can be hampered by persistent differences in the scope and focus of US and EU competition law, the procedures employed by both sides, and the exigencies of confidentiality which limit the sharing of information by US and EU agencies. These limitations can be illustrated in the atypical but well-known Boeing/McDonnell Douglas merger (both American firms), which was approved by the FTC in July 1997 only to be held up by Commission insistence that the companies agree to formal undertakings to satisfy its competition concerns. Although the case caused substantial strains in the transatlantic relationship, the companies concerned eventually agreed to the Commission's proposed remedies, allowing the merger to proceed.<sup>42</sup>

An even more dramatic difference of opinion occurred with regard to the proposed merger of two other US firms, GE and Honeywell, in 2001. Here again, US regulators approved the proposed merger, only to see the European Commission reject it in July 2001 after announcing that the firms' proposed remedies had failed to satisfy the Commission's concerns. Perhaps most strikingly, and unlike the previous case of EU/US disagreement in the Boeing/McDonnell Douglas merger, a number of analysts claimed that the disagreement between US and EU regulators reflected an underlying and fundamental difference in the criteria for assessing proposed mergers.<sup>43</sup> Although the resulting predictions of other imminent US/EU conflicts are almost certainly overstated, it is worthwhile noting that the Commission, in its December 2001 Green Paper on the review of the Merger Control Regulation, proposes to launch a debate on whether the Union should abandon its traditional 'dominance test' (i.e., assessing whether a proposed merger would create a dominant position for the merged firm in the relevant market) in favour of a 'substantial lessening of competition' test (similar to that already used in the US, Canada, and Australia).<sup>44</sup> Whether the Union will move in this direction remains unclear. If so, however, it would represent a striking example of regulatory convergence among regulators already notable for their similar (if not identical) regulatory philosophies and procedures.

### **4.3 Case Study: EU/US Mutual Recognition Agreements<sup>45</sup>**

As transatlantic tariff barriers have decreased, firms have become more concerned with what they term duplicative regulatory compliance costs, and many have pressed for their removal. This pressure has increased with rising transatlantic investment, since divergent EU and US standards and certification requirements most directly affect transatlantic corporate groups, and these groups more easily coordinate lobbying on both sides of the Atlantic.<sup>46</sup> Transatlantic firms,

under the auspices of the Transatlantic Business Dialogue in particular, have pressed for enhanced regulatory cooperation through mutual recognition agreements, culminating in the 1997 EU/US Mutual Recognition Agreement (MRA), providing for mutual recognition of testing and certification requirements, and the more ambitious MRA relating to marine equipment signed in 2000. These agreements have been promoted as a major achievement of the New Transatlantic Agenda, and as a flexible means of reconciling the regulatory approaches of the United States and the European Union and facilitating access to both domestic markets.

Notwithstanding these potential advantages, however, major challenges for transatlantic regulatory cooperation in this and other areas are posed by the significant institutional asymmetries between the United States' and EU's respective regulatory systems in an array of fields. Where regulators adopt similar regulatory structures and systems, and enact similar substantive standards, they more easily understand and accept each other's regulatory determinations. Regulatory symmetry facilitates regulatory trust and confidence, enabling regulatory cooperation to occur, as in the competition policy case examined above.

In many issue-areas, however, US and EU regulators tend to work in different regulatory cultures. Generally, EU and national regulators operate under the dual mission of ensuring free trade within the internal market on the one hand, while ensuring public safety through high product and process standards on the other. They thus are quite accustomed to interacting with foreign regulators and testing bodies on an ongoing basis. As a consequence, the Commission's DG Enterprise and DG Trade units rarely tumbled when negotiating and implementing the 1997 Mutual Recognition Agreement. The US Food and Drug Administration (FDA), by contrast, has traditionally defined its role solely as that of protecting US public health, and has not operated under a dual mission of also facilitating market exchange. Because the FDA is an independent regulatory authority anxious to protect its regulatory autonomy, US trade and commerce authorities encounter more difficulties in negotiating bilateral agreements concerning areas within the FDA's jurisdiction.

Overall, institutional adaptation for the negotiation and implementation the 1997 MRA has been much easier for the EU, which already has a mechanism for coordinating the mutual recognition of product testing and certification among fifteen member states speaking eleven different languages. This relatively deregulated system consists of EU legislators setting 'essential requirements' in EU 'new approach' directives, which are supplemented by large numbers of harmonized 'voluntary' technical standards that, in turn, are widely adopted. Before marketing their products, firms either self-certify their compliance with these requirements or hire accredited testing and

certification laboratories. Firms and laboratories remain subject to post-marketing member state regulatory controls, as well as market-reputational constraints. Member state regulators interact on a regular basis through working groups, committees and informal arrangements. Overall, this EU system can be characterized as governance by coordinated cross-border public-private networks.

US regulatory officials, however, oversaw very different regulatory systems in the areas covered by the 1997 MRA. For example, the US Federal Communications Commission (FCC) itself certified all telecommunications equipment until the negotiation of the transatlantic mutual recognition agreement, at which time it adopted a decentralized EU model of certification. The FDA continues to certify most medical devices, whereas EU authorities have permitted testing by private notified bodies since the mid-1990s. The US Occupational Health and Safety Administration (OSHA) requires OSHA-accredited laboratories to certify all electrical safety equipment used in the workplace, whereas the EU has permitted manufacturers to self-certify the equipment's conformity with European requirements since 1973.

EU and US authorities began to seriously address issues of regulatory coordination at the beginning of the 1990s. In May 1989, US Secretary of Commerce Robert Mosbacher and Commission Vice-President Martin Bangemann agreed to explore the possibility of transatlantic mutual recognition agreements, as well as mechanisms to grant US firms greater access to EU standard-setting procedures. After 1995, these efforts were championed explicitly and repeatedly by Transatlantic Business Dialogue, which became a prominent advocate of transatlantic MRAs.<sup>47</sup>

EU and US negotiators initially discussed negotiating mutual recognition arrangements in eleven sectors, but ultimately whittled this down to six.<sup>48</sup> In consequence, the 1997 MRA consists of a framework agreement and six annexes respectively covering telecommunications equipment, electromagnetic compatibility, electrical safety, recreational craft, medical devices, and pharmaceutical good manufacturing practices. Each of the annexes is, in fact, a separate agreement for a separate sector covering defined categories and lists of products.

As with all trade negotiations, the EU and the United States were concerned that the final results be 'balanced.' The United States wished to conclude an agreement on telecommunications equipment first, but the EU refused because it felt that US firms would benefit more if the agreement covered only this sector. EU negotiators thus insisted that an agreement on pharmaceuticals and medical devices be completed simultaneously. The MRA sets up a new transatlantic structure for overseeing its implementation. First, the MRA creates a Joint Committee, which consists of US and EU trade officials who meet



twice annually. Second, the annexes create Joint Sectoral Committees to oversee the annexes' implementation.

The 1997 Mutual Recognition Agreement does not cover recognition of the adequacy or equivalency of US and EU standards as such. Rather, the 1997 MRA only addresses mutual recognition by certification bodies (known as 'Conformity Assessment Bodies') of each other's separate standards.<sup>49</sup> Since neither the United States nor the EU relinquishes sovereign control over the substance of their standards, trading firms still must meet the separate requirements of the world's two largest markets. In addition, these assessment evaluations are subject to certain pre-approval and post-approval conditions.

Implementation of the 1997 MRA, moreover, remains uneven. The telecommunications, electromagnetic compatibility and recreational craft annexes all have been implemented as required. In contrast, implementation of the electrical safety, medical device and pharmaceutical GMP annexes remain in dispute, in part because the FDA and OSHA have been slow to recognize the equivalency of certification by European government regulators or private laboratories, and in part because of the magnitude and the unfamiliarity of US regulators' task in assessing the equivalence of standards from 15 different member states submitting documentation in up to 11 different languages.<sup>50</sup> In the words of one FDA official, the FDA has 'refused to compromise its mission of protecting public health for balance of trade purposes.'<sup>51</sup> Thus, all three annexes initially desired by the US administration are in operation, while the three annexes desired by the Commission are not. Since the US executive has less control over the US agencies responsible for implementation, both parties' choices are somewhat constrained.

On June 12, 2001, the United States and the EU initialed an Agreement on Mutual Recognition of Certificates of Conformity for Marine Equipment.<sup>52</sup> Unlike the 1997 Mutual Recognition Agreement and its six annexes, this new agreement provides for mutual recognition of each parties' standards and procedures as 'equivalent' for purposes of certifications issued by conformity assessment bodies located in the parties' respective territories (Articles 3 and 4). Pre-existing harmonization of standards in this sector made possible the parties' mutual recognition of 'equivalence.' These standards were agreed under the auspices of the International Maritime Organization (IMO), located in Geneva. This new mutual recognition agreement should be much easier to implement because less training and information exchange are required insofar as testing bodies will not be certifying under separate standards or procedures. The parties also agreed up-front to recognize each other's existing conformity assessment bodies so that no application procedures are required for implementation (Article 6). Thus, while this agreement is relatively narrow in product coverage, it is much broader in scope.

Transatlantic businesses that first touted the benefits of EU/US mutual recognition arrangements now realize their underestimation of the difficulties of implementation.<sup>53</sup> These constraints involve not just regulators and regulatory cultures, but market forces as well. The market has not reacted favourably to the recognition of new Conformity Assessment Bodies as provided under the 1997 MRA. From the perspective of manufacturers, they typically develop long-term working relationships with certifying laboratories, which constitute a form of cost-effective firm-laboratory partnership. Moreover, a laboratory's mark itself may be important in some markets, so that firms may continue obtaining formal certification from EU notified bodies for the EU market and US laboratories for the United States. As a result, most firms may continue using the same laboratories even though these laboratories cannot directly certify products as Conformity Assessment Bodies, but must work through sub-contracting arrangements with accredited laboratories on the other side of the Atlantic.<sup>54</sup> As for laboratories, they will not invest in the accreditation procedures required to become a Conformity Assessment Body if they fear that the benefits are limited or too uncertain. Accreditation costs can be substantial, involving seminars, workshops, training programs, audits and joint inspections with authorities across the Atlantic. The MRA's success, in consequence, may require considerable market promotion.

Perhaps the most important lesson from the implementation of the EU/US MRAs is that agreements that both guarantee public safety and reduce trade barriers cannot be accomplished on the cheap. They require sustained political will of leaders in each jurisdiction to allocate significant resources to finance the coordination of cross-border regulatory networks. EU member states sustained such political will and dedicated such resources over decades in order to create the single market. Even so, they too have encountered significant setbacks and obstacles. While it is far too early to pre-judge the 1997 MRA, it seems clear that the full benefits of the agreement will be reaped only if both sides take concrete steps to ensure that sufficient regulatory resources are made available to the regulators charged with implementing the agreement in practice.

#### **4.4 Case Study: Data Privacy and the Safe Harbour Agreement<sup>55</sup>**

Data privacy protection became a transatlantic issue because of the growing interdependence of the US and European economies and the rising importance of information technology. US affiliates in Europe produce over a trillion dollars of goods and services annually, constituting 'over half of all the foreign production of US companies.'<sup>56</sup> These companies depend on information flows, not only with third party suppliers, customers, consultants, marketers and other service providers, but also internally, within their complex networks of

affiliates, joint ventures and partnerships. The EU/US dispute over data privacy protection and efforts at cooperation demonstrate the inherent interrelation between social regulation and open trade policies where regulation (or the lack thereof) has external effects. Alleged US under-regulation can jeopardize the privacy interests of EU residents. Alleged EU over-regulation can limit the commercial operations of US enterprises. In an interdependent transatlantic economy, US and EU authorities attempt to manage the ensuing conflicts of norms and mesh, where possible, their divergent regulatory systems.

On October 24, 1998, Directive 95/46/EC on the Protection of Individuals with Regard to the Processing of Personal Data and the Free Movement of Such Data became effective. The EU, through its Directive, takes primarily a regulatory approach to data privacy protection, as opposed to private ordering through market processes. Except for public security, criminal law and related exceptions, the Directive covers all processing of all personal data by whatever means, and is not limited to action by government, business sector or field of use (arts. 2-3). The Directive prohibits data controllers from processing information unless the individual 'unambiguously' consents to the processing and that consent is informed (arts. 7, 8, 10, 14). The Directive provides multiple means for enforcement. It requires member states to grant individuals a permanent right of access to obtain copies of the data about them and have it corrected or its use enjoined (arts. 12, 28). It obliges member states to provide a judicial remedy for infringements of data privacy rights, including the right to receive damages (arts. 22-24). To support effective enforcement, each member state must designate an independent public authority 'responsible for monitoring the application within its territory' of the Directive's provisions (art. 28). These supervisory authorities are to be granted significant powers (arts. 18, 28).<sup>57</sup>

In contrast, the United States has stressed 'self-regulation' by the private sector backed by regulation which tends to be sector-specific and less stringent. Congress's targeting of specific sectors and concerns is reflected in the following statutory titles: The Driver's Privacy Protection Act of 1994, the Video Privacy Protection Act of 1988, The Electronic Communications Privacy Act of 1986, the Cable Communications Policy Act of 1984, and The Fair Credit Reporting Act of 1971. Overall, the US approach is fragmented, involving standard-setting and enforcement by a wide variety of actors, including federal and state legislatures, agencies and courts, industry associations, individual companies and market forces. US legislation provides citizens with significantly greater protection against the collection and use of personal information by government, in particular the federal government, than by the private sector.

Article 25 of the EU Directive provides that member states shall prohibit all data transfers to a third country if the Commission finds

that the country does not ensure 'an adequate level of protection' of data privacy. Since it appeared that the United States might not provide for 'adequate' data privacy protection under the Directive's criteria, US and EU authorities engaged in intensive negotiations to avoid a ban on data flows to the United States, culminating in their agreement on Safe Harbour Principles in March 2000.<sup>58</sup> Under the agreement, EU member states now must recognize that US firms' adherence to these Principles is sufficient to protect them from member state challenge. Member state authorities, however, may still challenge transfers to firms that do not adopt and comply with the Principles.

The guidelines set forth seven core data privacy principles for industry to follow, which respectively cover the following issues: Notice, Choice, Onward Transfer, Security, Data Integrity, Access and Enforcement. The parties supplemented the Principles with a document entitled 'Frequently Asked Questions' (FAQs) designed to guide firms and authorities in the Principles' application. Many of the FAQs specify the scope of exceptions, thereby providing some leeway to US firms.

Companies join the Safe Harbour program by annually certifying to the US Department of Commerce that they will comply with the Principles. The Department of Commerce then places the company's name on its web site list of certifying firms. Self-regulatory organizations (such as BBB Online and TRUSTe), backed by the U.S. Federal Trade Commission, offer the primary means for the Principles' enforcement. In this way, the Principles' application resembles the EU's new and global approaches to internal market harmonization.<sup>59</sup> As under the new approach, the Safe Harbour Principles set forth 'essential requirements' that firms must meet. As under the global approach, firms self-certify their adherence, which certification is backed first by audits from self-regulatory organizations, and then (ultimately) by the authority of the state. As of February 23, 2002, 156 companies had certified their adherence to the Principles.

The Directive also provides other ways to comply with it, in particular through obtaining 'unambiguous' consent from the 'data subject' in Europe (art 7) and the signature of a 'model contract' with data privacy authorities in member states (Article 26). In January 2002, the Commission approved standard contract clauses covering privacy protection that can be applied to all data transfers from the EU, regardless of a firm's adherence to the Safe Harbour Principles. Firms also can sign *ad hoc* contracts with individual member state data privacy authorities. In addition, firms can sign contracts with affiliates when transferring personal information, such as information contained in personnel files.

The Safe Harbour Principles are still at an inchoate stage so that it remains too early to assess their impact. Some commentators have

questioned the effectiveness of the Principles given that relatively few US companies have signed them. However, some practitioners point out that companies will not certify their procedures until their operations are in compliance.<sup>60</sup> For large companies, this allegedly can involve considerable re-engineering of their information systems, creation of new internal policies, and training of personnel.

Nonetheless, companies engaged in transatlantic business operate in the shadow of the Directive's potential enforcement. Under the Directive, US businesses face potential litigation before European courts and administrative bodies unless they adhere to the Safe Harbour Principles. Even though privacy advocates have criticized the Safe Harbour Principles, the agreement represents a potentially useful tool for such advocates. In addition, the agreement has increased the demand for legal, consulting and other privacy services within the United States. For example, the Better Business Bureau OnLine created a privacy seal program which incorporates the Safe Harbour Principles, and the Electronic Frontier Foundation, a public interest organization, has associated with information technology companies to launch a program named TRUSTe to rate the privacy protection of Internet sites, which program also is certified under Safe Harbour.

In a world of increased economic interdependence, the Safe Harbour Principles point to the importance of regulatory cooperation across borders involving public and private actors. Certification groups such as BBB OnLine meet with European data protection officials so that they become comfortable in the workings of an alternative US approach. Government officials, including in Europe, realize that they do not have the resources to enforce the Directive's provisions solely on their own, and thus rely on public-private networks in an attempt to ensure better global practices affecting EU constituents. Nonetheless, to make the Principles work will require sustained, cross-border cooperation.

#### **4.5 The Challenge of Transatlantic Regulatory Cooperation**

Although brief and selective, this review of cooperation across three sectors suggests several tentative conclusions about both the benefits and the potential obstacles to transatlantic regulatory cooperation.

With regard to the potential benefits of transatlantic regulatory cooperation, we have identified two. First, as we have seen, regulatory cooperation has the potential to enhance the efficiency of regulation, through the exchange of information and best practice, the provision of early warning of potential disputes, the avoidance or management of conflicting regulatory decisions, and the gradual building of mutual trust among regulators. Second, regulatory cooperation can facilitate transatlantic trade and investment by removing duplicative regulatory

requirements and other non-tariff barriers within the transatlantic marketplace. Such cooperation, moreover, need not involve the complete harmonization or convergence of EU and US regulations, although there is some preliminary evidence of convergence in specific issue-areas, including the acceptance by the United States of a mutual recognition scheme similar to that long practiced in the European Union, and the EU's active discussion of moving from its current 'dominance test' to a possible new standard for regulatory mergers closer to that employed by competition authorities in the United States.

Yet, despite the obvious promise of transatlantic regulatory cooperation, a broad survey of EU/US cooperation in various areas, including the three case studies analyzed above, points to a number of potential obstacles to successful transatlantic regulatory cooperation:

- **Regulatory Independence.** In a number of areas, US regulators enjoy greater regulatory independence than their European counterparts, and may resist what they perceive to be an effort to compromise domestic regulatory standards and processes in the interests of international trade. The result in some cases is that the USTR and other central agencies of the federal government encounter difficulty guaranteeing compliance with regulatory agreements by specific regulatory agencies, such as the FDA and OSHA, if and insofar as these agencies believe that implementation of those agreements would compromise established US regulatory standards and procedures.
- **Transparency and Administrative Law Requirements.** Across a wide range of issue-areas, US regulators express concern about the different administrative-law requirements for regulators in the US and the European Union, most notably in the area of transparency. In the United States, regulators are required to adhere to the 'notice-and-comment' rulemaking procedures of the Administrative Procedure Act, which requires agencies to provide public notice of proposed regulations in the *Federal Register*, allow individuals to submit comments prior to the final adoption of new rules, and keep a public record of the regulatory process. The EU rulemaking procedure, although typically characterized by widespread consultation of interested parties, does not incorporate these features.
- **Confidential Information.** The need to protect confidential information of firms and other private parties also places limits on the ability of both sides to cooperate in the adoption and implementation of regulations, particularly in the enforcement of US and EU competition laws regarding cartels and concentrations, where firms have been more reluctant to agree to the sharing of confidential information than in the area of merger control reviewed above.

- **Multi-Level Governance.** The United States and the European Union are both federal or quasi-federal governance systems, with regulatory powers divided in most sectors between the federal/EU level on the one hand, and individual states/member states or even local governments on the other. In terms of regulatory cooperation, this division of regulatory powers means that US executive-branch negotiators and EU Commission officials are frequently charged with negotiating regulatory agreements in areas where the states retain at least partial regulatory competence, and to charges from both sides that their counterparts are unable to 'deliver the states.' Examples of such state regulatory powers on the US side include the regulation of insurance and other services as well as public procurement, where the EU has insisted that the participation of individual states is vital to the enforcement of regulatory agreements.<sup>61</sup> Similar problems afflict the EU side, where Commission efforts to engage in regulatory cooperation may be frustrated by resistance among individual member states, as in the case of GMOs, or by the slow adoption of EU-level regulations, as in the case of financial services.
- **Regulatory Sovereignty.** Ultimately, the adoption of the broad regulatory frameworks for economic activity, consumer and environmental protection, and other areas is entrusted, on both sides of the Atlantic, to democratically accountable bodies such as the Congress and President in the US and the Council of Ministers and European Parliament in the European Union. Within the European Union, the harmonization and mutual recognition of national regulations has been accomplished in large part through a deliberate transfer of regulatory sovereignty to the European level (as in EU merger control); through the pooling of regulatory sovereignty in the Council of Ministers and the European Parliament (as in data privacy and food safety); and through the mutual recognition of standards as enforced by the European Court of Justice. To date, however, the European Union and the United States have proven unwilling to compromise their regulatory sovereignty in the various agreements reviewed above; indeed, even the most successful experiment in transatlantic regulatory cooperation, that in competition policy, is predicated explicitly on each side's ability to cooperate without any substantial change to its domestic regulatory objectives and procedures.

The existence of these various obstacles does not, of course, mean that transatlantic regulatory cooperation is doomed to failure. Some areas, like competition policy, are subject to relatively few obstacles to successful cooperation, while others, such as food safety, encounter multiple obstacles. Even in difficult areas like food safety, moreover, regular exchange of information has proven useful in allowing regulators on each side to understand each other's regulatory philosophies and procedures, and gradually to build up the trust

among regulators that will be required for the successful operation of future efforts at mutual recognition or harmonization of regulations.

As a first step in this direction, the European Union and the United States agreed in April 2002 to the adoption of a set of non-binding 'EU/US Guidelines on Regulatory Cooperation and Transparency.' Although this joint statement of principles does not bind either the US or the EU to any specific regulatory measures, and explicitly excludes the sensitive area of agriculture, the agreement does call for regularized exchange of information between EU and US regulators, and for consideration of harmonization or mutual recognition of standards 'as may be appropriate, in specific cases,' to minimize unnecessary technical barriers to trade. In addition, the document suggests that both EU and US regulators should apply potentially far-reaching principles of transparency in rule-making, including public notification of, and comment on, proposed regulations. The implementation of the guidelines is to be reviewed on an ongoing basis by the TEP/TBT Working Group.<sup>62</sup>

The significance of the new EU/US Guidelines will depend on their implementation in practice across an array of issue-areas in the months and years to come. Regardless of the success of this specific endeavor, however, regulatory cooperation remains an important priority for the European Union and the United States in achieving their respective regulatory aims while also preventing and resolving potential trade disputes. For this reason, the conclusion to this report suggests, a careful and systematic study of current attempts at regulatory cooperation across issue-areas, identifying key obstacles and 'best practice' at overcoming those obstacles, would represent a substantial contribution to future efforts in this area.



## **The European Union and the Americas**

EU/US economic relations do not take place in a vacuum. As we have seen, transatlantic efforts at trade liberalization, regulatory cooperation, and dispute resolution are nested within and frequently make explicit use of the rules-based multilateral trading system of the World Trade Organization, the next round of which both the United States and the European Union have identified as a priority in the coming years.

Just as importantly, the story of the EU's ever-closer economic relationship with the United States coincides with a second major development, namely the rapid increase of EU trade with the countries of North and South America. Prior to the 1990s, the United States was the most important trading partner and the largest source of foreign direct investment in Canada, Mexico, and throughout most of Latin America, and this important role for the US has been further enhanced by the adoption and implementation of the North American Free Trade Agreement (NAFTA) with Mexico and Canada, as well the early negotiations regarding the possible creation of a multilateral Free Trade Area of the Americas. During the course of the 1990s, however, the European Union has developed an increasingly close and institutionalized relationship with Canada, Mexico, the Mercosur customs union, and other countries of Central and South America, where it now rivals the economic importance of the United States.

In institutional terms, the EU/US relationship finds its closest counterpart in the Union's bilateral relationship with Canada—this despite an EU/Canada economic relationship that is dwarfed by each side's economic relationship with the US. In economic terms, the EU/Canada relationship is substantially less important than Canada's bilateral relationship with the United States, which is far and away Canada's largest trading partner, taking some 87% of total Canadian exports. The integration of Canada's economy with that of other North and South American states, moreover, has increased in recent years with the implementation of NAFTA and a free trade agreement with Chile. Nevertheless, the European Union ranks as Canada's second-largest trading partner after the United States, while Canada accounts for approximately 1.7% of EU imports and 2.2% of total EU exports. As in the EU/US relationship, moreover, foreign direct investment has

outpaced trade as a source of interdependence in the EU/Canada relationship, with Canada holding 3.2% of all FDI in the Union, while the EU is the second largest investor in Canada after the US, holding some 8% of all foreign direct investment in Canada.<sup>63</sup>

Institutionally, the EU/Canada relationship is structured by a series of bilateral agreements, including the 1990 Declaration on European Community-Canada Relations and the 1996 Joint Political Declaration on EU-Canada Relations and its accompanying Joint EU-Canada Action Plan, and by a series of regular high-level summits that parallel those held between the EU and the US. The EU and Canada have also signed a number of important regulatory cooperation agreements in recent years, including a 1996 customs cooperation agreement, a set of Mutual Recognition Agreements agreed in 1998, and agreements on veterinary equivalence and cooperation policy cooperation, both signed in 1999. Trade disputes between the EU and Canada are relatively rare, and have generally been dealt with successfully through bilateral consultation or through the WTO dispute resolution procedure.<sup>64</sup>

The Union has come also to play an increasingly important economic role in Latin America, characterized by a sharp increase in both trade and especially foreign direct investment in the region. At the same time, the Union has pursued a wide range of trade and economic agreements with the countries of Latin America, including a free trade agreement with Mexico, and other agreements with Mercosur and other Latin American countries. In the rest of this section, therefore, we examine the EU's economic relationship with the countries of Latin America, focusing in turn on the changing patterns of EU/Latin American trade and investment, EU economic agreements with the countries of the region, and the remaining challenges for the EU/Latin America relationship.

## **5.1 The EU and Latin America: Trade and Investment**

The pattern of the trade relationships between the EU and the main Latin American countries has changed substantially during the last decade. Although none of them was a major trade partner, the larger countries of Latin America already represented an important proportion of EU exports and imports in 1990, when Mercosur plus Mexico and Chile accounted for 4.3% of extra-EU exports and 3.2% of its imports. The trade balance was very favourable to the European side, with a deficit of over US\$8 billion. During the 1990s, Europe consolidated its Latin American export markets, and increased its market share in Argentina, Mexico, Chile and especially Brazil. In 2000, the EU maintained the proportion of its exports towards the analysed countries, while increasing the proportion of imports up to 3.5%. The trade balance has improved versus Argentina, Mexico and Brazil, whereas the deficit has increased significantly with Chile.

The total deficit with the countries has now turned into a surplus of more than 5 billion.

*Table 9: EU/Latin American Trade and Investment*  
(Exports/Imports and Foreign Direct Investment as a percentage of total extra-EU flows. Trade Balances are millions of US\$)

	% of EU exports		% of EU imports		Trade balance		% of EU FDI	
	1990	2000	1990	2000	1990	2000	1999	2000
<b>Argentina</b>	0.3	0.8*	0.8	0.6*	-2,252	737	5.4	1.5
<b>Brazil</b>	2.5	1.8	0.9	1.7	-5,711	-1,031	3.8	5.3
<b>MERCOSUR</b>	2.8	2.5	1.9	2.3	-8,368	301	9.2	6.8
<b>Mexico</b>	1.1	1.5	0.7	0.7	1,231	6,973	0.6	0.8
<b>Chile</b>	0.3	0.4	0.6	0.5	-1,336	-1,653	1.9	---

Note: figures with an asterisk correspond to year 1999.

Source: European Commission. DG-Trade.

Moving from Latin America as a whole to individual countries and groupings, we come first to the Mercosur countries (Argentina, Brazil, Paraguay and Uruguay), which created a customs union in 1994 and have since increased, partly thanks to their own process of economic integration, their openness towards the rest of the world.<sup>65</sup> The two smallest countries are considerably more open (a trade/GDP ratio of 70% in Paraguay and 33% in Uruguay in 1999), whereas this proportion is 19% in Argentina and 15% in Brazil.<sup>66</sup> Although intra-area trade accounts for 20% of their total flows, trade with NAFTA and the EU has also increased during the nineties. The financial crises of the end of the decade have, especially since 1998, temporarily put a halt in the process and affected their external demand. By 2000, the EU as a bloc had overtaken the United States as Mercosur's single largest trade partner, representing 30% of their exports and 35% of their imports.

The EU and Mercosur can be considered complementary economic blocs in both agricultural and industrial products. The EU is the main export market for Mercosur agriculture with a 40% share (the US represents only 9%). More precisely, 50% of Mercosur exports towards the EU are agricultural products, and are concentrated in a small range of products, such as oilseeds (particularly soy) and animal feed products. We should also mention coffee (10% of EU imports from Mercosur), livestock, and meat and derivatives, fruit and derivatives, tobacco and fish products. In contrast, EU exports of agricultural

products to Mercosur are modest (approximately 6% of total) and are concentrated in three groups of products: alcoholic beverages, dairy products and other edible animal products, and cocoa derivatives. The trade balance is negative for the EU in agricultural products, although the opposite happens in the case of industrial goods. The EU is the main supplier of industrial and capital goods to the area, including most importantly automobiles; machinery and mechanical appliances, and a third group of products from the electrical industry (mainly radiotelephony appliances and parts).

Economic relations between Argentina and the EU developed very positively since the signature, in 1990, of the EC/Argentina framework agreement on trade and economic co-operation. During the 1990s, Argentina advanced towards being an open market economy and opted for an outward-looking external policy where Mercosur and the EU played a key role. The EU is Argentina's second largest trading partner (after Brazil): overall trade with the EU has more than doubled during the last 10 years and represents around 25% of total trade. However, the crisis that started at the end of last decade has interrupted this positive trend. The main components of EU imports are agricultural products and raw materials, while EU exports to Argentina concentrate on machinery and transport equipment, chemicals and manufactured goods.

Brazil is the largest Latin American economy, its GDP accounting for 35% of the area or 65% of Mercosur. Brazil's domestic market, with a population over 160 million people, constitutes a potentially attractive destination for both US and EU exports. Brazil also signed a co-operation agreement in 1995 with the EU, which is now its main trading partner, destination of 26.8% of its exports and origin of 25.2% of its imports, although the US follows very closely (24.3% and 23.3% respectively). Although during the last years the EU has progressively reduced its share of the Brazilian market in favour of the US, Brazil remains the EU's main trade partner in Latin America. Like Argentina, the process of opening to international competition started between 1990 and 1993. As a result, Brazil's trade surpluses of the 1990s quickly turned into substantial deficits later in the decade, only slowly corrected after the 1999 devaluation. The main components of EU imports (1999 data) were vegetable products, prepared foodstuffs, mineral products, transportation equipment, wood and wood pulp products and machinery and mechanical appliances, the latter also important in EU exports, together with transportation equipment, chemical products, base metals, plastics and rubber.

Mexico is the tenth-largest world economy and the most important Latin-American exporter, its total exports amounting to US\$166 billion in 2000. In order to qualify its relative size, it should be compared with Brazil, the second larger exporter in the region (and ninth world economy in terms of GDP), which exported only US\$55 billion. Mexico

is traditionally one of the EU's most important trade partners in Latin America, sharing with Brazil its high potential for growth as an export market. Mexico has also followed a process of opening to international competition during the end of the eighties and all the nineties: first, by unilateral tariff reductions, then by subscribing to ten free trade agreements with the majority of the Latin American countries or areas, Canada and the US (creating NAFTA) and, in Europe, with the EFTA and the EU.

During the period 1994-2000 Mexican exports to the US increased 240%, while their composition has substantially diversified. Oil-related exports represented only 9.8% of the total in 2000, compared to 24.8% in 1990. Agricultural products did not account for more than 2.5% and the rest of the exports were manufactured goods. In contrast, 75% of Mexico's imports are intermediate goods, 13.4% capital goods and the proportion of consumption goods is only 11.7%. The EU is Mexico's second trading partner after the US, although the data reveals the overwhelming dependence of Mexico on the US economy: 88.7% of its exports are directed to the US and 73% of its imports come from it. In the EU, Germany and Spain represent Mexico's largest export markets, with 0.9% each. Germany is the main European supplier, representing a 3.3% of Mexico's imports. As mentioned above, Mexico's trade balance with the EU is highly deficitary.

Chile is considered the most open, stable and liberalized economy in Latin America. Despite its relatively modest size, Chile is an important trading nation due to its high trade/GDP ratio (over 40%). Chile is the fifth Latin American exporter (US\$18.2 billion in 2000), with agriculture and fishery accounting for 10% of the total, and the other 90% distributed between mining (44.9 %) and industry (44.2%). In contrast, Chile's imports are concentrated in the industrial sector (77%), with mining (13.5%) and agriculture (2.2%) lagging far behind. It should be stressed that Chilean trade is globally balanced, and exhibits important surpluses with the European Union and Asia. In contrast, Chile cumulates its largest deficit with Argentina, its main oil supplier.

The EU is Chile's main trading partner, taking in approximately 25% of the country's imports during 2001.<sup>67</sup> Among the EU countries, the United Kingdom and Italy accumulate 3.4% of Chile's trade each, and France 3%. Chile is not only a market for EU exporters of goods and services, but also an important source of imports, both in agricultural and industrial goods. The main components of EU imports from Chile are manufactured goods, raw materials, agricultural products and beverages and tobacco. EU exports of goods are concentrated in machinery and transport equipment, chemical products, and manufactured goods.

Latin America in general, and particularly Mercosur, has been involved in the general trend that directed large capital flows towards emerging and developing economies. In 1990 only 16% of overall foreign direct investment was received by developing countries, whereas in 2000 this proportion had reached 37%. Latin America and the Caribbean received around 11% of these flows during the period 1995-99. Brazil received one third of the investment in the area, whereas Argentina and Chile's proportions were 16% and 8% respectively, thanks to the acquisitions of domestic firms by the Spanish companies Repsol and Endesa. However, due to its instability, Argentina has experienced a significant reduction in foreign investment since 2000. Mexico is the second destination of FDI in Latin America (17% during the period above mentioned) and, in contrast with other countries such as Argentina, these flows exhibit a very stable behaviour.

Although Mexico followed a process of capital movements liberalization similar to the experiences of Brazil and Argentina, a factor behind the stability of these movements is related to its process of regional integration with North America. Many multinational enterprises have invested in Mexico as a platform to produce manufactured goods directed towards the US and Canadian markets. As an example, between 1995 and 2000, more than 60% of cumulated FDI went to the manufacturing sector, and 65% had its origin in the US. These investment flows have contributed to the modernization of the industrial sector and to a significant improvement in Mexico's competitive position in the automobile, electronic and textile industries, which can help to explain the excellent export performance of this country in recent years. Finally, in 2000 the banking sector has cumulated 30% of the total flows of FDI received by Mexico, whereas services, telecommunications and the oil industry have had a very limited interest for foreign investors. This fact is in contrast with the other large Latin American economies.

The majority of the FDI that the Mercosur countries received in the second half of the nineties was directed towards the privatization of the public firms, especially in the area of services (CEPAL, 2001). Due to this process, FDI has abandoned its traditional destinations (for example, in 1995, 55% of the FDI stock of Brazil was concentrated in manufacturing) to be employed in mergers and acquisitions mainly in the service sector. According to Tansini and Vera, in 1998 and 1999, 78% of these acquisitions were directed towards Argentina and 18% had Chile as destination.<sup>68</sup> In 1999, 30% of the capital flows received by Brazil were absorbed by the privatizations, although since then the majority of the resources were devoted to consolidating and restructuring these firms.

The European Union's share of foreign direct investment in Latin America increased dramatically during the 1990s, with net inflows from the EU increasing from US\$1.077 billion in 1993 to

US\$17.068 billion in 1997, nearly overtaking total inflows to the region from the United States. Within Europe, moreover, there has been a shift in the primary investors in Latin America, with Spain in particular joining the United Kingdom and Germany as the leading European investors in the region (see Figure 2). During the 1980s, the UK produced more than 50% of the cumulated FDI flows in Mercosur plus Chile<sup>69</sup>, followed by Germany (25%). In the 1990s, by contrast, Germany increased its participation to more than 30%, whereas Spain more than doubled its share to 24%. Germany's FDI concentrated in manufacturing (such as the automobile industry) during the first half of the decade, especially in Argentina and Brazil, with their large domestic markets. Since 1995, Spain is the main European investor, directing its interests in the privatization sectors: banking, telecommunications and energy. Other EU countries with important FDI flows in Mercosur and Chile during the nineties have been the Netherlands, France and Portugal (the latter with Brazil as its primary destination). According to the EC Commission, the EU's stock of foreign direct investment in 1999 was €1 billion in Uruguay, €31 billion in Argentina and €34 billion in Brazil. EU investment in Paraguay is virtually non-existent, whereas Chile cumulates €10.4 billion, although in this country the US is still the main foreign investor.

## **5.2 EU Trade Agreements with Latin American Countries<sup>70</sup>**

The first symbolic push for the intensification of EU relations with Latin America followed the 1969 'Declaration of Buenos Aires,' issued by the Latin American members of the Special Committee for Latin American Coordination, and calling for an institutionalization of the EU/Latin America political dialogue and closer economic cooperation between both regions.

Unlike some previous attempts, this time the EU responded positively and a regular dialogue between the group of Latin American ambassadors in Brussels (GRULA) and EC representatives was initiated. The major substantive measure advanced in this dialogue was the policy developed toward the Caribbean countries, which were incorporated together with other European former colonies in Africa and the Pacific in the so-called ACP Group and were accorded a special regime as stated in the Lomé Convention of 1975.<sup>71</sup> Apart from that, the Community's official policy during this period was limited to bilateral economic treaties with the major Latin American countries (so-called first generation agreements), such as the non-preferential trade agreements with Argentina in 1970, Uruguay in 1973, Brazil in 1973 and Mexico in 1975.<sup>72</sup>

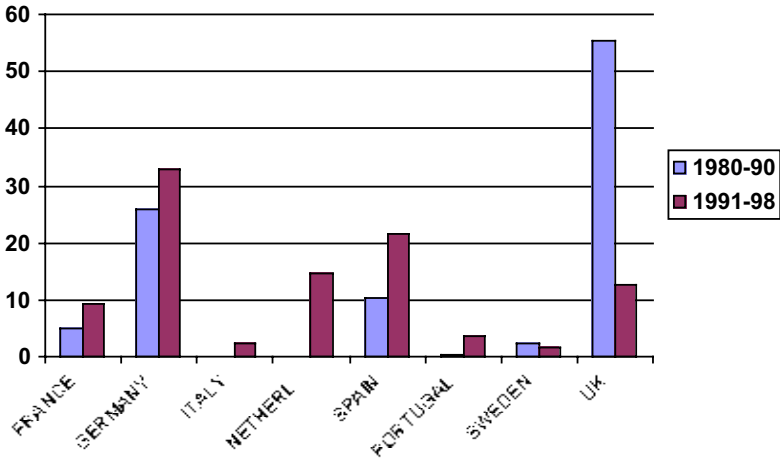
Table 10: EU/Latin American Trade Agreements

Agreement	Objectives	Year of entry into
<b>EU/Mexico Free Trade Agreement (Economic Partnership, Political Co-operation and Co-operation Agreement).</b>	Liberalizes over 96 per cent of EU-Mexico trade by 2007 at the latest; fully liberalizes industrial products by 2003 for the EU and 2007 for Mexico with negotiations on tariff phase-out of agricultural items deferred until 2003; includes rules on intellectual property and dispute settlements, and provides EU access to the Mexican procurement and services markets, similar to NAFTA.	2000
<b>Central America/EU: Framework Co-operation Agreement and Regional Programme for the Reconstruction of Central America (PRRAC).</b>	The Framework Agreement seeks to strength the co-operation in the economic, financial, commercial, socio-cultural areas and environment. A second aim is to reinforce the Central American Integration System. The PPRAC is a specific program for recovery from the effects caused by hurricane Mitch.	Both since 1999
<b>Andean Community/EU: Co-operation agreement and GSP.</b>	Political aspects: anti-drug dialogue. Commercial aspects: since 1998 the General System of Preferences is applied under a new regime. As a result, 75% of products imported from the Andean Community to the EU are exempt from custom duties. Framework Co-operation Agreement to promote regional integration.	1998 (political dialogue and co-operation) and 1999 (GSP)
<b>EU/Chile Association Agreement</b>	Governments concluded negotiations in April 2002 on a wide-ranging Association Agreement, including the creation of a free-trade area in goods and services, an agreement on wines and spirits, and provisions on public procurement, investment, competition, and intellectual property.	Awaiting ratification by the EU and Chile.
<b>Mercosur/European Union</b>	Framework agreement came into force in 1999. Negotiations on an interregional free-trade agreement began in 1999, and are ongoing.	Framework agreement since 1999. Free-trade agreement expected in 2005.

Source: Flôres (2001), DG Trade (European Commission) and Camarero and Tamarit (2002).



Figure 2: EU Foreign Direct Investment in MERCOSUR + Chile (Cumulated flows. Country shares, EU = 100%)



Source: OECD. *International Direct Investment Statistics Yearbook*.  
 Note: For clarity, some EU countries with smaller investment shares in MERCOSUR have been excluded.

From the mid-1970s to mid-1980s the official policy of the EC towards Latin America was based mainly on the Inter-Parliamentary Dialogue between the European Parliament and Latin American parliamentarians, and on bilateral economic treaties. With regard to the latter, a new round of 'second-generation' agreements was signed between 1980 and 1985 with individual countries such as Argentina in 1980, Uruguay in 1980, and Brazil in 1982, and with sub-regions such as the Andean Pact (created in 1969 between Venezuela, Colombia, Equator, Peru and Bolivia) in 1983, and the Central American Common Market in 1986.<sup>73</sup>

From the mid-1980s onward, Latin America became the focus of more substantial political and economic policies from the EU. On the political side a variety of multilateral fora have been set up. The San José Group was launched in Costa Rica in 1984, with the aim of supporting progress in the peace process and democracy in Central America. From that date annual meetings have been organized extending their aims to other fields, like the rule of law and human rights, the fight against the trafficking of drugs, and educational, technical and cultural co-operation. The Rio Group was established in 1986, again meeting on an annual basis, with a membership including all the South American countries as well as Mexico. Finally, two summit meetings—the first in Rio de Janeiro in June 1999, and a

second held under the Spanish EU Presidency in Madrid in May 2002—brought together the leaders of 48 countries from the EU and Latin America. The first summit in Rio agreed upon an Action Plan to increase co-operation in the political and cultural spheres, and called for negotiation of association agreements with Chile and Mercosur, while the Madrid summit further developed political cooperation and confirmed the conclusion of a bilateral EU/Chile Association Agreement.<sup>74</sup>

The 1990s and early 2000s, finally, have witnessed the conclusion by the EU of a round of so-called 'third-generation' treaties between the EU and various Latin American countries and trade blocs. The primary agreements in force or under negotiation between the Union and the countries of Latin America are summarized in Table 10. In all the cases the nature of these agreements is twofold, encompassing political agreements on questions such as democracy, the environment and human rights, and as well as economic agreements regarding the liberalization of trade and investment.

### ***5.2.1 The EU/Mexico Free Trade Agreement***

Since 1975 the EU has signed several agreements with Mexico. Although these agreements were not significantly different from others already in force with other countries in the same geographic area, Mexico had always received a particular treatment. Thus, in the 70s Mexico benefited from the treatment of most favoured nation neglecting the fact that this country was not a member of the GATT at that time. Later, Mexico was eligible under the GSP scheme, benefiting from this treatment until 1995, when this system was revisited and Mexico lost much of its preferential access to the EU market. Negotiations aiming at the establishment of an FTA with the EU started during the same year. The primary reason was the concern in the EU about possible trade diversion due to the Mexican entry into NAFTA in 1994. A general agreement removing trade barriers between the EU and Mexico would minimize any trade diversion effect.

Although the most important part of the agreement is the creation of a free trade area between the EU and Mexico, the so-called Global Agreement includes a rather wide package institutionalising a regular political dialogue and extending the bilateral co-operation. This agreement places the EU in a better position to compete for access to the Mexican market. In 2007 all industrial goods will be free of tariffs. Moreover, in trade volume, 52 % of EC exports will enter the Mexican market duty free by 2003 and for the remaining 48% a maximum duty of 5% will be applied. This extremely quick dismantling calendar will place economic operators on both sides on an equal footing with other preferential partners in real time. Concerning agricultural and fisheries products, some European special sensitivities are respected, allowing at the same time for preferential access to European and Mexican

exporters into their respective markets. The agreement also includes preferential treatment in services, providing service providers from the EU with access to the Mexican market which will be equivalent if not superior to that currently enjoyed by operators from Mexico's other preferential partners, in particular the US and Canada. In the services sector, EU banks and insurance companies will be authorized to operate and establish directly on the Mexican territory. The liberalization of investment and payments related to investments will take place in 2003. The agreement also provides access to the Mexican procurement market similar to NAFTA. Finally, provisions are made about intellectual property, competition and dispute settlement.

The agreement covers other aspects apart from trade. Thus, the EU fosters co-operation programmes with Mexico for an annual amount on average of €13 million during the 1990-99 period. There were also significant activities under horizontal programmes such as AL-Invest (Latin American Investment Programmes) and ALFA (Latin American Academic Formation).

### **5.2.2 Relations with Central America**

The most important part of the cooperation between the EU and Latin America, and more specifically, with Central America, has been implemented through the so-called cooperation agreements. The first bilateral agreements with individual Central American countries were signed during the 1970s and early 1980s. Later on, a second wave of agreements were adopted covering a wider range of areas topics, beginning with the First Framework Agreement of Co-operation for Central America, signed in 1985. This agreement belongs to the most advanced second-generation type, and covers areas such as commercial promotion, and well as agricultural, industrial and economic co-operation. The Second Framework Agreement of Co-operation signed in 1993 is considered as a 'third generation' type.<sup>75</sup> This Agreement came into force in 1999, including two novelties: a package of aid for refugees and a programme to support democracy and human rights. The provisions of financial, technical and economic co-operation aid with these countries from 2000 to 2006 are close to €500 million. Furthermore, the Commission has decided to participate in the initiative for highly indebted poor countries (HIPC). The eligible Latin American countries are Honduras and Nicaragua, which stand to receive as much as €30 million. Additionally, the European Investment Bank has made several loans to the Central American Bank for Economic Integration (CABEI) in order to support reconstruction in the region.

### **5.2.3 Relations with the Andean Community and Chile**

The EU has established a complete institutional framework with the Andean Community, implementing different instruments in each field (political dialogue, trade and co-operation) with a special emphasis on the question of 'anti-drug' measures.

Trade relations between the EU and the Andean Community have increased 32% over the last nine years, currently representing 0.8% of the EU's total trade, and 16.7% of total trade for the Andean Community. It is worthwhile to note that 90% of Andean exports consist of raw materials or primary production, while 85% of the EU's exports are manufactured products. From 1999 on, the EU has granted, under the Generalized System of Preferences (GSP), preferential access for all industrial products as well as numerous agricultural products, especially for those Andean countries committed to fighting against drug production and trafficking.

In the area of political co-operation, the Andean region was the first in Latin America to conclude a regional co-operation agreement with the EU. The present regional framework agreement was signed in 1993 and entered into force in 1998. The amount of the aid to the area reached some € 6 million/year for the period 1982-97.

Finally, the EU has also established several bilateral agreements with Chile, including the Framework Agreement signed in 1996 and currently in force. This agreement covers political and economic cooperation and formed the cornerstone for a new EU/Chile Association Agreement, the negotiation of which was completed in April 2002. The agreement, which is currently awaiting ratification by both parties, calls for the creation of a free-trade area in goods and services; an agreement on wines and spirits, including both market-access questions and the use of protected names; a Sanitary and Phytosanitary Agreement; new rules on public procurement, investment, competition and intellectual property; and a dispute-resolution mechanism.<sup>76</sup>

### **5.2.4 The Launching of a Free Trade Area with Mercosur<sup>77</sup>**

The EU is currently the main trade partner of Mercosur. The EU generally imports agricultural and primary products from Mercosur, while it exports primarily industrial commodities.<sup>78</sup> The EU has a Framework Agreement of co-operation similar to others with several countries or blocs in Latin America. In June 2000 negotiations were re-opened aiming at signing a new Inter-regional Association Agreement. This new agreement would cover not only commercial aspects but also many others like political dialogue or cooperation (social and humanitarian, economic and development) between the two blocs.

The fifth round of negotiation between the EU and Mercosur took place in July 2001. The main point in this round was the presentation by the EU of its offer for the reduction of tariff and non-tariff barriers in order to liberalize trade in goods, services and public procurement. These reductions would cover all the industrial products and 90% of agricultural products over a period of no longer than ten years. Mercosur's answer to that proposal was given during the sixth round in October 2001 presenting its own offer in terms of tariff and non-tariff reduction and public procurement. At the same time, there has been an exchange of views on political dialogue as well as some improvement in the area of technical and scientific co-operation, energy, transport, telecommunications and information technology. Negotiations continue, but conclusion of the agreement is not expected until 2005.

### **5.3 Challenges for EU/Latin American Economic Relations**

As even this brief survey has made clear, the European Union today plays a substantial economic and political role in Latin America. EU trade with, and foreign direct investment in, the region have increased dramatically during the course of the past decade, with the EU now emerging as the most important economic partner for Mercosur in particular. At the same time, the EU's political and economic agreements have demonstrated ever-greater ambition and an increasingly broad economic agenda embracing not only tariff and quota reductions but also provisions on non-tariff barriers, investment, and public procurement, as well as political provisions regarding democracy and human rights.

The completion of a more ambitious system of economic agreements with the Latin American countries remains a goal for both the United States and the European Union. However, there are important qualitative differences between the strategies of the two trade blocs: while the European Union is trying to keep the development of a hub-and-spoke system of bilateral agreements with individual countries or (as in the case of Mercosur) customs unions, the United States has announced its desire to create a multilateral Free Trade Area of the Americas. The countries of the region, for their part, have demonstrated a decades-long commitment to economic liberalization, locked in place by a series of both multilateral and bilateral trade agreements amongst themselves as well as with the United States and the European Union, although their commitment to proceeding along these lines has been tested by the recent economic crisis in Argentina.

The EU/Latin America summit meeting held in Madrid in May 2002 witnessed the conclusion of the EU/Chile free trade agreement, which is now awaiting ratification by both sides, but further negotiations lie ahead, particularly in the case of the proposed EU/Mercosur

agreement, which remains far from a conclusion not expected before 2005. In these negotiations, the EU should give special attention to expanding market access for the Mercosur countries, especially for so-called 'sensitive products.' Although the EU has presented itself as a champion of free trade within various multilateral fora, it is clear that the Union has actively sought to preserve barriers in some industrial subsectors, and especially in the agricultural sector, where the Commission has estimated that some 10-12% of all EU imports from the Mercosur countries are currently labelled as 'sensitive.'<sup>79</sup> Removal of these barriers would benefit not only Latin American countries but also European consumers, who are currently playing higher prices for an amount equivalent to 5-7% of the Union's GDP.<sup>80</sup> In addition, the negotiation process should cover not only tariffs (since over 50% of all imports from Mercosur are eligible for an average tariff lower than 2.5%), but also other means of market-access protection, such as tariff quotas, which are applied extensively to agriculture and food products. Additional areas for negotiation include trade in goods, services, investment, public procurement, intellectual property rights, technical standards, and rules of origin.

Finally, neither these EU/Latin American negotiations, nor the extensive EU/US cooperation outlined in the previous sections of this report, should distract the European Union or the United States from their shared priority, namely the successful completion of a 'Development Round' of multilateral trade talks within the WTO. During his recent trip to Argentina, EU Trade Commissioner Pascal Lamy stressed the importance of ensuring that bilateral and inter-regional trade agreements such as those that the EU has concluded with the countries of Latin America rest on the multilateral foundation of WTO trade law. For this reason, he argued, bilateral and interregional negotiations 'must not be allowed to detract our attention from the pursuit of the Doha Development Agenda.'<sup>81</sup> Such a commitment should remain a central tenet of EU trade policy in the years to come.

## **Conclusions: The New Transatlantic Economic Agenda**

The United States and the European Union have an extraordinarily close and important economic relationship, the health of which is vital to the global economy as a whole. Both partners stand to gain a great deal by making the relationship more productive. Both stand to lose if disputes cause interruptions and acrimony and if the relationship fails to adapt to new pressures and new challenges.

The agenda of transatlantic economic relations has evolved and expanded to reflect the increasingly integrated nature of the transatlantic marketplace. To be sure, traditional trade questions—and trade tensions—persist between the European Union and the United States. Despite the generally low level of tariffs between the EU and US, tariff peaks and quotas remain for both sides in a number of sensitive areas, which can and should be subject to further reductions in the Doha Round of trade liberalization talks within the World Trade Organization. In addition to tariffs and quotas, a number of other traditional trade measures—including most notably antidumping, subsidies, and safeguard measures—continue to plague the transatlantic partnership, most strikingly in the current dispute over US safeguard actions in the steel sector. Nevertheless, while the seriousness of these disputes should not be underestimated, the multilateral rules-based trading system of the World Trading Organization is generally well equipped to address such issues, and the United States and the European Union should continue in their efforts to use and support the WTO as a forum for both negotiation and dispute resolution.

Perhaps the greatest challenge to the transatlantic economic relationship, however, is the expansion of the transatlantic economic agenda to encompass domestic regulations that are adopted for legitimate purposes but act in practice as non-tariff barriers to trade, fragmenting the transatlantic market and in some cases leading to bitter and intractable trade disputes. As we have seen, these types of disputes also create enormous legal and political challenges to the dispute settlement procedure of the WTO, where judgments in areas such as the beef hormones and Irish music disputes have created political controversy without (at this writing) securing full compliance from the states concerned.

For these reasons, any attempt to deepen transatlantic economic integration between the United States and the European Union must address not only tariffs, quotas, and similar disputes about subsidies, antidumping actions and safeguard measures, but also the new-style regulatory disputes that are likely to become the most important barriers in the transatlantic marketplace, and place the greatest strains on the EU/US relationship and the multilateral WTO system, in the medium- to long-term future.

Addressing these challenges, in turn, will require a careful and extensive study and more comprehensive understanding, not only of traditional trade issues, but also and especially the domestic sources of transatlantic regulatory disputes, existing efforts to resolve such disputes, and possible new mechanisms for preventing and settling future regulatory disputes between the European Union and the United States.

Such a study would necessarily be wide-ranging, involving not only economists who would identify the potential benefits of economic liberalization, but also political scientists, political economists, and legal scholars, who would identify the domestic sources of transatlantic regulatory disputes, the possibility of preventing such disputes through early warning and/or regulatory cooperation, and the most promising means of settling disputes either bilaterally or multilaterally. Any such study would, therefore, have to undertake three fundamental tasks:

**1. A comprehensive listing and analysis, based on publicly available sources, of EU and US regulations capable of restricting trade and investment between the European Union and the United States.**

This report has taken a first step towards such an analysis with the compilation of regulatory barriers identified by the United States and the EU in their respective trade barriers reports for 2001 (see Appendix 1), but further research is required to identify both the sources and the seriousness of problematic regulations.

- In terms of sources, a useful first step would be to identify whether the regulations in question were adopted by the local, state, or federal (EU) levels of government, and whether they were adopted through legislation or by regulatory authorities.
- In terms of seriousness, a preliminary effort should be made to identify the economic impact of the regulations in question on transatlantic trade and investment. Such an analysis could draw on the research done by the US and the EU, as well as on the periodic reports of the World Trade Organization and the Transatlantic



Business Dialogue, but should be conducted by independent economists it is to be accepted as authoritative by both parties.

In addition, an effort should be made by scholars and practitioners on both sides of the Atlantic to identify new challenges to the relationship, particularly those arising from the application of new technologies such as electronic commerce and biotechnology.

## **2. A comprehensive survey and analysis of transatlantic regulatory cooperation, including areas of informal cooperation among regulators as well as areas of formal agreement.**

Section 4 of this report identified regulatory cooperation as a particularly promising means of preventing as well as settling transatlantic regulatory disputes, yet it also identified a number of political, legal, and institutional barriers which can hinder—and have hindered—cooperation across a range of issue-areas. Given the recognized promise of regulatory cooperation among EU and US authorities as a means of realizing our joint regulatory aims and avoiding future regulatory disputes, more detailed studies of transatlantic regulatory cooperation are vital in order to identify barriers to regulatory cooperation as well as instances of ‘best practice’ in overcoming those barriers.

## **3. A systematic analysis of various means of bilateral and multilateral dispute resolution, with particular emphasis on the specific challenges of transatlantic regulatory disputes.**

Finally, while emphasis can and should be placed on prevention rather than settlement of transatlantic disputes, future studies should focus on new and innovative means of dispute settlement in regulatory disputes, given the acknowledged difficulties of litigating regulatory disputes before the WTO Dispute Settlement Body. At the domestic level, the prospects for the adoption of ‘trade impact assessments,’ as well as a more general move toward transparent regulatory procedures on both sides of the Atlantic, should be examined. At the bilateral level, special attention should be directed toward the possible expansion of early warning, as well as the possible use of bilateral arbitration and mediation outside the WTO. At the multilateral level, finally, the EU and US should jointly examine the possible revision of WTO rules to clarify the use of the precautionary principle and to consider possible amendments to the WTO Dispute Settlement Understanding to be undertaken in May 2003.

## Appendix 1: EU-US Barriers to Trade in Goods, Services and Foreign Investment

Type of measure	EU concerns about US rules	US concerns about EU rules
Tariffs	<p>Tariff peaks: Food products; Textiles; Footwear; Leather goods; Jewelry; Ceramics and glass; Trucks; Railway cars; Optical fibers; Tubes for computer monitors.</p> <p>SANCTIONS IN RETALIATION FOR THE EU BAN ON HORMONE-TREATED BEEF.</p> <p>Tariff quotas: dairy products, tobacco.</p>	<p>BANANAS (tariff quota + discriminatory licensing) (settled).</p> <p>CUMULATIVE RECOVERY SYSTEM (brown rice).</p> <p>ADMINISTRATION OF CUSTOMS DUTIES FOR RICE (B) (agreement 11/01).</p>
Trade defence instruments	<p>1916 ANTIDUMPING ACT.</p> <p>SAFEGUARD MEASURES ON STEEL WIRE ROD (3/2000).</p> <p>SAFEGUARD MEASURES ON WELDED STEEL PIPE (3/2000).</p> <p>BYRD AMENDMENT (ANTI-DUMPING DUTIES GO TO INJURED INDUSTRY).</p> <p>FAILURE TO LIFT COUNTERVAILING DUTIES AFTER SUNSET REVIEWS.</p> <p>QUOTA ON THE IMPORT OF WHEAT GLUTEN (WITHDRAWN 6/2001).</p> <p>METHODOLOGY OF COUNTERVAILING DUTIES WITH RESPECT TO BRITISH STEEL. ANTI-DUMPING DUTIES ON SEAMLESS PIPE.</p>	
Other customs barriers	<p>Excessive invoicing requirements.</p> <p>EU not recognized as a country of origin.</p> <p>TEXTILES &amp; LEATHER: CUSTOMS FORMALITIES &amp; RULES OF ORIGIN.</p> <p>Tuna (certification of origin).</p>	
Other levies and charges	<p>Customs fees (e.g. Merchandise Processing Fee).</p> <p>HARBOUR MAINTENANCE TAX and Harbour Services Fee.</p> <p>50% tax on imported equipment for boats. Taxes that fall disproportionately on European automakers.</p> <ul style="list-style-type: none"> <li>• Luxury tax (70%)</li> <li>• Gas Guzzler tax (85%)</li> <li>• CAFÉ penalties (~100%)</li> </ul>	

(Appendix 1 cont.)

<b>Type of measure</b>	<b>EU concerns about US rules</b>	<b>US concerns about EU rules</b>
Regulatory barriers to trade	<p>SHRIMP-TURTLE – to import shrimp countries must be certified as matching US efforts to protect sea turtles (EU third party).            Tuna-dolphin – to import tuna countries must be approved by the National Marine Fisheries Service            General prohibition on the importation of dairy products made from unpasteurized milk.            Effective prohibition on the importation of yogurt.            Milk protein for yogurt must come from approved dairies.            Divergence from international standards.            Reliance on third-party conformity assessment (e.g., re: electrical equipment and domestic appliances).            US and Canadian content labeling of cars.            Approval slower than for US-produced drugs.            Over-the-counter drug approval requires US market history.            Extensive product description (textiles &amp; leather).            Citrus fruits must be landed at North Atlantic ports.            Rules on all imports of ruminant animals and animal products from all EU countries because of BSE.            Ban on some uncooked meat products.            Strict condition on imports of egg products (continuous inspection of production process).            Low acid canned food (e.g. fish and dairy products) subject to detailed prior approval system.            Pre-clearance inspection of apples and pears from some member states for pests.            Prohibition on imports of all animals and products from a member state where a disease exists (not just region where found).            Approval of wine labels.</p>	<p>HORMONE-TREATED BEEF.            Lack of national treatment with respect to GEOGRAPHICAL INDICATIONS for agricultural products and food.            Poultry treated with chlorinated water.            Effective moratorium on approval of GM products since 4/98.            Mandatory labeling of all foods containing more than 1% GM ingredients.            Stringent certification of non-hormone-treated beef (new US program seems adequate).            Food, feed and fertilizer containing specified risk materials (narrower product range than previous rule).            Treatment and traceability of raw materials for production of gelatine for human consumption (agreement near on health certificate that would enable US exports to resume).            EU approval of 3<sup>rd</sup> country establishments exporting animal products (esp. dairy).            Derogation from EU standards required for US wine (on-going negotiations to try to resolve).            Heat or pressure treatment of softwood packing material (new EU rule similar to draft international standard).            Metric-only labeling (implementation delayed to 2009).</p>

(Appendix 1 cont.)

<b>Type of measure</b>	<b>EU concerns about US rules</b>	<b>US concerns about EU rules</b>
Regulatory barriers to trade (continued)	Excessive post-entry quarantine of hardy nursery stocks. Exporters of meat or meat products to the US may not process meat from countries that are not recognized as free from diseases of concern to the US.	Slow and arbitrary new aircraft certification. Hushkits (dispute brought to ICAO, work on an ICAO standard). Labeling of TSP (fertilizer) disadvantages US exports. Restrictive limits on low frequency emissions from electrical and electronic equipment.
Regulatory barriers to trade (US state and EU member state level)	Duplicate approval of wine labels. State-level safety certification and environmental protection requirements (especially of agricultural and food products). Ban on fuel additive MTBE (CA).	Bans on some approved GM products (A, I & L). No approvals for planting certain GM products (G, P). Unresponsive to requests for field trials of GM crops (Gr). Ban on GM in animal feed adopted (It) - not in force. HCFC bans by Sw & Fn Additional navigation light requirements (Fn) - suspended. Testing of wheat leading to virtual ban on imports (transshipment recently permitted) (Gr). Harsh interpretation of EU SPS requirements caused or threatened to cause problems for: processed meat products, poultry products, game meat, seafood, animal feed, wood products (It). Qualitative imports standards and high testing and registration fees for bull semen (It).

(Appendix 1 cont.)

<b>Type of measure</b>	<b>EU concerns about US rules</b>	<b>US concerns about EU rules</b>
<p>Services barriers</p>	<p>50% tax on all non-emergency repairs to US-owned ships carried out outside the US.            Barriers in mobile communications (investment restrictions, lengthy procedures).            De-facto reciprocity requirements regarding satellite-based communications services.            Exclusive digital terrestrial television standard (ATSC ) different from EU (DVB-T).            Impractical for foreign securities firms to establish branches in order to engage in broker-dealer activities            Foreign mutual funds unable to make public offerings because of registration conditions.            Foreign investment is restricted in coastal and domestic shipping.            Partnership with US entity required for granting of licenses for landings sub-marine cables.            Only US citizens or corporations organized under US law can operate or maintain power facilities on Federal land.            Foreign stake in airlines capped at 49% (25% of voting stock).            Foreign-built vessels prohibited from engaging in coastwise trade either directly between or via a foreign port and cannot be registered for dredging, towing or salvage.</p> <p><u>State-level measures:</u>            Prohibitions on EU exporters distributing, rebottling or retailing their own wine.            Some states require insurance companies to already be established in another state.            Some states require insurers to buy reinsurance from state-licensed insurance companies.</p>	<p>European content requirements for TV broadcasts.            Access to the single aviation market restricted to firms majority-owned and controlled by EU nationals.            Banking, insurance and investment services rules require reciprocal treatment by home country (no US firms adversely affected).</p> <p><u>Member state measures:</u>            Content requirements for radio broadcasts (Fr).            Requirements that cinemas show European films (It, Sp).            Nationality requirements affecting to varying degrees the provision of legal services (A, Dk, Fn, Fr, G, It).            Strict restrictions on advertising by foreign legal consultants (Dk).            Nationality requirements affecting to varying degrees the provision of accounting services (A, Dk, Fr).</p>

(Appendix 1 cont.)

<b>Type of measure</b>	<b>EU concerns about US rules</b>	<b>US concerns about EU rules</b>
Foreign investment barriers	<p>National security vetting (Exon-Florio Amendment).            US subsidiary required to exploit deep-water ports or to fish in US Exclusive Economic Zone.            Fishing-vessel-owning entities must be 75% owned and controlled by US citizens.            Foreign individuals or foreign-controlled corporations cannot acquire licenses for using nuclear materials.            Conditional national treatment governs participation in government research programmes (subsidiaries in US allowed to participate, but eligibility process more cumbersome).</p>	'Mirror-image' reciprocity applies to investments in the extraction of hydrocarbons (no US firms adversely affected).

Notes:

Includes measures in effect + those for which implementation has been suspended as a result of agreement.

Does not include non-discriminatory measures, systemic barriers (such as the presence of monopolies; the pricing of pharmaceuticals; or delays and lack of transparency in standard setting), government procurement, intellectual property protection; subsidies (including FSC) or issues being prosecuted under EU rules.

Barriers in small caps are the subject of WTO proceedings (consultations have been requested).

Sources: Commission, *Report on United States Barriers to Trade and Investment 2001*; USTR, *National Trade Estimate Report: Foreign Trade Barriers 2001*.

## Appendix 2: WTO Cases by the EU against the US (excludes cases as third party)

Title and reference number	Short description of the measures	Relevant WTO provisions	Consultation	Panel	Status
WT/DS38 Cuban Liberty and Democratic Solidarity Act	Extraterritorial application of the US embargo of trade with Cuba in so far as it restricts trade between the EU and Cuba or between the EU and the US. The creation of a right of action in favour of US citizens to sue EU persons and companies in US courts in order to obtain compensation for Cuban properties. The denial of visas and exclusion from the US of persons involved in confiscating or 'trafficking' in confiscated property.	GATT (V, XI, XIII) GATS (II, III, VI, XI, XVI, XVII, Annex on Movement of Natural Persons).	5/96	10/96	Understanding reached (4/97).
WT/DS39 Tariff increases on products from the EU	The measures were taken in response to the adoption of EU legislation on the use of hormones in livestock farming, and seek unilaterally to settle the issue without resorting to the mechanisms of the WTO.	GATT (I, II, XXIII) DSU (3, 22, 23).	4/96	9/96	[No report]
WT/DS63 Anti-dumping measures on imports of solid urea from the former German Democratic Republic	By maintaining the order against the five states of the former GDR the US has ignored de jure and de facto their full integration into the reunified Federal Republic of Germany, and thus the economic integration of their companies into the German market economy.	Anti-Dumping (9.2, 11).	12/96	-	

(Appendix 2 cont.)

Title and reference number	Short description of the measures	Relevant WTO provisions	Consultation	Panel	Status
WT/DS85 Measures affecting textiles and apparel products	Changes to rules of origin of textile and apparel products, which entered into force on 1 July 1996, adversely affect exports of EU fabrics, scarves and other flat textile products, which are no longer recognized as being of EU origin and lose the free access to the US that they enjoyed before.	Textiles (2.4, 4.2, 4.4). Rules of origin (2). GATT (III). TBT (2).	6/97	-	Negotiated solution (9/97).
WT/DS88 Measure affecting government procurement	Massachusetts law regulating state contracts with companies doing business with or in Burma (Myanmar).	GPA (VIIIb, X, XIII).	6/97	9/98	Law overturned under US law.
WT/DS100 Measures affecting imports of poultry products	Ban on imports of poultry and poultry products produced in the EU until the United States is able to obtain additional assurances of product safety. No grounds given.	GATT (I, III, X, XI). SPS (2, 3, 4, 5, 8, Annex C). TBT (2, 5).	8/97	-	
WT/DS108 Tax treatment for 'Foreign Sales Corporation'	The FSC scheme provides for an exemption to the general rules established in the US Internal Revenue Code which results in substantial tax savings for US companies exporting through FSCs.	Subsidies (3). Agriculture (8, 9, 10).	11/97	7/98	Panel found in favour of the EU. EU not consider 'FSC Replacement Act' adequate. Panel found in favour of the EU. Appellate Body report check.



(Appendix 2 cont.)

<b>Title and reference number</b>	<b>Short description of the measures</b>	<b>Relevant WTO provisions</b>	<b>Consultation</b>	<b>Panel</b>	<b>Status</b>
WT/DS118 Harbour Maintenance Tax	Ad valorem tax (0.125%) on all waterborne imports entering US ports.	GATT (I, II, III, VIII, X).	2/98	-	Reform proposed (Harbour Services Fee), but EU still views as problematic.
WT/DS136 Anti-dumping Act of 1916	The Act imposes penal sanctions against the importation of goods and their sale in the US when the price is lower than in the country of production or in other foreign countries where the goods are exported.	GATT (III:4, VI:1 and VI:2). WTO (XVI:4). Anti-Dumping (1,2,3,4 & 5).	6/98	11/98	Appellate Body found in favour of the EU.  Implementation pending.
WT/DS138 Imposition of countervailing duties on certain hot-rolled lead and bismuth carbon steel products originating in the UK	Methodology relied on the presumption (based mostly on pre-WTO legislation and practice) that benefits from prior subsidies pass through without the need to show that a benefit continues to be conferred.	Subsidies (1.1b, 10, 14, 19.4).	6/98	1/99	Appellate Body upheld Panel report favouring EU (5/00).
WT/DS151 Measures affecting textiles and apparel products (II)	Same as WT/DS85.	Same as WT/DS85.	11/98	-	Negotiated solution (9/97).

(Appendix 2 cont.)

<b>Title and reference number</b>	<b>Short description of the measures</b>	<b>Relevant WTO provisions</b>	<b>Consultation</b>	<b>Panel</b>	<b>Status</b>
WT/DS152 Sections 301-310 of the Trade Act of 1974	Imposes specific, strict time limits within which unilateral determinations must be made that other WTO Members have failed to comply with their WTO obligations and trade sanctions must be taken against such WTO Members.	DSU (3, 21, 22, 23). WTO (XVI.4). GATT (I, II, III, VIII, XI).	11/98	1/99	US through a Statement of Administrative Action undertaken to act consistent with WTO obligations. Panel ruled that so long as respected compatible (11/99).
WT/DS160 Section 110(5) of US Copyright Act	Section 110(5) of the US Copyright Act permits, under certain conditions, the playing of radio and television music in public places without the payment of a royalty fee.	TRIPS (9(1), 13).	1/99	4/99	Panel found in favour of the EU (7/00). EU and US have negotiated an arrangement. Implementation pending.

(Appendix 2 cont.)

<b>Title and reference number</b>	<b>Short description of the measures</b>	<b>Relevant WTO provisions</b>	<b>Consultation</b>	<b>Panel</b>	<b>Status</b>
WT/DS165 Import measures on certain products from the EU	100% tariffs on certain product in retaliation for the EU's failure to bring its banana trade regime into compliance with WTO ruling.	GATT (I, II, VIII). DSU (3, 21, 22, 23).	3/99	5/99	Appellate Body found in favour of the EU (12/00). US brought sanctions into agreement. Sanctions suspended as result of 4/01 agreement.
WT/DS166 Safeguard measures on imports of wheat gluten from the EU	Methodology not ensure that all injury due to imports. Imports from Canada were excluded from the investigation.	GATT (I, XIX). Agriculture (4.2). Safeguard (2.1, 4, 5, 8, 12).	3/99	6/99	Appellate Body (12/00) found in favour of the EU.
WT/DS176 Section 211 Omnibus Appropriations Act	Section 211 provides that the registration or renewal in the US of a trademark previously abandoned by a trademark owner whose business and assets have been confiscated under Cuban law is no longer permitted without consent of previous owner. No US court shall recognize or enforce such rights.	TRIPS (2, 15, 16, 41, 42, 62).	7/99	6/00	Appellate Body found in favour of the EU (1/02).

(Appendix 2 cont.)

Title and reference number	Short description of the measures	Relevant WTO provisions	Consultation	Panel	Status
WT/DS186 Section 337 of the Tariff Act of 1930 and amendments thereto	Under Section 337, the US can investigate whether imported goods infringe US intellectual property rights and can exclude them from entry into the US. Despite amendment, the EU considers that the procedures and remedies are substantially different from procedures concerning domestic goods and discriminate against European industries and goods.	GATT (III). TRIPS (2, 3, 9, 27, 41, 42, 49, 50, 51).	1/00	-	
WT/DS200 Section 306 of the Trade Act of 1974 and amendments thereto ('carousel')	Section 306 provides for a mandatory modification (every 6 months) of the products subject to sanctions imposed against a WTO member which has not complied with a WTO panel ruling.	DSU (3, 21, 22, 23) GATT (I, II, XI, XXIII)	6/00	-	
WT/DS212 Countervailing measures concerning certain products from the EU (14 cases)	US application of countervailing duties based on an irrefutable presumption that non-recurring subsidies granted to a producer, prior to a change of ownership, 'pass through' to the current producer following the change of ownership.	SCM (10, 19, 21)	11/00	8/01	Panel established.

(Appendix 2 cont.)

<b>Title and reference number</b>	<b>Short description of the measures</b>	<b>Relevant WTO provisions</b>	<b>Consultation</b>	<b>Panel</b>	<b>Status</b>
WT/DS213 Countervailing duties on certain corrosion-resistant carbon steel flat products from Germany	Results of a full sunset review which maintains CV duties. The original duty was imposed prior to entry into force of WTO agreements. EU considers that it would not have been possible to impose this duty (less than 1%) if the investigation had been governed by the SCM agreement.	SCM (10, 11.9, 21).	11/00	8/01	Panel established.
WT/DS214 Definitive safeguard measures on imports of steel wire rod and circular welded carbon quality line pipe	EU considers that Sections 201 and 202 of the Trade Act of 1974 and Section 311 of the NAFTA Implementation Act contain provisions which prevent the US from respecting Safeguards Agreement.	Safeguards (2, 3, 4, 5, 8, 12) GATT (I, XIX)	11/00	8/01	Panel established.
WT/DS217 Continued dumping and subsidy Offset Act of 2000 (Byrd Amendment)	The Act mandates the distribution of the proceeds of duties levied pursuant to a CVD, an AD order or a finding under the Antidumping Act of 1921 to the affected domestic producers.	AD (5, 8, 18). SCM (11, 18, 32). GATT (X). WTO (XVI).	12/00	7/01	Panel established and joined with panel established by Canada and Mexico (WT/DS234).

(Appendix 2 cont.)

<b>Title and reference number</b>	<b>Short description of the measures</b>	<b>Relevant WTO provisions</b>	<b>Consultation</b>	<b>Panel</b>	<b>Status</b>
WT/DS225 Anti-dumping duties on seamless pipe from Italy	Results of a sunset review which found that anti-dumping duties on imports of seamless line and pressure pipe from Italy, will continue at a rate of 1.27%. EU considers this finding is in breach of AD Agreement (duties not lower than 2%).	AD (5.8, 11.1, 11.3, 17). GATT (XXII:1).	2/01	-	

Note: Columns 'Consultation' and 'Panel' report the date these were requested.

Source: Adapted from DG Trade 'WTO - Dispute Settlement' (updated 15/1/02), <http://europa.eu.int/comm/trade/pdf/cases.xls>, accessed 15/2/02; and the WTO's dispute database ([http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm)), accessed 15/2/02.

**Appendix 3: WTO Cases by the US against the EU and Its Member States  
(excludes cases as a third party)**

<b>Title and reference number</b>	<b>Short description of the measures</b>	<b>Relevant WTO provisions</b>	<b>Consultation</b>	<b>Panel</b>	<b>Status</b>
WT/DS13 Duties on imported grains	Reference price system used to determine the duties applicable to imports of grains appear to result in the application of higher rates of duties to shipments of US grains than is permitted under the EU WTO tariff schedule and to discriminate against US exports of grains.	GATT (I, II, VII, X). Agreement on Implementing GATT Article VII (109, 11, 22, Annex I).	7/95	3/97	Negotiated agreement (11/95).  Request for panel withdrawn following implementation (4/97).
WT/DS26 Measures affecting meat and meat products (Hormones)	EU measures prohibiting the importation of meat and meat products that have been treated with growth hormones.	GATT (III or XI). SPS (2, 3, 5). TBT (2). Agriculture (4).	1/96	4/96	Appellate Body found in favour of US (2/98).  Sanctions in place.

(Appendix 3 cont.)

Title and reference number	Short description of the measures	Relevant WTO provisions	Consultation	Panel	Status
WT/DS27 Import regime for bananas	EU regime for the importation, sale and distribution of bananas established by Council Reg. No. 404/93 and subsequent legislation, regulations and administrative measures, including those reflecting the provisions of the Framework Agreement on Bananas, which implement, supplement and amend that regime.	GATT (I, II, III, X, XI, XIII). Licensing (1, 3). Agriculture. TRIMs (2). GATS (II, XVI, XVII).	2/96	4/96	Appellate Body found in favour of the US and Ecuador (9/97). Compliance panel found revised EU regime still incompatible (4/99). US, Ecuador and EU negotiated settlement (4/01).
WT/DS37 Portugal – Patent protection under the Industrial Property Act	The term granted existing patents under the Portuguese Industrial Property Act appears to be inconsistent with Portugal's obligations under the TRIPS Agreement.	(GATS (33, 65, 70).	4/96		Negotiated solution (5/96).
WT/DS62 Customs classification of some computer equipment	Reclassification of certain LAN adapter cards, automatic data processing machines and units thereof as telecommunications apparatus raised the tariff applied them.	GATT (II).	11/96.	2/97	Appellate Body overturned Panel report favouring US (6/98).



(Appendix 3 cont.)

<b>Title and reference number</b>	<b>Short description of the measures</b>	<b>Relevant WTO provisions</b>	<b>Consultation</b>	<b>Panel</b>	<b>Status</b>
WT/DS67 UK – Customs classification of some computer equipment	Same as WT/DS62.	Same as WT/DS62.	Same as WT/DS62.	Same as WT/DS62	Same as WT/DS62.
WT/DS68 Ireland – Customs classification of some computer equipment	Same as WT/DS62	Same as WT/DS62	Same as WT/DS62	Same as WT/DS62	Same as WT/DS62
WT/DS80 Belgium – measures affecting commercial telephone directory services	Conditions for obtaining a license to publish commercial directories in Belgium.	GATS (II, VI, VIII, XVII).	5/97	-	
WT/DS82 Ireland – measures affecting the grant of copyright and neighboring rights	Ireland appears not to grant copyright and neighboring rights in accordance with the TRIPS Agreement.	TRIPS (9-14, 63, 65).	5/97	1/98	

(Appendix 3 cont.)

Title and reference number	Short description of the measures	Relevant WTO provisions	Consultation	Panel	Status
WT/DS83 Denmark – measures affecting the enforcement of intellectual property rights	Denmark does not appear to make available provisional measures in the context of civil proceedings involving intellectual property rights.	TRIPS (50, 63, 65).	5/97	–	Negotiated solution (3/01).
WT/DS86 Sweden – Measures affecting the enforcement of intellectual property rights	Sweden does not appear to make available provisional measures in the context of civil proceedings involving intellectual property rights.	TRIPS (50, 63, 65).	6/97	–	Negotiated solution (6/97).
WT/DS104 Export subsidies – processed cheese	Export subsidies, including under an inward processing arrangement, in favour of processed cheese distort markets for dairy products and adversely affect US sales of dairy products.	Agriculture (8, 9, 10, 11). Subsidies (3).	10/97	–	
WT/DS115 Ireland – Measures affecting the grant of copyright and neighboring rights	Ireland appears not to grant copyright and neighboring rights in accordance with the TRIPs Agreement.	TRIPS (9-14, 63, 65, 70).	1/98	1/98	

(Appendix 3 cont.)

<b>Title and reference number</b>	<b>Short description of the measures</b>	<b>Relevant WTO provisions</b>	<b>Consultation</b>	<b>Panel</b>	<b>Status</b>
WT/DS124 Enforcement of intellectual property rights for motion pictures and television programs	TV stations in Greece regularly broadcast copyrighted motion pictures and TV programs without the authorization of copyright owners. Effective remedies against copyright infringement do not appear to be provided or enforced.	TRIPS (41, 61).	5/98	-	Negotiated solution (3/01).
WT/DS125 Greece – Enforcement of intellectual property rights for motion pictures and television programs	Same as WT/DS124	Same as WT/DS124	Same as WT/DS124	Same as WT/DS124	Same as WT/DS124
WT/DS127 Belgium – Certain income tax measures constituting subsidies	Belgian corporate taxpayers receive a special tax exemption for recruiting a departmental head for exports.	Subsidies (3).	5/98	-	

(Appendix 3 cont.)

<b>Title and reference number</b>	<b>Short description of the measures</b>	<b>Relevant WTO provisions</b>	<b>Consultation</b>	<b>Panel</b>	<b>Status</b>
WT/DS128 Netherlands – Certain income tax measures constituting subsidies	Dutch income tax law permits exporters to establish a special 'export reserve' for income derived from export sales.	Subsidies (3).	5/98	-	
WT/DS129 Greece – Certain income tax measures constituting subsidies	Greek exporters are entitled to a special annual tax deduction calculated as a percentage of export income.	Subsidies (3).	5/98	-	
WT/DS130 Ireland – Certain income tax measures constituting subsidies	Under Irish income tax law, 'special trading houses' qualify for a special tax rate in respect of trading income from the export sale of Irish-manufactured goods.	Subsidies (3)	5/98	-	
WT/DS131 France – Certain income tax measures constituting subsidies	French companies may deduct, temporarily, certain start-up expenses of its foreign operations through a tax deductible reserve account.	Subsidies (3)	5/98	-	

(Appendix 3 cont.)

<b>Title and reference number</b>	<b>Short description of the measures</b>	<b>Relevant WTO provisions</b>	<b>Consultation</b>	<b>Panel</b>	<b>Status</b>
WT/DS158 Import regime for bananas II	Failure to implement the Dispute Settlement Body's recommendations and rulings in WT/DS27 within a reasonable period.		1/99		See WT/DS27
WT/DS172 Measures relating to the development of a flight management system	French government has agreed to grant, and the Commission has approved, a loan, on preferential and non-commercial terms to develop a FMS for Airbus aircraft.	Subsidies (5, 6) GATT (XXIII1b)	5/99	-	
WT/DS173 France - Measures relating to the development of a flight management system	See WT/DS172	See WT/DS172	See WT/DS172	See WT/DS172	See WT/DS172
WT/DS174 Protection of trademarks and geographical indications for agricultural products and foodstuffs	EU rule does not provide national treatment with respect to geographical Indications, nor sufficient protection to pre-existing trademarks that are similar or identical to a geographical indication.	TRIPS (3, 16, 24, 63, 65).	6/99	-	

(Appendix 3 cont.)

<b>Title and reference number</b>	<b>Short description of the measures</b>	<b>Relevant WTO provisions</b>	<b>Consultation</b>	<b>Panel</b>	<b>Status</b>
WT/DS210 Belgium - Administration of measures establishing customs duties for rice	Belgian customs values and duties for rice would lead to a denial of duty rebates for US rice and to duties in excess of the bound rate.	GATT (I, II, VII, VIII, X, XI). CVA (1). TBT (2, 3, 5, 6, 7, 9). Agriculture (4).	10/00	1/01	Negotiated solution (11/01).
WT/DS223 Tariff-rate quota on corn gluten feed from the US	TRQ triggered by DSB ruling against the US in WT/DS166.	Safeguards (8.1, 8.2, 8.3). GATT (I, II, XIX).	1/01	-	

Note: Columns 'Consultation' and 'Panel' report the date these were requested.

Source: Adapted from DG Trade 'WTO - Dispute Settlement' (updated 15/1/02), <http://europa.eu.int/comm/trade/pdf/cases.xls>, accessed 15/2/02; and the WTO's dispute database ([http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm)), accessed 15/2/02.

## References and Recommended Reading

### Primary Sources: Web sites

European Commission, DG TRADE, Bilateral Trade Relations: USA:  
<http://europa.eu.int/comm/trade/bilateral/usa/usa.htm>.

European Union, Europa Web Site: <http://europa.eu.int>.

European Union Mission to the United States:  
<http://www.eurunion.org>.

Transatlantic Business Dialogue: <http://www.tabd.com/>.

Transatlantic Consumers Dialogue: <http://www.tacd.org/>.

Transatlantic Environmental Dialogue:  
<http://www.tiesweb.org/taed/index.htm>.

Transatlantic Legislators Dialogue:  
[http://www.europarl.eu.int/intcoop/tld/default\\_en.htm](http://www.europarl.eu.int/intcoop/tld/default_en.htm).

Transatlantic Information Exchange Service: <http://www.tiesweb.org>.

United States Mission to the European Union: <http://www.useu.be>.

United States Trade Representative, Western Europe/EU page:  
<http://www.ustr.gov/regions/eu-med/westeur/index.shtm>

World Trade Organization: <http://www.wto.org>.

### Primary Sources: Official Government Documents

CEPAL, 2001. *Informe de la Inversión Extranjera en América Latina y el Caribe. Año 2000*. Naciones Unidas, Chile.

Commission of the European Communities, 1998a. *The New Transatlantic Marketplace*: Draft Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee, available at:  
<http://europa.eu.int/comm.dg01/sectiona.htm>.

Commission of the European Communities, 1998b. Commission staff working paper concerning the establishment of an inter-regional association between the European Union and Mercosur,  
[http://europa.eu.int/comm/external\\_relation](http://europa.eu.int/comm/external_relation).

Commission of the European Communities, 2000. *The Transatlantic Economic Partnership Overview and Assessment*, Coordination: DG TRADE.E.3, October.

Commission of the European Communities, 2001a. *Reinforcing the Transatlantic Relationship: Focusing on Strategy and Delivering Results*. COM(2001)154 of 20 March 2001. Available on-line at: <http://www.eurunion.org/partner/TransatlAgenda.pdf>.

Commission of the European Communities, 2001b. *Report on United States Barriers to Trade and Investment*, July, available on-line at: <http://europa.eu.int/comm/trade/pdf/usrbt2001.pdf>.

Commission of the European Communities, 2001c. *Green Paper on the Review of Council Regulation (EEC) No. 4064/89*, COM(2001)745/6 final of 11.12.2001.

UNCTAD, 2001. *Informe sobre las inversiones en el mundo*. United Nations, New York and Geneva.

U.S. Department of Agriculture (1998), *Agriculture in the WTO: Situation and Outlook Series*, WRS-98-4, Washington, Economic Research Service.

United States Trade Representative, 2001. *2001 National Trade Estimate Report on Foreign Trade Barriers*, available on-line at: [http://www.ustr.gov/html/2001\\_contents.htm](http://www.ustr.gov/html/2001_contents.htm).

World Trade Organization, 2000. *Trade Policy Review: The European Union: Report by the Secretariat*, available on-line at: [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp\\_rep\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp_rep_e.htm).

World Trade Organization, 2001. *Trade Policy Review: United States: Report by the Secretariat*, available on-line at: [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp\\_rep\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp_rep_e.htm).

## **Secondary Sources**

Abbott, Kenneth W., 2001. 'Disputes over Technical Barriers to Trade: Are the Rules and Procedures Adequate?' paper prepared for the Conference on Dispute Prevention and Dispute Settlement in the Transatlantic Partnership, European University Institute, Fiesole, 5-6 July.

Atlantic Council of the United States, 2001. *Changing Terms of Trade: Managing the New Transatlantic Economy*, Policy Paper, April (Washington, DC: The Atlantic Council of the United States).

Barfield, Claude E., 2001. *Free Trade, Sovereignty, Democracy: The Future of the World Trade Organization* (Washington: American Enterprise Institute Press).

Bermann, George, 1996. 'Regulatory Cooperation between the European Commission and U.S. Administrative Agencies,'



*Administrative Law Journal of the American University*, Vol. 9, pp. 933-983.

Bermann, George, Matthias Herdegen, and Peter Lindstreth, eds., 2001. *Transatlantic Regulatory Co-Operation: Legal Problems and Political Prospects* (New York: Oxford University Press).

Bignami, Francesca, and Steve Charnovitz, 2001. 'Transatlantic Civil Society Dialogues,' Chapter 10 in Pollack and Shaffer, *Transatlantic Governance in the Global Economy*.

BP Chair in Transatlantic Relations, 2001. *Resolving and Presenting US-EU Trade Disputes: Six Prize-Winning Essays* (Florence: European University Institute, Robert Schuman Centre for Advanced Studies, 9 May 2001).

Busch, Marc L., and Eric Reinhardt, 2001. 'Testing International Trade Law: Empirical Studies of GATT/WTO Dispute Settlement,' in Daniel L. M. Kennedy, and James D. Southwick, eds., *The Political Economy of International Trade Law: Essays in Honor of Robert E. Hudec* (New York: Cambridge University Press).

Camarero, M., and C.R. Tamarit, 2002. 'La Unión Europea y las Américas: consecuencias del establecimiento de un acuerdo de asociación interregional entre la UE y Mercosur,' *Papeles de Economía Española*, n. 91. (forthcoming).

Charnovitz, Steve, 2001. 'Rethinking WTO Trade Sanctions,' *American Journal of International Law*, Vol. 95 (October).

Claes, Benedicte A., 2000. 'Comment: Aircraft Noise Regulation in the European Union: The Hushkit Problem,' *Southern Methodist University School of Law Journal of Air Law and Commerce*, Vol. 65: 329-382.

Cowles, Maria Green, 2001a. 'The New Transatlantic Dialogue: Transforming the New Transatlantic Dialogue,' in Mark A. Pollack and Gregory Shaffer, eds., *Transatlantic Governance in the Global Economy* (Lanham, MD: Rowman & Littlefield), pp. 213-233.

Cowles, Maria Green, 2001b. 'Transatlantic Cooperation and Discord in the New Economy: A Case Study of the Global Business Dialogue on e-Commerce,' paper delivered at the Biennial Conference of the European Community Studies Association, Madison, Wisconsin, 31 May.

Damro, Chad, 2001. 'Building an International Identity: The EU and Extraterritorial Competition Policy,' *Journal of European Public Policy*, Vol. 8, No. 2 (April): 208-226.

Devuyst, Yuri, 2001. 'Transatlantic Competition Policy Cooperation,' in Mark A. Pollack and Gregory Shaffer, eds., *Transatlantic Governance in the Global Economy* (Lanham, MD: Rowman & Littlefield), pp. 127-151.

Evans, David S., 2002. 'The New Trustbusters: Brussels and Washington Part Ways,' *Foreign Affairs*, January/February.

- Evenett, Simon J., Alexander Lehmann and Benn Steil, 2000. *Antitrust Goes Global: What Future for Transatlantic Cooperation?* (Washington, DC: Brookings Institution Press).
- Falke, Andreas, 2001. 'The EU-US Conflict over Sanctions Policy: Confronting the Hegemon,' *European Foreign Affairs Review*, Vol. 5, No. 2: 139-163.
- Featherstone, Kevin, and Roy Ginsberg, 1996. *The United States and the European Union in the 1990s: Partners in Transition* (London: Palgrave).
- Flores, R., 2001. 'Regional Economic Integration', in *Investing in Latin American Growth: Unlocking Opportunities in Brazil, Mexico, Argentina and Chile*, EAU, Australian Department of Foreign Affairs and Trade, Chap. 12, pp. 259-282.
- Frankel, J.A., E. Stein, and S.J. Wei, 1998. 'Continental Trading Blocs: Are they Natural or Supernatural?' in J.A. Frankel, ed., *The Regionalization of the World Economy* (Chicago: The University of Chicago Press).
- Frost, Ellen, 1997. *Transatlantic Trade: A Strategic Agenda* (Washington D.C.: Institute for International Economics).
- Gardner, Anthony, 1997. *A New Era in US-EU Relations? The Clinton Administration and the New Transatlantic Agenda* (London: Avebury).
- Giordano, P., A. Valladio and M.-F. Durand, eds., 2001. *Vers un accord entre l'Europe et le Mercosur* (Presses de Science Po, Paris).
- Helfer, Laurence R., 2000. 'World Music on a U.S. Stage: A Berne/TRIPS and Economic Analysis of the Fairness in Music Licensing Act,' *Boston University Law Review*, Vol. 80: 93-204.
- Helweg, Jason, 2000. 'The Retreat of the State? The Massachusetts Burma Law and Local Empowerment in the Context of Globalization(s),' *Wisconsin International Law Journal*, Vol. 18: 477-510.
- Hindley, Michael, 1999. 'New Institutions for Transatlantic Trade?' *International Affairs*, Vol. 75: 45-60.
- Hudec Robert, 1998. 'The New WTO Dispute Settlement Procedure: An Overview of the First Three Years,' *Minnesota Journal of Global Trade*, Vol. 8: 22-24.
- Kahler, Miles, 1995. *Regional Futures and Transatlantic Relations* (New York: Council on Foreign Relations Press).
- Keohane, Robert O., Andrew Moravcsik, and Anne-Marie Slaughter, 2001. 'Legalized Dispute Resolution: Interstate and Transnational,' *International Organization*, Vol. 54, No. 4: 457-488.
- Knauss, Jody, and David Trubek, 2001. 'The Transatlantic Labor Dialogue: Minimal Action in a Weak Structure,' in Mark A. Pollack and Gregory Shaffer, eds., *Transatlantic Governance in the Global Economy* (Lanham, MD: Rowman & Littlefield), pp. 235-254.

- Kolasky, William J., and Leon B. Greenfield, 2001. 'A View to a Kill: The Lost GE/Honeywell Deal Reveals a Trans-Atlantic Clash of Essentials,' *Legal Times*, 30 July 2001, p. 28.
- Kuner, Christopher, 2001. 'Beyond Safe Harbour: European Data Protection Law and Electronic Commerce,' *International Lawyer*, Vol. 31.
- LaFrance, Mary, 2001. 'Congress Trips Over International Law: WTO Finds Unfairness in Music Licensing Act,' *Journal of Art and Entertainment Law*, Vol. 11: 397-424.
- Lorvellec, Louis, 1997. 'Back to the Fields after the Storm: Agriculture in the European Union after the Uruguay Round Agreements,' *Drake Journal of Agricultural Law*, Vol. 2 (Winter), p. 411.
- Mazumdar, Anandashankar, 2002. 'European Commission Gives Final Approval to Model Clauses to Protect Personal Data,' *International Trade Reporter*, Vol. 19: 187 (31 January).
- Mehta, K., 2002. 'International Competition Policy Cooperation,' revised version of a paper presented at the BP Chair Conference on Dispute Prevention and Dispute Settlement in the Transatlantic Partnership, European University Institute, Florence, July 2001.
- Messerlin, Patrick A., 2001a. *Measuring the Cost of Protection in Europe* (Washington, DC: Institute for International Economics).
- Messerlin, Patrick A., 2001b. 'Niveau et coûts du protectionnisme européen', in Giordano, P., A. Valladao y M.-F. Durand (eds), *Vers un accord entre l'Europe et le Mercosur*, Presses de Science Po, Paris.
- Mishkin, F.S., and M.A. Savastano, 2001. 'Monetary Policy Strategies for Latin America,' *Journal of Development Economics*, 66, 415-444.
- Nagarajan, N., 1998. 'Mercosur and Trade Diversion: What Do the Import Figures Tell Us?' *Economic Papers*, No. 129, European Commission.
- Petersmann, Ernst-Ulrich, ed., 1997. *The GATT/WTO Dispute Settlement System: International Law, International Organizations and Dispute Settlement* (Kluwer Law International).
- Peterson, John, 1996. *Europe and America: Prospects for Partnership* (New York: St. Martin's Press, 1996).
- Peterson, John, 2001. 'Get Away from Me Closer, You're Near Me Too Far: Europe and America after the Uruguay Round,' in Mark A. Pollack and Gregory Shaffer, eds., *Transatlantic Governance in the Global Economy* (Lanham, MD: Rowman & Littlefield), pp. 45-72.
- Peterson, John, and Maria Green Cowles, 1998. 'US Economic Diplomacy: What Makes the EU Different?' *Governance*, Vol. 11, No. 3, pp. 251-71.
- Philippart, Eric, and Pascaline Winand, 2001. 'Deeds Not Words? Evaluating and Explaining the US-EU Policy Output,' in Philippart and

Winand, eds., *Ever Closer Partnership: Policymaking in US-EU Relations* (Brussels: Peter Lang), pp. 431-463.

Pollack, Mark A., ed., 2001. *The New Transatlantic Agenda at Five: A Critical Assessment* (San Domenico di Fiesole: BP Chair in Transatlantic Relations, Robert Schuman Centre for Advanced Studies, European University Institute).

Pollack, Mark A., and Gregory C. Shaffer, 2001a. 'Transatlantic Governance in Historical and Theoretical Perspective,' in Mark A. Pollack and Gregory Shaffer, eds., *Transatlantic Governance in the Global Economy* (Lanham, MD: Rowman & Littlefield), pp. 3-42.

Pollack, Mark A., and Gregory C. Shaffer, 2001b. 'The Challenge of Reconciling Regulatory Differences: Food Safety and GMOs in the Transatlantic Relationship,' in Mark A. Pollack and Gregory Shaffer, eds., *Transatlantic Governance in the Global Economy* (Lanham, MD: Rowman & Littlefield), pp. 153-178.

Pollack, Mark A., and Gregory C. Shaffer, 2001c. 'Who Governs?' in Mark A. Pollack and Gregory Shaffer, eds., *Transatlantic Governance in the Global Economy* (Lanham, MD: Rowman & Littlefield), pp. 287-305.

Reidenberg, Joel, 2001. 'E-Commerce and Trans-Atlantic Privacy,' *Houston Law Review*, Vol. 8: 717-49.

Schaefer, Matthew, 2002. 'Government Procurement Disputes: Lessons from the Dispute over the Massachusetts 1996 Act Regulating State Contracts with Companies Doing Business with Burma (Myanmar),' paper presented at the Conference on Dispute Prevention and Dispute Settlement in the Transatlantic Partnership, European University Institute, Florence, 5-6 July 2001; final version submitted 26 January 2002.

Shaffer, Gregory, 1999. 'The Power of EU Collective Action: The Impact of EU Data Privacy Regulation on US Business Practice,' *European Law Journal*, Vol. 5.

Shaffer, Gregory, 2000. 'Globalization and Social Protection: The Impact of EU and International Rules in Ratcheting Up of US Privacy Standards,' *Yale Journal of International Law*, Vol. 25, pp. 1-88.

Shaffer, Gregory C., 2002. 'Managing U.S.-EU Trade Relations through Mutual Recognition and Safe Harbour Agreements: 'New' and 'Global' Approaches to Transatlantic Economic Governance?' in Ernst-Ulrich Petersmann, ed. *Dispute Avoidance and Dispute Settlement in the Transatlantic Partnership* (unpublished manuscript) (working paper on file with the author).

Sindelar, Leslie, 2001. 'Not So Fair After All—International Aspects of the Fairness in Music Licensing Act,' *The Transnational Lawyer*, Vol. 14: 435-71.

Steffenson, Becky J., 2001. *The Institutionalization of EU-US Relations: Decision Making, Institution Building, and the New Transatlantic*

Agenda, unpublished Ph.D. dissertation, University of Glasgow, Department of Politics.

Tansini, R., and T. Vera, 2001. 'Los procesos de integración en América Latina: El caso de Mercosur', *Información Comercial Española*, Febrero-Marzo, núm. 790, 107-117.

Vogel, David, 1997. *Barriers or Benefits? Regulation in Transatlantic Trade* (Washington, D.C.: Brookings Institution.)

Vogel, David, 2001. *Ships Passing in the Night: The Changing Politics of Risk Regulation in the United States and the European Union*, RSCAS Working Paper No. 2001/16.

Woolcock, Stephen, 2000. 'European Trade Policy: Global Pressures and Domestic Constraints,' in Helen Wallace and William Wallace, eds., *Policy-Making in the European Union* (New York: Oxford University Press), pp. 373-99.

Yerkey, Gary G., 2000a. 'EU Accuses U.S. of Failing to Implement MRAs on Electrical Safety, Pharmaceuticals,' *International Trade Reporter*, Vol. 17: 1662 (2 November).

Yerkey, Gary G. 2000b. 'US, European CEOs Call on Governments to Resolve Dispute Over MRA by Dec. 18,' *International Trade Reporter*, Vol. 17: 1662 (30 November).

Young, Alasdair, 2001. *Trading Up or Trading Blows? US Politics and Transatlantic Trade in Genetically Modified Food*, RSCAS Working Paper No. 2001/30.

Young, Alasdair R., 2002. 'Risk, Positive Integration and System Friction: The Single European Market and World Trade,' paper presented at the Council of European Studies Conference, 14-16 March 2002.

## Notes

- 1 *The EU and the 50 US States*, website of the European Union Mission to the United States,  
<http://www.eurunion.org/partner/usstates/usstates.htm>.
- 2 *Ibid.*
- 3 As Miles Kahler wrote in 1995: 'Increasingly the points of conflict among the industrialized countries are not the familiar ones of barriers to exchange at the border, but an entire array of "domestic" policies that produce conflict by appearing to restrict market access or alter the terms of competition. The agenda of behind-the-border issues that has become more prominent in the 1990s will only grow as economic integration continues and groups mobilize to seek new benchmarks for an international "level playing field"' (Kahler 1995: 5). For good discussions of regulatory barriers in US/EU trade relations, see also Vogel 1997, Young 2002.
- 4 This section draws on the analysis presented in Pollack and Shaffer 2001a.
- 5 For good discussions, see Gardner 1997; Peterson and Cowles 1998.
- 6 Pollack and Shaffer 2001c: 291.
- 7 'Transatlantic Declaration,' text available on-line at:  
<http://www.eurunion.org/partner/transatldec.htm>.
- 8 See e.g. Featherstone and Ginsburg 1996; Peterson 1996.
- 9 'The New Transatlantic Agenda,' text available on-line at:  
<http://www.eurunion.org/partner/agenda.htm>.
- 10 'Joint US-EU Action Plan,' text available on-line at:  
<http://www.eurunion.org/partner/actplan.htm>.
- 11 Gardner 1997.
- 12 Commission of the European Communities, 1998a.
- 13 'Transatlantic Economic Partnership: Action Plan,' text available on-line at: <http://europa.eu.int/comm/trade/bilateral/usa/1109tep.htm>. For a useful review of the TEP, see Commission of the European Communities, 2000.

- 15 For good discussions of the TABD, see Cowles 2001a, 2001b, and the website of the TABD at <http://www.tabd.org>.
- 16 'Cincinnati Recommendations: Transatlantic Business Dialogue,' November 16-18, 2000, p. 4. Available on-line at: <http://www.tabd.org/recommendations/Cincinnati00.pdf>.
- 17 Ibid., page 5.
- 18 Cowles 2001b.
- 19 Steffenson 2001.
- 20 Pollack, ed., 2001: 12.
- 21 For an excellent discussion of the TACD and its activities, see Bignami and Charnovitz 2001, and the TACD website at: <http://www.tacd.org>.
- 22 For example, sixty-five consumer groups issued a statement in 2000 stating that the EU and the US had largely ignored consumer trade policy recommendations. TACD press release, 'US & EU Consumer Groups Call for Swift Action to Balance Trade Dialogue,' 30 March 2000.
- 23 The USIA funding for the TAED (\$100,000) was subject to approval from the Senate Finance Committee. In January 2000 the objection of Senator Jesse Helms to TAED funding blocked the approval of funds, and stopped the State Department from issuing the grant. The TAED argued that this demonstrated the US government's lack of dedication to the project. See 'Transatlantic Environment Dialogue suspends its activities due to the failure of US government to stick to its commitments,' accessed on 12 March 2002 on the TAED website: <http://www.tiesweb.org/taed/index.html>. For a good general discussion of the TAED, see Bignami and Charnovitz 2001.
- 24 To summarise, the TAED recommended the removal of subsidies for environmentally unfriendly energy sources (such as coal), demanded that sustainability assessments be applied to a number of WTO agreements and expressed its opposition to the multilateral TRIPs, Technical Barriers to Trade and SPS Agreements. It aired concerns about biotechnology, eco-labelling and the Precautionary Principle, the MRAs and Chemical and Electrical Waste Management (WEEEs). It stressed transparency in transatlantic and multilateral decision making, urged both governments to support the Kyoto Treaty and to stop challenging environmental legislation at the WTO. The message to the EU/US Summit, Lisbon May 31, 2000 was that, 'Until such time as parity exists between environmental governance and multilateral trade rules, we demand that both the United States and the European Union immediately agree to mutual moratorium on WTO challenges and threatened challenges.' For a good discussion of the TAED and its activities, see Bignami and Charnovitz 2001.
- 25 For an excellent discussion of the TALD, see Knauss and Trubek 2001.

- 26 Commission of the European Communities, 2001a.
- 27 Philippart and Winand 2001.
- 28 Kahler 1995. See also Vogel 1997; Young 2002.
- 29 For excellent overviews of the WTO dispute resolution procedure and its predecessor within the GATT, see Petersmann 1997; Hudec 1998; Busch and Reinhardt 2001; and BP Chair in Transatlantic Relations 2001. For a provocative challenge to the DSU, see Barfield 2001.
- 30 This section draws largely on Abbott's (2001) account of transatlantic disputes over TBTs in general, and the hushkits case in particular. For other accounts of the hushkits dispute, see also Claes 2000 and Peterson 2001: 58-59.
- 31 Commission of the European Communities, 'Commission Proposes New Legislation to Fight Aircraft Noise,' Press Release; IP: 01/1683.
- 32 For a detailed analyses of transatlantic disputes over food safety and genetically modified organisms, see Pollack and Shaffer 2001b; Vogel 2001; and Young 2001.
- 33 The text of the report can be found at:  
[http://europa.eu.int/comm/external\\_relations/us/biotech/biotech.htm](http://europa.eu.int/comm/external_relations/us/biotech/biotech.htm).
- 34 Schaefer 2002: 1-2. See also Hellweg 2000.
- 35 For useful background on the case, filed before the WTO as DS160, see Helfer 2000; LaFrance 2001 and Sindelar 2001.
- 36 Commission of the European Communities, 'EU and US Agree on Temporary Compensation in Copyright Dispute,' Press Release; IP: 01/1860.
- 37 For good discussions of potential reforms of the bilateral relationship as well as WTO dispute settlement, including a wide range of proposals, see e.g. BP Chair in Transatlantic Relations 2001; Charnovitz 2001; Barfield 2001; and Petersmann 2001.
- 38 Some countries, such as the United Kingdom, have established guidelines for policymakers to take trade implications of proposed regulations into account, but neither the US nor the EU currently employs any statutory requirement to undertake such an impact assessment.
- 39 Bermann 1996: 961. For an excellent set of essays on various aspects of transatlantic regulatory cooperation, see also Bermann, Herdegen and Lindstreich (eds.) 2001.
- 40 *Ibid.*, p. 966.



- 41 For excellent analyses of US/EU competition-policy cooperation, from which this analysis is largely drawn, see e.g. Evenett, Lehmann and Steil 2000; Devuyst 2001; Damro 2001; and Mehta 2002.
- 42 Devuyst 2001: 142-145.
- 43 See e.g. Kolasky and Greenfield 2001; Evans 2002.
- 44 Commission 2001c: 38-40.
- 45 This section draws extensively from research reported in Shaffer 2002.
- 46 Subsidiaries of U.S. firms in the EC account for about one-third of EC imports from the United States, while subsidiaries of EC firms in the United States account for about 38% of U.S. imports from the EC. See Pollack and Shaffer 2001a: 14.
- 47 Agreement on Mutual Recognition Between the European Community and the United States of America. Available on-line at:  
<http://europa.eu.int/comm/trade/pdf/0713mra-usen.pdf>.
- 48 The five excluded sectors were information technology, pressure equipment, road safety equipment, lawn mowers, and personal protective equipment such as helmets.
- 49 However, as an exception, tests of pharmaceutical good manufacturing practices are to be performed by regulatory bodies, and not private laboratories, in accordance with that annex.
- 50 Yerkey 2000a, 2000b.
- 51 Quoted in Shaffer 2002: 23.
- 52 Agreement Between the European Community and the United States of America on Mutual Recognition of Certificates of Conformity for Marine Equipment. Available on-line at:  
<http://europa.eu.int/comm/trade/pdf/mareq.pdf>
- 53 See Shaffer 2002.
- 54 See Shaffer 2002.
- 55 This section draws extensively from research reported in Shaffer 2002.
- 56 The above figures are from the prepared testimony of Assistant Secretary of Commerce Franklin Vargo before the House Committee on International Relations. See 'Issues in U.S.-European Union Trade: European Privacy Legislation and Biotechnology/Food Safety Policy,' Federal News Service (May 7, 1998).
- 57 Mazumdar 2002. See also Shaffer 2000, Reidenberg 2001.
- 58 Commission Decision of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the

- protection provided by the safe harbour privacy principals and related frequently asked questions issued by the US Department of Commerce. Available on-line at:  
<http://europa.eu.int/comm/trade/pdf/safeharbour.pdf>. For general information on safe harbour documents see Safe Harbor Documents:  
[http://www.exports.gov/safeharbor/sh\\_documents.htm](http://www.exports.gov/safeharbor/sh_documents.htm).
- 59 Guide to the Implementation of Directives Based on the New Approach and the Global Approach. Available on-line at:  
[http://europa.eu.int/comm/enterprise/newapproach/legislation/guide/document/1999\\_1282\\_en.pdf](http://europa.eu.int/comm/enterprise/newapproach/legislation/guide/document/1999_1282_en.pdf).
  - 60 See Shaffer 2002.
  - 61 For a good discussion of the obstacles posed by US federalism in regulatory cooperation, see Commission of the European Communities 2000.
  - 62 'EU-US Guidelines on Regulatory Cooperation and Transparency,' available on-line at:  
[http://europa.eu.int/comm/enterprise/enterprise\\_policy/gov\\_relations/regulcooptransat.htm](http://europa.eu.int/comm/enterprise/enterprise_policy/gov_relations/regulcooptransat.htm). See also 'Transatlantic Bid to Cut Red Tape,' European Report, 10 April 2002; and Micheal Mann, 'Drive to Head Off Trade Rifts,' *Financial Times*, 13 April 2002.
  - 63 See the DG Trade website, 'Bilateral Trade Relations: Canada,' accessed at: <http://europa.eu.int/comm/trade/bilateral/canada/canada.html>.
  - 64 For useful and up-to-date reviews of the EU/Canada relationship, see, in addition to the DG Trade web page cited above, the websites of the European Union Delegation to Canada: <http://www.eudelcan.org/english/index.cfm>; and the Canadian Mission to the European Union: [http://www.dfait-maeci.gc.ca/eu-mission/conten\\_e.html](http://www.dfait-maeci.gc.ca/eu-mission/conten_e.html).
  - 65 For more information about Mercosur, visit the following internet address: <http://www.mercosur.org>.
  - 66 Tansini and Vera 2001.
  - 67 'EU/Chile: Deal Reached on Free Trade Agreement,' European Report, 27 April 2002.
  - 68 Ibid.
  - 69 Camarero and Tamarit (2002). Source: OECD International Sectoral Database.
  - 70 For more information about the EU and Latin America visit the following internet address: [http://europa.eu.int/comm/external\\_relations/mercosur/intro/index.htm](http://europa.eu.int/comm/external_relations/mercosur/intro/index.htm).
  - 71 The Lomé Convention replaced the Yaounde Convention of 1963, after the accession of the UK to the Community. It was renewed in 1979

- (Lomé II), 1985 (Lomé III), 1989 (Lomé IV), and 1995 (Lomé IV) and consists of a system of preferences for imports, in which industrial goods almost free of tariffs, and agricultural receive different treatments. In June 2000, the Lomé Convention was replaced by the Cotonou Agreement, which stabilized what can be seen as a transitory regime aiming to incorporate the ACP countries in the WTO general rules.
- 72 What characterizes first-generation agreements is their conventional bilateral and technical structure and their reference to possible reciprocal cooperation. In practical terms, however, these treaties only extended the Most Favoured Nation (MFN) status to its signatories.
  - 73 The second-generation agreements referred mainly to specific commercial and cooperation questions.
  - 74 For the conclusions of the Madrid summit, see the Latin America web page of the Commission's Directorate-General for Trade:  
<http://europa.eu.int/comm/trade/bilateral/lac/lac.htm>.
  - 75 In October 1998, hurricane Mitch, one of the worst natural disasters ever to have hit the region, caused a material damage equivalent to 10% of the region's GDP. The EU not only played a significant role in the international community's emergency aid but also launched in 1998 a medium-term rehabilitation plan called the Regional Programme for the Reconstruction of Central America (PRRAC). Funding was set at €250 million, committed for the 1999-2002 period, but to be implemented within six years. The target countries were Honduras, Nicaragua, El Salvador and Guatemala.
  - 76 For details on the provisions of the EU-Chile Association Agreement, and the status of the ratification procedure, see:  
[http://europa.eu.int/comm/external\\_relations/chile/intro/index.htm](http://europa.eu.int/comm/external_relations/chile/intro/index.htm).
  - 77 The information about the results of the different negotiation rounds can be updated at the following internet address: [http://europa.eu.int/comm/external\\_relations/mercosur/intro/index.htm](http://europa.eu.int/comm/external_relations/mercosur/intro/index.htm).
  - 78 For an assessment of the trade-diverting effects of Mercosur, see Nagarajan (1998).
  - 79 Commission of the European Communities 1998b.
  - 80 Messerlin 2001b.
  - 81 Pascal Lamy, 'Facing the Challenge of Globalization: Regional Integration or Multilateral Rules?' Buenos Aires, 1 March 2002. Reproduced on the DG Trade website at:  
[http://europa.eu.int/comm/trade/speeches\\_articles/spla99\\_en.html](http://europa.eu.int/comm/trade/speeches_articles/spla99_en.html).

Report prepared by the  
Transatlantic Programme  
for and with the contribution of:

---

**Her Majesty's Treasury**  
United Kingdom



HM TREASURY

**Ministry of Finance**  
The Netherlands

 *ministry of Finance*