

**The Paradox of Transatlantic Trade Cooperation:
The New Transatlantic Marketplace and the Road Towards the
Transatlantic Economic Partnership**

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I. Introduction

If there is one issue on which there exists consensus between the two sides of the North-Atlantic, it is that the European Union and the United States are linked to each other by extensive trade and investment relations and by common security interests. Indeed, each and any of the numerous statements on Transatlantic relations issued since the fall of the Berlin Wall has emphasized this. And there are many reasons to agree with this.

First, there is NATO that binds the security policies of the U.S. and Canada together with these of an increasing number of European countries.

Second, there is the impressive record on trade. As has been stated recently by the Office of the United States Trade Representative (USTR, 1998a), the EU and US trade for about \$300 billion in goods annually (in 1996, ECU 277 billion) which accounts for about 20% of world trade in goods. About 20% of this trade was trade in high technological manufactures, an indication that a large part of the Transatlantic trade is intra-industry trade. European products compete with similar U.S. products on the Transatlantic market (Commission, 1998a). Furthermore, agricultural trade alone accounted for \$15 billion in 1997¹

The picture for trade in services is similar although this sector is still in full development, given the difference between its share in the GNP of both the U.S. and the EU, and its lower share in the exports of these customs territories. But in terms of bilateral trade, services accounted for ECU 124 billion which was about 35% of world trade in services². If all trade is taken together the EU, the U.S. and their bilateral trade account for about 60% of world trade whereas US trade accounts for approximately 20% of EU imports and exports (goods and services combined, see following table).

	1995		1996		1997	
	Value ³	%	Value	%	Value	%
Tot. EU Exports (goods)	572.8	100.0	625.0	100.0	717.8	100.0
Of Which to the US (goods)	103.3	18.0	114.4	18.3	140.7	19.6
Tot. EU Imports (goods)	545.1	100.0	581.4	100.0	667.3	100.0
Of Which from the US (goods)	103.6	19.0	112.7	19.4	136.4	20.4
Tot. US Exports (goods, incl. agriculture)	584.7	100.0	625.1	100.0	689.2	100.0
Of Which to the EU	140.5	24.0	148.8	23.8	163.2	23.6
Tot. US Imports (goods, incl. agriculture)	743.4	100.0	795.3	100.0	870.7	100.0

¹ In that year the EU had a deficit of \$2 billion on its bilateral agricultural trade balance with the U.S.

² The overall U.S. trade balance for services was positive in 1997 (\$87.8bn).

³ In \$bn. Sources: House of Commons, 1998; United States Trade Representation, 1998b: 17 (exports), 20 (imports); International Trade Administration, 1999. The difference between the EU bilateral export figures and the US bilateral import figures is due to different \$/ECU exchanges rates on which these calculations have been based. But especially important here are the percentages.

Of Which from the EU	131.8	17.7	142.9	17.9	157.5	18.0
Trade Balance EU-US ⁴	-3.4 ⁵		+1.6		+4.2	
Tot. US Agricultural Exports	56.0	100.0	60.6	100.0	57.1	100.0
Tot. US Agricultural Exports to the EU	8.2	14.6	8.7	14.3	8.5	14.8
Tot. US Agricultural Imports	29.3	100.0	32.6	100.0	35.2	100.0
Tot. US Agricultural Imports from the EU	5.4	18.4	6.1	18.7	6.5	18.4

Equally, the investment relationship has been impressive. While the European Union acts as the biggest foreign investor in the United States – being responsible for 59% of the FDI stock in the U.S. – the United States is equally the biggest foreign investor in the EU with a share of 51% of the FDI stocks in the European Union (Ibidem). As a result, about 3 million Europeans work for American companies in the EU while about the same number of Americans work for European companies in the U.S. (House Ways and Means, 1998)⁶. According to Sbragia (1998: 147), the qualitative difference between the Transatlantic trade relations of the past and those of today lays precisely in these investments. Even in the absence of an agreement or a framework on a Transatlantic Marketplace, these investments have created, indeed, a Transatlantic marketplace. But according to DeAnne Julius (quoted by Sbragia, 1998: 152) the potential positive effect of these investments for the Transatlantic relationship has largely been neglected by decision-makers. As she has phrased it: “FDI is the neglected twin of trade”.

Clearly, a Transatlantic marketplace needs not to be invented. It is already there. And it is created and recreated every day in the numerous transactions between the two sides of the Atlantic. Still, it seems that there is a need for political structures to sustain this marketplace, to smoothen its transactions, to further enhance mutual trade and investment, and to remove remaining barriers of all kinds. In addition, the Transatlantic marketplace doesn't operate in a vacuum, even not on its own. It works in an environment of regulated trade and investment. And part of this regulation is not Transatlantic but multilateral in nature. By occupying 20% of world trade in goods, 35% of world trade in services, and by representing themselves a large part of world trade – as both the EU and the U.S. are the two largest trading blocks in the multilateral trading system – Transatlantic trade regulations and practices cannot have anything but a large effect on the operation of this multilateral system. Seen from that perspective, Transatlantic trade policies are not only Transatlantic in nature but multilateral as well, or, as Jeffrey Lange, Deputy USTR, has phrased it in his testimony to the Ways and Means in July 1997 (House Ways and Means, 1997: 21):

“(..) it's safe to say that most U.S. efforts to further open markets and increase the rule of law in international trade, particularly on a multilateral basis, cannot advance without the positive participation of the European Union”⁷.

And Green Cowles (1997: 1) has put it this way:

“(..) virtually all trade disputes between the U.S. and the EU affect other countries as well. Every bilateral dispute has the potential to become a multilateral dispute”.

Since the end of the Cold War, one can observe a new enthusiasm, a new zeal for the strengthening of the Transatlantic relationship. A number of reasons can be put forward to explain for this.

⁴ Based on the EU figures

⁵ A positive figure reflects a surplus for the EU.

⁶ Equally, about one-third of American exports that go to the European Union supply U.S. companies located there.

⁷ And indeed, one could give the Information Technology Agreement and the WTO Agreement on Basic Telecommunications as convincing evidence of this.

First, there is the end of the Cold War itself. Quite soon after the fall of the Berlin Wall, politicians on both sides of the Atlantic started to wonder what the effect of this would be on the Transatlantic relations. James Baker, George Bush's Secretary of State was one of the first to realize this. In his December 1989 visit to Berlin, he – at the verge of the German reunification process – stressed the continuing importance of the security ties across the Atlantic. Similarly in Europe, voices were raised about the nature and extent of the American commitment to Europe's security now that the Cold War was over and the Warsaw Pact soon dissolved. In those days, ideas started to emerge that trade linkages would provide a stable basis for the continuation of the mutual security commitments. As trade and investment would bring the two sides of the Atlantic closer together, the security ties between them would become closer as well. The New Transatlantic Declaration, as adopted in December 1990, directly stemmed from this.

Second, there was the Uruguay Round. If the Uruguay Round made one thing quite clear, it was that without agreement between the U.S. and the EU on major issues of trade policy, no multilateral trade cooperation in the GATT/WTO, or elsewhere would be possible. The EU and the U.S. clearly were each others hostages in the multilateral trading system just like the multilateral system itself was a hostage of Transatlantic cooperation and agreement⁸. In addition, as the dragging on of the Uruguay Round made regional bloc formation more attractive for the United States (Jütte-Rauhut, 1995; Economic and Social Committee, 1995: 2; Buelens, 1997: 5), the EU had an additional argument to keep the Americans on the multilateral track (Abbott, 1995: 119; Rolle, 1995: 45). This was a remarkable evolution since the EU itself has traditionally been the champion of regional trade agreements and regional trade policies. But the emergence of U.S. interest in regional trade agreements – first through CUSFTA and NAFTA, then through APEC, and now through the FTAA – changed the picture. As the Commission Forward Studies Unit remarked (1995: 15):

“Regional projects are now important variables on both sides of the Atlantic, and their development, at varying speeds, will be one of the primary contextual factors shaping Transatlantic relations”.

Furthermore with the Asian financial crisis of 1997 both the EU and the U.S. have to function as a “market of last resort”. Especially on the American side complaints have been issued about the lack of economic growth in the European Union and the necessity for the EU and the U.S. to share the role of market of last resort as a way to avoid the emergence of protectionism in the U.S. (cf. *Financial Times*, February 25, 1999, p. 1).

These developments led to the following two conclusions. First, that after the Cold War the role of trade, and therefore of trade policy, in sustaining and cementing a security partnership was even more important than during the Cold War⁹. As the aforementioned Jeffrey Lang testified in July 1997¹⁰:

“as U.S. cooperation with Europe on security matters formed the bedrock on which the post-Second World War peace was built, the U.S.-European trade relationship has been the anchoring point for the international trading system since the General Agreement on Tariffs and Trade came into force in 1947”¹¹.

⁸ This was, of course, in the first place the case for the question of trade in agricultural products (cf. Josling, 1998: 18).

⁹ Indicative of this may be the fact that the House Ways and Means Committee devoted in July 1997 a hearing that focussed exclusively on the trade relations with the EU and the US., something which – according to Rep. R. Matsui (D-CA) hadn't happen in 18 years (House Ways and Means, 1997: 15).

¹⁰ Written statement by Ambassador J. Lang (House Ways and Means, 1997: 23).

¹¹ During the same hearing, Timothy Hauser, Acting Under Secretary, International Trade Administration, put it this way: “The U.S.-European partnership has never been one only of military and security concerns, but has also developed common ground in trade and economic interests. With the end of the Cold War, the commercial aspect of our relationship has taken on greater importance, and trade and economic growth are the focus at the top levels of our bilateral meetings and institutions” (House Ways and Means, 1997: 34). In the same sense Hufbauer (quoted by Eichengreen, 1998: v) has remarked: “In the past, economic disagreements between the United States and Europe were given second billing in the interest of maintaining the broad strategic partnership. Now that the strategic imperative is gone, economic issues have assumed a higher profile”. And Mathiopoulos

United States Trade Representative Charlene Barchefsky testified in the same sense a year later (USTR, 1998c: 2):

“After the Cold War, in the absence of a great common threat to Europe and the United States and in the presence of a number of trade disputes, it is possible to lose sight of our vast common interests and responsibilities. And the Clinton Administration is determined to make sure that will not happen. We plan to make our partnership with Europe in the next century as fruitful for Americans, and as important to world peace and prosperity, as it has been since 1945”.

The European Commission clearly shares this opinion as is indicated by the following quote from a report of the European Commission on transatlantic relations (European Commission, 1995a: 2):

“Of course, the end of the Cold War has changed the nature of [transatlantic] relationship. There is no longer a single, common adversary and the need to guarantee military security has ceased to be the overriding feature of the relationship. (...) There can be no return to the time when political and economic issues were subordinate to the central question of security. Today it is necessary to demonstrate anew why this unique partnership is more valid than ever, for reasons which have more to do with the future than a past common heritage”¹².

Second, that the intensity of transactions and interactions in the Transatlantic marketplace could not be taken for granted: In order to reap the full benefits of these transactions, they had to be underpinned by political commitments and by a large array of rules – both bilateral and multilateral. Otherwise stated, besides the Transatlantic marketplace of trade transactions and investment – the one that already exists for a long time – there was a need for a Transatlantic Marketplace – with a capital “m” – built on trade agreements and rules. The search for such a marketplace started quite quickly after the fall of the Berlin Wall and is – to a certain extent – still going on. The aim of this chapter is to highlight the problems and the challenges that had to be met in order to make this endeavor a success. In doing so, it will become clear why cooperation is still difficult between two major trading blocks which such a large and deep trading relationship. Indeed, the paradox of the Transatlantic partnership is exactly that its depth is inextricably linked to the occurrence of conflicts, and that its weight in the multilateral system has almost inevitably intensified these conflicts. This has put a serious burden on Transatlantic cooperation, and has required serious political investments in it.

II. The Road to the 1995 New Transatlantic Agenda (NTA)

II.1. The Emergence of the NTA

Our search for Transatlantic cooperation starts with the emergence of the New Transatlantic Agenda in the course of 1995. The process that led to it generated a qualitative leap in the Transatlantic

(1998: 223) has observed: “After the end of the Cold War, both partners rightly assumed that their relations would no longer be dominated by the security partnership to the extent that they had been in the past” (see also Soskice, 1998: 9; Schott, 1998: 37).

¹² Not everybody shares this point of view however. Frank Vargo, Assistant Secretary of Commerce on U.S. – Europe Trade, basically rejected the notion that economic relations have to act as a “glue” for the maintenance of the security relationship after the end of the Cold War. As he testified before the House International Relations Subcommittee on International Economic Policy and Trade on September 10, 1997 (Vargo, 1997: 2): “While I certainly agree the defense partnership contributed much to the common bond across the Atlantic, I disagree it was the only, or even the primary, bond. (...) The belief that something must take over as the new glue in the relationship is almost exclusively voiced by the political/strategic community. Few economic experts express this concern, and most, I believe, share my view that the economic relationship has always been a strong bond across the Atlantic and is now stronger than ever”.

relationship because it went beyond pure declaratory politics (which was largely the case with the 1990 Transatlantic Declaration), because it created constant communication at high political levels between the U.S. and the EU (which proved to be helpful when problems arose during negotiations on trade agreements such as the ITA, veterinary equivalence, and customs cooperation), and because it was evolutionary in nature. The New Transatlantic Agenda (NTA) was not meant to be the end of the search for improved relations. It was a stepping stone, meant to create a new political momentum in favor of deeper trade, security, and political relations, and to provide the start of a new process in which new frameworks for these relations would be looked for and created.

The NTA was – at least from the perspective of trade – also a “qualitative” leap in that it started from a new paradigm (Stern, 1996; Jackson, 1996). Instead of letting the governments do all the work and determine what would be put into the relationship, business – and later, in 1998, also civil society – were directly involved. Moreover, it was government that basically brought businesses from the two sides of the Atlantic together in order to clarify how from a business point of view, Transatlantic trade relations could be promoted. The initiative to this came from the U.S. Dept of Commerce, namely from its Secretary, the late Ron Brown. For the U.S. this approach was not completely new given its propensity to self-regulation rather than regulation by decree.

For the European Union, this was less evident. Indeed, the EU has undergone a major shift in its attitude to the business approach, i.e. an approach in which businesses play an important role as identifiers of problems and agenda setters. When the U.S. Commerce Department issued a proposal on a business-inspired approach towards Transatlantic trade relations¹³ the reactions in the European Union, including the Commission, were highly skeptical¹⁴. The original proposal was called the “Expanded New Vision for Trade with Europe” and later changed into the “Transatlantic Business Dialogue”. But European politicians didn’t see the added value of such an initiative given the existence of several international forums – like the G7, the annual EU-US summits, the OECD, and the Quad. For the European Commission, a dialogue inspired by business could only be accepted on condition that after an initial test period, a withdrawal from it would be possible.

There were equally questions in business circles. Some company leaders wanted to have more guarantees about the extent to which the dialogue would get a real input in the intergovernmental Transatlantic relations. Others had to be convinced that the required investment in such a dialogue would pay off with trade liberalization and the removal of regulatory barriers.

The Commerce Department ultimately succeeded in enticing both businesses and the European Commission. The first was seduced by the emphasis on the complementarity of this initiative and its expected effect on trade liberalization with the ongoing liberalization process in the WTO (which just had started to operate). The emphasis was largely put, therefore, on regulatory issues such as standards, product testing and certification, and on public procurement, intellectual property rights, and national treatment in foreign investment.

The Commission was convinced by the promise to make the new approach a “trial” and by the concomitant consequence that participation in it didn’t commit neither the Commission nor the EU member states on any subject of trade liberalization. In addition, the prospect for cooperation on a “level playing field” in third markets – the Central and Eastern European Countries’ integration in the WTO, and the Asian emerging economies – was put forward as an “appetizer”. Indeed the skepticism was extremely high on the European side.

¹³ The idea has been flouted first by the late Ron Brown, the then Commerce Secretary, in a December 1994 speech before the American Chamber of Commerce in Belgium.

¹⁴ Hugo Paemen – since 1996 European Commission ambassador to the US – later (in January 1996) recognized that the Commission first felt some “apprehension” on the TABD as it was initially too much “Department of Commerce driven”.

Gradually however, the idea of more than just a dialogue started to emerge, especially on the European side. One of the main reasons for this was the end of the Cold War and the concerns in some member states, not to the least Germany, that this could lead to a weakening of the security ties between Europe and the United States. As a consequence, the idea of a Transatlantic free trade area started to emerge (Peterson, 1996: 58). Political leaders such as John Major and Klaus Kinkel first referred to the new Transatlantic relations in this way. The Commission remained cautious however, realizing that the compatibility of such an approach with the brand new WTO rules would require that such an area would have to be cover "substantially all the trade" between the EU and the US (Kerremans, 1998). This would certainly mean that a TAFTA would cover agricultural trade as well. Given the difficulties in the Uruguay Round, such an approach was just not realistic. Sir Leon Brittan proposed, therefore, an approach that emphasized business facilitation, mutual recognition of standards and certification and an intensified Transatlantic business dialogue.

This approach was largely shared by the Americans as they believed that the negotiation of a major trade liberalization agreement so soon after the termination of the Uruguay Round and the difficulties in the U.S. ratification process would be risky. More and more, the U.S. Commerce Department and the European Commission shared the conviction that the first step in the amelioration of trade relations had to be provided by the business dialogue and by business facilitation. As Leon Brittan put it in December 1995: "The best way to identify and discuss all (...) [the] problems is to let the businessmen speak" (*Agence Europe*, n° 6599: 5). From May 1995 on, therefore, they embarked on a strategy of which the Transatlantic Business Dialogue would become the centerpiece and in which different initiatives for the removal of obstacles to Transatlantic business development would be gathered in one single framework. The idea was that separate initiatives on business facilitation would never attract sufficient investment from higher political levels. This could be the case however, when many initiatives would be grouped into one large project. In that case, there was a possibility that it would attract the active interest from the U.S. president, and European government leaders. This became indeed the main objective of the new initiative: attracting political attention and interest. That would be its added value to the large array of already existing agreements and negotiations. At the same time, it would avoid that the search for an improvement in Transatlantic trade relations would have to concentrate on the creation of a Transatlantic Free Trade Area, a formula which was clearly out of the question for both the Commission and the Clinton Administration (Kerremans, 1998).

Two politicians, U.S. Commerce Secretary Ron Brown, and European External Trade Relations Commissioner Sir Leon Brittan, took the lead. At the end of April 1995, they sent a letter to more than hundred large European and American companies and business associations asking them to participate in a Transatlantic Business Dialogue. As the letter indicated¹⁵:

"The goal is to provide a means for U.S. and EU companies and organizations to develop an agenda of key issues that could be addressed by the European Commission and the U.S. Administration so as to improve and deepen the transatlantic business relationship".

And it continued:-

"We believe that a direct business perspective could make a constructive contribution to defining our vision of the future shape and direction of that relationship".

Businesses seemed to be interested in the initiative as the U.S. Commerce Department received many (more than 300) positive reactions and as the European-American Business Council took the lead in further institutionalizing the emerging business dialogue (cf. European Commission, 1996b). Most of the companies had clear demands on regulatory issues and the question of mutual recognition of testing and certification¹⁶. At the same time, the highest political levels started to react as well. At a

¹⁵ Quoted in *Inside U.S. Trade*, Vol. 13, n° 8, May 5, 1995

¹⁶ Moreover, as Timothy Hauser (Acting Under Secretary of the International Trade Administration) testified in the House Ways and Means Subcommittee on Trade: "The main impediments to trade across the Atlantic, they told the government officials, were not tariffs—although there were some important objectives in lowering

meeting¹⁷ between President Clinton, Commission president Jacques Santer and French President Jacques Chirac (who held the presidency of the European Council), a new High Level Working Group was created to develop a new Transatlantic agenda. This agenda was clearly meant to include more than just trade. It had to encompass security and other political aspects of the Transatlantic relationship as well. The group had to prepare this agenda against the US-EU Summit of December 1995 in Madrid.

In addition, both the Commission and the U.S. Administration started to conduct studies in order to find out the level of political support for the idea and the issues and objectives for the new initiative. In its study, the Commission clearly focussed on regulatory issues (including testing and certification, and early warning of regulatory changes) and emphasized that close cooperation on regulation and competition could make contingency protection (such as antidumping) obsolete in what the Commission called "the Transatlantic Economic Space". In addition, the recurrent question of a TAFTA was resolved by proposing a "joint US-EU feasibility study" that would include the precise gains and losses of such a free trade area. Furthermore, a distinction was made between bilateral and multilateral issues. As far as the former is concerned, the Commission proposed "an overall approach" in which different ongoing negotiations would be brought together and in which a clear timeframe would be defined. As far as the latter is concerned, the idea was that the EU and the US together had to take a leadership role in the WTO in order to complete the "unfinished business of the Uruguay Round", especially in the area of telecommunications and maritime services, and to expand the WTO-agenda in areas such as competition policy¹⁸ and investments (cf. TABD, 1996b: 22).

At the September 29, 1995 meeting of the EU-Council of Ministers (General Affairs) however, many member states expressed their reservations about a drive towards a TAFTA or even concrete concessions on tariff reductions at this stage. But the Council principally approved the search for deeper Transatlantic relations. During the debate it became clear however that some member states' objections went deeper. The "substantially all the trade" requirement of article XXIV GATT would require the inclusion of agriculture and textiles in a TAFTA-agreement and that was clearly unacceptable to member states like France, Belgium, Greece, and Portugal, and to a lesser extent to Spain¹⁹, Austria, and Italy. These member states didn't even want to include a reference to TAFTA in the joint feasibility study that the U.S. administration and the Commission would set up jointly. Including such a reference would be tantamount to passively committing to TAFTA, according to these countries²⁰.

tariffs—but were in differing standards, testing and certification requirements, and other regulatory differences. The EU was particularly surprised by the emphasis the European business community placed on reducing testing and certification costs, which provided a major impetus to the Mutual Recognition Agreement the U.S. and the EU had been discussing for about two years" (House Ways and Means, 1997: 41). And indeed, it seems that Hauser was right at it is generally expected that the MRA concluded between the EU and the U.S. in 1997 will reduce the sales costs of the sectors concerned (medical devices, recreational craft, telecommunication equipment, electromagnetic compatibility, electrical safety, and pharmaceutical good manufacturing practices) with more than 10%. Since it concerns a sector with annual Transatlantic trade of about \$50 billion, the expected benefits are impressive (see International Trade Administration, 1997 & House Ways and Means, 1997: 86).

¹⁷ On June 14, 1995 in Washington DC.

¹⁸ The EU and the US already had a Competition Agreement since 1991. In 1995 this agreement has been renewed (see *OJ L95* of April 27, 1995, as corrected by *OJ L134* of June 26, 1995).

¹⁹ Its position as Council President prevented Spain from expressing its opposition too explicitly.

²⁰ Their objections were issued at the Council meeting of October 2, 1995. In the same vein, the countries concerned rejected any reference to a speeding up of tariff concessions made during the Uruguay Round. Other member states supported a feasibility study that would include the FTA-approach. In this position were the United Kingdom, Germany, Ireland, Finland, Sweden, and Denmark. The position of France was somewhat peculiar. Whereas the French foreign minister Hervé De Charette rejected a feasibility study on the FTA-approach and the tariff acceleration, he emphasized that a renewal of the Transatlantic relations had to be concentrated on political issues such as "the United States' disengagement in matters of aid to development (..) as well as the question of the funding of the UN and that of currency stability". Especially the last has been emphasized by French diplomats during the shaping of the NTA. See *Agence Europe*, n° 6575, October 2-3, 1995, p. 8.

Also on the U.S. side some work was done in preparation of the Madrid Summit. But here, relatively more emphasis was put on the multilateral aspects of the Transatlantic agenda. For many U.S. officials, the Madrid Summit had to “lock in” EU support for trade liberalization in the WTO and more concretely for commitments in this vein in the upcoming WTO ministerial in Singapore. In this respect, the Americans were trying to garner European support for zero tariffs by 2000 on information technology (what would become the ITA 1 agreement). In addition, the US sought to reinforce cooperation in the framework of the OECD notably on investment rules (the MAI-negotiations²¹).

But on the American side – just like on the EU side – a certain divergence of opinion emerged. The United States Trade Representative (USTR) tried to emphasize a cautious approach in which a TAFTA would be avoided and in which a political impetus was sought for the “overall approach”. Issues like regulatory cooperation and the acceleration of tariff reductions were considered to be much more important than the politically risky track of TAFTA. Such an approach would have two benefits. First, it wouldn’t trigger Congressional opposition which would certainly be the case with TAFTA. The difficulties with the Uruguay Round Agreement and with NAFTA provided ample evidence of this. Second, tariff reductions would not directly and automatically require new trade negotiating authority for the president²². This was clearly an advantage given the difficulties that the administration faced in getting new fast track authority from Congress.

The State Department was more in favor of a TAFTA, however. That was not a coincidence as State perceived a TAFTA in a larger security perspective. A TAFTA would tie both sides of the Atlantic and would avoid disruptive trade conflicts. This would strengthen the preparedness of the Europeans to continue the North Atlantic security cooperation now that the Cold War was over and new security problems had emerged (i.e. the Yugoslav War and the U.S. diplomatic involvement in it)²³.

Because of the objections against an FTA-approach on both sides, a subcabinet meeting on September 28, 1995 retained a “building block approach”. Instead of working with a free trade area, a Transatlantic marketplace would be created by gradually concluding trade liberalization agreements, not by concluding one agreement that would cover all the subjects concerned. But the conclusion of these agreements would become part of a predetermined timeframe. In addition, such agreements could only be concluded where they would be complementary to currently existing WTO-agreements or would be explicitly allowed for by these agreements. In this sense, tariff reductions would become part of EU-US efforts inside the WTO²⁴, not of separate bilateral deals. As a consequence, the “building block approach” would largely result into agreements on regulatory issues. Ongoing negotiations on such issues – like the question of testing and certification – would be integrated into the new initiative so as to give them a new political impetus.

In the remainder of 1995 two important things happened in the Transatlantic relations. First, the Transatlantic Business Dialogue was institutionalized, largely due to efforts in this sense by U.S. Commerce Secretary Ron Brown, and EU Commissioners Sir Leon Brittan and Martin Bangemann. This institutionalization meant *inter alia* that the TABD would continue to play a role – would even be formally involved – in defining and developing the Transatlantic trade agenda²⁵.

²¹ The MAI-negotiations had started in May 1995.

²² As the president still had some residual tariff reduction authority from the previous fast track law (it concerns the July 1993 extension of the trade authority based on the 1988 Trade and Competitiveness Act).

²³ As the U.S. Deputy Chief of Mission to the EU, Tony Wayne, said in November 1995: “Though trade and economics have often been the focus of the U.S.-EU relationship, non-trade issues are the growth areas of the relationship” (quoted in *Inside U.S. Trade*, Vol. 13, n° 45, November 10, 1995).

²⁴ This doesn’t apply of course to those tariff issues that had been left out of the Uruguay Round negotiations, among which the products covered by the ITA 1 agreement and products such as white spirit, fertilizers, nonferrous metals, oilseeds and oilseed products, photographic film, wood, electronics, flashlights, soda ash, and certain cameras (see *Inside U.S. Trade*, Vol. 13, n° 44, November 3, 1995 & TABD Group II Report).

²⁵ As a matter of fact, the role of the TABD went beyond this. In November 1996, during the negotiations on the Mutual Recognition Agreement, the TABD meeting in Chicago played a decisive role in pushing through an

Second, the EU-US Summit of December 3 in Madrid resulted in the adoption of the New Transatlantic Agenda (NTA) and of an attached Action Plan. The agenda covered a whole range of issues – ranging from actions against cross-border criminality, over trade, security, and cultural and educational exchanges. The Action Plan also provided for a dialogue, not only for businesses, but also for labor unions and environmental groups.

In addition, there was of course the multilateral agenda as well, the agenda for the conclusion of what is called “the unfinished business of the Uruguay Round”²⁶ and the initiation of new issues in the WTO, especially in the light of the upcoming Singapore ministerial. Even the bilateral relations had to be perceived and assessed in this perspective. Bilateral deals between the two sides of the Atlantic were not supposed to be an end in itself but only a way to initiate, promote, and stimulate the negotiation of multilateral agreements on the same subjects either in the WTO or in other multilateral frameworks such as the OECD.

In the light of the conclusions of the Madrid Summit, the decision was taken to set up a joint EU-US study – not on a TAFTA as was originally suggested but rejected by some EU member states – but on “reducing or eliminating” remaining EU-US barriers to trade and on trade facilitation. The reference to “reducing or eliminating” was included on the demand of France which didn’t want to commit itself to “eliminating” only.

The conclusion of the New Transatlantic Agenda has not been easy. Both the governments and the business representatives (in the European and the American groups of the TABD) had their own sensitivities and priorities and these were not always exactly the same on both sides of the Atlantic. Whereas the Americans wanted European commitment on the acceleration of tariff reductions²⁷, particularly in sectors such as agriculture (e.g. oilseeds), information technology²⁸, and telecommunication services, the European side stressed the importance of non tariff barriers and trade liberalization in maritime services, and financial services, and the importance of a multilateral steel agreement. But at the end of the day, the momentum created by the idea of a new relationship proved to be decisive.

agreement (TABD, 1996). As was testified by Timothy Hauser (House Ways and Means, 1997: 40 & 45) the involvement, especially the insistence, of the TABD people during their meeting in Chicago played a decisive role in keeping the MRA talks on track and in unblocking them. The Commission (1996b) defined the role of that TABD meeting as “(...) contributing to (...) progress on by providing the occasion for an important conceptual breakthrough on the negotiations for a Mutual Recognition Agreement (...)”. De Vink called it a typical example of how “entrepreneurial diplomacy” can contribute to the Transatlantic relationship (House Ways and Means, 1997: 63). But one could rather call it an example of successful triangular diplomacy in which the two government sides (the U.S.’ FDA, and the Commission’s DG I and DG III) and business representatives (from the TABD) negotiated deals on controversial issues (especially pharmaceutical good manufacturing practices). The contribution of the TABD can best be summarized from De Vink’s testimony (Ibidem: 66): “By helping government negotiators understand more precisely the practical ramifications of the policy decisions before them, we helped facilitate an agreement”.

²⁶ Such as maritime services, telecommunications, financial services, and government procurement.

²⁷ The American demand for accelerated tariff reductions or even elimination was not a coincidence. It is partly related to the structure of U.S. tariffs (generally low tariffs, with peak tariffs in sensitive sectors such as food products, textiles, footwear, leather goods, jewellery, ceramics, glass, trucks, and railway cars, see European Commission, 1997: 10; 1998d: 12; World Trade Organization, 1999b) and partly related to the absence of any new trade negotiating authority for the U.S. president. This limited the leeway of the administration in the field of tariff reductions to the residual authority from the previous fast track laws (the July 1993 extension of the 1988 OTCA). The combination of the two basically meant that the U.S. was proposing accelerated reductions in sectors that would benefit them, much less the EU which complains about the peak tariffs, especially on textiles (cf. the Commission reply to the TABD proposals in TABD, 1996b: 26).

²⁸ Contrary to the request from the TABD, no deadline, neither for the agreement nor for the tariff elimination was provided for. The TABD had asked for the December 1996 for the first, and 2000 for the second.

II.2. The Lessons from the NTA

The 1995 New Transatlantic Agenda (NTA) was in itself a reaction to two factors. First, it was an attempt to deepen the Transatlantic relationship in the post Cold War context that emerged after German reunification. It was clearly linked, therefore to the 1990 Transatlantic Declaration that reaffirmed the strong security and economic bonds between the two sides of the Atlantic and the indivisibility of their security.

Second, the 1995 NTA expressed the European concern that the United States might go its own way in the field of trade. There were reasons to believe this. First, there were the difficulties through which the Uruguay Round had gone, largely due to the escalating Transatlantic conflict on trade in agricultural produce. In addition – and partly in relation to the first – the United States had embarked on a trade policy strategy of regional trade agreements. This fed the European fears that the US might give up multilateral trade policy strategies and might instead, forge market access through regional trade agreements. There were reasons to believe this. There was of course the conclusion of NAFTA – itself an extension of the 1988 CUSFTA²⁹ – and the launching of a number of initiatives that could go in the same direction: the Asian Pacific Economic Cooperation (APEC), and the 1994 initiative of the Free Trade Area of the Americas (FTAA) (cf. Schott, 1998: 52). Although none of these initiatives proved to lead to a U.S. regional trade policy strategy to the detriment of its multilateral credentials, it certainly made the Europeans more aware of such a risk or at least of a risk that some of the American attention and political capital would be diverted away from the WTO and the multilateral system³⁰. As the European Commission's Forward Studies Unit observed in 1995 (1995: 15):

“Regional projects are now important variables on both sides of the Atlantic, and their development, at varying speeds, will be one of the primary contextual factors shaping Transatlantic relations”.

What Sbragia (1998: 147) has observed “outside of the trade arena” is equally true – maybe even more true – for the Transatlantic trade relations. As she phrased it:

“Outside of the trade arena, the Union has faced fierce competition for U.S. attention. The fact that it is being granted – sometimes reluctantly – an increased share of that attention is pivotal in understanding the enhanced role of the EU in international affairs”.

I would phrase this a little bit differently as far as trade is concerned: Inside of the trade arena, the Union has faced fierce competition for U.S. attention (cf. Asia through APEC, Latin-America through the FTAA, North America through NAFTA, the Caribbean through the CBI, and Africa to the GSP and the initiatives on the pending Growth and Opportunity Act). The fact that it has been granted – sometimes grudgingly – an increased share of that attention is explained to a large extent by the emergence of the EC/EU as a large trading bloc in the multilateral system and its current market power and international role in this field. Thus in the case of trade – which is much less the case for security despite some European hopes to the contrary – the Transatlantic relationship has evolved from a situation of dependence to one of mutually balanced interdependence. Attempts to reconcile European dependence on security – the Bosnian and Kosovar examples provide dramatic evidence of this dependence – with European assertiveness in trade have been made by those that are concerned about the security relationship and that recognise that in the field of trade, there is *interdependence*. The New Transatlantic Agenda was such a clear recognition from the European side. It was also a clear recognition from the American side that to a certain extent European security is still an American interest, just like global trade liberalisation is, and that leadership in the global trading system is indeed contingent on co-operation with the EU.

The NTA was therefore, to a large extent, a recognition of dependence and interdependence. Although it equally consisted of a list of initiatives, it was more a recognition than a framework for co-operation.

²⁹ Canada – United States Free Trade Agreement

³⁰ European regionalism – a longer established tradition in EU external trade policies – and EU enlargement have entailed a similar concern in Washington DC (Schott, 1998: 53).

For that reason, the fact that some observers have claimed to be disappointed by the NTA's meagre achievements³¹ is partly due to an overstating of its real significance. For those in the US administration and the European Commission that were closely involved in emergence of the NTA, it was just a transitional agreement, a stepping stone for a more qualitative leap in the Transatlantic relationship. Indeed, the NTA set the preparatory stage for the concrete development of the New Transatlantic Marketplace, while at the same time trying to improve the context of the Transatlantic trade relations by endeavouring for the successful conclusion of trade agreements.

III. From NTA to NTM, and from NTM to TEP

III.1. Problems with the NTA

The New Transatlantic Agenda was not a big success as far as its effect on Transatlantic relations was concerned. This was especially the case when one looks at the bilateral relations³². To a certain extent, the effect of the Agenda on multilateral relations was more successful.

III.1.1. The Bilateral Agenda

There are a number of reasons why the bilateral track proved to be much more difficult than the multilateral one. First, there was the role of the U.S. Congress. During the period in which the New Transatlantic Agenda was adopted, Congress was working on two bills that would poison Transatlantic relations. The first one was the Helms-Burton Act (on Cuba)³³ and the second the D'Amato Act³⁴ (on Libya and Iran). Both acts were extraterritorial in nature as they wanted to punish non-U.S. companies for actions outside the United States (respectively in Cuba, and Iran and Libya). As some European companies were hard hit by this measure, and as the EU considered the extraterritorial effects of the two laws to be violations of international trade law, the acts resulted in a major trade conflict between the European Union and the United States (cf. House of Commons, 1998: 33).

Second, the kind of bilateral issues with which the Transatlantic Agenda tried to deal, proved to be more complicated and controversial than was originally expected. Issues such as testing and certification opened the door to discussions on the equivalence of EU and US standards, and the tests on these standards. A typical example here was the conclusion by the EU that American slaughter procedures for chickens didn't reach the EU veterinary standards³⁵. In the case of testing and certification on pharmaceuticals, there was the resistance from the Food and Drug Administration to allow EU products certified by EU pharmaceutical inspection services on the U.S. market. At the same time, the U.S. Congress increased the pressure on the administration by allowing U.S. wines to use European regional designations as generic wine categories³⁶. An amendment in that sense was being proposed by Senator D'Amato (R-NY) and this amendment would give a federal legal blessing to a U.S. practice that already exists for a long time but that has never been accepted by the EU.

³¹ Cf. the comments by Bruce Stokes (Council on Foreign Relations) in the *Financial Times* (May 14, 1998).

³² Cf. the comments by Bruce Stokes (Council on Foreign Relations) in the *Financial Times* (May 14, 1998).

³³ Public Law 104-114. The law originated in two bills: H.R. 927 (104th Congress) submitted by Rep. Dan Burton (R-IN), and S. 381 (104th Congress) submitted by Sen. Jesse Helms (R-NC).

³⁴ Better known as ILSA. The Act was introduced as S. 1228 (104th Congress) by Sen. Alfonso D'Amato (R-NY) and became public law 104-172.

³⁵ *Agence Europe*, n° 6957, April 18, 1997

³⁶ See however, article 23 ("Additional Protection for Geographical Indications for Wines and Spirits") of the TRIPs Agreement. Whereas the EU claims that some U.S. geographical wine appellations violate this article, the U.S. claims that article 23 has to be read in conjunction with article 24 TRIPs. This article provides for exceptions to article 23 provisions (TABD, 1996c: 67).

In the same vein, EU ecolabelling was considered to be a potential hidden trade barrier instead of a genuine environmental measure³⁷. In Congress irritation about the EU's Common Agricultural Policy started to grow, and with it the pressure on the U.S. administration³⁸ not to accept anything from the Europeans unless something would be done about the negative trade affects of the CAP and the European stances on sanitary and phytosanitary regulations (see House of Representatives, 1998a).

Most of the problems on the bilateral agenda had to do with regulatory issues in the environmental area (where besides ecolabelling, fur and leghold traps were the issues), bioengineering in foodstuffs (the so-called GMOs), electronic commerce (encryption, data protection), and veterinary and phytosanitary regulations (ranging from the use of hormones in beef to hygiene in slaughter houses). Part of these problems were a consequence of the ambitions of the agenda itself. Dealing with regulatory issues is more than just liberalizing trade. It is – in addition to the removal of trade barriers – an effort that aims at establishing or maintaining a certain level of safety, health, environmental, and eventually labor standards. Since the definition of what is needed here can be quite different on the two sides of the Atlantic (e.g. the beef hormone question), this is an area where conflicts can easily and strongly erupt (Vogel, 1997: 23-24 & 58-59). As Lawrence (1996: 7) has put it:

“Once tariffs are removed, complex problems remain because of differing regulatory policies among nations”.

Other problems were the consequence of longstanding disputes (such as the 11-year old hormone question) and the fact that the political impetus provided by the NTA was clearly not sufficient to resolve them. But in the background the discussion on the Helms-Burton and the D'Amato Act loomed. It impeded any serious political input – especially from the European side – into the Transatlantic Agenda and prevented any serious progress on bilateral issues. A major conflict in the WTO – which would have risked to jeopardize the WTO dispute settlement system itself – could just be avoided³⁹.

III.1.2. The Multilateral Agenda

The picture of the multilateral agenda was quite different despite the fact that also here, problems had emerged. But on many issues cooperation between the EU and the US proved to be decisive in getting things done in the WTO. The Information Technology Agreement, the Agreement on Basic Telecommunications, and the Financial Services Agreement were all concluded after major efforts by both the EU and the US to convince others – especially the newly industrialized countries – to grant concessions on the subjects concerned.

³⁷ *Agence Europe*, n° 6578, October 6, 1995. As the U.S. Administration indicated in its comments on TABD proposals: “The U.S. Government remains concerned that the ecolabel development committee was not transparent to industry and afforded insufficient means to influence the development of criteria (...)” (TABD, 1996c: 28).

³⁸ The relevance of this question gradually grew as in the fall of 1997 it became obvious that president Clinton would only be able to get trade negotiating authority from Congress if such authority would be supported by representatives from the agricultural states (see House Committee on Agriculture, 1997; Senate Committee on Agriculture, Nutrition, and Forestry, 1997).

³⁹ On April 18, 1997 the EU and the U.S. reached an Understanding in which the U.S. Administration promised to suspend Title III of the Helms-Burton Act (suing of European companies that have invested in expropriated assets in Cuba) in return for a European promise “to step up efforts to promote democracy in Cuba” (*Agence Europe*, n° 6958, April 19, 1997: 6).

III.2. The Search for a New Initiative: the NTM

As the bilateral part of the NTA experienced difficulties, and as the multilateral part proved to be successful, the European Commission started to look into ways to renew the political commitment of the NTA. In its point of view, this had to be done in two ways. First by removing the Helms-Burton and D'Amato cases as major obstacles in the bilateral relations. Second, by presenting a new plan for market integration that could trigger new enthusiasm for Transatlantic trade relations, and that could engender a new political momentum. The conclusions of the joint study had to act as a guide in this.

By looking for a new initiative however, the Commission was looking further than just bilateral trade relations. First, the security perspective was taken into consideration. The old idea with which it all had started in 1989-1990 (the Transatlantic Declaration) and which played a role in the launching of the NTA in 1995, became prominent again when the "new initiative" was being prepared. Good trade relations would – this remained the idea – serve the quality of the security integration on the two sides of the Atlantic. And the period between 1991 and 1998 had provided ample and sufficient evidence that this kind of integration was still important after the end of the Cold War. Wasn't it NATO that was playing a central role in the peacekeeping and peace enforcing efforts in Bosnia-Herzegovina? Wasn't everybody looking at the US again when in February 1998 new violence erupted in Kosovo, this time with an even larger spillover risk than Bosnia? Clearly, forging stronger security links between the two sides of the Atlantic was not outmoded yet.

In addition, the European Union – especially Commissioner Leon Brittan – was looking at the WTO as well. In December 1999 new negotiations on agriculture had to be started and that would be a difficult case for the EU as for Transatlantic relations. During the second semester of 1997 and the first of 1998 there was ample reason to believe this. World market prices for some major crops were dropping whereas in the United States the pressure for the opening of foreign agricultural markets became overwhelming at a time when the Clinton administration faced tremendous difficulties in getting new trade negotiating authority from Congress⁴⁰. Leon Brittan was thinking, therefore, in terms of a new all-encompassing round of multilateral trade negotiations. For the first time since the creation of the GATT – and a fortiori of the WTO – the Europeans would initiate such a round, the Millennium Round. But in order to do so, both the United States and most EU member states had to be convinced. And he had to react quickly as the list of potential trade conflicts became longer and longer. There was not only the issue of agriculture but also of electronic commerce (data privacy protection), beef hormones (where a WTO-panel ruled), food safety⁴¹, the use of specified risk materials (SRMs) in animal products, and bananas⁴². The momentum created by launching a new major initiative in Transatlantic trade relations, could be helpful therefore. This initiative would become the New Transatlantic Marketplace. As Leon Brittan has described its significance⁴³:

"The New Transatlantic Marketplace is a specifically tailored package of measures to address the real barriers that exist in the EU/US trading relationship. It represents a huge leap forward for Europe's relationship with the US, bringing not only strong economic benefits for both business and consumers, but also a new political momentum to relations across the Atlantic".

⁴⁰ This pressure from agriculture became visible in different ways. First, there were the ever louder calls in Congress for reductions in the EU's agricultural export subsidies and price support policies. Second, there were clear indications – *inter alia* through meetings between the U.S. administration and countries from the Cairns Group – that the Administration was taking these calls seriously. As USTR Barchefsky stressed after one of these meetings in May 1998: "agriculture is an industry critical to the United States and the world economy (...). Market opening in this sector is a principal U.S. objective" (*Journal of Commerce*, May 22, 1998). Third, the U.S. agricultural sector went through a major crisis in the course of 1997 and 1998, partly due to the Asian financial crisis – as the EU farmers suffered from the Russian financial crisis (European Commission, 1998c: 58) – and as the U.S. administration decided to reinstate export subsidies for poultry, dairy products, and grain (*Journal of Commerce*, May 11, 1998).

⁴¹ As part of the negotiations on a veterinary equivalency agreement.

⁴² Where a WTO-panel, and later the WTO Appellate Body ruled against the EU (World Trade Organization Appellate Body, 1997a).

⁴³ Statement by Sir Leon Brittan, following the official launching of the NTM-proposal, March 11, 1998.

In March 1998, after months of careful preparations, the European Commission officially submitted its proposal on a New Transatlantic Marketplace (NTM). The NTM proposal may have served the Commission's agenda on the WTO quite well, it was to a large extent a logical outcome of the NTA. Indeed, the NTA had produced its joint feasibility study in November 1997 and had formulated a number of recommendations to the EU-US Summit of December 1997⁴⁴. As a consequence, Sir Leon Brittan had formulated four areas on which Transatlantic cooperation in the field of trade had to be concentrated: technical barriers to trade (with an emphasis on the extension of the MRA⁴⁵), trade in services, the elimination of industrial tariffs, and issues that should be dealt with on a multilateral scale such as government procurement (where new negotiations are scheduled in the WTO⁴⁶), investment (cf. the then ongoing MAI-negotiations), and intellectual property. Despite this broad agenda, the initiative was meant to fall short of a free trade approach. Such an approach was clearly unacceptable to both the U.S. Congress and to several EU member states.

The Commission's NTM proposal – as endorsed on March 11, 1998 – was both ambitious⁴⁷ and controversial. Immediate reactions followed, first from the U.S. Congress, then from the EU member states.

The reactions from the U.S. Congress were no surprise. During the informal meetings between the EU and the US – and specifically between USTR Charlene Barchefsky and EU External Trade Commissioner Leon Brittan, it had become clear that the American approach towards the NTM was more careful and restrictive than the Commission's. Barchefsky had underlined this in one of her numerous letters on the subject to Congress. In her February 11 letter she had enumerated the five following principles that had to guide the new NTM⁴⁸:

“First, any initiative must be in the interest of the United States. Second, it must be trade creating, not trade diverting. Third, it must enhance the global trading system and build a model for the future. Fourth, it must not prejudice the resumption in 1999 of global talks on the WTO built-in agenda, most notably in agriculture. And finally, it must in no way detract from our ability to enforce aggressively our existing agreements with the EU. If we can develop a proposal that adheres to all of these principles, we will then have a solid basis for moving forward”.

The second principle was clearly a warning against an FTA approach or anything close to it. The third principle – widely shared by the European Commission⁴⁹ – pointed at the complementarity between the NTM and the WTO and at the role of the Transatlantic relationship in promoting multilateralism⁵⁰.

⁴⁴ On the U.S. side the study was conducted by the International Trade Commission.

⁴⁵ Such an extension would include telecommunications, chemical products, and motor vehicles.

⁴⁶ Emphasis would be put here on an EU commitment to national treatment (which would give third suppliers the benefit of internal market rules), and the extension of public procurement rules to defense-related procurements. In the background of this discussion looms – of course – the question of the Massachusetts Burma Law, currently under legal attack by the federal American government and by the European Commission.

⁴⁷ In his March 18 speech at Harvard University, Leon Brittan described the NTM proposal as follows: “This is a major initiative, and deliberately so. It is designed to tackle the most serious impediments to transatlantic trade, by far the biggest economic relationship in the world, and to bring major economic benefits to business and consumers in the EU and the U.S.”.

⁴⁸ Quoted in *Inside U.S. Trade*, Vol. 16, n° 7, February 20, 1998

⁴⁹ Cf. Brittan's March 20 speech at the National Press Club in Washington DC in which he emphasized the role of the NTM in promoting multilateral trade liberalization. As he put it: “[W]hat we are doing is not at the expense of other countries or the multilateral economic system. It is rather a way to reinforce the joint leadership of Europe and the United States and to provide a building block in the next step forward in the evolution of the multilateral system”. This was clearly meant to appease any concern – *inter alia* by third countries – that the Transatlantic partnership could jeopardize or hinder multilateral trade liberalization or commitments in that sense.

⁵⁰ This opinion was shared by the WTO director-general Renate Ruggiero. As he said at an Institute for International Economics conference in Washington DC (April 15, 1998), “Everything that can be done to improve the relationship in the trade field between Europe and the United States is of fundamental importance.

The fourth principle was a way to calm concerns in Congress that the EU could use the NTM to “drown” the question of agricultural liberalization – a matter that was on the 1999 WTO agenda anyway – into negotiations on a larger agreement. The fifth principle pointed at pending conflicts such as the beef hormones and the banana regime. An NTM could in no way be used to provide a bargaining chip in negotiations on these matters.

But despite the guarantees on these principles, many in Congress were unhappy about the EU Commission’s proposal. In press statements, the chairmen of the Senate Finance Committee and of the Senate Finance Subcommittee on Trade, stressed that the NTM served European interests to the detriment of issues that were of particular importance to the United States. There were reasons for that. First, there was the explicit exclusion of agricultural tariff reductions, export subsidies and internal support systems⁵¹. According to the Commission, since negotiations on these issues would start in the WTO anyway, parallel negotiations as part of the NTM would not be very “helpful”. For many members of Congress this was far from evident⁵².

In addition, the NTM implicitly excluded other sensitive issues. Fish and fish products would have to be dealt with as agricultural products, thus to be excluded from the NTM. Audiovisual services would be, according to the Commission, excluded since these had received an exemption in the final stages of the Uruguay Round and this exemption “must be fully preserved and therefore excluded from the NTM negotiations”.

In the same vein, the proposal included many subjects that were extremely difficult for the United States to negotiate about. Examples are the maritime services (excluded from the Uruguay Round services agreement thanks to U.S. opposition), foreign ownership levels in satellite-based telecommunications services companies, state-level restrictions on the provision of professional services, the question of “first-to-file” or “first-to-invent” in the case of patents⁵³, and the upcoming question of the use by U.S. wine producers of EU appellations of origin.

It was maybe not surprising that the Commission paid attention to its own agenda in the first place. It was after all, a Commission proposal and it had to be acceptable for the EU member states in the first place. But it remains remarkable that – given the numerous informal meetings that preceded its adoption by the EU executive – it failed to take into account Congressional concerns to such an extent, especially since the failure of President Clinton to get new trade negotiating authority in November 1997 indicated quite clearly the new assertiveness of Congress on trade issues. And, by the way, one of the major questions there is equally agriculture (Kerremans, 1998).

Unless Europe and the United States do not have a shared vision – I do not say the same vision – of how to proceed in the multilateral trading system and in the other issues, there will be no progress”. And indeed, the Commission’s initial timing pointed in that direction as it hoped to finish the negotiations on the NTM before the start of negotiations on major issues (such as services, government procurement, and agriculture) in the WTO.

⁵¹ As far as agriculture was concerned, the proposal suggested to include talks on phytosanitary standards, veterinary equivalency, and animal welfare (which includes the sensitive issue of production of fur on the basis of animals captured by leghold traps).

⁵² However, within the Clinton Administration support was shown for the exclusion of agricultural tariffs and subsidies from the NTM – since these would be dealt with in the WTO anyway – and the focus on regulatory issues concerning this sector (cf. sanitary and phytosanitary measures, GMOs). This clearly didn’t satisfy the members of Congress. During the April 21 hearing in the Senate Finance Subcommittee on Trade, the rationale behind this was clearly expressed by Sen. Brownback (R-KS) in his reference to a letter sent to him by former USTR Clayton Yeutter. The letter, as quoted by Brownback, said the following: “Where they’ve [the Europeans] successfully isolated agriculture from other trade issues, we’ve not been able to do much because we’ve not had much agricultural trading stock of interest to the EU”. So even if subsidies and tariffs would be dealt with in WTO negotiations, the US could use bilateral talks – and especially the European anxiousness to conduct these on a wide array of regulatory issues – as a bargaining chip to get agricultural concessions beyond regulatory issues from the EU.

⁵³ The United States being the only country that uses the “first-to-invent” principle.

But even if there may have been a focus on the EU member states themselves, the proposal was far from uncontroversial to these. On the contrary. At a Council meeting on April 3, 1998 – the first opportunity to discuss the proposal formally – and at subsequent meetings of the Coreper and a special working group on Transatlantic relations, several member states raised questions about the compatibility of the proposal with the EU's WTO obligations. This was especially the case concerning the absence of agriculture. Would this jeopardize the legality of an NTM in the perspective of the "substantially all the trade" requirement of article XXIV GATT, even if the NTM was not meant to be the basis of a free trade agreement?

Equally, questions were raised about the effects of a Transatlantic dispute settlement system – as proposed in the proposal – on the obligations of the EU under the Dispute Settlement Understanding (DSU) of the WTO.

In the same vein, doubts were expressed about the proposed free trade area in services with the ongoing services agenda of the WTO.

But not all member states expounded these concerns with the purpose of targeting the NTM as such. Most of them welcomed the proposal on condition that it would be clear what kind of problems and obligations it could entail for the EU and its member states as WTO members. In this sense, the position of France was slightly different – and maybe also the position of the Netherlands. For France, the NTM as proposed by the Commission was unacceptable, partly because of its potential problems with the WTO, and partly because of the extent of the proposal itself. The big political importance that France attached to the question could be seen by the personal intervention of both president Jacques Chirac and prime minister Lionel Jospin. Both complained that the Commission had failed to consult the member states sufficiently on the NTM proposal – an allegation that was vigorously rejected by Leon Brittan – and about the possible inclusion – either explicitly or implicitly – of agriculture and (audiovisual) services in the NTM negotiations. They clearly feared that the bilateral NTM approach was less suitable than a multilateral one to counter American attempts "to encroach on European positions in the audiovisual, communications, agricultural, and intellectual creation fields" (*Journal of Commerce*, March 13, 1998). In addition, the French government believed that the bilateral dispute settlement as proposed in the NTM would undermine the WTO's dispute settlement. For France therefore, a multilateral approach to Transatlantic relations was clearly preferable than a bilateral one. As prime minister Lionel Jospin phrased it:

"The government that I head is opposed to the New Transatlantic Marketplace proposed to us (...). While being favorable to the development of economic ties and political dialogue with the United States, France considers that, in the commercial sphere, priority should be given to multilateral talks in classic international channels, that is, the World Trade Organization" (quoted in: *Journal of Commerce*, March 13, 1998).

But France was not the only member state to raise questions about the NTM-proposal. Other member states, not to the least the Netherlands, did the same. For these member states⁵⁴, the main question of the proposal was its effect on the WTO in both a legal and a political way. Legally the question of article XXIV GATT and certainly article V GATS arose. Politically, the question was raised what a bilateral agreement with the US would entail for the multilateral trading system and for the prospects of multilateral trade liberalization. The Netherlands in particular believed that leaving agriculture out of NTM-negotiations would possibly entail a violation of the "substantially all the trade" requirement of article XXIV. The Commission's way out of this caveat, by referring to the 1999 WTO agricultural

⁵⁴ Remarkable was the German attitude. Whereas the German foreign minister Klaus Kinkel was one of the first to react enthusiastically to the proposal – saying that the initiative came "at the right time, especially now, when Germany and Europe urgently need more economic growth and employment" (see *Financial Times*, March 12, 1998 & *International Herald Tribune*, March 13, 1998) –, the German government raised more questions about it once the discussions on the proposal started in the EU Council.

negotiations⁵⁵, was just not sufficiently convincing. And even if the Commission had a point that such negotiations would resume in 1999, politically disconnecting agriculture from Transatlantic trade relations and *a fortiori* from the NTM proved to create more problems than it could resolve.

At the April 27 Council of Ministers meeting the consequence of these complaints and objections became clear. France, supported by other member states, rejected the NTM-proposal while the Council – on the demand of those that supported the NTM – asked the Commission to conduct talks with the Americans aiming at “(..) promoting multilateral liberalization, as well as enhanced bilateral cooperation by progressively reducing or eliminating barriers that hinder the flow of goods, services and capital”. In other words, while the NTM was rejected, many of its pieces were approved. In addition – and some say that this was the real objective of Leon Brittan – the Council formally endorsed Brittan’s proposal on the organization of a new round of multilateral trade negotiations in the WTO, the so-called Millenium Round. Both subjects – the Round and Transatlantic trade relations – would be part of the Commission’s mandate for the May 18 EU-US Summit in London. But all these decisions were conditional upon the acceptance by the United States to repeal the Helms-Burton and D’Amato Acts or to waive parts of it.

III.3. The Search for a New Alternative: the TEP

Inside the Commission, the search for an alternative for the defunct NTM almost immediately started. Already after the first contacts with the US it became clear that a new initiative had to be more modest and would probably cover regulatory issues only or almost only. Issues such as the elimination of industrial tariffs by 2010, a free trade area in services, investment, and procurement soon dropped out.

During the days before the May 18 EU-US London Summit a new concept – the Transatlantic Economic Partnership – emerged. With this concept – which, just like the NTM, found its origin inside the European Commission’s US Desk – the Commission tried to engender the political momentum targeted by its NTM-proposal and to promote its substance, while avoiding the kind of objections encountered by the NTM. Hence, the launching of the “Transatlantic Economic Partnership”, a concept that implied further steps on the course of Transatlantic trade liberalization while remaining vague on the formulae through which this would be achieved. As a matter of fact, as far as formulae are concerned, the TEP only phrased – as the White House has indicated – the promise of a new action plan “(..) for achieving concrete results for our industry by 2000”, and the development of “(..) a framework for on-going consultation, cooperation and negotiations to expand our trade relationship in the longer term”⁵⁶.

The objective of all these activities would be to “(..) negotiate the reduction or elimination of existing trade barriers, or improve regulatory cooperation in such areas as manufactured goods; agriculture, including biotechnology; services; industrial tariffs; global electronic commerce; intellectual property rights (IPR); investment; government procurement; and competition. It will also improve the

⁵⁵ As stated in the proposal: “Regarding agriculture a WTO process is already under way in Geneva (Analysis and Information Exchange, A.I.E.) to prepare the resumption of negotiations on agriculture which are scheduled to start at the end of 1999. The negotiations will shape future trade in agriculture. As the WTO Agreement on Agriculture is already fairly comprehensive, covering internal support, subsidisation and market access (including tariffs), and future negotiations can be expected to at least mirror such an approach, a parallel process in an NTM context would not be helpful. Furthermore, it must also be borne in mind that not only are there fundamental structural differences between agriculture in the US and the EU; domestic policies of the two parties are also radically different. Complete free trade would therefore be difficult, if not impossible, to imagine, without a degree of prior harmonisation of our respective policies, which is likely to be unacceptable to either side. This is why agricultural tariffs and subsidies cannot be included in the NTM negotiation”.

⁵⁶ Press Release, May 18, 1998. The White House, Office of the Press Secretary

“efficiency and effectiveness of regulatory procedures (e.g., standards, testing, and certification)”. Note the inclusion of agriculture in this list⁵⁷.

At the May 18 Transatlantic Summit, the idea of a Transatlantic Economic Partnership (TEP) was officially submitted with a Declaration on the Transatlantic Partnership⁵⁸. At that time it was still more an idea than a plan but it clearly distinguished itself from the NTM. It did not contain a proposal for a free trade area for services but only a reference to negotiations “with the aim of substantially improving opportunities for market opening” in this sector and an emphasis on the importance of the planned WTO negotiations in this field (point 9.b. TEP Declaration). It excluded any talks on agricultural tariffs and subsidies but offered clear perspectives on agricultural regulatory issues⁵⁹. As far as industrial tariffs are concerned, the TEP didn’t refer to their elimination against 2010 but to “a broad WTO work program for the reduction of industrial tariffs”⁶⁰.

As far as technical barriers to trade are concerned, the TEP was pretty close to what was proposed in the NTM. Moreover, in the TEP, such barriers would become the centerpiece of Transatlantic negotiations. These would aim at “the elimination or substantial lowering of the remaining barriers” (point 9.a. TEP Declaration) and would concentrate on the extension of the already existing mutual recognition agreement between the US and the EU, especially as far as testing and approval procedures are concerned. In addition, cooperation between the standard-setting and regulatory bodies would be promoted and intensified.

Attached to the TEP-Declaration was a Declaration on Political Cooperation which contained the commitment to enhance the political cooperation established by the NTA of 1995, especially with the aim of promoting international stability and security. This Declaration was not unimportant since it maintained the linkage that had been made quite explicitly in the NTM proposal. This linkage

⁵⁷ The TEP-Declaration referred to agriculture in two ways. First, to the multilateral negotiations due to begin in the WTO in 1999 (Article 20 of the Uruguay Round Agricultural Agreement). Second, to the bilateral agenda on agriculture which would deal with regulatory cooperation. See UK Presidency of the European Union, *Press Release*, May 18, 1998, London, FCO

⁵⁸ This was only possible after the two parties negotiated a deal on the Helms-Burton and D’Amato Acts (*Agence Europe*, n° 7224, May 18-19, 1998: 6-6bis). The agreement – largely based on a U.S. non-paper issued the day before the summit – was adopted as the Understanding with Respect to Disciplines for the Strengthening of Investment Protection. In this Understanding it is determined that the US will grant the EU a waiver under Title IV of the Helms-Burton Act. This means that its company executives cannot be denied access to the United States because of their involvement in investments in properties in Cuba that have been nationalized without compensations for the American owners or the Cuban owners that currently live in the United States (a waiver under Title III already existed, which means that no EU company can be required to pay compensations to the former owners concerned). The waiver – which is valid for six month periods – would be renewed until changes with a similar effect would be made in the Helms-Burton law itself. Indeed, in the Understanding, the U.S. administration promises “(...) to consult Congress with a view to obtaining a Title III waiver provision that would have no specific time limit”. In return, the EU would increase its disciplining of EU investments in expropriated properties in Cuba and would not challenge the Helms-Burton and D’Amato Acts in the WTO. As far as the D’Amato Act is concerned, the U.S. would not punish EU companies that invest in the energy infrastructure in Iran and Libya (which is currently the case with the French oil company Total).

⁵⁹ This happened in the context of an escalating conflict on the GMOs after a rumour was spread that the French government had decided not to approve the import of two strains of genetically modified corn. As the U.S. doesn’t separate its unmodified corn from its GMOs, this would have blocked all U.S. corn imports in the EU. This would have (and indeed initially did) outraged U.S. agricultural interests. The Commission was anxious therefore, to offer the Americans the prospect of Transatlantic talks on the subject. At the end of July it became clear however, that the French government had approved the two strains of corn. The problem of these particular strains was thus resolved, but not the transparency of the approval procedure. Hence the fact that this procedure continued to occupy a prominent place on the agenda of the Transatlantic trade talks.

⁶⁰ As far as the WTO is concerned, the TEP Declaration also referred to Transatlantic cooperation on the WTO accessions. This is notably important for the questions of the Chinese and Russian applications for WTO accession.

perceived good trade relations as part of an overall strategy to intensify the political and security partnership between the two sides of the Atlantic (European Commission, 1998b: point 2.b.).

The Transatlantic Economic Partnership was still largely an idea, a vague commitment, when it was endorsed at the May 18 summit. In the following months, this idea had to be translated into an Action Plan that would guide its concrete realization. But this was no easy task. Almost immediately after the adoption of the Declaration, criticism started to mount on both sides of the Atlantic.

III.3.1. Reactions in the United States

a) Congressional Reactions

Across the Atlantic, the receipt reserved for the TEP-idea was – especially on Capitol Hill – far from enthusiastic. In Congress, a number of reactions were outright negative, all because of agriculture. Both the chairman of the Senate Finance Committee, Sen. William Roth, and the chairman of the Senate Finance Subcommittee on Trade, Chuck Grassley, issued press statements in which they rejected the approach of the TEP.

Roth's statement left no doubts about his feelings on the TEP. As he stated it⁶¹:

“While I am a strong supporter of further trade liberalization with our European trading partners, we have to understand that we cannot expect the support of the American people for further initiatives on trade if we cannot demonstrate how they serve their fundamental interests. (...) I have made clear, as have a number of members of the Finance Committee, which I chair, that any bilateral initiative on trade with the European Union worthy of investment must address the difficult issues that divide us, particularly those of European agricultural tariffs and subsidies. The proposed arrangement would simply defer progress on those issues, while taking up an agenda shaped by European, not U.S. interests”.

In the same vein, Grassley stated⁶²:

“The [TEP] agreement pulls the rug out from under American agriculture. We have an extraordinary number of unresolved agricultural trade issues outstanding with the EU. Now, we have little or no leverage left with which to find a solution. I'm very disappointed that the administration chose to ignore the challenges facing American farmers in its fervor to 'just make a deal, any deal' with the EU. American farmers can compete for any market, any where in the world, but they must have access to a level playing field. Negotiators who work out of Washington, DC, would be smart to realize that agriculture is the shining star in the U.S. trade deficit”⁶³.

These remarks had to be taken seriously, even if their strong language – especially in Grassley's message – had to serve political (and constituency) purposes as well. But given the important role agricultural interests played (and play) in gathering the necessary majorities to give the president new trade negotiating authority (which failed in 1997 and 1998), and given the fact that indeed agriculture is the “shining star” in the quickly rising U.S. trade deficit, both the U.S. administration and the EU

⁶¹ Senate Committee on Finance, Press Release #105-325, May 18, 1998

⁶² Office of Sen. Grassley, Memorandum, May 18, 1998

⁶³ And indeed, it was the shining star in 1997, just like in previous years. There was not only a surplus on the overall U.S. trade balance in this sector of \$21.9bn (against a total deficit of \$181.5bn for goods). The balance for agricultural trade with the EU was also positive (+\$2.3bn). The major EU importers of U.S. agricultural produce were the Netherlands, Germany, United Kingdom, Spain, and Belgium/Luxembourg. The major EU exporters to the U.S. in this sector were Italy, the Netherlands, France, Germany, and Spain.

Commission had an interest in not neglecting the meaning of these messages in particular and congressional criticism on the TEP in general.

b) Reactions from the United States Trade Representative

The USTR's reaction was more cautious as it had been involved in the drafting of the TEP declaration itself. While supporting the substance of the declaration, the USTR perceived the Transatlantic Economic Partnership and the concomitant Action Plan as a way to clarify the NTA, not to radically depart from the building block approach of the NTA. This meant that in no way, the USTR thought that the TEP could mean that the EU and the US would start negotiating a comprehensive trade agreement or anything close to it. Given Congressional emphasis on agriculture, such an approach would have been politically too risky.

At the same time, the USTR – in her July 28, 1998 testimony before the House Ways and Means Subcommittee on Trade – emphasised that the TEP wouldn't hurt the potential of the United States to put pressure on the EU in the WTO agricultural negotiations (due to start in December 1999) and on subsidies (due to start in July 1999). As far as agriculture would be concerned, the TEP would only deal with regulatory issues concerning agricultural trade such as veterinary equivalence and the mutual recognition of sanitary and phytosanitary rules. In response, the House softened its criticism on the TEP somewhat, as it allowed the USTR to start negotiations on the TEP unless she would determine that these “would undermine the ability of the US to achieve a successful result in the upcoming WTO talks on agriculture” (point 7. H. Con. Res. 213 RFS).

This was a clear signal for the Commission that it could count on cooperation from the USTR in further elaborating the TEP by developing an Action Plan. Leon Brittan seemed to be determined not to limit the endeavor to a clarified NTA. For him, a qualitative departure from the NTA towards something close to the NTM was the *minimum minimumum*. But – given the opposition of a number of member states – this was not evident.

III.3.2. Reactions in the European Union

First, there was the ever recurring problem of the Helms-Burton and D'Amato Acts. Second, member states that had rejected the NTM continued to look with certain reservations at the TEP and the way in which the Commission was handling it. But as only a principle decision on the TEP was taken at the London Summit, the focus of most member states went to the Helms-Burton question. This question rose as a consequence of confusion among the EU member states about the precise commitment that Washington had made at the May 18 Summit (*Financial Times*, May 20, 1998). This confusion emerged after U.S. officials made clear that the commitment of the administration to seek a permanent waiver on Title III of the Helms-Burton Act (legal suits against companies that have invested in expropriated assets in Cuba) only meant that it had to see what the sense of Congress on this issue was and whether such an amendment would be feasible. It didn't mean however, that the administration had to seek agreement with Congress on this issue.

The EU member states reacted promptly. During the preparations of the May 29 Council meeting, several member states – among which France, Belgium, Spain, and Portugal – made clear that they would neither support nor approve a mandate for TEP negotiations in case the two laws hadn't been changed in line with the Understanding of May 18 (*Financial Times*, June 2, 1998). The unilateral declaration issued by European Council president Tony Blair and Commission president Jacques Santer, stressed more or less the same. This basically means that the Commission will not be enabled to negotiate on the TEP (which means on the implementation of the TEP Action Plan) with the United States unless Congress has amended the two laws. In this way, the EU expressed – again – its irritation about the extraterritorial effects of the two laws but postponed the effects of this irritation to the

implementation stages of the TEP. Hence, Sir Leon Brittan could pursue his work on the TEP Action Plan.

III.4. The Construction of a TEP Action Plan

There was not much time left. First, an Action Plan had to be drafted and approved. Then, negotiations on this plan had to be started with a clear deadline at the end of 1999. Hence the emerging idea to work on an Action Plan with stages. Thereby, a first group of issues to be dealt with in the course of 1999 would be identified. A second group of issues would be dealt with in negotiations that could take place after December 1999.

The limited time span had another effect as well. Ever more, all efforts started to be concentrated on the issue of regulatory cooperation. Two strategies emerged: the strategy of harmonization of regulations, taking into account that this would be a time-consuming and laborious way of working, and the strategy of mutual recognition. The latter would be used whenever the former would prove to be unfeasible or too time-consuming. The matter was now to identify the issues and sectors on which this endeavor would be undertaken. The U.S. side directly demanded negotiations on the harmonization of the approval process for bio-engineered agricultural products. This request was not surprising given the difficulties that the U.S. faced with its genetically modified corn on the EU market. At the same time, the United States Trade Representative (USTR) published a request for suggestions from industries on the subjects that should be negotiated as part of the TEP⁶⁴. From these reactions, it became clear that besides regulatory cooperation (including on agriculture), demands had been expressed for TEP-talks on intellectual property rights (cf. pharmaceuticals, new digital media and such rights), talks on specific services sectors (intermodal transportation, air auxiliary services, distribution, warehousing, customs, postal, telecommunications, logistics, brokerage, insurance and freight forwarding), and on government procurement (e.g. the EC's Utility Directive and its application in the telecom sector⁶⁵). The U.S. Chamber of Commerce further asked for tariff reductions (up to elimination) in the fifteen sectors that were dealt with in the tariff negotiations of APEC⁶⁶.

The preparation of the Action Plan took place through a range of formal meetings – themselves prepared by informal meetings at lower official levels – that convened in the course of July, August, and September 1998. Some of these were meetings between Barchefsky and Brittan (July 7, September 25, October 19), others were meetings of the Senior Level Group, and the NTA Task force (see following table).

⁶⁴ Published on June 9, 1998.

⁶⁵ The Commission excluded the binding of government procurement negotiations in the WTO to bilateral U.S.-EU negotiations on the issue (cf. TABD, 1996b: 29).

⁶⁶ *Inside U.S. Trade*, Vol. 16, n° 27, July 10, 1998. The negotiations had to be concluded in November 1998 without a clear outcome because of Japanese resistance against tariff concessions in particular sectors. What has been conceded however, will be submitted for tariff negotiations in the WTO (see World Trade Organization, 1999a).

<i>Format</i>	<i>Meetings</i>	<i>Level</i>
U.S. – EU Summit	Semi-Annual	Presidential
Bilateral meetings USTR Charlene Barchefsky – Commissioner Leon Brittan	Regular	Cabinet-level / Ministerial level
Senior Level Group	Regular (six to eight times a year)	Subcabinet level / Ambassadorial level
NTA Task Force	Regular: Through either video conferences or in person	Working-level Officials

In these meetings a number of problems showed up and had to be resolved. Discussions concentrated first on commitments concerning trade in services where the U.S. administration had proposed a standstill agreement and an agreement on the improvement of existing GATS-rules. For the EU this was problematic as it feared that this would violate the provisions of article V GATS (regional trade agreements), which would entail an obligation to extend the granted concessions to all the WTO members. This would confront the EU and the US with a free rider problem⁶⁷. The solution to this – as defended by the American side – would be that a services agreement would have to be large in scope so that it wouldn't violate the "substantially all the sectors" requirement of article V GATS. But that created problems for the EU since some member states – among which France – wanted to exclude a services agreement that would liberalize services trade "across the board", clearly with an eye on the possible inclusion of audiovisual services⁶⁸.

The outcome of the process was twofold. First, the EU and the US agreed to start negotiations with the aim of preparing a joint approach to the WTO negotiations of 2000. One of the subjects in these would be the development of additional disciplines "to strengthen market access" and to work on the guarantee "that services can be supplied in a pro-competitive environment" by *inter alia* the drafting of pro-competitive regulatory principles, as was done in the 1998 WTO agreement on basic telecommunications services.

Second, the question of regulatory cooperation showed up. The first question dealt with the approach to be used. That there would be a focus on the harmonization of standards was clear quite soon. In all cases where that would be difficult, mutual recognition would be looked for⁶⁹. But no time was left – since the Commission was looking for a Council mandate by September 1998 – to determine the sectors for which such agreements would be looked for. As a consequence, the conclusion of the Action Plan mainly pointed at the identification of the sectors that had to be included in such negotiations. It didn't determine which sectors would be included⁷⁰. After this identification – which

⁶⁷ Concerns in this sense were not only expressed by the European Commission but also by France.

⁶⁸ Cf. the French fear for a "negative list formula" in the services negotiations that have to start in 2000 in the WTO. This formula has been agreed upon by the Quad members in the course of 1998.

⁶⁹ This approach is not new for the Transatlantic trade relations. In May 1998 the US and the EU signed their first MRA agreement on testing. It covers a wide range of sectors such as pharmaceuticals, medical devices (with some exceptions), recreational craft, telecommunications equipment, and products that must be inspected electromagnetic compatibility and electrical safety. The agreement basically provides for one testing procedure that will be recognized (certified) when products are imported in the market of the other party to the agreement. In December 1998, right before the December 18 Summit, the U.S. proposed to extend the coverage of the MRA to six new areas in three sectors: road and marine safety equipment, and calibration devices. See *Inside U.S. Trade*, Vol. 16, n° 49, December 11, 1998. The EU didn't want to agree with this extension immediately.

⁷⁰ Although it was clear that each of the parties had particular sectors in mind. The U.S. the audiovisual services, the EU the mutual recognition of professional standards. As far as the EU was concerned, the MRA approach to services would have as an additional benefit that it would not fall under the MFN obligations and that it would, therefore, avoid the free rider problem. The fact that the EU didn't want to include audiovisual services was quite obvious, certainly after the EU had insisted (and convinced) that Latvia could not include commitments on this sector in its WTO accession negotiations with the U.S. and other WTO members. This in the perspective of a future EU membership of this country.

would last until January 1999 – substantial negotiations aiming at the principles of cooperation in this field would start. During that stage the U.S. and the EU would compare their regulatory regimes. After that negotiations on testing and certification would start, and – according to the planning – be terminated by the end of 1999. After that date, talks on newly identified sectors could be started.

In this way of working, an integrated approach can be discerned. Thereby, all sectors that are included in the MRA-talks would become part of one general agreement. In this agreement, general principles and rules for all the sectors concerned would be defined, including a dispute settlement system. In additional annexes to this agreement, concessions for the specific sectors – either based on a positive or on a negative list – would be exchanged⁷¹. This approach would maintain consistency and transparency, and would reconcile consistency with an open-ended dynamic process through which new sectors could be added without forcing the parties to start the whole process all over again. In the case of regulatory cooperation, this is not unimportant. With fast technological developments – e.g. electronic commerce – new rules are needed all the time and old ones quickly become redundant. This implies that cooperation between the two sides of the Atlantic has to be permanent and continuous in order to be effective. And this concern was clearly reflected in the approach that came out of the Summer 1998 deliberations between the European Commission and the U.S. Administration.

A second problem with regulatory cooperation was its place in the Transatlantic Economic Partnership, compared with other issues. Whereas the EU emphasized the central importance of this kind of cooperation within the TEP, the U.S. – while not denying this – preferred to focus more on the liberalization of services. One of the reasons for this was the U.S. concern that MRA negotiations would be difficult because self-regulating agencies (such as the FDA, the FAA, and the FCC) and state-level authorities had to be involved, the latter especially on the subjects in which the EU was interested: professional standards for engineers and architects. But the conclusion (reached Mid-October 1998) was that indeed MRAs would occupy a central place in the services negotiations⁷². For the remainder, the outcome of these discussions was relatively vague. No mention was made neither of a standstill agreement, nor of focussed negotiations on the removal of existing barriers (except of course the above mentioned MRA negotiations). Rather, Transatlantic cooperation would focus on the discussion of any policy proposals “that could have an adverse effect on conditions for service providers”. In the course of 1999, talks on services negotiations would be continued, first with a focus on engineering.

Besides services and regulatory cooperation, a third problem that emerged in the preparation of the TEP concerned the approach towards government procurement. There, the U.S. Administration preferred the multilateral approach, through the GPA⁷³. A reason for that was the U.S. expectation that such an approach would largely concentrate on procedural issues (such as bidding procedures and electronic tendering) and would leave sensitive issues such as “buy America”, military procurement and exemptions for SMEs relatively untouched (cf. TABD, 1996b: 30). In addition, an important request by the EU to extend the rules to the state-level and to local authorities, was clearly unfeasible within the GPA-framework⁷⁴. After laborious negotiations during October and November 1998, a compromise was reached in which the two sides agreed “to explore possibilities for the balanced expansion of market access opportunities for U.S. and EU companies in U.S. and EU procurement markets”. No mention was made of “buy America” on the explicit demand of the U.S. side.

⁷¹ This is clearly the format of the 1998 Mutual Recognition Agreement where the agreement consists of two parts: a framework, and sectoral annexes.

⁷² *Inside U.S. Trade*, Vol. 16, n° 42, October 23, 1998

⁷³ Government Procurement Agreement, an agreement that was part of the Uruguay Round but that was only plurilateral in nature. The extension of the coverage of the GPA was planned for 1999, as part of the 1994 agreement in the Uruguay Round.

⁷⁴ A typical example of the problems faced here by the US is the Massachusetts Burma Act, which has been challenged by both the U.S. Administration (for being unconstitutional) and by the EU (for violating the U.S. commitments in the WTO) (see European Commission, 1998d: 29).

The fourth problem concerned the patent system mentioned above, namely the question of “first-to-invent” (applied by the U.S.) or “first-to-file”⁷⁵. While the EU continued to insist on the inclusion of this matter in the TEP, the U.S. rejected this⁷⁶. Even EU questions “to explore the consequence of the two systems” were not acceptable.

The fifth problem consisted of cooperation inside the WTO on an “across the board” reduction and harmonization of industrial tariffs. While the EU defended this approach, the U.S. expressed concerns about the free rider problem due to MFN.

The sixth problem consisted of the place of investment rules inside the WTO, an approach defended by the EU. The U.S. showed more reservations in this field, partly because of rising domestic opposition against such rules in the WTO, but mainly because the U.S. doesn’t expect that any serious agreement on this issue would be feasible in the WTO⁷⁷. Instead, the U.S. wanted to reinvigorate the MAI-negotiations instead of declaring them dead, like the EU wanted to do. For the EU, a matter that plays a role is the fact that the French government played an important role in the collapse of the MAI-negotiations and that the EU doesn’t have the exclusive competencies in this field⁷⁸. The MAI is, therefore, a “dead end” for the EU and the only way out of it is an investment deal in the WTO. This would allow the negotiations to restart “from scratch”, would avoid negotiations exclusively concentrated on a confrontation between the EU and the U.S., and would provide the developing countries the opportunity to participate in them. But the U.S. government didn’t support this approach and insisted on a resumption of the MAI-talks in Paris. This divergence of opinion between the two sides of the Atlantic was clearly not only a matter of difference of opinion between governments but between companies. This became clear at the TABD meeting of November 1998 in Charlotte, NC.

The seventh problem was the issue of regulatory cooperation in the field of agriculture, more specifically veterinary equivalency and biotechnology. The outcome here was a deal to establish an “early warning system” to avoid acrimonious disputes in the food safety, plant and animal health areas. Specific steps would be undertaken to promote administrative cooperation in this field. In addition, an “overarching group” would be created. Its function would consist of the monitoring of discussions on technical issues in the field of biotechnology with the purpose of taking “into account their potential trade effects with the objective of reducing unnecessary barriers to trade”.

In the meantime, it seemed that USTR Barchefsky succeeded to convince the House of Representatives that the TEP would in no way weaken the United States in agricultural tariff and subsidy negotiations with the EU. On July 28 she testified in that sense before the House Subcommittee on Trade. The day after this testimony, House Ways and Means Chairman Bill Archer (R-TX) changed a proposed resolution for a non binding sense of Congress – H. Con. Res. 213 – from a clear criticism on the EU’s market access policies for agriculture into a resolution that referred to barriers in agricultural trade in general and their negative effect on U.S. farm exports in particular⁷⁹. In

⁷⁵ The EU defends the “first-to-file” system because it avoids claims that the first inventor was somebody else than the one that first filed the invention.

⁷⁶ As the U.S. Administration already indicated in 1996: “(..) there is currently no consensus in the United States, including in the U.S. Business community, to go forward with patent harmonization negotiations largely because they would require the United States to change to a first-to-file system for issuing patents and to make other changes that are not supported by U.S. industry” (TABD, 1996c: 64).

⁷⁷ This opposition manifested itself quite strongly against the MAI negotiations in the OECD.

⁷⁸ The MAI-negotiations were declared “dead” after a six months suspension of the talks in April 1998. The “declaration” itself was issued by the French prime minister, Lionel Jospin on October 14, 1998 in the Assemblée nationale, the French lower house of parliament (cf. Assemblée nationale, 1998: 22).

⁷⁹ In the original proposal (H.Con.Res. 213IH) the focus was explicitly on the EU as was indicated by its 4 provision “Resolved by the House of Representatives (the Senate concurring), that it is the sense of Congress that (1) the European Union unfairly restricts the importation of United States agricultural products; (2) the restrictions imposed on United States agricultural exports to the European Union are the most vexing problems facing the United States exporters in Europe; (3) the elimination of restrictions imposed on United States agricultural exports should be a top priority of any current or future trade negotiations between the United States

addition however, the resolution also urged the USTR not to start the TEP-negotiations with the EU if she would determine that these would “undermine the ability of the U.S. to achieve a successful result in the upcoming WTO talks on agriculture” (point 7, H. Con. Res. 213RFS).

The agreements on the different issues opened the door for the formal adoption of the TEP Action Plan at the U.S.-EU Summit of December 18, 1998. It was maybe a pity that this happened in the shadow of the impeachment proceedings in the U.S. House, as the summit took place one day before the vote on this issue, and the day after bombings on Iraq had started. For that reason, the issue of trade was almost absent from the summit and the discussions concentrated largely on security questions. But the Action Plan was formally adopted and this provided the basis for its implementation from 1999 on.

As has been indicated above, the action plan not only provides for a range of commitments on negotiations on particular issues but also a time frame, at least for some of its topics. It equally provides for such negotiations with the purpose of concluding bilateral agreements and in addition with the purpose of influencing, even reinforcing, the process of multilateral liberalization in the WTO.

IV. Conclusions

IV.1. The Wider Implications of the Transatlantic Relationship

The discussions on the Transatlantic relations and particularly on the Transatlantic Economic Partnership have showed that conflict and cooperation are an integral part of the Transatlantic relations and that this has a consequence on the operation of the WTO as well.

As the two largest trading blocks in a multilateral trading system in which none can dominate on its own and where – partly as a consequence of the accession of developing countries – the EU and the U.S. find themselves increasingly on the same side of major issues, cooperation is a rational option⁸⁰. The U.S. and the EU clearly realize this as they endeavor to deepen their cooperation on issues that are

and the European Union; and (4) the United States Trade Representative should not engage in any trade negotiations with the European Union that undermines the ability of the United States to achieve the elimination of unfair restrictions imposed upon United States agricultural exports to the European Union”. In the resolution as reported to the Senate – adopted by the House (on August 4, 1998) by 420 votes against 4 (Roll Call #380) – the provisions had been changed as follows (see H. Con. Res. 213RFS): “Resolved by the House of Representatives (the Senate concurring), that it is the sense of Congress that (1) many nations, including the European Union, unfairly restrict the importation of United States agricultural products; (2) the restrictions imposed on United States agricultural exports are the most vexing problems facing United States exporters; (3) the elimination of restrictions imposed on United States agricultural exports should be a top priority of any current or future trade negotiation; and (4) the President should develop a trade agenda which actively addresses agricultural trade barriers in multilateral and bilateral trade negotiations and steadfastly pursues full compliance with dispute settlement decisions of the World Trade Organization; (5) in such negotiations, the United States should seek to obtain competitive opportunities for United States exports of agricultural products in foreign markets substantially equivalent to the competitive opportunities afforded to foreign exports in United States markets, and to achieve fairer and more open conditions of trade; (6) because of the significance of issues concerning agricultural trade with the European Union, the United States Trade Representative should not engage in any trade negotiation with the European Union if the Trade Representative determines that such negotiations would undermine the ability of the United States to achieve a successful result in the World Trade Organization’s negotiations on agriculture, set to begin in December 1999; and (7) the President should consult with the Congress in a meaningful and timely manner concerning trade negotiations in agriculture”.

⁸⁰ As USTR Barchefsky has put it recently (USTR, 1999a): “(..) it is the U.S. relationship with Europe that provides the cornerstone for a liberal trading regime”.

—dealt with in the WTO and its concomitant negotiating process or that are expected to be dealt with in the WTO in the future (e.g. investments).

Equally, the cooperation in the Transatlantic Marketplace has never been remote from wider questions of political relationships and security. This has been emphasized by many European and American politicians and was quite obvious in the Commission's March 1998 proposal for a Transatlantic Marketplace. As the Commission emphasized (Commission, 1998b):

“The proposal [the Transatlantic Marketplace] is more than a trade policy initiative. It is also an important initiative for the EU's broader policy towards the United States, and should be considered in that light. Since the end of the Cold War we have taken a number of steps to restructure and refocus the EU's links with the US, which remains our most important and complex external relationship, and to reinforce US support for European stability. (..) [The Transatlantic Marketplace] is designed to use an economic instrument to give a much broader impetus to the overall political relationship; to produce important economic benefits; and to provide a new mechanism and stronger incentives to prevent and resolve disputes between us”.

Questions such as the crisis in Kosovo have re-emphasized the importance of this relationship. Typical in this respect was the answer given by the Department of State's spokesman, James Rubin, to a question related to the U.S.' interest in Kosovo. Rubin's answer clearly pointed at the way in which this interest was clear and present but at the same time dependent on the commitment of the Europeans in this particular question. The significance of his answer was wider than just Kosovo. It basically pointed at the Transatlantic security relationship that has emerged after the end of the Cold War and its implicit division of labor between the U.S. and the West-European countries as far as European security is concerned. Rubin – talking about the U.S. interest in Kosovo – has put it in the following way⁸¹:

“We believe that we do have an interest; but not so big that we'll do all the work or we'll take the overwhelming risk. What we've done here is arrange for the Europeans to bear the brunt of the military responsibilities as well as the brunt of the financial responsibilities if there is an agreement”.

IV.2. The Coexistence of Cooperation and Conflict

IV.2.1. The Kind of Conflicts

Despite the interests in a deepened relationship both for economic, political, and security reasons, besides cooperation, conflicts continue to arise between the two sides of the Atlantic. Some of these conflicts have been bitter, i.e. the Helms-Burton, agricultural subsidies, and the banana case. Many have even posed a danger for the operation and credibility of the WTO (the bananas are a case in mind, just like Helms-Burton is). And it was this danger that played a role in appeasing the conflict, that stimulated creativity in finding a way out, and that intensified attempts to avoid similar conflicts on other issues⁸².

By looking at the recent trade conflicts between the United States and the European Union, a distinction between different categories of trade conflicts can be made. Some of them are idiosyncratic in nature, others are related to more structural features of the Transatlantic trade relationship. If these two features are considered as the two extremes of a continuum, the following three categories can be

⁸¹ Interview of State Department Spokesman James Rubin on Fox Morning News, February 22, 1999. Distributed by the State Dept. Listserv.

⁸² Cf. a remark made by a U.S. official on the beef hormone dispute between the U.S. and the EU that “both sides want to foster a dialogue on this issue in order to avoid a contentious fight in the WTO such as on the ongoing dispute over bananas” (*Inside U.S. Trade*, Vol. 17, n° 7, February 19, 1999).

discerned: idiosyncratic conflicts, conflicts rooted in a strong and structural domestic base, and conflicts due to the features of Transatlantic trade.

In the first category, one can find conflicts that are due to a whole range of domestic policies but that are transient. It concerns particular policy decisions that come and go with particular majorities or administrations and that go as easily as they have come. The Helms-Burton case is a case in mind. It is rooted in a particular U.S. policy and in particular ideas about the extent to which the U.S. can oblige its trade partners to abide by the rules created by its own domestic sensitivity on this issue. Nothing tells us, however that the laws concerned will stay there when another administration would be in office or another congressional majority.

In the second category, it still concerns conflicts that directly relate to the domestic dynamics of trade policy making but that are rooted in a more structural domestic setting. They won't go with a particular government or parliamentary majority. Examples are here the question of trade in agriculture, in steel, in textiles, and in audiovisual services. The difference between the first category and this one is twofold.

First, the policies concerned are less transient because they engender a high level of political mobilization. For that reason, the political price of changing course is – even for a new administration or for a new majority – more politically risky.

Second, the base for mobilization in the domestic realm is structural. It doesn't consist of a coincidental coalition or interest. Rather it concerns social groups or actors that are seriously and structurally affected by the policies and that are quite well organized therefore. For them it consists of a matter of (economic) life and death, as it consists for their political representatives.

In the third category, the conflicts are directly related to the kind of trade relations between the U.S. and the EU. They are not necessarily related to particular domestic policies or groups but to the extent of trade and economic integration between the two sides of the Atlantic. They basically reflect the depth of this integration and wouldn't exist in case there wasn't such deep integration. They are – to a certain extent – a reflection of the existence of a Transatlantic marketplace in which trade and investment have come to play such an important role. They equally reflect the fact – so prominent in the Transatlantic trade relationship, as in the Transpacific relationship (i.e. between Japan and the U.S.) – that deeper cooperation enhances the probability of conflicts while simultaneously providing for instruments to contain and to prevent conflict escalation, and to resolve them. As Deputy USTR Lang has put it (House Ways and Means, 1997: 27):

“No international economic relationship as vast and intricate as that binding the United States and Europe could operate without problems. The very dynamism which propels this machinery inevitably results in a certain amount of friction, especially as the pace of innovation and adaptation in the business world continues to accelerate”.

For all the three categories however, a multiplier effect is at work. Because of the size of the U.S. and the EU as trading blocks and of their mutual trade relations, Transatlantic trade conflicts have serious consequences for the WTO, at least if they cover issues that fall within the scope of the WTO rules, are dealt with in WTO negotiations or are supposed to be dealt with in WTO negotiations soon.

IV.2.2. Structural Roots of Transatlantic Conflicts

It can be expected that the future of Transatlantic relations will be haunted by the second and third categories of conflict. This doesn't mean that the first group won't play a role, but it means that for this group the occurrence, resolution, and disappearance of conflicts is relatively unpredictable as they depend on idiosyncratic factors.

In the case of the second and the third categories, the situation is different. They are more deeply rooted in respectively factors of domestic mobilization (for the second category), and factors endemic to the depth of Transatlantic market integration.

For the second category, the domestic-structural one, the continuous existence of the conflicts concerned will depend on the extent to which particular national policies will be changed. Far and foremost, this is the case for agriculture. As long as the EU's Common Agricultural Policy remains as it is today, major Transatlantic conflicts on this issue will erupt, either in the WTO, or in other international forums. The same is true for the risks that regional trade agreements concluded by either the United States or the EU bring with them for the Transatlantic relationship. The banana question is a reflection of this as it basically refers to the problems between multilateral rules and the philosophy of preferential trade relations.

For the third category, the endemic one, the continuous existence of conflicts can be expected. But that doesn't need to be a dramatic conclusion. This basically reflects the health and magnitude of the relationship. Most – if not all – of these conflicts are related to regulatory issues. These are typically issues that show up when all other barriers to trade – cross-the-border-barriers – have been removed. The remaining “behind-the-border” barriers inevitably lead to conflicts since they are much deeper rooted in the political and social systems in which they have been created. In addition, many of these so-called barriers act as barriers not because they were intended to do so but because their effect on trade has been a latent consequence. Their intended consequences are mostly related to issues such as health, security, social welfare, the environment, and consumer protection. These are typically objectives that have traditionally been considered to be domestic and that have been shaped by domestic concerns without any explicit attention for their consequences on trade.

The problem with these measures is twofold. First, making the distinction between intended and unintended effects on trade is not easy. Measures that seem to be intended for non-economic purposes such as consumer, health or environmental protection can be intended to provide a barrier to trade as well. Measures that seem to be intended to impede trade can however, be rooted in domestic concerns unrelated to trade. That is a general problem for all non-tariff barriers to trade, especially the technical ones (the so-called TBTs), and especially for the kind of regulatory barriers that have been so prominent in recent Transatlantic trade conflicts. And the problem is compounded by the scientific foundation (or alleged scientific foundation) of these barriers as the hormones dispute has shown⁸³. Indeed, if one looks at these conflicts, the presence of such issues has been prominent. The following table provides an indication of the Transatlantic trade conflicts that emerged during the period between the adoption of the New Transatlantic Agenda (December 1995) and the adoption of the TEP Action Plan (December 1998). In this table, a distinction has been made between problems of the first (idiosyncratic), the second (domestic-structural), and the third category (endemic).

⁸³ Questions that aroused here concerned the question of the risk assessment (what kind of evidence is legitimate to underpin regulations that act as barriers to trade), the question of the risk itself (what is a risk and how serious has the risk to be in order to be legitimate as a basis for a *de facto* trade barrier), the question of proportionality (is banning a product better than regulating its substance, a question that is related to the problem of import control), and the kind of proof that is necessary to show that a regulatory regime is a “disguised restriction on international trade” (World Trade Organization Appellate Body, 1998).

<i>Conflict</i>	<i>Type</i>
Helms-Burton Act	I
D'Amato Act (S.1228, 104th Congress)	I
MRA: standard certification or just testing	III
Consequences of the 1995 EU enlargement (agricultural concessions)	II, III
Sectoral coverage of ITA ⁸⁴	II, III
Tariff reclassification of Local Area Network equipment (LAN)	II
MRA: Role of FDA in testing and certification of medical equipment and pharmaceuticals	III
EU Data Privacy Directive	III
EU Subsidies on Barley	II
China's WTO accession as a developing country	II
MRA: Transitional period for medical devices	III
MRA: Confidence-Building period for Pharmaceuticals ⁸⁵	III
ITA: Staging of tariff cuts	II
MAI: Exceptions for regional economic integration organizations	II
Allocation of rice-tariff quotas	II
EU subsidies for canned fruit	II
European approval processes for biotechnological products	III
Veterinary equivalency agreement: Poultry and poultry products	III
EU Certification of wine exports	II
EU ecolabelling rules	III
Growth hormones in beef	III
EU banana regime	II
Boeing – Mc Donnell Douglas Merger	II
Animal protection: leghold traps case	III
Wine: use of generic geographical designations	II
Fish and Fish products: exclusion from the NTM	II
Foreign ownership levels in satellite-based telecommunications services companies	III
"First to file" versus "first to invent" in patent systems	III
EU imports of products that could carry BSE	II
Concrete negotiations on competition disciplines in Millennium Round ⁸⁶	III
EU's Utility Directive: discrimination against non EU companies that sell telecommunications equipment (procurement)	III
Audiovisual commitments by Latvia (as part of its WTO accession)	II
American foreign sales tax provisions, as challenged by the EU	III
EU mandatory standard for third generation of digital wireless services and equipment (3G)	III
Strategy on Investment: WTO or OECD?	III
U.S. Trademark bill	I
Wine-making practices	III
UN Convention on Biological Diversity, Biosafety Protocol	III

The endemic problems have been prominent and have therefore, caught the attention of the designers of the different proposals for a deepening of the Transatlantic partnership and of the Transatlantic Business Dialogue (1997; 1998). This is not surprising as many of the regulations that have been put into question are rooted in quite different political, social, and economic traditions. Sometimes, the

⁸⁴ Among which inter alia the inclusion of fiber optic cables.

⁸⁵ Including the conditions for the reinspection of European drugs by the FDA (the EU's required an automatic recognition of European drug inspections, while the FDA wanted to keep the right for reinspection, cf. TABD, 1996c).

⁸⁶ Defended by the EU.

traditions concerned are continental in scope (federal in the case of the U.S., the EU-level in the case of the EU). Sometimes they are national (in the EU) or subnational (in the U.S.) in nature. Sometimes they deal with the role of particular societal values and principles, sometimes with the role of particular institutions that enjoy public trust⁸⁷.

The United States and the European Union may have quite similar political-economic approaches in general, a “confluence of interest” as USTR Barchefsky (USTR, 1999a, see also House Ways and Means, 1998) recently called it – both clearly support a market-based economy – this similarity is only real at a high level of aggregation. As soon as one digs deeper into lower levels of political-economic aggregation – such as the relations economy-society, the relation state-economy, and the relation state-society – differences between the U.S. and the EU, and among EU member states start to show up. As long as the removal of trade barriers is limited to cross-the-border barriers, the relevance of these differences is relatively limited as both the U.S. and the EU share the conviction that free trade – or at least trade liberalization up to a certain level – is beneficial for the general welfare in general, and for their welfare in particular. As soon as the barriers refer to “behind-the-border” issues, the differences in domestic political-economic approaches becomes relevant. Elsewhere (Kerremans, 1998: 74), I have called this the “fallacy of commonality”, a phenomenon of relevance for Transatlantic relations that has been recognized by many practitioners and scholars (cf. Vogel, 1997). According to one of these (Ives, 1997: 27), this is especially the case in issues related to the mutual recognition agreements. As he has stated it:

“(..) the differences when diving into something like MRAs tend to emerge much more readily than the similarities. (...) the differences seem to stand out more than our wish to cooperate and find common ground”.

In coming to this conclusion, another one becomes implicit. The depth of Transatlantic trade relations and the kind of demands that it engenders, is evidence of the fact that the Transatlantic marketplace is not just a concept for international trade but a concept that points at the fact that Transatlantic trade can be situated somewhere between traditional international trade and trade within an integrated market. It is not an internal market, as there still are a number of non-tariff barriers to trade. It is not even supposed to be an internal market as there is no preparedness to tie decision-making on non-tariff and tariff barriers together to the extent that it is necessary to sustain such a market.

Transatlantic relations – even in the trade field – go deeper however, than the traditional concept of international trade. It is featured by extensive mutual investment and by a large extent of business and trade integration beyond the level of removed cross-border barriers. This puts a burden on Transatlantic relations as far as institutions and policy-making are concerned. As far as the latter is concerned, it leads to a larger vulnerability and therefore sensitivity to the domestic policies of “the other”. In a market integrated to that extent, domestic policy-decisions of many kind are not exclusively “domestic” in nature as they directly affect the other side of the Atlantic. Many issues that traditionally belong to the domestic realm have acquired therefore a Transatlantic relevance and engender therefore a Transatlantic conflict potential, just like policy decisions engender conflicts and political mobilization domestically. In this sense the remark from Timothy Hauser⁸⁸ in his July 23, 1997 testimony before the U.S. House Ways and Means Subcommittee on Trade that “regulatory differences remain the most significant barriers to transatlantic trade” gets a new meaning (House Ways and Means, 1997: 47). They are indeed barriers and they have an increasing political

⁸⁷ In the case of the U.S., for example, there is the resistance of some regulatory agencies against any loss of autonomy due to international agreements. Opposition of the Food and Drug Administration, the Environmental Protection Agency, and the Occupational Safety and Health Administration to parts of the 1997 MRA are cases in mind. But on the European side, similar problems exist. An example of this is the role of the European Telecommunications Standards Institute (ETSI) that recently sparked a new Transatlantic conflict with its proposal to set one European standard for wireless services (3G) in Europe and which has chosen a standard that is mainly used by European telecom companies (W-CDMA) and that is incompatible with a standard that is used by most American telecom companies (cdma2000).

⁸⁸ U.S. Commerce Undersecretary for International Trade

significance both Transatlantically and domestically⁸⁹. It seems that political leaders realize this increasingly as they have been expanding the dialogue between societal actors of the two sides beyond business. In the course of the development of the TEP Action Plan, both the European Commission and the Office of the United States Trade Representative have made clear that they wished to create a Transatlantic Consumer Dialogue, a Transatlantic Environmental Dialogue, and a Transatlantic Labor Dialogue. As Assistant USTR for Europe Cathy Novelli phrased it at the TABD meeting of November 1998 in Charlotte (NC): "It is necessary to have a trade policy that includes all civil society views"⁹⁰.

As far as the institutional consequences of this evolution is concerned, taking into account the Transatlantic consequences of domestic policies requires a permanent dialogue in the real sense of the word. It needs to be permanent and that requires – to a certain extent – its institutionalization. This is probably the most obvious in the area of standardization where rapid technological developments require new standards, new rules and the adaptation of old ones. International trade agreements – as agreements at one fixed moment in time – just don't suffice for that. What is required here is the creation of institutions that enable quick and joint responses to these developments. The "Overarching Group for Biotechnology" that will be created as part of the TEP Action Plan will just be the first one in a necessarily expanding list of bodies that can bring together regulators from the two sides of the Atlantic. But the task won't be easy as many issues – because they are regulatory in nature – touch upon non-trade social sensitivities and rule-setting traditions.

In the case of the latter, a point of conflict between the United States and the European Union is the extent to which governments need to be involved in the process of standard-setting. In the U.S. there is a clear and old tradition of private sector standardization, in most EU member states it is a government driven process. Quite recently, this difference has proved to be relevant in the case of the biotechnology dispute between the U.S. and the EU, and even more on the question of privacy protection in electronic data transactions⁹¹. And the problem is quite complicated because it goes much deeper than dealing with jurisdictions. It is a matter of public trust and confidence. In the U.S. the public in general accepts – even thinks that it is normal – that the private sector sets its own standards as long as they respect certain levels of consumer, health and safety protection and provide for a credible enforcement. In the European Union, this is not the case. There, people associate credibility much more with government involvement in setting the standards and enforcing them. Bridging this difference is not an easy task, especially not if Transatlantic (or international) harmonization becomes the objective.

IV.2.3. The Case for Cooperation

Conflicts are inherent to cooperation. This is certainly the case for the Transatlantic trade relations. There is no reason for panic on this front. The only question concerns the intensity of the conflicts than can be reconciled with the maintenance of cooperation. There are two reasons why this question has to be answered carefully in the case of Transatlantic relations and both have a multiplication effect.

⁸⁹ As Hauser has indicated (House Ways and Means, 1997: 42) the costs engendered by such regulatory barriers are not just born by large companies but also – even disproportionately – by small and medium companies (which is by the way recognized in the preamble of the 1997 MRA between the US and the EU, see International Trade Administration, 1997: 2). As a matter of fact, for many of these companies regulatory cooperation – i.e. through mutual recognition – is a matter of access or no access. On the question of testing for instance, many SMEs just cannot afford to do the testing and are unable to bear the cost of outsourcing such tests to international labs. With mutual recognition, the cost of testing decreases (since overseas testing disappears) and becomes affordable. It is normal that these companies have achieved a strong voice in the TABD through the Transatlantic Small Business Initiative (TASBI).

⁹⁰ *Inside U.S. Trade*, Vol. 16, n° 50. December 18, 1998

⁹¹ Directive 95/46/EC

First, there is the weight of the two territories – the name is used because the EU cannot be considered as a state – in the World Trade Organization and the market power that this entails. Their conflicts – as far as they are related to WTO issues – set more than others precedents and determine more than others the extent to which the WTO members will be able to reach a consensus on issues. As Transatlantic conflicts have large multilateral ramifications, their conflict potential becomes larger as there is much more at stake.

Second, there is the prevalence of behind the border issues in Transatlantic relations which more clearly links domestic politics, and therefore domestic mobilization and questions of trade policy legitimacy to the Transatlantic relations. Such mobilization can easily lead to the emergence of conflicts. Conversely, conflicts can also trigger such mobilization more easily, which basically complicates cooperation further as it makes it more difficult for decision-makers to turn from a conflictual dynamic to a cooperative one.

The conclusion is therefore that while conflicts in Transatlantic trade relations are not by definition negative – they can even be healthy – they have to be contained in order to avoid that they would hinder or even jeopardize cooperation. In the recent banana regime case, this border line has clearly been crossed and has created the risk that this particular conflict would spillover to other Transatlantic trade issues because of the climate of bitterness that it created. Conflict containment is therefore an advice for Transatlantic policy-makers, rather than conflict avoidance. In order to do so a larger involvement of social actors – also beyond business – is advisable. Second, it is equally important to provide for early warning systems – as has been provided by the Transatlantic Economic Partnership Action Plan – and for conflict prevention systems. In doing this, Transatlantic trade relations will be able to find a healthy combination of civilized conflicts and constructive cooperation.

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