

**Multilateralism and Regionalism: Complementary or
Contradictory?**

The Case of the Transatlantic Trade Relations

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Paper Presented at the XVIIth World Conference of the International Political Science
Association (IPSA), Panel on Regionalism and Multilateralism (MT 5.9)
Seoul, South-Korea, August 17-21, 1997

Multilateralism and Regionalism: Complementary or Contradictory?

The Case of the Transatlantic Trade Relations

Bart Kerremans¹

1. Introduction

Since the end of the Uruguay Round, the world trading system has experienced the emergence of a large group of regional blocs. Ranging from the NAFTA and the Mercosur to the APEC and the enlargements of the EU, regional blocs seems to become factors that have to be taken seriously in the future trading system. The abundance of literature indicates that this is widely recognized by scholars in international political economy and international economy. Far from leading to a consensus on the effects of regionalism on the multilateral trading system, the scientific debate reveals the controversies in assessing these effects.

The purpose of this paper is not to provide or even to attempt to provide *the* answer to that question. Its objective is rather to look into a concrete case to see to what extent the relation between regional bloc formation and multilateralism can affect the multilateral trading system and the bilateral relations between trading blocs. For that purpose, the paper aims at providing an analysis of the way in which the relations between the two largest trading blocs in the World Trade Organization affects the multilateral character of the WTO-system and is affected by it. Rather than indicating whether regionalism contradicts multilateralism, the paper aims at analyzing the interplay between the two by looking at a concrete case: the Transatlantic trade relations. In these relations, one regional trading bloc (the European Union) develops relations with a country that in itself forms the center (if not the regional hegemon) of another (admittedly weaker) regional trading bloc, i.e. NAFTA. The paper will go deeper into the question of the extent to which the preservation of multilateralism requires a prudent approach towards the possible development of a Transatlantic regionalism. It tries to assess the importance of this multilateral factor by comparing it with the relative influence of other (bilateral and domestic) factors.

2. The Question of Bilateralism and Multilateralism in EU-US Relations

The context of the US-EU economic relations abounds of declarations on improving transatlantic relations. The adoption of the Transatlantic Agenda in Madrid in December 1995 is generally seen as an important step, if not qualitative leap in the economic relations between the US and the European Union. After a period of increasing trade conflicts and acrimonious discussions on agriculture in the GATT Uruguay Round, a new

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era in EU-US relations seemed to start. The goal of these improved relations would not be the establishment of a Transatlantic Free Trade Area or Agreement but rather the gradual creation of a Transatlantic Marketplace. Such an approach is reminiscent of the approach for the European Economic Area between the EC and the EFTA-member states before 1989.

A number of questions could be raised however, on these ambitious plans. The first question concerns the real significance of the Transatlantic Marketplace (or TAM) compared with the current situation of the Transatlantic economic relations. Secondly, the consequences of the Transatlantic Marketplace for the WTO can be questioned. To what extent will the TAM create an added value for the WTO and to what extent can it jeopardize the multilateral principles of the WTO. Last, but not least, questions can be raised about the limits of the Transatlantic Marketplace. Is it going to contribute to a qualitative improvement in the Transatlantic trade relations or is it just an overstated political project that has to disguise the modest performances in ongoing Transatlantic trade negotiations?

Behind these three questions, one question lingers. It concerns the question on the role of multilateralism and bilateralism in EU-US trade relations. Because the US and the EU are the two major trade partners in the WTO, this question is relevant, not only for the relations between them, but also for the operation of the WTO as a whole. This question will be answered by looking at the state of the current relations between the United States and the European Union as seen from the perspective of trade relations. Then, the problems with the Transatlantic Agenda will be analyzed. Different possible roads of cooperation will be assessed. Does this agenda lead to exclusive bilateralism between both sides of the Atlantic, to a limited bilateralism in which there is room for bilateralism and multilateralism. And if this would be the case, does the Agenda provide the basis for co-leadership in the WTO?

3. The Current State of the EU-US Trade Relations

3.1. Trade and Investment between the EU and the US

Much has been written and said about the trade relations between the United States and the European Union. In almost every publication on this issue one can read about the impressive amount of trade between the two sides of the Atlantic and about the huge amount of mutual foreign investment. Especially the last one is emphasized to indicate that there exists a large constituency in both the US and the EU that has an interest in smooth Transatlantic relations, in the removal of whatever barrier to trade and investment, in the absence of trade conflicts, in the maintenance or building of a mutual consensus on multilateral trade policies and in the creation or development of a marketplace that spans the Atlantic Ocean.

Such consensus-directed constituency is said to be strengthened by the large amount of intra-industry trade between the EU and the US. Intra-industry trade leads to lower adjustment costs as a consequence of trade liberalization because “jobs lost due to customers shifting to more efficient foreign suppliers may to a large extent be offset by the job-enhancing expansion in foreign demand for similar goods produced domestically” (Hoekman & Kostecki, 1996: 215). As the US and the EU have a large amount of such trade, the basis for trade liberalization between them is strong.

The trade figures speak for themselves. As indicated by the last United States Trade Representation (USTR) report on the National Trade Estimate (1997 NTE), the EU and the US share the largest two-way relationship in trade and investment in the world. In 1996, the EU merchandise exports to the United States valued \$ 142.7 billion whereas the value for US merchandise exports was \$ 127.5 billion. This accounts for almost one fifth of total EU exports and total US exports.

In terms of foreign direct investment, US FDI in the EU accounted for 42% of all inward FDI in the European Union in 1994. EU inward FDI in the United States accounted for 53% of total FDI in the States (Devuyt, 1995: 20), which represented about 43% of all outward investment of the EU (European Commission, 1996a).

As far as investment is concerned, outward investment from the European Union represents 44% of all world outward FDI whereas all EU inward investment represents 37% for all world inward FDI (Echinard, 1997: 195).

From the figures on trade and investment between the EU and the US one can derive at least two conclusions. Firstly, that there is a high level of interdependence between the EU and the US and secondly, that the quality of their mutual relations potentially affects the quality of trade relations in the context of the World Trade Organization in general. Paralyzing trade disputes or conflicts between the two sides of the Atlantic clearly affect a large share of world trade and for that reason the quality of trade relations in general.

Trade figures are just trade figures however. They may indicate the possible influence of trade relations, but not the quality of them. In the case of the Transatlantic relations, the assessment of these relations has to be done on a multilateral and a bilateral level.

3.2. The State of the Transatlantic Relations

In the past, the quality of the EU-US trade relations has played an important role in the quality of the relations inside and the effectiveness of the GATT. This has been true for the Uruguay Round, for the rounds before this one and for the issues that are on the table for the implementation of the agreements of the Uruguay Round. Indeed, the extent to which the US and the EU have been cooperating in the WTO has to a large extent determined and influenced the extent to which the post-Uruguay Round Agenda has been implemented. And even if one of the two Transatlantic partners blocked negotiations in

the WTO because of a conflict with a third country, the Transatlantic partner concerned has - more than often - been criticized for endangering progress in the multilateral negotiations. This makes clear that in many cases, the policies and behavior of both partners in their relations with third countries affects the quality of their mutual relations. This is to a certain level logical, since the size of the two partners (in terms of market power) makes their actions - even if unilateral - relevant for the other and for the world trading system as a whole. So if the United States concludes a semi-conductor agreement with Japan (the Vancouver Agreement), the European Union cannot look the other way if this agreement is an example of managed trade that violates the principles of non-discrimination in the GATT/WTO. Even so, it is not surprising that the United States has showed and still shows interest for decisions taken by the European Union in its relations with third countries. The Customs Union with Turkey or the banana regime with the ACP-countries are not just trade issues with a European relevance. They are issues with a relevance for large parts of world trade, and for that reason for the United States as well.

For that reason, it is not surprising that during the Uruguay Round, the relationship between the United States and the European Union has played a substantial role. Cooperation and conflict between the US and the EU influenced to a large extent - but not completely as other actors are becoming more important - the degree of progress or stalemate in the Uruguay Round (see Kerremans, 1996). For the implementation of the Uruguay Round, the same is true.

For the same reason, one is not surprised to see that both, the European Union and the United States stress at regular intervals the importance of the relations between them.

4. The Transatlantic Agenda

4.1. Motives for Strengthened Relations

In the context of the high interdependence between the two sides of the Atlantic, one wouldn't be surprised to see emerging something like the Transatlantic Declaration and Agenda. The reasons, though, for their emergence, seems to be more political than economic.

When James Baker launched the idea of strengthened Transatlantic relations, in his speech of December 12, 1989 in Berlin, the Berlin Wall just fell down and the process of German reunification had just started (Coffey, 1993: appendix 5). In this context the United States was looking for the reaffirmation of its special relationship with Europe. This search was intensified because of the reaction of the European Community itself to the process of German reunification. By way of direct linkages between German reunification and the Economic and Monetary Union and between the last and the intergovernmental conference on ECU the European Community seemed to react to German reunification with a new step in its own integration (Dinan, 1994: 161 & 165).

The effect of this on the EU-US relations has been indicated clearly by Peterson (1996: 58):

“(..) Germany unified in less than a year. The pace of European integration was accelerated in the process, as American and wider European positions converged on its desirability as a response to German unification. The US moved to ensure that its relations with both Germany and (especially) the EU were intensified. The New Transatlanticism may be viewed largely as a byproduct of German unification”.

The conclusion is, therefore, that the Transatlantic Declaration served political objectives in the first place and that references to economic or trade issues were not the first goal. After all, in the field of trade, EC-US relations were nearing their point of escalation as the agricultural dispute between them became the issue that dominated the negotiations for the Uruguay Round and that led to the failure of the Heysel Conference in Brussels (December 1990) (Kerremans, 1996). This conference was supposed to conclude the Uruguay Round negotiations.

Seen from the European perspective, the “New Transatlanticism” was also a instrument that had to serve political purposes in the first place. It was a way to reaffirm the American commitment in Europe, in the first place in the field of security. The end of the Cold War could not - as far as the Europeans were concerned - mean the end of the US security commitment in Europe. The Transatlantic Declaration was a way to convince the US of this. As Kohl, quoted by Peterson (1996: 59) has put it:

“A Transatlantic security union is of existential significance for Germans and Europe. Only it can create a true balance in Europe. A look at the map underlines this”.

Equally, in the reaffirmation of the good relations between the European Union and the United States by way of the Transatlantic Agenda political factors seem to explain for the reinforcement of this relationship. The Transatlantic Agenda was not the consequence of trade conflicts that needed to be resolved or avoided although trade issues have been included in the Action Plan that became part of the Agenda.

Trade did however, play a role in the emergence of the Transatlantic Agenda more than it did in the case of the Transatlantic Declaration. Whereas in the case of the latter, political motives seems to have played a central role - like German reunification and European integration - in the case of the former, the main motive was related to trade and economics. In the period between 1988 and 1994 the United States started to conclude preferential agreements with other countries. The first was the CUSFTA, the Canadian - United States Free Trade Agreement in 1988. It was preceded by the preferential agreement between the US and Israel (1985), a country with which the EC also concluded a preferential agreement (Association Agreement). In this vein, 1993 was a “key year”. The US started to conclude regional arrangements, the first of which was the North American Free Trade Agreement. That agreement was approved by Congress in

November 1993. In the same period, on the initiative of president Clinton, the first APEC-summit was held in Seattle.

The conclusion of all these agreements by the US, was the result of mixed motives, in which market access, migration (from Mexico) and the Uruguay Round played a role (Cuyvers & Kerremans, 1997: 308-309). US frustrations about its paralyzing conflict with the EU on agriculture and audiovisual services in the Uruguay Round triggered an increased interest in NAFTA and APEC (Jütte-Rauhut, 1995). The timing of the three (Uruguay Round, NAFTA and APEC) was remarkable. On November 17, 1993, the House of Representatives approved the NAFTA-agreement by 234 votes against 200. On November 18-19, 1993 the first APEC-Summit took place in Seattle. On November 20, 1993 the US Senate approved NAFTA by 61 votes against 38. On December 15, 1993 the final agreement on the Uruguay Round was reached. Also important was the initiation of the process towards a Free Trade for the Americas Agreement in December 1994 (Economic and Social Committee, 1995: 2; see also Cuyvers & Van den Bulcke: 6; Buelens, 1997: 45).

This timing seems to indicate that the formation of the NAFTA and the start of the APEC-process was part of a US-strategy to press the Europeans and other negotiating partners in the Uruguay Round (cf. Abbott, 1995: 119; Rolle, 1995: 472; Peterson, 1996: 122)². The idea was simple. If no agreement would be reached in the multilateral Uruguay Round, the US would use bilateral and regional strategies to achieve market access, or, as Vernon (1996: 625) has put it:

“The emergence of a NAFTA possibility offered the Americans a splendid opportunity to send a signal to the negotiators in Geneva that, if those negotiations [the Uruguay Round negotiations, BK] failed, the United States had an attractive option, namely, to build its own trading block from a North American base”.

From the European side this was perceived as threatening because of two reasons. First because the bilateral and regional alternative for the United States could reduce its preparedness to support a multilateral framework as the new WTO or to concede in negotiations on its formation. It is in this context important to remind that one of the big objectives of the EC in the Uruguay Round consisted of the “disciplining” of section 301 by a reinforced dispute settlement procedure in the GATT³.

Another, perhaps even more important reason was the fear of the EC and its member states that APEC and NAFTA would divert the attention away from Europe. Moreover, the US was working on better relations with a region that provided remarkable rates of

² Abbott claims that one of the major factors behind the US-attitude towards NAFTA consisted of “(..) the developments involving the European Union”. It was not however, the fear for a Fortress Europe that was decisive, but the fact that the EU would assemble so much bargaining power that it could create a “sufficient risk of imbalance in future trade negotiations with the United States” (1995: 119).

³ For the text of section 301, see Coffey (1993: appendix 6).

economic growth and an impressive potential outlet for western products. Especially the involvement of China (the People's Republic) in APEC was important in this context⁴.

The fear for the "turning away" of the United States' attention in favor of the Asia-Pacific area was to a large extent due to the fact that the end of the Cold War didn't tie the US anymore to Europe in the field of security as it did before 1989-1990. This gave the impression that the US was more free now to choose its preferential partners in the world trading system. In some circles, this fear was probably overstated - as was the US fear for a "Fortress Europe" in 1989 - but it nonetheless exerted an influence on EU-decision-makers, especially in DG I. The following quote from a report of the European Commission on Transatlantic relations indicates this (European Commission, 1995a: 2):

"Of course, the end of the Cold War has changed the nature of the [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".

The lingering fear of the European Union for the US attention for Asia was not so much due to the attention itself but to the possibility of the development of preferential relations with that region. By definition, such preferential relations would exclude the European Union. This fear still exists⁵, although it has been reduced somewhat since the reinforcement of the relations between the APEC-countries in the field of trade seems to be more difficult than originally expected. This is partly a consequence of the attitude of the Asian countries which see APEC as a tool to tie the hands of the NAFTA-countries to the multilateral trading system (Kohler-Koch, 1996)⁶. Nevertheless, the European concern about possible preferential relations in APEC to the detriment of Europe, still exists, as has been indicated by a speech given by sir Leon Brittan on March 19, 1996 at the Capitol Hill Club in Washington D.C. in which he compared the American and the European approach to the Asia-Pacific region⁷:

"We must not fall back into the Cold War trap of thinking we have to choose between partners. Ours will not be an exclusive relationship. We are not setting

⁴ Recently published figures from a RAND study (published in *The Wall Street Journal Europe*, April 8, 1997) are revealing. In this study it is estimated that the five largest Asian states (China, Japan, India, South Korea and Indonesia) would account for 45% of the world product in 2015. The US would account for 25% (its current share) and the EU for 15%.

⁵ As has been put by the European Commission's Forward Studies Unit (Forward Studies Unit, 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".

⁶ It must be mentioned here that especially Mexico saw NAFTA as a way to attract Japanese investment. In practice however, NAFTA attracted Japanese FDI more to the US than to Mexico (Orme, 1996: 265-266).

⁷ "Brittan Describes US-EU Disparities on Asia Policies", in: *Europe in Washington*, Vol. 6, 1996, n° 2, pp. 1 & 3

out to create a rival regional group, nor do we propose to set up a regional trade liberalization system along the lines of APEC. We wish APEC well, as long as it remains a force for further multilateral liberalization. So far we are satisfied that APEC liberalization will be open on a most favored nation basis and thus compatible with the WTO agreements. However, there are voices in America which argue that market opening in Asia should be on a preferential basis, in other words only available to members”⁸.

The European answer to this diversion of US attention consisted of two parts. Firstly, the improvement of its own relations with the Asian-Pacific Region. Secondly, the re-emphasis on the importance of the Transatlantic relations, which basically resulted in the Transatlantic Agenda.

The renewed European stress on the Transatlantic relations clearly struck a sensitive cord in some parts of the federal administration in Washington D.C.. It clearly reinforced those - in the administration and in the business communities - that were eager not to let the US turn itself exclusively or too much to the Pacific. Otherwise stated, it reinforced the “Atlantic lobby” in Washington⁹. Among them were certainly the secretary of commerce, the late Ron Brown and Mickey Kantor, at that time still US Trade Representative. Also involved was Stuart Eizenstat, then head of the US mission (ambassador) to the EU in Brussels and now under-secretary of commerce and largely involved in the EU-US dispute on the Helms-Burton and the D’Amato Acts.

An additional factor in the American receptiveness towards the idea of a reinforced Transatlantic relationship were - as Peterson (1996: 184) has called it - the “teething problems of NAFTA and APEC [which] (...) acted to weaken the assumption in Washington that the country’s economic future lay in North America and Asia, not Europe” (see also Orme, 1996; & Rich, 1997: 96). This certainly reinforced the “Atlantic lobby” in Washington D.C. and reinforced the conviction - even in Congress - that improving Transatlantic relations is in the interest of the United States.

It was Ron Brown who launched the idea of a Transatlantic Business Dialogue (TABD), which was warmly welcomed by the European Commission vice-president Sir Leon Brittan and by his German colleague, Martin Bangemann.

In the course of 1995, both the TABD and the Transatlantic Agenda were developed, which resulted in the TABD-meeting in the presence of Brown, Brittan and Bangemann in Sevilla and the EU-US Summit in Madrid, the first one in November 1995 and the

⁸ One could say that Brittan’s assessment of APEC largely points at the big plans to realize a free trade area on a preferential basis between the APEC-countries, plans that were largely supported by the US. In practice however, APEC has become a framework that presses in favor of multilateralism. As Kahler (1995: 23) has put it: “A key role of APEC since its inception has been to lobby within the global trading system for multilateral negotiations and multilateral resolution of outstanding trade conflicts”.

⁹ Interview with a Member state representative of the Working Party Responsible for Transatlantic Relations, April 1997. This Working Party has been erected by the COREPER in January 1996.

second one in November 1996. These meetings resulted in reports in which the formation of a Transatlantic Marketplace was ushered. At the summit, both the US and the EU adopted the Transatlantic Agenda including an Action Plan. The role of the TABD in shaping the Action Plan had been - according to Brittan and Bangemann - essential. This confirmed their conviction that as far as Transatlantic relations are concerned, "the best way to identify and to discuss all (...) [the] problems is to let the businessmen speak (...)" (AE¹⁰, n° 6599: 5).

In the Agenda the concept of a Transatlantic Marketplace was for the first time used. It pointed at a number of initiatives that would be developed between the US and the EU. These are (AE, n° 6619: 6):

- an agreement on standards and verification;
- an agreement on veterinary issues;
- greater openness on public procurement;
- an effort to resolve outstanding difficulties on intellectual property;
- dialogue on financial services;
- the development of dialogue on the information society (with several specific initiatives);
- the continuation of bilateral cooperation on competition;
- discussion of data protection;
- specific initiatives on air and maritime transport;
- intensification of cooperation in energy matters.

One can wonder what the meaning of this Transatlantic Marketplace really is. Is it a kind of Transatlantic APEC? It is meant to develop a preferential trade agreement between the US and the EU or is it meant to be an instrument that can promote a policy of proactive multilateralism by both the US and the EU jointly and separately? The answer to this question is far from unanimous as the discussions during the preparation of the Transatlantic Agenda and the declaration after its launching have indicated. Nonetheless, these questions are of a fundamental importance as Transatlantic trade - and as a consequence also Transatlantic trade relations - in one way or another affect the WTO and its multilateral rules. The question is therefore, whether the Transatlantic Agenda aims at an exclusive bilateralism or at a limited bilateralism at the service of multilateralism?

4.2. Exclusive Bilateralism?

Exclusive bilateralism refers to a relationship between two countries that is based on mutually granted preferences which are not granted to third countries. In the case of the EU-US relationship, the once proposed TAFTA (Transatlantic Free Trade Agreement) would have been an example of such bilateralism.

¹⁰ AE refers to Agence Europe (English version).

The arguments in favor and against TAFTA have been outlined extensively elsewhere. It is important to look at them, however, in order to clarify the concept of the Transatlantic Marketplace, a concept that has been developed as soon as it became clear that a TAFTA was neither feasible nor desirable.

The idea of a TAFTA became popular in the first half of 1995 when both European and North American leaders defended the idea. In Europe, politicians such as Klaus Kinkel and Malcolm Rifkind raised the issue (Devuyst, 1995: 17). On the North American side, the Canadian Prime Minister, Jean Chrétien raised the issue by pledging for a general trade liberalization agreement between NAFTA and the EU (Economic and Social Committee, 1995: 26). American politicians such as Jeffrey Garten, Under Secretary of Commerce for International Trade and Clayton Yeutter, former US trade representative and agricultural secretary, found the idea attractive. Former US Secretary of State, Warren Christopher even stated that the US would make a serious analysis of the issue.

A number of problems have barred the road to a TAFTA however. In the first place, there is article XXIV of the GATT and the Understanding on the Interpretation of Article XXIV of the GATT 1994. Article XXIV: 8(b) clearly states:

“A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories”.

One of the questions about this definition has concentrated on the exact meaning of “substantially all the trade”. A clear figure (80% of total trade) - as originally suggested by the EEC member states when the consistency of the EEC-Treaty with article XXIV was examined - has never been accepted¹¹. Instead, a negative criterion - i.e. a criterion that defines when the condition of “substantially all the trade” has not been met - have been adopted. This criterion, as adopted by several GATT-Working Parties On Agreements Presented Under Article XXIV, stated that (WTO, 1995: 825):

“Article XXIV: 8(b) had to be interpreted to mean free trade in all products and not carved out by sectors; the exclusion of a whole sector, no matter what percentage of current trade it constituted was contrary to the spirit of both Article XXIV and the General Agreement”.

This reasoning has been included in the Understanding on Article XXIV, following the Uruguay Round. In the preamble of this Understanding - after having recognized the

¹¹ The EEC-countries proposed that “substantially all” would mean: “a free-trade area should be considered as having been achieved for substantially all the trade when the volume of liberalized trade reached 80% of total trade” (WTO, 1995: 824). According to Grossman and Helpman (1995: 681-682) however, “substantially all trade” can be interpreted “(..) to place a limit on the number of industries that can be excluded from an agreement, on the fraction of bilateral trade excluded, on the fraction of total trade excluded, or perhaps on something else” (see also Senti, 1994: 145).

contribution to the expansion of world trade that customs unions and free-trade areas *may* make - the Members of the WTO recognize:

“(..) that such contribution is increased if the elimination between the constituent territories of duties and other restrictive regulations of commerce extends to all trade, and diminished if any major sector of trade is excluded”.

One could easily say that this interpretation probably represents the major stumbling block to the formation of the TAFTA. By definition, a TAFTA would have to include agricultural trade between the US and the EU¹². If one looks, however, to the extent to which discussions about trade in this sector has paralyzed the Uruguay Round (Ingersent et al, 1996: 707) and to the way in which this issue continues to affect Transatlantic relations - e.g. the issue of the EU reference price system for grain imports¹³; the role that grain and rice played in the EU-US negotiations based on Article XXIV: 6 after the EU-enlargement with Austria, Sweden and Finland; the question of the EU-banana regime for which a WTO Panel has been established in 1996 (USTR, 1996; 1997; European Commission, 1995b; 1996a) - it would be realistic to predict that the inclusion of this sector in TAFTA-negotiations would paralyze such negotiations from the beginning. Such a paralysis would not only be the consequence of disputes between the EU and the US, but also because of the conflicts that it would engender (again) among the EU-member states (Kerremans, 1996). Revealing here is a quote from Franz Fischler, the current EU Agricultural Commissioner on the TAFTA. Saying that he “cannot imagine a free-trade agreement on agriculture between the US and the EU”, he added: “I can only recommend caution in free trade” (quoted in AE, n° 6618: 2).

A TAFTA without agriculture would be unimaginable, however. This for two reasons. Firstly, because of the pressure in the US itself (especially in Congress) to use the opportunity of TAFTA-negotiations to force more access to the European agricultural market, this in a period where the enlargement negotiations with the Central European countries would put serious strain on this market anyway. The recalcitrance of France towards TAFTA was - besides for its traditionally complex relations with the United States - partly due to this “fear” to weaken or to lose the Community preference on agriculture.

The second reason, would be of course, the WTO itself. If the two biggest trading blocs in the WTO - the two customs territories on whose loyalty the legitimacy and the very existence of the WTO depends - would violate one of the basic provisions of the GATT 1994, they would probably give the *coup de grâce* to the current multilateral trading system. A preferential trade agreement between the US and the EU that violates the “substantially all the trade” provision would certainly open Pandora’s box and would engender the reinforcement of trends in regional bloc formation everywhere in the world.

¹² One can imagine similar problems in other sectors, such as maritime services, audiovisual services, and the subsidization of airplane production.

¹³ Where the EU blocked the composition of a WTO-Panel in February 1997 (see *Financial Times*, February 27, 1997).

Besides the problem of the sectoral coverage of a TAFTA, an additional problem that basically jeopardized the whole idea consisted of the effect that a TAFTA would have on the WTO, even if it would respect the WTO-rules. As Devuyt (1995: 17) has indicated, a TAFTA would probably be perceived by most developing countries as a “rich men’s club, leaving the rest of the world behind”. A similar impression would certainly arise in Japan and in the newly industrialized countries such as South Korea and Taiwan (Forward Studies Unit, 1995: 38). This would probably reduce the credibility of the multilateral trading system and reduce the preparedness of the developing world and the Asian countries to make reciprocal concessions in the WTO (cf. Kahler, 1995: 60). In other words, TAFTA risks to block the permanent process of trade liberalization that was launched by the Uruguay Round timetable for further negotiations and by the establishment of the WTO as a permanent forum for multilateral trade negotiations. Abbott (1995: 137), not referring to TAFTA but to the relations between NAFTA and the EU, comes to a similar conclusion:

“It is perhaps ironic that the relative compatibility of the NAFTA and the EU social welfare systems may provide an impetus more for bi-regional Fortress Atlantic than for either Fortress North America or a Fortress Europe”.

TAFTA would not only, however, have a negative impact on the ongoing negotiating process in the WTO but also on the meaning of what can be considered to be the nucleus of the WTO, the MFN-principle. A TAFTA would put a large amount of trade - currently ruled by the MFN-principle - on a discriminatory basis, thereby eroding the basis on which the whole GATT/WTO has been built. Consequently, neither the US, nor the EU wanted to take such a risk. This shows how trade relations between such two big trading blocs like the EU and the US cannot be conducted without affecting the whole trading system. This, to a certain extent, ties the hands of those that are responsible for these relations.

The overall conclusion about TAFTA cannot be different than - as Kahler has put it (1995: 60) - that TAFTA is the “least attractive” formula to reinforce Transatlantic relations. It would jeopardize the WTO-system and it would risk to block any progress in Transatlantic relations because negotiations on a TAFTA would inevitably involve acrimonious discussions on sensitive issues. Besides that, opposition to a TAFTA in both the EU and the US - because it ties the US and the EU too much together (which is especially a concern in Congress) - makes the conclusion, let alone the ratification of such an agreement highly improbable. Rather than being the basis for a qualitative leap in the Transatlantic relations, a TAFTA would risk to become a factor of deterioration in these relations.

What are the conclusions that can be drawn from this? The first one is clear: in shaping their mutual relations the EU and the US have to take into account the effects of their agreements and disagreements on the multilateral system. Secondly, to tie too much the EU and the US together is both unfeasible (because of domestic opposition) and too risky for the quality of their relations. The latter may sound paradoxical. It is in the interest of

the EU and the US to reinforce their trade policy relations, but to limit such a reinforcement to a certain level. After all, and whatever the political rethorics of the Transatlantic relations, the United States and the European Union do not only share a large number of common values, but are also each others competitors in the international trade arena. This is not only true for American and European companies. If one sees how anxious the EU has become to improve its relations with the Asian-Pacific countries since the APEC-process has started (cf. the Asia-Europe Meetings, called ASEM, see Dent, 1997: 8) or how much effort is put into concluding a preferential agreement with Chile now that the perspective of a Chilean accession to the NAFTA has faded away (Rich, 1997: 96), one can clearly conclude that both the public authorities of the EU and of the United States are collaborating and competing at the same time. That clearly sets limits to the depth and the quality of Transatlantic cooperation.

In terms of the Transatlantic Agenda, what was required instead of the TAFTA, was the search for another formula to define and to structure the Transatlantic trade relations.

4.3. Limited Bilateralism?

The fact that TAFTA was dropped resulted in a search for another way to restructure the Transatlantic relationship. In the discussions on this subject, the idea of TAFTA loomed in the background. Some EU-member states were afraid that - in spite of a different the name - the acceptance of a new framework for these relations could mean that they would engage themselves in a process that would result in something similar to a Transatlantic free-trade area. Especially the Southern member states didn't want to go that far.

As a result, new concepts to define the renewed Transatlantic relation were looked for. Concepts such as the Transatlantic Economic Space and the Transatlantic Marketplace emerged. The nebulous character of these concepts (what is a marketplace?) made them more suitable to be accepted by all the EU member states.

Whatever the name, the great distinction between the TAFTA and the new concepts was that in the new framework enhanced cooperation between the EU and the US would be compatible with the multilateral way of liberalizing trade. This puts two constraints on Transatlantic cooperation. Firstly, whenever the US and the EU cooperate on issues that are already dealt with in the WTO or that are part of the ongoing post-Uruguay Round negotiating process, cooperation must aim at promoting multilateralism. This is the idea of "co-leadership" in which the EU and the US jointly provide leadership in favor of multilateralism in the WTO.

The second constraint is a consequence of the first. On issues that are not dealt with in the WTO, EU-US cooperation must aim at improved mutual market access by dealing with market barriers that are difficult if not impossible to deal with on a multilateral basis. In principle, such cooperation would have to lead to "open regionalism". This means that - at least in theory - issues that are dealt with on a bilateral basis should be brought into the

multilateral realm as soon as multilateral solutions on these issues come within reach. The second constraint refers to the idea of “subsidiarity”. It points at the fact that EU-US cooperation aims at elevating mutual market access at a “higher qualitative level” than is possible or feasible in the multilateral framework of the WTO. By definition, this means that Transatlantic bilateral cooperation will mostly deal with “behind the border issues”, i.e. with regulatory cooperation. By looking at the Transatlantic Marketplace, as defined in the 1995 Transatlantic Agenda, one clearly sees that most issues that have been enumerated concern regulation. Issues such as Mutual Recognition Agreements on Standards and Certification, sanitary and phytosanitary measures, and competition policy agreements are predominant. It concerns issues that can only be dealt with by countries or trading blocks with similar or comparable levels of economic development, regulation and economic structures. Countries with intra-industry trade, for instance, will encounter less difficulties in reaching agreements on such issues than countries that maintain inter-industry trade (cf. *infra* and Hoekman & Kostecki, 1996: 215).

Let us look deeper into the concept of subsidiarity and the role it plays in the Transatlantic trade relationship. Afterwards, we will go deeper into the question of Transatlantic co-leadership in promoting and sustaining multilateralism.

4.3.1. International Subsidiarity and the Transatlantic Trade Relationship

The concept of international subsidiarity is an attractive one in the context of the US-EC trade relations. International subsidiarity relates to the concept of “subsidiarity” which is central in federalism and federal thinking. It points at the rationale behind the division of power among different government levels which is effectiveness. Applied to the international realm (as has been done on a smaller and very controversial scale inside the European Union), this means that the extent to which problems will be dealt with domestically, bilaterally, plurilaterally or multilaterally, will be determined by the most effective government level or level of cooperation to deal with them. In this case the nature of the problem determines the required government level or level of cooperation. Two perspectives can be used here: the bottom-up approach and the top-bottom approach. In the case of international subsidiarity, the first approach mainly points at an economic rationale, whereas the second one is more political.

A. The Bottom-Up Perspective (the Demand Side)

There are problems with which an individual state or customs territory cannot deal with effectively because of their scale. The globalization of the economy makes a number of national decisions meaningless and requires an international approach. This is not only true for the global commons but also for problems directly related to trade and investment. For such problems, it is precisely the increased amount of FDI and international trade that has made purely national strategies to trade obsolete. In order to

reach a decent level of policy efficacy states have to cooperate with others. What was once dealt with at a purely national level (i.e. the “lower level”) has now become the subject of international negotiations (i.e. the “higher level”). The failure to do so is generally perceived as being a serious political problem since economic integration results in cross-border spillovers between countries which means that one country is exposed to problems created by or in another country or that the benefits of one country’s policies “leak away” (i.e. externalities) to other countries (e.g. the benefits of the French economic policies between 1981 and 1983 for Germany). As there is “a growing mismatch between the economic and the political structures of the world” (Lawrence, 1996: xvii), the problem of cross-border spillovers and externalities becomes more urgent.

The problem of the “mismatch” is not a static one, however, nor is it similar for the world as a whole. The extent of market integration between countries or customs territories will determine the need for international cooperation or the extent of the mismatch in case there is a failure to cooperate. As the extent of market integration evolves, cooperation will have to evolve as well. The failure to do so will become increasingly problematic as market integration proceeds. In the case of Transatlantic relations this is important since the level of Transatlantic trade and economic integration (not in political but in transnational terms) is quite important, this largely due to the high amount of Transatlantic investment (see above). In addition, almost all tariff barriers between the US and the EU have been removed. This exposes traders and investors to other, domestic, barriers, mostly of a regulatory kind¹⁴. This requires, not only Transatlantic cooperation in the traditional meaning of at-the-border issues, but also cooperation on behind-the-border-issues. What Lawrence (1996: xvii-xviii) has written about trade and investment in general, therefore, applies in the first place to the Transatlantic relation:

“As separation fences have been lowered and technological innovations have shrunk economic distances, a multitude of formerly neglected differences among domestic nation’s domestic policies have become exposed to international scrutiny. National governments and international negotiations must thus increasingly deal with deeper - behind-the-border-integration”.

One could call this the demand side of international subsidiarity. In the case of international trade this demand side has, literally, been reflected by the activities of interest groups and companies in favor of a international rules-based trading system. As international economic integration has been intensified by increasing trade and investment (globalization) and by technological developments (especially in telecommunications, Vandenbroucke, 1995), the demand has evolved as well (cf. Krugman, 1997). Issues like non-trade barriers, investment, services and intellectual property rights have all been put on the multilateral trading agenda during the last twenty years.

¹⁴ As Lawrence (1996: 7) has put it: “Once tariffs are removed, complex problems remain because of differing regulatory policies among nations”.

In the Transatlantic realm, the increasing demand for a Transatlantic level playing field, with its increasing stress on behind-the-border issues, has been reflected in the activities of the Transatlantic Business Dialogue (TABD, 1995; 1996a; 1996b; 1997), the Transatlantic Policy Network and more informal and less open attempts by interest groups to open the borders and to allow for more Transatlantic coordination on issues that have traditionally been domestic issues (such as competition policy). Some of them really infringe deep into the domestic realm. In EuroChambres' report on Non-Trade Barriers (1996: 6), for instance, the "complicated American legal system" is said to be a trade barrier.

The "demand side" is not only reflected in non-governmental activities, however. Both the United States and the European Union have started to look deeper into each others domestic policies in order to assess the effects of domestic policy decisions on trade in general¹⁵ and on Transatlantic Trade in particular. On the EU-side, one can see this in the annual reports on the United States 'trade and investment barriers in which a good deal refers to barriers engendered by decisions that traditionally belonged to the domestic realm. On the US-side there are the annual National Trade Estimates. Besides that, the United States followed very precisely the steps that have been taken in the European Community in the completion of the internal market and its effects on the US. For that purpose, the United States International Trade Commission issued six Follow-Up Reports on the 1992 Internal Market between 1988 and 1994¹⁶.

B. The Top-Bottom Perspective (the Supply Side)

It is not sufficient, however, to have a demand for cooperation in order to have cooperation itself. Equally, the demand for multilateral cooperation will not always be met by cooperation on that level. In other words, there can be a large difference between the demand and the supply of international cooperation. As on the demand side, subsidiarity also plays a role on the supply side.

A often-heard reply to the question why the US and the EU use the bilateral approach on the Mutual Recognition Agreements on Standards and Certification¹⁷ is that the equivalence between the US's and the EU's standards and certification procedures makes bilateral agreements on these more feasible. Negotiations with countries with radically different standards or certification procedures would just not result in an agreement. That is why the EU succeeded to conclude MRA's with Australia, New Zealand, and Canada

¹⁵ As an example, EuroCommerce claims in its Manifesto of European Commerce that "(...) the rules and disciplines of the WTO should be extended to new areas such as international competition policy and foreign investment". It defends the opinion that "multilateral negotiations on these issues should be started as soon as possible, with the EU taking a clear lead" (EuroCommerce, 1996: 23).

¹⁶ The reports were the consequence of a joint request by the House Committee on Ways and Means and the Senate Committee on Finance based on section 332(g) of the Tariff Act of 1930 (see USITC, 1994: i).

¹⁷ Better known as the MRA's. At the time of writing, the MRA-negotiations had just been concluded (May 28, 1997).

as well. That is also why it is unrealistic to expect MRA-negotiations on a multilateral level. There is just too much diversity on that level to allow for agreements.

Another aspect is enforcement (for the theoretical arguments, see Martin, 1993: 97 and the reaction from Caporasso, 1993: 64). In MRA's, the question of trust plays a central role. One recognizes the certification and the standards of the other. That requires that one can be sure that the other will apply the required levels of safety and quality for one's own export products. That seems to be only possible in the case of economic systems with equivalent levels of economic development and consumer demands. This, by definition (at least in the current world) restricts the number of potential counterparts in MRA-negotiations. The same could be said for other trade issues such as financial services (where regulations play a very important role, cf. Herring & Litan, 1995), intellectual property and competition policy. It seems logic, therefore, to conclude that the effectiveness of policy-making on these issues requires that agreements are concluded, not on a multilateral, but on a bilateral or minilateral level. As the world economic system becomes less divergent, the geographical extension of such agreements would become feasible.

This subsidiarity logic gives the impression that technical arguments (effectiveness) can account completely for the choice of the geographical level of cooperation in general and between the US and the EU in particular. Because the last two have similar systems in terms of economic development, consumer preferences, the role of the state in the economy, and the current level of standardization, they can provide bilateral agreements on issues where multilateral agreements still are unfeasible.

This technical rationale behind the supply side of international subsidiarity is one part of the picture, though. The other part is more political and could be termed "reversed subsidiarity". It points at the paradox of the US-EU trade relations. As these relations have led to a reduction in trade barriers between the two sides of the Atlantic and to an increased investment in both directions, the future Transatlantic relations can almost exclusively concentrate on issues that impinge upon questions that have been traditionally dealt with in the domestic realm only. This is true for the EU as it is true for the US. This has two consequences: firstly it confronts the process of market opening and market integration with issues that reflect domestic values and interests much more than the traditional issues of trade policies. Such issues relate to questions about the organization of society, social welfare, tax policies and environmental protection. Secondly - and this is to a large extent related to the first consequence - these issues mobilize much more domestic political actors more intensively. Domestic interest groups that had never something to do with international trade policies will now be directly affected by them. This puts a serious strain and a lot of pressure on those domestic institutions and actors that take part in the decision-making on international market integration and results in much more domestic controversy on such issues. More controversy leads to more domestic visibility of international trade issues and to more political salience for the subjects concerned. The "reversed" aspect of subsidiarity is then, that the more international cooperation on trade and investment is "domesticated", the more difficult

such cooperation will become. The conclusion is then, that subsidiarity and reversed subsidiarity are the two sides of the same coin. On one side there is the internationalization of previously domestic issues. On the other hand there is the domestication of international trade policy. Whereas the first points at the need for international cooperation, the second refers to the problems to satisfy this need. The combination of the two leads to a difficulty in overcoming the mismatch between economic integration and the political structures in both international trade in general and Transatlantic market integration in particular.

In recent US-EU trade relations this has become very visible as these relations affect actors and issues “behind the border” more than most other trade relations do. The MRA-negotiations, for instance raise the question of the role of private normalization bodies on both sides of the Atlantic. They raise the question of certification procedures and of the competence and autonomy of national certification bodies, the most famous (or infamous) of which is the Food and Drugs Administration. Equally, in the case of public procurement and financial services, the autonomy of the states-level (in the US) and the substate-level (in the EU) is at stake. To what extent are the 50 US-states committed by obligations accepted by the federal government. In the case of the EU a similar problem occurred on TRIP’s and services which required first a Court Ruling (Opinion 1/94, see Kerremans, 1996a) and then a Code of Conduct.

The question goes deeper, however. It not only concerns the autonomy of actors but also the opinions of a society towards fundamental issues such as environment and health safety. The hormones and the leghold trap cases are relevant examples here. Does it matter that scientific research proves that particular kinds of hormones have to be allowed in beef if this risks to jeopardize beef consumption on a whole market? Whatever the answer, it is clear that it will attract a lot of public attention, even turmoil. The same holds for the leghold trap case where fundamental values about animal protection are at stake. Even in the case of financial services, legal frameworks build on socially well embedded premises about the ways to protect the banks and the public from too much financial risks (cf. the Glass-Steagal Act), are confronted with completely different opinions about banks and finances. As this will mobilize domestic actors, negotiations between the EU and the US become more difficult. In the case of the United States, this leads to two problems: firstly, whether Congress - by tradition more receptive to local and parochial pressures (see Peterson, 1996: 80-82) - will accept the concessions made by the United States Trade Representative. As Siverstein (1997: 163-164) has put it:

“Foreign trade intimately and immediately effects most industries in the United States as well as having a direct impact on the prices paid by all consumers. Many lobbyists and all constituents, then, have a direct interest in foreign trade legislation, and increasingly constituents are coming to realize the impact these policies actually do have on their lives”¹⁸.

¹⁸ Silverstein doesn’t generalize for trade policy as a whole however. He claims that Congress has tried to increase its influence only for those issues that “(..) has been focused almost exclusively on those measures that most directly affect domestic industries. In other words, legislators have successfully divided foreign

Secondly, whether other actors - such as the 50 states and other federal administrations like the FDA - either are committed by or will accept the commitments conceded by the USTR. These two questions - which will become more urgent as Transatlantic cooperation will impinge more upon the domestic US-system - create problems for the US's partner, the EU. As Peterson (1996: 81, see also Silverstein, 1997: 199) has put it: "For EU policy-makers, it became more difficult to identify a single 'American view' on most issues of foreign policy, particularly those concerning trade"¹⁹.

Exactly the same holds for the European Union however. As more "behind the border issues" will be dealt with between the US and the EU, proportionately less issues will be issues directly related to trade in goods where the European Union enjoys exclusive competence's. That means that more and more Transatlantic agreements will take the form of mixed agreements which equally confuses the picture who negotiates for who and who commits who (Kerremans, 1996b). The only difference between the EU and the US is perhaps then, that the EU has already built a certain tradition in negotiating, concluding, ratifying and implementing mixed agreements. But the question of the TRIPS's and services in the Uruguay Round and the recent debate on the EU competence's in the "Open Skies" negotiations indicate that the question still bears a lot of political controversy.

The question of "reversed subsidiarity" refers to a fundamental problem in US-EU trade relations which - and this is the paradox - points at the relative depth and success of these relations in the past. Whereas it is generally accepted that the future for US-EU trade relations augurs quite well because of the large extent of commonality in the economic structures and development levels of both customs territories²⁰, the reality will be the presence and the absence of this commonality at the same time. One could call this the fallacy of commonality in Transatlantic relations. Because of the existent commonality and the removal of trade barriers, the US and the EU has deepened their trade relations so much that they have to deal with issues where the pretended commonality doesn't exist anymore or is at least qualitatively less than in the case of general concepts such as economic welfare and economic structures. This is one of the lessons to be drawn from the rejection of the concept of a Transatlantic Free-Trade Area (TAFTA). Because the

trade policy into two halves, trade rules that primarily concern domestic industry and protection, and rules that focus on foreign affairs" (Silverstein, 1997: 164).

¹⁹ The analysis of Silverstein on those policies that Congress tries to keep within its own control seems to confirm the point that is made here, namely that "behind the border issues" will increase the interest of Congress for international trade and investment policies. As Silverstein has put it: "Legislators have been most successful in gaining power and influence in those areas of foreign policy that lie clearly within the constitutional authority of Congress, where the problems at hand are reasonably responsive to the tools Congress has its disposal, and where the issues at stake have real and direct connections to the legislator's electoral interests" (Silverstein, 1997: 199).

²⁰ See for instance the more general argument (e.g. not limited to US-EU relations) of Ruggie (1993: 33) where he explains for the continued existence of the multilateral system as created by the US after the decline of US hegemony by referring to the lack of a strong "domestic divergence" between the major powers of today, especially after the fall of the Berlin Wall and the implosion of the Soviet Union.

risk it would pose for multilateralism, it would engender more conflicts than agreements since it would impinge too much upon the domestic economic and trade systems of both the EU and the US. It is also a reason to remain skeptic when Europeans talk about the Transatlantic Marketplace as an “Transatlantic extension of the Internal Market”. As the European Economic Area (EEA) negotiations with the former EFTA-countries have shown, such an extension is difficult because it has fundamental consequences for both the countries concerned and the decision-making autonomy of the EU (Kerremans, 1996a: chapter VI). In the case of Transatlantic relations - different from the case of the EEA - the EU won't have a predominance in the negotiations, which will make it all but easy to come to something close to a Transatlantic Economic Space.

The conclusion is clear therefore, because of its inherent constraints, EU-US bilateralism has its limits. It is limited because deeper than shallow Transatlantic integration (to use the words of Lawrence) means impinging upon the sovereignty and the domestic politics of the two sides. This doesn't mean that Transatlantic bilateralism is unfeasible or impossible. It already exists. But going deeper than on “behind the border” issues will be a slow, incremental and difficult process which will be impeded by all those that try to jealously preserve their nationally (or European-wide) protected prerogatives. It will equally be hindered by those that believe that the values on which one owns environmental, health and social policies are better than those of the other side of the Atlantic. Transatlantic bilateralism will be limited bilateralism therefore, a bilateralism that will hardly risk to damage the already existing multilateral rules in the international trading and investment system.

There is a question that still needs to be answered however. Will this “limited bilateralism” be able to support and to strengthen multilateralism. Otherwise stated, will the EU-US relationship be able to provide co-leadership in the WTO?

4.3.2. Limited Bilateralism and Co-Leadership in the WTO

There is a reason to believe that the United States and the European Union have an interest in collaborating in order to increase their influence inside the WTO. As the two largest trading blocs in the world, the two together would be difficult to oppose inside the WTO. The question one can raise is whether such cooperation has occurred since the Transatlantic Agenda has been initiated and to what extent Transatlantic cooperation has really aimed at influencing decision-making in the WTO²¹.

By looking at the Transatlantic trade relations the picture is far from clear. On the contrary, there are examples that seem to indicate a kind of cooperation without directly indicating whether such cooperation was part of a strategy to shape WTO-policies. There are equally examples where one find no traces of EU-US cooperation, let alone traces of a Transatlantic strategy towards the WTO. In other words, there are arguments that plead in

²¹ For a historical overview of the role of the EU-US relations in the GATT/WTO, see Irwin (1995).

favor and against the assumption that the Transatlantic Agenda would provide the basis for co-leadership on trade multilateralism.

A. Arguments in Favor

There are certainly examples of how the US and the EU cooperate in the framework of the WTO, without saying however that this cooperation is tantamount to providing co-leadership. There are, however, some logical arguments that plead in favor of such leadership. As the US has been confronted with a declining market power for the last forty years and both the US and the EU have an interest in the maintenance and development of a rules-based multilateral trading system, there are reasons to suppose that the combination of the market power of the US and the EU would result in a tremendous preponderance in the WTO. This would allow the two Transatlantic partners to exert jointly the hegemony that the US was capable to exert on its own in the fifties and sixties. This reasoning is probably too simplistic as firstly, a US-EU hegemony would affect the legitimacy of the WTO negatively as WTO-membership has become more universal - and for that reason more heterogeneous - than in the old days of the GATT. Developing countries, although not preponderant, have the possibility - as the Uruguay Round has shown (Kerremans, 1995; 1996a) - if not to determine - at least to influence and to block developments in the WTO, not to speak about Japan and the NIC's (Kahler, 1993: 312-313). Secondly, practice has shown that there may be a community of interests between the US and the EU on many issues dealt with in the WTO, this community is far from complete as many issues continue to cause - sometimes very acrimonious - trade disputes. The development of a more aggressive unilateralism on the US-side²² and the emergence of a more aggressive multilateralism on the EU-side is not completely strange to this²³. In addition, there are signs of the emergence of managed trade policies by the US, which is clearly incompatible with the multilateral and non-

²² Buelens (1997: 41) sees this as part of a "three-level-approach" (multilateral, regional and bilateral) in the trade policy of the United States (see also Devuyt, 1995: 20), which he calls a "hegemonic strategy" (Buelens, 1997: 47). According to Goldstein (1993) the more aggressive stance of the US towards the GATT is due to the decline of the American preparedness, concomitantly with the one of the US hegemony, to pay a disproportionate price for the maintenance of the GATT-regime. Since the 1980's the Americans expect and require direct reciprocity instead of the diffuse reciprocity that they allowed for in the 1950's and 1960's. Direct reciprocity (or full reciprocity) involves "reciprocity of access, reciprocity of trade restrictions and level playing fields" (Bhagwati & Irwin, 1987: 116).

²³ With aggressive multilateralism we refer to the attempts of the EU to use the existent multilateral tools to open the markets of trade partners. The basic instrument to this is the "Market Access Data Base", created by the European Commission in November 1996 as part of the New Market Access Strategy. That it concerns a multilateral strategy was emphasized by Leon Brittan when the initiative was launched: "It is first and foremost at the multilateral level that Ecom believes that the EU will have to have additional weight by fully using all the instruments available in the WTO", and he added: "Europe has one of the most open markets in the world. We will not hesitate to insist that our trading partners provide similar opportunities to our companies. We are responsible for the policy while businessmen know the markets. Together we will provide a potent force for liberalization worldwide. It is not enough to negotiate new international trading rules - we must ensure that they are effectively enforced. That is what we will now be in a position to do" (AE, n° 6851: 7).

discriminatory principles of the WTO²⁴. Similarly, both the US and the EU conduct their anti-dumping policies in a rather arbitrary way (Peterson, 1996: 126).

It is clear however that both the US (although less uncritical than in the past) and the EU continue to support the principle of a multilateral rules-based trading system and sometimes try to play a kind of joint leadership role in the WTO. In negative terms, the meaning of such a role is quite obvious: if the EU and the US disagree on an issue dealt with in the WTO, the conclusion of a WTO-agreement on the issue becomes unfeasible. That has been proved during the Uruguay Round and afterwards. In the negotiations that dealt with the consequences of the EU-enlargement of 1995 for instance - negotiations based on article XXIV:6 GATT - it was clear that a EU-US agreement on the matter was a *conditio sine qua non* for a multilateral arrangement in the WTO. So first a EU-US agreement was reached on December 1, 1995 (AE, n° 6618: 6), after which it was “multilateralized” in the WTO (AE, n° 6620: 6)²⁵. Similar examples could be given by looking at the telecom negotiations or the negotiations on maritime²⁶ and financial services. On such issues not only the bilateral Transatlantic relations play a role but also the talks that take place in the so-called Quad-Meetings, i.e. meetings of Canada, the European Union, Japan, and the United States, as the telecom²⁷ and the ITA-talks²⁸ have shown.

Perhaps the best example of how EU-US trade disputes can lead to a “hostage taking” of the whole WTO is the Helms-Burton case. Surprisingly, though, is the fact that this case can also be seen as an indication that there is a political will on both sides of the Atlantic to let the WTO work.

It is not the purpose to analyze the Helms-Burton case in depth here. What is important here, is the fact that the European Union, just like other trade partners of the US, defended the opinion that the extra-territorial effects of both the Helms-Burton and the D’Amato Acts were an infringement on the WTO-rules. The US-opinion was that it concerned a case of national security which means firstly that the exception of article

²⁴ Examples of these are the US-Japan Cars and Spare Parts Agreement (in which the EU is an observer) and the US-Japan Vancouver Agreement on Semi-Conductors (AE, n° 6785: 4).

²⁵ As a matter of fact, the European Commission and the USTR reached an agreement on December 1, 1995, which was adopted by the EU Council a few days later (December 5, 1995). At the same day the Council also adopted the agreements on compensations with Canada and Australia.

²⁶ These negotiations have been postponed until 2000 after the US withdrew from them (AE, 6736: 11). The EU, by way of Sir Leon Brittan, blamed the US for this (AE, 6761: 8).

²⁷ In the case of basic telecommunications, an attempt to arrange the question in a Quad Meeting in Kobe (Japan, April 1996) failed because of US-EU disputes on the issue (AE, n° 6713: 7).

²⁸ ITA: Information Technology Agreement. It concerns an agreement for which the negotiations were first launched by the Quad (on its meeting of September 1996 in Seattle) and that was first reached among the Quad-partners and then “multilateralized” (after additional negotiations) in the WTO. A similar pattern was followed in the telecom negotiations, where the EU and the US submitted improved market access offers on a Quad-Meeting and used these offers to press the other - mainly newly-industrialized - WTO-countries to improve their offers as well.

XXI GATT was applicable, and secondly that it basically concerns an issue on which the WTO is not legally competent²⁹.

The European Union Council of Ministers, after numerous meetings with the USTR and after having enjoyed temporarily (six months) exemptions on some parts of the Acts (title III) decided to start a WTO-Dispute Settlement Procedure on the case by demanding the formation of a WTO-Panel on the issue. Since the US refused to agree with this, the EU and the US didn't find a compromise on the Panel's composition which resulted in a EU-demand to the WTO-director-general that he would decide on the panel. This last request was quite dangerous for the WTO. As the two largest members of this organization were quarreling on an issue which was fundamental to both of them, whatever the outcome, the decision of a WTO-Panel would have risked to jeopardize the whole WTO-system. In the days after the EU-decision about the panel was taken, US-officials started to emphasize publicly the risks of it for the WTO itself. Stuart Eizenstat, for instance, warned that the EU-request for a WTO-panel on the Helms-Burton case could "provide aid and comfort and sustain and support elements in the US who already opposed to the WTO" (quoted in AE, n° 6859: 8)³⁰. In comments on the Helms-Burton and D'Amato cases, it was generally recognized that they put the WTO in a very difficult position since the US would never accept any ruling by either a WTO-panel or the WTO-Appellate Body on the issue. Jeffrey Schott called it a "lose-lose situation"³¹. The understanding of this seems to have convinced the Council of Ministers of the EU to accept a "truce" on the matter for six months in return for a permanent suspension of title III in the Helms-Burton act³².

The Helms-Burton case indicates the importance that both the EU and the US attach to the WTO. This is, however, still a far cry from providing co-leadership in it. As has

²⁹ As Stuart Eizenstat, Clinton's special envoy on the case, has put it in February 1997: "The WTO is not the appropriate forum for resolving differences over what is essentially a disagreement over foreign policy" (AE, n° 6920: 10).

³⁰ Which basically proved to be right as two US Senators, the Republicans Ileana Ros-Lehtinen and Lincoln Diaz-Balart told journalists that they were in favor of a US-withdrawal from the WTO in February 1997 when the Helms-Burton conflict was raging across the Atlantic (*Financial Times*, March 24, 1997). Before the Helms-Burton case erupted, however, an increasingly critical stance of the US towards the WTO - largely under Congressional pressure - was visible. One of the indications of this was the conclusion by Bob Dole and Bill Clinton of the "three strikes" proposal. This proposal makes it possible that the US withdraws from the WTO if a WTO Dispute Settlement Review Commission (consisting of five US Federal Appellate Judges) decides that the WTO has acted arbitrarily against the interests of the United States in three cases in five year. In such a situation every member of Congress can propose a resolution instructing the President to withdraw the US from the WTO (Buelens, 1997: 47).

³¹ Quoted in *The International Herald Tribune*, February 6, 1997

³² Interview with a WTO-official, May 5, 1997. Hugo Paemen, currently the head of the European Commission Delegation in Washington D.C. seemed to have had a similar opinion when he claimed that the benefit of the WTO-Panel on the Helms-Burton Case was that it would "encourage the parties to come to an agreement before the work of the panel is finished" (quoted in *The International Herald Tribune*, February 6, 1997). The Washington Post (quoted in *The International Herald Tribune*, April 16, 1997) phrased it as follows: "(...) both [the EU and the US] finally accepted the need to head off a major collision that could have spoiled a fledgling trade institution, the WTO, that is critical to American as well as European free trade interests".

already been indicated, there are examples in which the two Transatlantic partners try to play that role. But this is not equal to the two of them providing systematically such leadership. On the contrary, a number of indications seem to point at the opposite direction.

B. Arguments Against

By looking at the WTO, its formation (Petersmann, 1994: 31-33), and the way in which the Post-Uruguay Round agenda is implemented, it becomes clear that a number of issues dealt with in the WTO cause trade disputes and conflict between the EU and the US. This is especially the case when one goes beyond the traditional tariff barriers issues. Issues like subsidies to aircraft producers, the application of government procurement rules by non-federal state actors, agriculture and maritime services have all been affected by difficulties between the two sides of the Atlantic. Equally, the talks on basic telecommunications in the course of 1996 couldn't be finished at the end of April because of the withdrawal of the US offer in response to the alleged insufficiency of the offers of the other countries among which - besides the Asian tigers - the European Union³³.

Likewise, the US and the EU have had a number of trade disputes in which WTO-Panels became involved. Examples are the banana regime (where the EU got a negative conclusion on April 29, 1997 and decided to bring the case before the Appellate Body), the hormone case (AE, n° 6644: 6 & 6732: 13), the grains case and, of course, the Helms-Burton case. In the same vein, one of the reasons why the European Commission launched the New Initiative on Market Access (with the Market Access Data Base) was said to be the opening, by multilateral ways, of the US-market. As Leon Brittan himself (quoted in AE, n° 6666: 8) indicated in a press conference on the issue:

“(..) The US is Europe's biggest external market. And yet European firms face an array of trade barriers when trying to sell or invest there. While most tariffs are coming down as a result of the Uruguay Round, other pernicious barriers persist”.

If one looks at the 1997 National Trade Estimate of the USTR, an American official could have made the same remarks about access for US companies to the EU-market. To a certain extent, this is not surprising. The high level of Transatlantic trade and investment makes the EU and the US not only interdependent but also mutually vulnerable. The EU is the second largest export market for the US, whereas the US is the largest single trade partner of the EU. In such a situation it is normal that there is a high potential for trade conflicts between them, despite the high level of mutual market access and the large number of trade and investment issues on which they agree. In the case of

³³ The US criticized the maintenance by the EU of restrictions on foreign shareholding in national companies for basic telecommunications (AE, n° 6580: 12). The exemptions were granted to Spain, Portugal, France, Greece, Ireland and Belgium. It was only with the withdrawal of some of these exemptions (the ones for Spain, France, and Belgium) by the EU that the US was satisfied (AE, n° 6853: 9).

the WTO, where the US and the EU are the largest trading blocks, such disputes inevitably affect the capacity of both of them to provide co-leadership.

In addition, however, both sides of the Atlantic have their own internal problems in providing leadership in the WTO. On the EU-side, there is always the difficulty of finding a compromise among the member states with their diverging interests (Kerremans, 1996a), a problem that will become even more serious with the expected enlargements (Rollo, 1995). This not only affects the capacity of the EU to act in international trade issues but also to provide leadership jointly with the US as not all member states pay as much attention to the Transatlantic relationship³⁴. On the US-side, there is the interaction between the administration and Congress (Rich, 1997: 95 & 100)³⁵. As the case of the recent fast-track procedures have indicated, the responsibility for this is not always in the Republican camp. The “Gephardt-factor” with its inclination towards managed trade, makes clear that the problem is more complicated than just the one of a “cohabitation” of a democrat President with a Republican Congress (see also Peterson, 1996: 162-163)³⁶. As the Helms-Burton and the D’Amato acts have shown, Congressional activism in trade can bring the administration and the USTR in difficulties with the US’s trade partners and negatively affects the United State’s capacity to provide leadership in the WTO. Whatever the meaning and the objectives of it, neither the Transatlantic Agenda nor the Transatlantic Marketplace have made any difference in this. The same holds for the problems on the EU-side.

In the same vein, one can say that there are no indications whatsoever, that the Transatlantic Agenda has entailed a dramatic change in the capacity of the EU and the US to provide jointly co-leadership in the WTO or to resolve trade conflicts on WTO-issues among the Transatlantic partners themselves. The perception on the Transatlantic Agenda is rather that it can smoothen Transatlantic relations in the future rather than it did so in the recent past³⁷.

The conclusion could be, therefore, that whereas the Transatlantic Agenda provides a possible basis for better cooperation in the trade field - either bilaterally or multilaterally - it doesn’t seem to provide a better perspective for a possible Transatlantic co-leadership in the WTO. The European Union and the United States will remain the “critical actors”

³⁴ Interviews conducted with representatives of six member states (March - May, 1997).

³⁵ According to Rich (1997: 95), since the 1980’s US trade politics changed dramatically as it became “(..) more partisan and less committed to liberal trade”. And she adds (ibidem: 100): “American trade politics (..) have become one of constant conflicts between Congress and the White House, heavy politisation of issues which respond to political and personal advantage and to interest groups (..)”.

³⁶ According to Peterson (1996: 162-163) this is due to the fact that “(..) many centrist moderates were defeated in the 1994 election. One effect [of this] was to empower left-wing, free trade skeptics in the Congressional party who tended to represent economically declining areas”. The problem will continue to play a role however as Gephardt - a potential democratic presidential candidate and challenger of vice-president Al Gore in the 2000 elections - is taking a “managed trade profile” against Gore (*The Wall Street Journal*, April 3, 1997).

³⁷ Interviews conducted with DG I officials, one official from the Forward Studies Unit of the European Commission and with representatives of six member states (March - May, 1997).

in the WTO though (Nunnenkamp, 1993: 186). But this is still a far cry from providing real leadership in Geneva.

5. Conclusion

5.1. The Transatlantic Marketplace and Multilateralism

What can be the conclusions from the above for the concept of the Transatlantic Marketplace (TAM) and its relationship with multilateralism? The answer to this question can be provided by looking at the scope of the TAM and the depth of cooperation inside the TAM (see table 1).

| <i>Dimension of cooperation</i> | <i>Extent of cooperation</i> | <i>Inhibiting factors</i> |
|--|---|--|
| Scope of cooperation | <ul style="list-style-type: none"> • Not in sensitive areas • No TAFTA or Economic Space | <ul style="list-style-type: none"> • Division among the EU member states • Resistance from Congress • Article XXIV GATT & Article V GATS |
| Depth of cooperation | <ul style="list-style-type: none"> • Reversed subsidiarity • Limits to co-leadership in the WTO | <ul style="list-style-type: none"> • Resistance of Congress, the member states and the public at large • the fallacy of commonality • economic rationale versus societal rationales • no strategic interest in an exclusive partnership in the WTO |

Table 1: Scope and Depth of Transatlantic Trade Policy Cooperation

As far as the scope of the Transatlantic Marketplace is concerned, there are clear limitations. Whereas there are still a number of issues for which the Transatlantic Marketplace could provide a framework of cooperation, it is clear that the TAM can never come close to a TAFTA nor to a Transatlantic Economic Space if the definition of this “space” would be analogous to the European Economic Space or Area between the EU and the EFTA (except Switzerland). It is clear that sensitive issues such as agriculture, textiles, subsidies (in some sectors), maritime services and audiovisual services will be difficult to deal with on a bilateral basis. The factors that inhibit this are on the EU-side the division among the member states, on the US-side the role that Congress plays and the fact that the US has no strategic interest in linking itself too much to Europe, and on the WTO-side article XXIV GATT³⁸. For these reasons, there is no risk

³⁸ and article V GATS.

that the Transatlantic Marketplace would result in an exclusive bilateralism between both sides of the Atlantic to the detriment of the multilateral principles of the WTO.

As far as the depth of the Transatlantic trade policy relationship is concerned, there are also certain constraints despite the fact - and it is important to emphasize this - that the depth of this relationship is already far-reaching. It is precisely the current depth of the relationship which accounts for the limitations on its possible future deepening. In the first place there is the "reversed subsidiarity" which points at the fact that deeper cooperation makes better cooperation more difficult as such cooperation has to deal with traditionally domestic issues and impinges therefore, into the domestic realm of both customs territories. This "fallacy of commonality" puts serious constraints on Transatlantic trade policy cooperation, as recent disputes between the US and the EU have shown. Congress, the EU member states and the public at large show a certain recalcitrance in allowing international trade arrangements (like the Transatlantic ones) to intervene in issues that affect basic principles of society, health, consumer protection or environment. The deeper trade cooperation goes - i.e. the more successful trade cooperation is - the more the traditional *rationale* of competition will be confronted with other less economic and more societal *rationales*. In the case of the EU-US relations, this not only affects the bilateral relationship but also the capacity for the Transatlantic partners to provide co-leadership in the WTO. In the latter, there is an additional factor that impedes the deepening of cooperation: the strategic interest of both the US and the EU to keep their hands free in choosing their partners whenever these are needed to defend ones own interests in WTO-negotiations (cf. the support of the Cairns-countries for the US-approach on agriculture in the Uruguay Round).

The confrontation between the political and economic interests of both the US and the EU to emphasize the importance of the Transatlantic relationship on the one hand and the constraints inherent to this relationship on the other hand has entailed an interest in creating and preserving a concept that emphasizes the special character of the relationship while keeping the concrete content of this relationship as vague as possible. This concept is the Transatlantic Marketplace.

What has been put in the TAM, were almost all issues that would have been dealt with anyway. In addition, the TAM didn't seem to make any concrete difference in the negotiations on these issues in the one and a half year that the TAM-idea exists. On the contrary, according to some, the problem with the TAM, compared with the Transatlantic Declaration, is that it is precisely too concrete. This makes it possible to measure its real meaning on concrete issues and results, at least until now, in a "low grade". It equally gives the impression, as one European Commission official has put it³⁹, that the Transatlantic Agenda is just window-dressing.

The conclusion is then, that it is in the interest of both the EU and the US to take into account the constraints on the deepening of their mutual relationship and to try to

³⁹ Interviews with DG I officials (March - May, 1997).

improve this relationship by using a nebulous framework such as the TAM, which is compatible with the multilateral principles of the WTO. In its vagueness, the TAM is most instrumental for both the Transatlantic trade relationship and for the role of this relationship (in positive and negative terms) in the WTO. As one DG I official has put it⁴⁰:

“The TAM contains a long open list of issues that can be dealt with between the US and the EU. This has the benefit of always providing issues on which we agree. That can be very useful whenever serious conflicts between the two of us erupt”.

Otherwise stated, the Transatlantic Marketplace is most instrumental for EU-US relations and for the WTO (i.e. no risk for Transatlantic trade bloc formation) if it continues to be the nebulous framework in which a platonic trade relationship - not too close and not too distant from the concrete issues at stake - between the US and the EU can develop further. In this way, the limited bilateralism that it engenders can remain easily compatible with multilateralism and with the mixed-trade-strategies⁴¹ of the two sides of the Atlantic.

⁴⁰ Interviews with DG I officials (March - May, 1997).

⁴¹ Multilateral, regional, bilateral and unilateral.

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