

**THE TRANSATLANTIC ECONOMY:  
*ADAPTING TO NEW REALITIES***

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## ***THE TRANSATLANTIC ECONOMY: ADAPTING TO NEW REALITIES***

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The shortcomings of the transatlantic economic relationship are mired in defects of the policy process. Both the European Union (EU) and United States have sought to score domestic political victories at the expense of sound economic strategies. Each uses multilateral organizations, most notably the World Trade Organization (WTO), to appease local lobbies rather than to support fundamental rules of how the global economic system should operate efficiently and fairly. The consequence is that the global structure could be brought to its knees for the sake of temporary and largely meaningless deference to constituents. If anything, trade conflicts are escalating in quantity and severity.

Globalization is the engine changing the economic environment as innovations in technology impose pressure to liberalize markets around the world. To be sure, globalization may constitute an entirely new "international system" (Friedman, 2000:7) that is the catalyst responsible for the rapid integration of markets. Since the process does not respect the borders of the nation-state, it can only be managed through collaboration on a global scale. Basic governmental tasks, including taxation, will become more difficult in the fluid exchange among nations. Countries acting independently will lack the resources and enforcement capabilities to control many essential functions of sovereignty in the absence of a multilateral cooperative framework. Lines of authority will become further obscured in areas like crime and social services where national responsibilities overlap. These factors combine to compel transnational organizations to reinvent themselves to maintain relevance to future needs. Such organizations are both the solution and the problem. "Our failure to modernise the WTO," EU Trade Commissioner Pascal Lamy recently stated, "would strain the credibility test" (Lamy, 2001).

Despite the universal dimension of what must be accomplished, the transatlantic nexus, for better or worse, will decide the long-term implications of globalization. There is no alternative in light of the size and interconnected nature of the EU-U.S. economies. The transformation of multilateral organizations must await the transformation of the transatlantic economy. The immediate question is how to protect

the integrity of a rule-based economic system to ensure accountability at both ends of the policy process, from rule-making to rule implementation.

Patterns of investment, mergers, and networking are countervailing forces to the conditions provoking discord in the transatlantic partnership. Too much focus has been devoted to trade to the neglect of the more enduring influences generated by increased investment levels. Mutual self-interest will more than likely act as a buffer to some of the tendencies stirring economic combat. Basic issues on which living standards depend—ranging from pensions to employment status—will become elements of a common agenda as a matter of course. This means that closer coordination on regulatory matters is beginning to surface as a transatlantic priority to reconcile. The difficulty is finding an acceptable ground for compromise. Since the EU and U.S. have different attitudes toward the tolerable scope of regulatory intervention, the framework for a settlement will be a hard bargain to negotiate. Yet it will happen and, in the process, the civic and economic areas will become increasingly intertwined across the Atlantic. After all, it is economics—not security or even culture—that constitutes the glue holding together the transatlantic alliance today. The purpose of this paper is not to predict what will happen but to isolate the ingredients that would promote a healthy transatlantic adjustment to the new economic realities.<sup>1</sup>

### **Assessing the External Environment**

The transatlantic economic relationship is the largest bilateral commercial partnership in the world. In 2000, the two-way flow of trade equaled \$1.1 trillion while the total stock of two-way direct investment stood at \$1.37 trillion (AIRC, 2002). These figures, in the context of trade, represent 35 percent of world exports and over 40 percent of imports. The sheer scale of transatlantic commerce confers almost automatic dominance in global forums when the two parties are in agreement. Moreover, economic integration across the Atlantic is increasing. The value of EU-U.S. trade has risen 350 percent since 1980 (Caborn, 2001). Investment levels have grown

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<sup>1</sup> The introductory paragraphs are adapted from a policy brief composed as the product of a conference sponsored by the European Union Center of the University of Georgia on March 29, 2001 in Atlanta. The policy brief, entitled *Transatlantic 2020: Building New Bridges or Building New Blocs?*, can be found at [www.inta.gatech.edu/eucenter/home.html](http://www.inta.gatech.edu/eucenter/home.html). The author was the rapporteur of the conference. This article seeks to expand upon the work initiated at the conference.

even more rapidly. The total EU investment volume in the U.S. has jumped from 7.1 percent of GDP in 1990 to 13.9 percent in 2000 while U.S. investment in the EU has shot from 6.6 percent to 17.6 percent of GDP (Hufbauer and Neumann, 2001). These data have been interpreted to indicate that the identity of many corporations is becoming transatlantic in character rather than nation-specific (Barber, 2001:91). Indeed, it is estimated that transatlantic intra-company trade has become responsible for the majority of trade across the Atlantic, accounting for one-third in the mid-1990s (Schott, 1998:44) to about 60 percent in 2002 (Primrose, 2002). To some, a transatlantic marketplace is the next logical step (Brittan, 2000).

One concern is that the economies in Europe and the U.S. have not developed along parallel paths in certain important respects. Most notably, the U.S. experienced greater GDP growth (3.9 percent compared to 2.6 percent) and productivity gains (with Europe averaging 70 percent of the U.S. level) between 1995-2001 (Fröhlich, 2002:51). The usual explanation for this difference in performance is the faster adaptation in the United States to the new market conditions imposed by globalization (Guay, 1999). In simple terms, globalization is distinguished by integration of economies through the liberalization of regulations on commercial activity. The lowering of market restrictions is the catalyst that stimulates the impetus to integrate (Reinicke, 1996b). That economic integration is taking place at an accelerated pace cannot be refuted. According to the World Bank, 194 regional integration agreements had been concluded by 1999 and nearly half of these were executed after 1990 (World Bank, 2000:ix). The U.S. has clearly become a more hospitable target for international investment than Europe due to the latter's reluctance to reduce structural rigidities, such as employment flexibility and business start-up rules, to sufficient degrees to lure both venture capital and deeper inward investment. Thus, as the EU conceded in the Lisbon Summit in 2000,<sup>2</sup> the U.S. is doing better because it is more equipped to exploit globalization to its fullest potential.

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<sup>2</sup> At the Lisbon Summit in March 2000, the EU set a goal of making Europe the most competitive economy in the world by 2010. A new process of "open coordination" was established in which targets are set and benchmarking progress assessed each spring in social cohesion and sustainable economic development. In 2001, sustainable development policy was included to the list of activities governed by the Lisbon process.

As economic realities are being shifted by globalization, the transatlantic relationship is required to mutate to accommodate the change. An expression of this adjustment, especially in Europe, is movement toward multi-level governance structures (Marks, Hooge and Blank, 1996). This approach is rational in that it is a more efficient way to confront the opportunities and challenges posed by globalization. Different levels of governance apply different standards of regulation (Nicolaïdis and Howse, 2001) and an assessment must be made as to which level is best organized to handle a particular aspect of the economy. At least three levels of governance can be identified as relevant to the transatlantic context: international, nation-state, and regional. In this matrix, the traditional nation-state is caught in the middle despite having maximum legitimacy to act. It is important to keep in mind that both multilateral organizations and regional institutions must have their authority delegated to them by nation-states. Nonetheless, globalization sometimes confuses lines of authority and makes it difficult to assign responsibility to regulate.

At the international level, the concentration of capital compels regulation by multilateral organizations because neither the nation-state nor regional entities possess the scope to manage economic actors—like multinational corporations—who operate in a global capacity. Multilateral organizations are designed to establish international rules and, when needed, to settle disputes. This leads inevitably to a push for greater standardization, typically in the form of mutual recognition agreements, to support transnational economic exchanges. Standardization is at the heart of global competition. To date, however, the record of success by multilateral organizations has been marred due to weak accountability in which nation-states have relied on strategies like “safeguard clauses to restrict the circulation of products” (Nicolaïdis and Egan, 2001:463). It is only in non-controversial technical areas where international standard setting has achieved any degree of satisfactory compliance (Vogel, 1997:6). Legitimate health and safety concerns continue to constitute appropriate grounds to maintain trade barriers (Vogel, 1995:136). The deficiency in accountability—in which nation-states too easily escape compliance with international standards—enables capital to gravitate toward locales that are the most inviting to investment. Standardization, in other words,

has not become sufficiently cost-neutral to equalize global market conditions. In consequence, regionalism has been the second outcome of globalization.

The impact of globalization has not been uniform across the world because market integration has been too uneven at the international level. Instead, regionalism “has been growing at a much faster pace in the past two decades than globalism” with only three regions (North America, EU, and East Asia) “responsible for about 80 percent of all world trade ...” (Pastor, 2001:20). When measured in terms of foreign direct investment and cross-border transactions, “the globalization of economic activities has been limited to a relatively small number of countries, all of which (except for Japan) belong to the transatlantic community” (Reinicke, 1996a:33). In short, what has been taking place is a competition among regions across the Atlantic in a battle to attract investment. This fact changes the focus of analysis to an understanding of the dynamics shaping interaction among regions. Globalization is about integration and what guides integration is investment in pursuit of less restrictive market conditions. From this perspective, the capacity to innovate has become the primary concern of the contemporary economy in which social capital (human resources and research environment) determines investment potential—even more so than geography and physical infrastructure (Cooke and Morgan, 1998). That is, the characteristics that induce investment—such as educational attainment and quality of life—are less descriptive of a nation than of a region. National boundaries no longer define the unit of investment because regions in many cases transcend country borders.

This scenario does not spell the end of the nation-state as a relevant policy actor but merely alters its role in the scheme of regulatory control. “Regions are not about to replace states as the primary instrument in social regulation in Europe, but alongside states they are finding their own place in the emerging continental order. As Europe integrates more closely and states surrender more power of regulation to the European Union, they will further lose their ability to regulate their own spatial economies” (Keeting, 2002:217). In the transatlantic framework, the nation-state is being squeezed from above (the European Union and—to a much lesser extent—the North America Trade Agreement) as well as from below. At both ends, however, the logic of globalization is creating incentive to liberalize markets. The nation-state is the locus

where the backlash to this process is being championed and the reaction in Europe (and elsewhere) has been far more strident than in the United States. Two explanations for this difference have been articulated. First, globalization in Europe has become synonymous with Americanism and its “hire and fire” mentality that does not show adequate respect for basic human dignity (Friedman, 2000:381). Some commentators consider anti-Americanism to constitute the common cultural thread uniting Europe today (Byatt, 2002:6). Second, Americans and Europeans have a different relationship to the state. Where “Europe...tends to view globalization as a threat to the achievements of society based on the nation-state” (Fröhlich, 2002:53), Americans consider it a dynamic opportunity. The nation-state and society are intertwined in Europe to such an extent that to weaken the bonds of society by marginalizing the social safety net is to imperil the foundations of the nation-state. This transatlantic gulf in perceptions about globalization is a primary impediment to deeper economic integration. While the pressure to liberalize will persist, it is unlikely that Europe will ever mirror the United States in market openness. Cultural values preclude it.<sup>3</sup>

At the moment, further liberalization has stalled in Europe as well as in the United States in response to pressure generated by protests, the economic downturn, and terrorism (Bergsten, 1999). The result has been a slide toward protectionism and unilateralism as domestic lobbies have captured the agenda to defend their constituents in a time of economic slowdown and international tension. As the European Commission recently complained, “One of the most disquieting aspects of US policy is that domestic pressure to adopt protectionist measures appears to be stronger than willingness to seek internationally agreed solutions” (European Commission, 2002:5). As often happens, trade has been hijacked by domestic regulation (Kahler, 1995)—for example, genetically modified organisms (GMOs) in Europe and the Helms-Burton Act in the U.S.—where parochial political actors rely upon technical barriers as an excuse to protect the national interest (Mansfield and Busch, 1995). Inconsistency is intrinsic in

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<sup>3</sup> In a series of studies released in 2002, the values of the EU and U.S. were analyzed. The studies discovered a greater hostility in Europe toward the U.S., a difference in how the public in Europe and the U.S. prefer to resolve leading international problems, and a widening in traditional values (religion, family and country). The results were summarized as indicating that “the values gap between America and European countries seems to be widening” (“Living,” 2003:20).

transatlantic economics as trade and regulatory considerations continually collide in the arena of domestic politics to trump the other. In a real sense, this conflict cannot be avoided in that trade is premised on opening markets while regulations are designed to protect them. The solution is to separate the trade and regulatory processes more cleanly on both sides of the Atlantic to tame the negative tendencies of globalization while facilitating its positive aspects. At bottom, “problems arise in transatlantic relations ... because the governing institutions of the EU and US cannot deliver what is needed” (Taylor, 2002).

### **The Transatlantic Response**

The transatlantic response to globalization has been to build a series of institutional frameworks that channel trade and regulatory matters into dialogue forums in which conflict is to be anticipated, minimized and—in the end—resolved. The emphasis on institutionalization has led to the conclusion that liberalism provides the best theoretical explanation for transatlantic economic relations in the post-Cold War era (Duffield, 2001:106). Despite containing discord within tolerable limits, the institutional approach has in reality achieved marginal success and only in the context of trade (Hindley, 1999). On the one hand, it should be conceded that more trade disputes were inevitable simply in light of the higher magnitude of transatlantic commerce that has been taking place (Eichengreen, 1998:1). On the other hand, the nature of trade disputes has changed to make compromise more difficult to accomplish and institutions less appropriate as avenues to bring about settlement. Where traditional disputes involved issues dealing with market access and industrial policy, “the EU and US currently find themselves entangled above all in philosophical clashes” (Kuehler, 2002). To be sure, disagreements over data privacy and GMOs touch upon sensitive cultural values. As liberalization opened markets, it followed that regulatory policy would intrude more often into transatlantic trade as foreign goods sought entrance to domestic retail shelves at higher rates and each product had to be evaluated against public standards of suitability. This makes regulatory hindrances to trade more complicated to handle since they are embedded in valid goals, such as the protection of health and consumer safety (Genschel and Plümper, 1997).

The trend toward institutionalization developed in progressive steps. Until the mid-1990s, issues of market access (tariffs and quotas) and industrial policy (subsidies and government procurement) dominated transatlantic economic discussions. Since the topics were concrete and involved long-standing concerns about economic protectionism, institutional mechanisms were considered ideal vehicles to manage a relationship revolving around interpretations of national self-interest. After a couple of trial balloons in the form of removing all tariffs in a North America Free Trade Area (TAFTA) and establishing a free trade area in services in The New Transatlantic Marketplace, the EU and U.S. finally reached a more modest agreement in the Transatlantic Economic Partnership (TEP) in 1998. Most notably, it launched an "early warning system" to exchange information on pending legislative and regulatory proposals to preempt future controversies. Not much improved as the string of trade disputes continued to lengthen. "The value of its [TEP] early warning function is questionable, because many recent disputes have been provoked by measures ... which date back a long time or which ... are imposed by Congress in a form that the White House feels unable to resist" (de Jonquières, 2001). Clearly, the early warning experiment has been too easily usurped outside the bureaucratic loop—highlighted by President George Bush's steel tariff announcement—for raw political advantage.

Along a parallel track, mandated summits were inaugurated more frequently and at higher platforms in an effort to apply pressure from the top downward. Under the New Transatlantic Agenda (NTA) of 1995, biannual summits are held at the presidential (Presidents of the U.S., European Council, and European Commission), ministerial, and legislative (European Parliament and U.S. Congress) levels either to intercept problems or to negotiate solutions. The idea seemed to be that, like in any marriage, communication was the key to compatibility. In addition, the NTA initiated formal dialogues in almost every conceivable category of transatlantic economic interaction—business, environment, labor, consumer, and information exchange—as part of its goal to "build bridges" across the Atlantic. Most quickly succumbed to apathy and lack of official support, a list of casualties soon to include the flagship Transatlantic Business Dialogue ("US and Europe," 2003:12). Trade issues are too intricate and low spotlight to warrant priority status to elected political leaders on a consistent enough

basis to rely upon as the method of securing transatlantic commerce. More meetings are not adequate to compensate for the deficiency of existing institutions (Taylor, 2002). This failure prompted the EU and U.S. to resort increasingly to the WTO to act as the definitive arbitrator of transatlantic trade policy. It may be that global institutions have achieved a record of success in lowering trade barriers to the point where a strictly bilateral approach between the EU and U.S. is not even worth the effort (Schott, 1998:41).

The transatlantic regulatory record is another story and one that is becoming more critical in confronting globalization. Market integration is stymied in the face of standards that do not mesh sufficiently to facilitate mergers, acquisitions, and product access. There is a “disconnect” between investment and trade policies that is causing the transatlantic economic relationship to drift (Niles, 2003). As such, economic decisions are being made in a piecemeal fashion without an overriding strategy (Bergsten, 1999). The EU and U.S. have resorted to voluntary cooperation agreements to meld regulatory policy more coherently. In 1997, the Joint Statement on Regulatory Cooperation encouraged collaboration that would “maintain a high level of protection for health, safety, and consumers.” The agreement fell short of outlining the practical steps that would implement this promise as a means of addressing specific instances of regulatory inconsistency. The “early warning” system installed in 1998, of course, sought to identify regulations that might constitute non-trade barriers. It was not until the Guidelines for Regulatory Cooperation and Transparency in 2002 that a new direction was taken in which public input was solicited about draft regulatory proposals at an early stage. The Transatlantic Business Dialogue, a prime mover of the agreement, lauded the accomplishment as “a major breakthrough for the regulatory process” because it ensures “stakeholders have ample time to contribute their ideas and expertise on new rules before they are signed into law” (TABD, 2002). Two test cases on auto safety are to pilot the project. Yet functional constraints may impede much cooperation at operational levels. Regulatory agencies “rarely have a budget for coordinating their actions with other agencies abroad, and ... few regulatory agencies have mandates that match exactly with another anyway” (Wayne, 2002). The answer must reach deeper into the way the regulatory maze works on both sides of the Atlantic.

Better bureaucratic alignment across regions is an indispensable, but delayed, outcome of globalization.

Reorganization of bureaucracies will be fought internally as well as externally. Internally, bureaucracies have distinctive cultures that are invented to develop a sense of mission and to prescribe a method of performing tasks in a manner constant throughout the organization (Morgan, 1986; Wilson, 1989:Chapter 6). Such patterns of behavior are not easily altered. The task is further complicated because basic approaches to regulation do not correspond. In general, the EU “tends to place much more emphasis on design standards” where the U.S. concentrates on “performance standards, which work by establishing objectives and allowing flexibility on how they might be met” (Burwell, 2002:25). The practical result is that the U.S. relies heavily “on *ex-post* liability instead of *ex-ante* standards” (Nicolaidis and Egan, 2001:464). These divergent regulatory mindsets are surely artifacts of administrative culture and, for this reason alone, will resist efforts to bond them. In terms of external interference to restructure, bureaucracies develop cozy relationships with clients who have a vested interest in protecting their privileged status (Hecl, 1978; Mazey and Richardson, 1999). This networking exposes the regulatory process on both sides of the Atlantic to multiple points of access to policy makers and at multiple levels of the policy process. Too much is at stake to surrender influence for the sake of transatlantic bureaucratic conformity. Moreover, this messy arrangement works to the advantage of the U.S. who sometimes employs a “divide and rule” tactic—such as in the “Open Skies” negotiations—to circumvent the European Commission by arranging bilateral agreements with several EU member states to pressure the others to go along to avoid trade diversion (Kuehler, 2002). In other words, there is little incentive for either transatlantic partner to change a regulatory model that fails to deliver.

Even when regulatory policies are adopted through a transatlantic accord, accountability too often breaks down at the implementation stage. Many of the current economic disputes between the EU and U.S. “reflect the externalization of the uneven decision-making and enforcement situation within the Union” (Van Oudenaren, 2001:33). In most cases (with certain exceptions as in environmental policy), the European Commission is dependent upon member states to execute international

commitments and compliance is therefore shaky at best since the Commission rarely punishes non-enforcement defiance. The U.S. is not immune from similar criticism in which state agencies carry the burden of national policy implementation. Yet the comparison is not perfect because the U.S. national government has less difficulty in making its policies applicable against recalcitrant state bureaucrats in areas where its authority is supreme. On the other hand, the federal structure invites policy diversity as states have much latitude to create their own regulatory guidelines that require foreign exporters in some instances to obtain a myriad of product certifications. The single market, in contrast, is pushing the EU in the opposite direction as the Commission is increasingly serving as a "one stop shop" for product certification through the mutual recognition approach. Thus while the EU is better at defining common standards for its marketplace, it is less equipped to assert them at the consumer level. The U.S. is more vulnerable to the reverse assessment. It would seem that the transatlantic economic relationship is in need of repair of a structural kind.

### **The Transatlantic Economic Agenda**

The distinction between domestic and foreign policy agendas is blurring as the management of the economy acquires an international dimension influenced by the progressive integration of markets (Guay, 1999). As former EU Trade Commissioner Leon Brittan cautions regularly in speeches, the spillover of transatlantic economic conflict could too easily contaminate the political relationship as well. It is hardly an exaggeration to contend that correcting the structural inadequacies of economic policy-making constitute a foreign policy objective. At present, this means addressing the problem through negotiations between the executive branch in the U.S. and European Commission in the EU because they continue to exercise prominence in transatlantic governance on overall economic policy (Pollack and Schaffer, 2001). As the EU revises its institutional framework in anticipation of enlargement in 2004,<sup>4</sup> this conclusion could

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<sup>4</sup> The Laeken Summit in 2001 concluded that a constitutional convention (Convention on the Future of Europe) should be established to develop a coherent proposal to facilitate enlargement. The convention's mission, which began March 1, 2002, is to draft a set of proposals that will be considered by the EU's heads of governments in early 2004. At the end of 2002, Convention President, Valéry Giscard d'Estaing, presented the skeleton of the constitution that was divided into three areas: constitutional structure, union policies and their implementation, and general provisions. The Copenhagen Summit in 2002 requested the convention to present the result of its work in time for the European Council in June 2003.

require amendment but it is highly doubtful the Commission would be significantly stripped of its executive functions to warrant much refinement of its role as mediator of international economic policy.

A more real concern is that enlargement could turn the EU away from its transatlantic orientation by becoming “so inwardly-focused that it is distracted from its obligation to remain fully engaged with the global economy” (Wayne, 2001), a disposition possibly reinforced by the launch of the single currency (Eichengreen and Ghironi, 1998). When coupled with the inherent isolationist tendencies of the U.S., the future could just as easily culminate in stalemate as progress toward economic rationality. Moreover, domestic politics are acting to slow movement toward greater liberalization and market integration. In 2003, the European Commission cautioned that the European Union is losing its battle to become the world's most competitive economy by 2010—as promised in the Lisbon summit—because current “economic and political conditions have made things considerably more difficult” (European Commission, 2003:5). To be blunt, incentive is lacking to initiate the actions needed to link the transatlantic economic partnership into closer cohesion at least in the immediate future.

Despite the bleak forecast, any strategy to bring about enhanced economic integration across the Atlantic must take into account the following considerations:

- ◆ deeper transatlantic economic integration has been taking place since the 1990s as a result of globalization which, in turn, is reflected in the liberalization of trade and regulatory regimes;
- ◆ the U.S. has outpaced the EU in making the transition to a liberalized market in part because cultural resistance in Europe will never condone the same degree of economic deregulation and cutbacks in social spending;
- ◆ globalization has inspired the creation of a multi-level governance structure in which trade is managed increasingly by multilateral institutions, investment by regional regulatory arrangements, and compliance by the nation-state;
- ◆ standardization is the key in promoting economic integration at the multilateral and regional levels and it cannot occur without better alignment of bureaucratic functions on a transatlantic basis;

- ◆ enforcement accountability suffers due to the politicization of the regulatory process.

This list provides the framework around which the transatlantic economic partnership should be based to adapt to the new imperatives being forced by globalization. While both trade and investment flows have been swelling rapidly in the past decade, each should be analyzed separately since they are responding to different factors that impact how they should best be managed.

To begin, it would be folly to advocate a free trade zone across the Atlantic for several reasons. First, total liberalization is not the likely end game of globalization for quite some time. According to Andrew Rose, many trade goals—“such as opening trade in services, liberalizing investment, and harmonizing rules on competition—are too easily evaded by rich countries” (Schiffers, 2002). For that reason, the transatlantic trade relationship may have reached “the limits of the benefits of economic openness and principled multilateralism” (Duffield, 2001:93). Second, a free trade zone would not be in the political interest of either Europe or the U.S. because such a step would place both sides in a domestically tangled web woven by WTO rules. While a free trade area is consistent with WTO principles, it would have to cover “substantially all trade” (Article 24) between the participants. “A WTO-consistent FTA [Free Trade Area] would at a minimum require the EU to liberalize agricultural trade and the US its treatment of textiles and apparel” (Hindley, 1999). The explosive nature of these sectors would surely render an FTA politically untenable to significant lobbies in Europe and the U.S. Third, it is not only the global trading system that would become unbalanced by an EU-U.S. trading bloc but the transatlantic relationship itself would not be served. Each partner retains negotiating leverage to the extent that it is “able to confer and deny benefits” that cannot be secured independently “save at unacceptable costs” (Van Oudenaren, 2001). Too much preoccupation with transatlantic trade could diminish the ability to protect the domestic market since bargaining positions are weakened without a plausible threat to divert trade.

In the final analysis, the WTO continues to constitute the most feasible forum to sort out most transatlantic trade disputes (Hufbauer and Neumann, 2001). What worries the EU, however, is the sincerity of the U.S. commitment to multilateral frameworks. As

EU Commissioner for External Relations Chris Patten commented, "We have to persuade Americans that the concept of a nation whole unto itself is anachronistic; that the 'national interest' implies international co-operation and international obligations; that the things Americans want—jobs, prosperity, peace—can only be secured if the United States works with others" (Patten, 2003). The long-term answer is likely to be positive if only because economic self-interest should override isolationist inclinations in the U.S. but the immediate situation is questionable due to the uncertain ramifications of the current Iraq crisis. A temporary inward turn should be an expected consequence for the U.S., especially in light of the anti-American sentiment that has been spawned.

Yet the WTO is not the ideal mechanism for settling all trade conflicts. While successful on many fronts, the WTO has proven institutionally incapable of handling trade matters with cultural overtones, such as the GMO and beef hormone controversies (Kuehler, 2002). Its decisions are having no practical impact in bringing about meaningful compliance by the offending parties in these areas because value preferences are difficult to bargain away by governmental officials due to the fear of provoking widespread social backlash. The weakness of the WTO is exposed in trade disputes distinguished by their attempts to regulate on behalf of the public welfare. In effect, a multilateral approach is most effective in trade litigation that does not touch upon regulatory prerogatives and is confined to measures involving claims of traditional protectionism and market access. The newer clashes over regulatory obstacles to trade must look elsewhere for resolution and have overtaken trade policy in importance during transatlantic negotiations (Carruth, 1999).

More than trade is encompassed within the realm of regulatory policy. Indeed, a wider scope of international economic activity is at issue, including investment and competition policies. Since globalization is driven largely by investment in search of a competitive environment, regulatory concerns are at the core of what's at stake in the contemporary global economy. As discussed earlier, transatlantic regulatory integration is most suitably managed at the level of regional interaction. A two-fold set of problems has been identified as existing at the regional level of governance: the quest for standardization and poor enforcement accountability. Both point to inadequacies of institutional capacity that tempt politicization of the policy process most often for mere

parochial purposes. While the policy process cannot be—nor probably should be—wholly immune to political interference, some of the sinister aspects can be minimized within tolerable limits.

Integration cannot take place without standardization of regulatory policies. The relationship is symbiotic but the two dynamics are not synonymous. As the EU experience demonstrates, integration does not require regulatory homogeneity but only compatibility of standards (Nicolaidis and Egan, 2001:460). This latitude enables different regulatory cultures of countries to intersect without demanding what would be impossible: complete uniformity. The EU, for all its trail-blazing in this field, has been criticized for formulating regulations that are either too stringent or the lowest common denominator (Burwell, 2002:24). The result is regulations that tend toward the extremes, excessive or not enough. In an effort to mitigate improper political meddling, the EU invented a new paradigm in which directives defined “essential requirements” for product safety but left European standards bodies ... to develop specific standards conforming to those requirements, through a contractual bond with these bodies” (Nicolaidis and Egan, 2001:462). This system yielded the basis to promote standardization across the EU’s single market but at the long-term expense of what would translate smoothly across the Atlantic. The extreme focus on technical specifics—the consequence of relying upon standards bodies—collided head-on with the more flexible American approach to product safety and consumer protection. Transatlantic trade conflict was predictable even without factoring in cultural and political considerations.

What needs to be accomplished is to blend the regulatory norms in the EU and U.S. in a way that keeps domestic politics from ruining collaboration in developing standards acceptable in the transatlantic marketplace. In other words, greater regional cooperation among standard-setting bodies is a prerequisite condition for easing some—but hardly all—of the most vexing trade and commercial disputes today. This strategy is premised on acting early in the policy-making process to preempt quarrels before they reach too high in the bureaucratic ladder. Since the building block of regulatory policy is an analysis of what constitutes a “risk” against which the public should be protected, scientific convergence on risk assessment and risk management

would go a long way in short-circuiting much eventual political fallout over a mutually agreed upon transatlantic understanding of a regulatory concern (Burwell, 2002:27). If the risk is defined in common terms in advance, the regulatory policies adopted separately in the EU and U.S. would at least seek to address a common problem from a similar theoretical foundation. The regulations themselves would not have to copy one another but only have to guide product design enough to lessen the chance of transgressing a market access protocol. For example, European bias for the "precautionary principle"<sup>5</sup> could be evaluated as part of risk assessment calculations and incorporated in the manner warranted by the issue under review.

A regional institutional approach to risk assessment, although a modest step, would encounter political resistance because it encroaches upon the opportunity for private interests to influence the creation of standards that operate to their domestic advantage. However, the degree of transatlantic intra-company trade is becoming too significant to sacrifice to regulatory inconsistency. A phased-in approach, whereby sectors are incorporated at intervals based on volume of transatlantic commerce and ease of reaching common accord, would test the model and establish a pattern of cooperation. A supplemental benefit is that the more politically explosive matter of seeking to merge the regulatory norms in the EU and U.S. would not be opened. Discussions of risk assessment and management do not anticipate modifications of bureaucratic operating procedures. The substance of a regulation, whether consumed by detail or sketched in broad objectives, can be left alone.

The more troublesome problem involves how to maintain enforcement accountability on both sides of the Atlantic because fundamental questions of a constitutional nature must be reconciled. The EU is currently engaged in a debate deciding the future of its structure and division of powers in preparation of enlarging membership in 2004. A root-and-branch revision is long overdue. "Indeed, it is not too much to say that the future of U.S.-EU relations depends more on the vicissitudes of Europe's internal dilemmas than on anything else" (Van Oudenaren, 2001). Until the

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<sup>5</sup> The precautionary principle is applied in the EU's environmental and food-related policies. It is defined as appropriate to situations "where there are threats of serious or irreversible damage, or lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation" (Carter, 2002:225).

final shape of the EU's new constitutional order is determined, much remains speculative about the recipe for remedying non-performance with transatlantic obligations.

At a minimum, international commitments must have adequate institutional follow-through by the parties to make the effort worthwhile and reliable. On the EU side, the European Commission must be made more credible to justify the U.S. in focusing negotiations with it rather than in cutting bilateral deals with the member states. Competition policy is beginning to move in a direction that could become a prototype. Under a new system approved in 2002 to take effect in 2004, the Commission will avail upon the bureaucracies of the member states to review the anti-competitive implications of mergers and acquisitions. According to Commissioner for Competition Mario Monti, "This reform shows that the Commission does not hesitate to involve a wide network of national enforcement agencies in the implementation of a core Community competence when this clearly contributes to stronger enforcement of EU law" (EUObserver, 2002). The Commission, unlike in the past, is not delegating enforcement entirely to the discernment of member states but instead is imposing investigative duties while retaining a closer hand on overall implementation. It is a formula that might be worth replication into other regulatory sectors.

On the U.S. side, enforcement breaks down at the state level largely out of a constitutional respect for federalism enshrined in the much-invigorated Tenth Amendment. The U.S. Supreme Court has reversed decades old precedent to fortify the status of the Tenth Amendment as a barrier to national regulatory control.<sup>6</sup> As a result, the federal government is increasingly frustrated in its efforts to exercise policy leadership in certain regulatory situations. International commitments are sometimes the victim of this reallocation of legal jurisdiction. While the U.S. is not as dependable in fulfilling its international obligations where state policies may supplant them, it is far from being untrustworthy. Greater care in framing regulatory policies in the interest of

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<sup>6</sup> One of the most frequently cited decisions reflecting the U.S. Supreme Court's strengthening of the Tenth Amendment is *Printz v. United States*, 521 U.S. 98 (1997) where Congress was denied authority to impose a mandatory background check on local police to conduct prior to the purchase of a handgun.

interstate commerce or even national security has traditionally overridden much of the blockage.<sup>7</sup>

The transatlantic economic relationship is strong but experiencing signs of trauma. A strategy directed at restructuring institutional arrangements is mandatory. The paradox is that this prescription crashes into the wall of political reality at the same time that globalization is challenging the system to adapt. The pressure is making the teakettle whistle and it could explode if something is not done.

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<sup>7</sup> The power of Congress and of the President to supercede state policy in international agreements is well established and constitutes a plausible method to negotiate regulatory matters with the EU. See, *United States v. Belmont*, 301 U.S. 324 (1937). Defining certain economic issues in national security terms might override certain obstacles associated with federalism.

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