



University
of Glasgow

Steffenson, Becky J. (2001) *The Institutionalisation of EU-US relations: decision making, institution building and the new transatlantic agenda.* PhD thesis.

<http://theses.gla.ac.uk/2232/>

Copyright and moral rights for this thesis are retained by the author

A copy can be downloaded for personal non-commercial research or study, without prior permission or charge

This thesis cannot be reproduced or quoted extensively from without first obtaining permission in writing from the Author

The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the Author

When referring to this work, full bibliographic details including the author, title, awarding institution and date of the thesis must be given

**'The Institutionalisation of EU-US Relations: Decision
Making, Institution Building and the New Transatlantic
Agenda'**

Becky J. Steffenson

PhD

University of Glasgow

Department of Politics

August, 2001

Abstract

This thesis represents an attempt to make an original contribution to knowledge about transatlantic institutions and transatlantic governance. It investigates attempts in the 1990s to foster a 'new transatlantic dialogue' between the EU and the US, through three bilateral agreements: the Transatlantic Declaration (1990), the New Transatlantic Agenda (1995) and the Transatlantic Economic Partnership (1998). The thesis questions whether and to what extent the relationship has been institutionalised into a structure for transatlantic governance, and how the composition of transatlantic institutions impacts the way that transatlantic actors govern. Consideration is given to both 'who' governs in transatlantic relations and 'how', as evidence is sought to prove or disprove the claim that a decentralisation of decision-making powers has resulted in 'policy setting' and 'policy shaping' by lower level civil servants and non-state actors participating in transgovernmental and transnational institutions. Three policy sectors- the EU-US anti-trafficking in women campaigns, the EU-US Mutual Recognition Agreements and the EU-US banana dispute- serve as case studies for the transatlantic policy process.

Table of Contents

Lists of Illustrations and Tables	v
Preface	vii
Abbreviations	viii
Chapter 1- Understanding the ‘New Transatlantic Dialogue’	1
The Research Question and the Main Hypothesis	5
Governance and Institutions in EU-US Relations	7
Transatlantic Governance: Decentralisation and ‘Privatisation’?	12
An Overview of the Thesis	15
Chapter 2- Governing through the NTA: A Decision-Making Model	21
International Relations Theory: Institutions, Communication and Interests	23
The Governance Literature: Responses to Globalisation	35
Transatlantic Governance: Capabilities and Expectations	43
A Transatlantic Decision Making Model	49
Chapter 3- The Institutionalisation of EU-US Relations in the 1990s	60
European-American Relations though the Cold War	62
Breaking Ground- The Transatlantic Declaration	70
The NTA: The Cornerstone of the Transatlantic Foundation	80
Adding on- The TEP	91
Chapter 4- Setting and Shaping the Transatlantic Dialogue: The Transgovernmental Policy Process	102
The EU-US Summit	103
The NTA Processes: Political and Economic Decision Taking	108
The Early Warning System Process	115
Decentralised Policy Setting and Shaping	122
Chapter 5- Transnational Policy Shaping and the Transatlantic Civil Society	130
The Transatlantic Business Dialogue	131
The Transatlantic Consumer and Environmental Dialogues	139
The Transatlantic Labour Dialogue	159
Transnational Decision Shaping	162

Chapter 6- The Transatlantic Challenges to Transnational Trafficking in Women	173
The Political Decision to Target Trafficking in Women	175
Setting and Shaping Transatlantic Policy on Trafficking in Women	187
Shaping Transatlantic Policy on Trafficking in Women	196
The Implications of the Transatlantic Information Campaigns	202
Chapter 7- Regulating the Transatlantic Marketplace: The EU –US Mutual Recognition Agreements	211
The Political Decision to Pursue Mutual Recognition	213
Transgovernmental Trade and Domestic Regulatory Authorities	220
Transnational Input: The Role of the Transnational Civil Society	230
The MRAs in the context of the NTA	238
Chapter 8- The EU-US Banana Dispute	243
Overview of the Banana Dispute	245
The US Negotiating Position	255
EU Decision Making in the Banana Dispute	266
The Wider Implications of the Banana Dispute	275
Chapter 9- Conclusion	287
The Institutionalisation of Transatlantic Relations	289
The Decentralisation of Decision Setting and Shaping	292
Policy Shaping by Non-state Actors	297
Effective and Legitimate Transatlantic Governance	301
Research Notes	307
References	312
Books and Journals	312
Official Documents and Speeches	326
News Sources	332
Websites	336

Illustrations and Tables

Tables

Table 1.1 Types of Transatlantic Actors	14
Table 2.1 Transatlantic Decisions in Theory	35
Table 2.2 Competency in EU Decision Making	46
Table 2.3 A Categorisation of Decision Making	50
Table 2.4 Actors in the New Transatlantic Dialogue	53
Table 2.5 Transatlantic Decision Making	55
Table 3.1 A History of EC Trade Agreements	74
Table 3.2 Baker's New Atlanticism Speech	75
Table 3.3 The Institutional Framework of the TAD	76
Table 3.4 The Berlin Working Groups	79
Table 3.5 The Four Chapters of the NTA	83
Table 3.6 Examples of NTA Deliverables	85
Table 3.7 The Three Prongs of the TEP	94
Table 3.8 Sectors Covered by the TEP	99
Table 4.1 The Transatlantic Working Groups	109
Table 5.1 The Dialogue 'Summits'	152
Table 5.2 Dialogues' Access to EU-US Summits	153
Table 5.3 Formal Access for the Dialogues	156
Table 5.4 Active Dialogue Members	158
Table 5.5 Policy Positions of the Transatlantic Dialogues	159
Table 6.1 A Chronology of the Trafficking in Women Policy	185
Table 6.2 Parallel Transatlantic Information Campaigns	193
Table 7.1 A Chronology of the MRA Negotiations	215
Table 7.2 The MRA Annexes	215
Table 7.3 MRA Institutions	229
Table 8.1 Depictions of EU and US Roles in the Banana Dispute	245
Table 8.2 The Transitional First Come, First Serve Licensing	251
Table 8.3 Chronology of the Banana Dispute	253
Table 8.4 The EU Banana Regime	254
Table 8.5 Favoured First Come First Serve Licensing	267

Figures

Figure 4.1 The NTA Policy Cycle	107
Figure 4.2 The Structure of the Transatlantic Dialogue	111
Figure 4.3 The Early Warning Mechanisms	116
Figure 5.1 The TABD Structure	140
Figure 5.2 The TACD Structure	146
Figure 5.3 The TAED Structure	151
Figure 5.4 The Transatlantic Labour Dialogue	162
Figure 6.1 Global Trafficking in Women and Children	177
Figure 8.1 A Message to Congress	264
Figure 8.2 Statement on EU Imports	271

Chapter 1

Understanding the 'New Transatlantic Dialogue'

The transatlantic relationship is arguably the most significant relationship in the international system. Western Europe and the United States (US) have the largest concentration of individual and combined political and economic power, making the European Union (EU) and the US each other's most important partner world-wide. Common values, culture and history have combined to make them political partners. The EU and the US are each other's largest trading partner, accounting for 20% of each others' trade in goods and 33% of trade in services (Berry 2001). More importantly, in economic terms, they are the recipients of around half of each other's Foreign Direct Investment (FDI).¹

Much academic attention in the 1990s focused on relations between the EU and the US in light of radical structural changes to the international economic and political orders (see Smith and Woolcock (1993) Featherstone and Ginsberg (1996) Peterson (1996) Monar (1998) Gardner (1997)). The end of the Cold War visibly reduced the security threat on which the transatlantic alliance previously hinged. However, geopolitical and economic shifts in the international system, caused in part by increasing flows of people, capital, and goods, created a number of new incentives for EU-US co-operation and conflict. The transatlantic relationship was viewed as a way to promote western ideas of democracy and security in an era of change and

¹ In the last measurable year, US exports to Europe totaled \$259 billion, while European exports to the US totaled \$293 billion. Foreign Direct Investment is an important tie between the EU and the US because it is such an important source of employment. For example, European investment in the US supports over 7 million American jobs (EABC 2001). American investment in Europe accounts for about 3 million European jobs (see European Committee of the American Chamber of Commerce's website <http://www.eucommittee.be>)

uncertainty. Deepening European integration, including the creation of Common Foreign and Security (CFSP) and Justice and Home Affairs (JHA) pillars under the Maastricht Treaty (1992), signalled to the US the growing capacity of the EU to act as a foreign policy actor in its own right. The 1990s marked the first time in the history of the transatlantic relationship that the EU and the US faced the task not only of keeping the 'alliance' together but of facilitating a partnership of – more or less- equals (Peterson 1996).

This thesis represents an attempt to make an original contribution to knowledge about how and why the transatlantic partners chose to 'manage' the relationship by creating new transatlantic institutions in an era of rapid international change. It investigates attempts in the 1990s to foster a 'new transatlantic dialogue' between the US and the EU, rather than separate EU Member States. Central to the thesis is the question of why the EU and US chose to build bilateral institutional ties outside of traditional multilateral institutions such as North Atlantic Treaty Organisation (NATO), the United Nations (UN) and the World Trade Organisation (WTO). The focus is on three transatlantic agreements: the Transatlantic Declaration (TAD) (1990), the New Transatlantic Agenda (NTA) (1995), and the Transatlantic Economic Partnership (TEP) (1998). The emphasis on transatlantic economic and political relations between the EU and the US in the thesis reflects the focus of these agreements on expanding the scope for policy co-ordination and co-operation under the agreements.² It is not meant as an indication that multilateral or security issues are any less important to the larger transatlantic partnership. Rather, the thesis seeks to gauge the significance of bilateral attempts to re-invent the relationship through these

² The term political rather than security here indicates the focus on 'soft' rather than 'hard' security issues. The scope for policies studied in this thesis is largely confined to those incorporated under the NTA. For transatlantic security studies see Haass (1999) Bronstone (1998), Geipal and Manning (1996) and van den Broek (1993).

transatlantic agreements, which themselves are both bilateral and focused almost entirely on policy areas other than traditional security.

These transatlantic agreements warrant study because they mark, to a considerable point, a break from the pre-1990s past and together they form a new framework for managing the transatlantic relationship. The TAD, the NTA and the TEP are the first bilateral agreements signed between the EU and the US. Despite earlier attempts to foster EU-US rather than European-American relations in the 1960s, and 1970s (see chapter 3) the 1990s was the first era to be characterised by the institutionalisation of a structure for transatlantic governance. Unlike President Kennedy's Grand Design or President Nixon's Atlantic Charter, the agreements were accompanied by institutional arrangements and specific policy commitments. The transatlantic agreements expanded the scope for bilateral co-operation to a range of new (largely) non-traditional security and economic policy areas.

Specifically, the NTA commits the EU and US to approach jointly, where possible, rising transnational crime, terrorism and environmental degradation. It acknowledges the role that the transatlantic partners can play in promoting peaceful transitions to democracy world-wide. The NTA and the succeeding TEP contain strategies for facilitating increased economic integration and dispute management in direct response to competing forces both to liberalise trade and protect domestic producers. In substantive terms, the agreements explicitly acknowledge the capacity of the transatlantic partners both to promote and undermine global economic liberalisation. EU-US trade and investment agreements have the potential not only to open the transatlantic marketplace but also to lead the way for further liberalisation at the multilateral level. On the other hand, transatlantic trade disputes and a lack of solidarity at the WTO have the potential to undermine the multilateral trading system.

In short, EU-US relations are significant because the transatlantic partnership can make or break the foundations of the western economic and political orders.

What follows in this chapter is an introduction to a study of the capacity of the EU and US to respond to the challenges, or to effectively ‘govern’ the transatlantic marketplace and the international political order through bilateral transatlantic agreements. The emphasis is on the creation of decision-making structures and a framework for transatlantic policy making. Section 1 discusses the primary research questions and sets out the main hypothesis, namely that these transatlantic agreements do matter because they have established a transatlantic governance structure. An examination of the existing literature on transatlantic relations in section two reveals that foundations for this thesis are found in earlier works. It also seeks to establish what light a decisionmaking approach sheds on EU-US relations generally and the NTA framework specifically. Section 3 outlines two sub-hypotheses, which are that transatlantic relations are determined not only by transatlantic structures but also by how transatlantic actors use them; and that transatlantic institutions – however fragile – persist because each side has a clear interest in ensuring that the other does not defect from transatlantic bargains. Section 4 outlines how subsequent chapters contribute to the discussion.

1) The Research Question and the Main Hypothesis

This thesis seeks to establish what impact transatlantic agreements in the 1990s have had on EU-US relations. The main hypothesis, which is divided into two parts, is that these transatlantic agreements have altered the scope and depth of transatlantic co-operation. The thesis seeks support for the arguments that,

- The EU-US relationship has been institutionalised in the 1990s through the three transatlantic agreements (the Transatlantic Declaration, the New Transatlantic Agenda and the Transatlantic Economic Partnership), and
- that the institutionalised networks and policy framework created by the transatlantic agreements form the basis of a transatlantic governance structure which has produced policy outcomes that would be unimaginable in the absence of such a structure.

Further operationalisation of the hypothesis is needed to clarify precisely what kind of evidence is needed to prove or disprove the claim. The first part of the hypothesis seeks to establish the ‘institutionalisation’ of the relationship. The thesis employs a definition of institutionalisation that draws on the work of scholars such as Keohane and Nye (1993), Ruggie (1998) and Risse (1995), which suggests that by no means should we expect international institutionalisation always to result in supranational organisations. Rather many international institutions are in effect ‘regimes’ which can be broadly defined by ‘patterned behavior’ (see Puchala and Hopkins 1983) ‘specific rules’ (Keohane 1989) and even ‘principles norms, rules, and decision making procedures’ (Krasner 1983). Thus, for the purposes of this thesis, institutionalisation

is a process whereby a co-ordination and pattern of behavior between actors is established and developed (see also Ruggie 1998: 54).

The second part of the hypothesis seeks to establish what impact transatlantic institutions have on the wider relationship between Europe and America. A rich literature now exists that argues firmly that ‘institutions matter’ and that they constitute the ‘central component of political life’ (Peters 1999: 150; see also March and Olsen 1989). However, most of this literature focuses specifically on politics in domestic political settings. Relatively little of the so-called ‘new institutionalism’ is concerned with international politics. This thesis draws on Peters’ (1999:18) definition which argues that institutions generally are characterised by

- formal and informal structures, including networks and shared norms
- patterned and sustainable interaction between actors
- constraints on the behaviour of its members
- some sense of shared values.

This thesis ‘borrows’ the central questions raised by the new institutionalism and applies them to international relations and transatlantic relations generally. These questions are: do institutions matter, particularly in determining the behaviour of actors – public and private – who are stakeholders in US-EU relations? If institutions do matter, how much do they matter? And how do we measure how much they matter? This thesis questions not only whether the creation of formal transatlantic dialogue structures can be construed as institutions, but also whether the institutional ties created in the 1990s comprise a process for policy co-ordination or joint policy making. In other words it questions the extent to which actors within these structures create a policy agenda or simply pursue a predetermined, established policy agenda.

The test for transatlantic governance is not only the existence of transatlantic policy output but also of attempts- both successful and unsuccessful- to accommodate the interests of different actors input in the policy process in order to facilitate integration and manage disputes. The examination of transatlantic institutions as decision- making forums for transatlantic policy making ultimately sheds light on the capacity of the EU and the US to manage the transatlantic dialogue and to govern in both the transatlantic marketplace and the international political order.

2) Governance and Institutions in EU-US Relations

‘Governance’ is a term that is now widely used to characterise the actions of actors in the international arena. What is ‘governance’ and how do we study it? Eising and Kohler-Koch (1999: 5) argue that,

‘governance’ is about the structured ways and means in which the divergent preferences of interdependent actors are translated into policy choices ‘to allocate values’, so that the plurality of interests is transformed into co-ordinated action and the compliance of actors is achieved.

For his part, Rosenau (1992: 4) contends that governance, ‘embraces governmental institutions, but it also subsumes informal, non-governmental mechanisms whereby persons and organisation within its purview, move ahead, satisfy their needs, and fulfil their wants’. Simply put, governance is ‘the imposition of overall direction or control on the allocation of valued resources’ (Peterson and Bomberg 1999: 5). It is, in all of these definitions, seen to be a synthetic process in that a variety of actors – not all of them governmental – are involved in decisions that determine who gets what, when and how.

One strategy for understanding governance is to ‘deconstruct’ it (in a literal sense) and approach it as a process of making individual decisions. Peterson and

Bomberg (1999: 4) note that, 'All policies are the product of decisions about what to do, how to do it, and how to decide what to do.' This thesis approaches EU-US relations as a process of decision-making because decision-making as an analytical approach helps us identify who governs and how, and who or what determines policy outcomes. The explanatory power of a number of variables in the process of transatlantic policy making is discussed throughout the text. Institutions and actors are considered as important factors of policy input, and agreements and declarations serve as final policy outputs. This approach to transatlantic governance is rooted in a number of earlier transatlantic studies.

A host of literature in the early 1990s sought to explain the nature of co-operation and conflict in relations between the EU and the US, particularly in light of shifts in the balance of power between the partners and growing 'complex' interdependence. Interest in the nature of international regimes, a preoccupation of international scholars in the 1980s (Keohane and Nye 1977; Keohane 1989; Hasenclever etc all 1996; see also Peters 1999), was resurrected as institutional approaches to politics more generally began to flourish. The result was fresh interest in the prospects for fostering increased transatlantic co-operation – and international co-operation more generally -- through new institutions. Key to the discussion was the increased potential for conflict seen to accompany the breakdown of the hegemonic system, under which the US had acted as a dominant partner over the Europe in a bipolar, Cold War international order. The rise of a multipolar order, it was argued, increased the likelihood that a united Europe had the capacity to act as a more equal partner but also as a more equal competitor. Scholars such as Featherstone and Ginsberg (1996) highlighted the potential for diverging interests in a post-hegemonic

system, but also for EU and US interest in common action prompted by economic interdependence.

Earlier works on EU-US relations in the 1990s highlight a number of important themes that feature in the current study. Authors including Smith and Woolcock (1993) and Peterson (1996) noted that diverging interests were unavoidable given the growing importance of domestic actors in international politics. The question of how to manage the relationship was complicated by the tendency of the EU to boldly declare that it was ready to play an international role commensurate with its economic power even as the Union's Member States showed themselves unwilling to vest the EU with the resources and policy instruments needed to play such a role. The result was a wide gap between the EU's internal capabilities and the rest of the world's expectations (see Hill 1993; 1996), with no international partner of the Union more acutely aware of the gap than the US. Meanwhile, the 'action capacity' of the US was also called into question as American foreign and trade policies became subject to more and more effective domestic pressures than had been imaginable during the Cold War, and also more prone to complication by the separation of powers between institutions at the federal and a state levels (see Smith 1997; Nicolaïdis and Howse 2001).

Institutionalist approaches to EU-US relations in the early 1990s highlighted the importance of institutions in transatlantic relations (see for example Keohane and Nye 1993). It was argued that institutional ties could manage the relationship and overcome diverging interests. Peterson (1996) argued that a genuine partnership would require 'better-organized exchanges'. Smith (1997) argued that policy co-ordination could not take place without a clear allocation of political authority or a clear legal framework, both of which required considerable institution-building.

A second wave of EU-US literature in the 1990s focused on how new transatlantic institutional structures created by the TAD and the NTA could manage the dialogue. Studies of the NTA including Krenzler and Schomaker (1996), Gardner (1997) and Monar (1998) and Bail *et al* (1997) linked policy co-ordination and co-operation to transatlantic institutions, but mainly described the prospects for such co-ordination and co-operation under the NTA, in part because they were released before the NTA had produced substantive results. Nonetheless, these studies helped provide a bridge to a new wave of (quite recent) studies, which concentrate more narrowly on transatlantic policy outputs and the role of the NTA in fostering actual co-ordination and co-operation.

This thesis seeks both to build upon and critique this most recent wave of literature, particularly works by Pollack and Shaffer (2001) and Philippart and Winand (2001). These works concentrate not only on the NTA as a framework for co-operation but as a structure of transatlantic governance. They explain what the NTA is, but also how the NTA works and how well it works. Shaffer and Pollack offer an actor based explanation for who governs in EU and US relations by describing different levels of intergovernmental, transgovernmental and transnational networks which have been institutionalised by the NTA. Phillipart and Winand's examination of not only policy making but policy shaping opens the policy process up to a range of actors who have an input into the transatlantic policy process. Their policy-based study tries to measure the success of the NTA by applying numerical values to individual sectors based on the discrepancy between policy goals and policy output.

In many ways the decision making approach taken to EU-US relations in this thesis seeks to combine the logic of these two approaches. Chapter two outlines a decision-making model as a way of categorising actor input into the transatlantic

policy process. It argues that intergovernmental, transgovernmental and transnational actors have different roles in making, setting and shaping transatlantic policy. Unlike Philippart and Winand's study, however, this thesis does not try to present a quantitative measure of what has been achieved under the NTA, for a number of reasons. First, transatlantic co-operation or co-ordination was being pursued in many policy areas before the creation of specific transatlantic institutions, thus making it difficult to establish a causal relationship between the NTA framework and policy output. Second, it is difficult to measure the significance of policy agreements simply by relying on the public declarations of senior transatlantic policy-makers – specifically contained in so-called 'Senior Level Group reports' -- because of a tendency by transatlantic policy makers to 'recycle' and 'repackage' their announcement of policy successes.³ The short-term pressure to produce results out of the NTA reflects the political cycles which govern the behaviour of governments on both sides: 'Quite simply, whilst the development of strategic direction in US-EU relations is a long-term exercise to be judged over a period of years if not decades, political leaders are judged over periods of five years at most' (Smith 2001: 271). Third, a numerical measure of successes in one area is not necessarily comparable with policies pursued in another. As one senior EU official interviewed for this study argued, 'how do you compare the levels of success? Is it more important that the EU and the US go to Russia with a common position on food aid or that they run joint trafficking programmes in Central and Eastern Europe (CEE)?'⁴

Perhaps above all, this thesis eschews attempts to measure quantitatively the success, or not, of transatlantic policy-making because it is concerned with process as much as policy: it emphasises the importance of not only policy output but also of the

³ The SLG report is a stock take of co-operation under the NTA which is released before each summit. See chapter four.

process of policy making. Policy agreements are important measure of the capacity to govern in the short term, but so too is the creation of dialogue structures and the ability to foster long term strategies of co-operation. As such, this thesis seeks primarily to make clear the perceptions of actors who participate in the policy process and to gauge the impact that different variables – including the creation of new transatlantic institutions -- have had on the policy process. This thesis primarily relies on elite interviews to determine the relevance of transatlantic institutional structures, their effect on the actors who participate within them, and the impact on the policies they seek to influence in the overall process of transatlantic governance.

3) Transatlantic Governance: Decentralisation and ‘Privatisation’?

The validation of the first hypothesis opens up the discussion on transatlantic governance to a number of sub-hypotheses about the process of transatlantic decision making. If the relationship has been institutionalised into a governance structure, what room has it allowed for different actors (as described by Shaffer and Pollack) to influence the policy process, which Phillipart and Winand note is not restricted only to making policy but also shaping? In other words, the interest is not only in the big decisions that establish the scope for transatlantic policy co-ordination, but also in the decisions that determine policy details and policy options (see chapter 2). To generalise, what space does the formal transatlantic structure leave for agents, both governmental and non-governmental, to influence the co-ordination, convergence or mutual recognition of transatlantic policy? Who exercises what type of power in the transatlantic process and when? Two further hypotheses are presented regarding the role of different actors involved in transatlantic policy making.

⁴ Interview, Commission Delegation, Washington D.C., October 2000 (32).

- The second hypothesis to be tested by this thesis is whether or not, and to what extent, the creation of an institutional framework by the transatlantic agreements has led to a decentralisation of decision taking powers to state actors.

Put another way, how much responsibility for actual policy making has been delegated to transgovernmental, as opposed to intergovernmental, actors (see table 1.1; see also chapter 2). This hypothesis leads us to be concerned not only with the making of ‘history-making’ political decisions by so-called ‘chiefs of government’ to institutionalise the relationship or establish the scope for policy reach. Rather, this thesis seeks to determine the capacity of transgovernmental actors to exercise powers in setting and shaping policies. Validation of this hypothesis requires demonstrating that a range of different civil servants have both participated in and had an impact on the transatlantic decision making process through formal, institutionalised channels.

- A third hypothesis examined by this thesis tests whether and to what extent a decentralisation of decision taking powers has been devolved to private as well as public actors.

The study of non-state actors in international politics is not new. There is a growing literature on the impact that a ‘third sector’, or the global civil society, has had on international governance (see chapter 2). The growing role of private actors is discussed by Keohane and Nye (1977, 1989) and Shaffer and Pollack (2001) as a ‘transnational’ phenomenon.

This third hypothesis has an interest in the capacity of private groups to influence transatlantic negotiations not only through national channels, but through transnational networks of European and American corporations and non-governmental organisations. The question here is not whether business groups and NGOs ‘make’ policy but whether there is evidence to support the claim that transnational networks ‘shape’ transatlantic decisions. Rittberger (2000) notes that a great problem for researchers is how to measure the impact of these actors. The thesis looks for evidence that non-state actors narrow policy options or ‘load’ the decision-making process in favour of some outcomes rather than others, through either advocacy and persuasion, or through the withholding or provision of valued resources.

Table 1.1 Types of Transatlantic Actors

Intergovernmental	High Level contact between Chiefs of Government
Transgovernmental	Day to Day contact between Sub-Units of Government (Civil Servants)
Transnational	Contact between private actors- businesses and NGOs

Based on Shaffer and Pollack (2001)

To summarise, this thesis seeks to contribute to the larger debate on how the EU and US manage the transatlantic relationship. It focuses on the ‘new transatlantic dialogue’ established by the TAD, the NTA and the TEP as a process of institutionalisation, which has created a formal structure of governance. If the first hypothesis is correct, the transatlantic agreements have created institutional structures and an established policy forum through which transatlantic actors ‘govern’. It is argued that

institutionalisation has taken place at multiple levels, thereby increasing the scope for different actors to influence transatlantic governance in different capacities.

The second and third hypotheses seek to establish the role played by lower level civil servants and non-state actors in decentralised and privatised decision taking forums. Chapter 2 helps clarify these hypotheses by outlining a transatlantic decision making model which argues that intergovernmental actors ‘make’ decisions which establish transatlantic institutions and a policy framework, but that transgovernmental and transnational actors impact the decision making process by ‘setting’ and ‘shaping’ transatlantic policy. Finally, the role of bureaucrats and non-governmental actors in transatlantic governance raises some questions about the transparency of decentralised decision taking. The debate on the legitimacy of transatlantic governance is a theme that is discussed throughout the thesis.

4. An Overview of the Thesis

The decision making model outlined in chapter 2 is the product of a broad theoretical debate about how to approach EU-US co-operation generally and transatlantic governance more narrowly. Chapter 2 draws on different lines of political theory for explanations as to why the EU and US would choose to pursue a policy of ‘institutionalisation’ and how they have subsequently chosen to operate within transatlantic structures. A number of themes are developed in this chapter which inform the discussion of EU-US policy making throughout the thesis. First, the trend towards decentralisation of decision-making power, rather than the centralisation of power at the intergovernmental level, is highlighted. That this process has taken place is evidenced in later chapters, which describe the building up of interstate networks rather than the creation of any supranational ‘transatlantic’ organisation. Second,

chapter 2 highlights, following Peterson (1996) and Smith (1997), that domestic structures affect the capacity of the EU and US to co-ordinate action at a transatlantic level. It is argued that multi-level governance approaches to decision making, which are usually used to characterise the EU, also apply to the US which shares levels of decision-making competency between federal and state institutions. Finally, an exploration of the rationalist-constructivist debate within international relations theory, and examination of both global governance and multi-level governance approaches, highlights the possibility that different actors may be capable of influencing policy at different levels. If all the hypotheses set out above are correct, it can be argued that different actors' actions are driven by different rationales. Rationalist explanations that explain top political decisions do not necessarily account for other parts of the decision-making process. If the decentralisation of decision making allows different actors to have a role in 'shaping' policy, then constructivist claims about the nature of communication according to agreed rules of behaviour (established by the NTA framework) may bear more explanatory weight.

Chapters 3 through 5 set out evidence to support the three hypotheses. Chapter 3 looks at the three transatlantic agreements and seeks evidence to support the claim that the relationship has been institutionalised. It concentrates on the build up of formal institutional ties, which serve as transatlantic decision-making structures. The extent to which policy issues have been placed in a bilateral forum is also discussed as a means of establishing the scope for transatlantic governance. The impact of transatlantic institutionalisation and the capacity of transatlantic institutions to act as governing structures is not only measured by the output of policies or 'deliverables'

but also by the institutionalisation of communication, argued by institutionalists to foster co-operation.⁵

The remaining chapters seek to explore the sub-hypotheses. How is it that actors govern under the institutional framework created in the 1990s? Chapter four examines the process of transatlantic decision making, setting and shaping. It highlights the role of the intergovernmental EU-US Summit as both a beginning and end point of the policy cycle, but also concentrates on the role that transgovernmental actors play in setting and shaping policies at a sub-summit level. The chapter highlights the complicated nature of EU-US decision taking which has become increasingly institutionalised in order to incorporate both domestic economic and political actors. Chapter four also seeks to test the second hypothesis by questioning the extent to which transgovernmental networks provide a forum for decentralised decision setting and shaping. Finally, given the implications of transgovernmental decision setting and shaping on transatlantic governance, the chapter questions the legitimacy of a process which is both highly decentralised and primarily bureaucratic.

Chapter 5 tests the third hypothesis against a number of formal interest based transnational networks- including the Transatlantic Business Dialogue (TABD), the Transatlantic Consumer Dialogue (TACD) and the Transatlantic Environmental Dialogue (TAED)- which have been asked formally to participate in the transatlantic policy process. It seeks to establish whether the behaviour of actors within these networks provides support to the claim that decision-making powers have been extended to non-state actors. The legitimacy debate on transatlantic decision making is also considered in light of the unequal access that different actors have and the

⁵ 'Deliverables' is a term used by EU and US officials to describe policy output in the NTA process. Deliverables range from agreements, to joint initiatives, to declarations.

increased demands for transparency in the policy process. It is argued that the capacity of actors to shape the process is varied, and thus too is support for the hypothesis that a decentralisation of decision taking to private sector actors has occurred.

Chapters 6 through 8 discuss three policy sectors, which serve as case studies for the three hypotheses and for EU-US decision making. The case studies were chosen to show the broad range of the new transatlantic dialogue and to incorporate political and economic issues as well as policy areas characterised by integration, interest diversion or 'system friction'.⁶ Chapter 6 looks at the decisions that made, set and shaped transatlantic policy co-ordination on trafficking in women in CEE. A case study of the EU-US information campaigns on trafficking in women highlights the type of low key, technical decisions that are facilitated by the NTA. The discussion on trafficking in women begins with an examination of the intergovernmental decision to include trafficking in women in the institutional framework of the NTA. It also questions whether there is evidence of decentralised decision setting and shaping by transgovernmental actors and what role transnational actors have played. Trafficking in women is also examined as a case study for EU external co-operation on JHA issues, an area where the EU has normally been considered to be a less supportive partner because of internal institutional gaps.

Chapter 7 presents a second case study, this time in an economic policy sector. It examines intergovernmental, transgovernmental and transnational actor input into the EU-US mutual recognition agreements (MRAs), according to which the regulatory standards governing the production of goods on one side of the Atlantic is accepted as legitimate on the other side. Like the trafficking in women case, the MRAs point to the existence of multi-level governance in transatlantic policy making. This chapter seeks

⁶ This term is used by Smith (2001) to describe clashing structures, for example between regulatory or industrial cultures.

to establish the impact that the institutionalisation of the NTA and the decentralisation of decision setting and shaping to state and non-state actors has had on actual policy agreements. The chapter also demonstrates a policy sector where the EU has the capacity to act more coherently than the US, thus revealing that the capabilities-expectations gap often ascribed to the EU, and held to be a major deterrent to effective EU-US policy co-operation, is mirrored by a similar gap on the American side.

Finally, chapter 8 examines a trade dispute that raged for most of the 1990s. It considers the role that domestic actors on both sides have played in the transatlantic banana dispute and questions how effectively NTA institutions have been in managing this conflict (and other areas of trade friction). In short, it moves us towards an answer to the question: does the transatlantic decision making model apply to areas of dispute as well as agreement? The chapter develops the argument that the banana dispute was an 'outlier', or a case where transatlantic institutions have been criticised for not effectively managing a dispute. The banana case draws attention to the complicated task of facilitating 'governance' where interests diverge and where disputes become legal disputes under international trade rules. But, it also demonstrates the capacity of the transatlantic institutions to contain policy friction. The chapter asks what the banana case can tell us more generally about the capacity of the new transatlantic dialogue to overcome competition between domestic actors.

To conclude, chapter 9 reviews the main findings of the thesis and 'broadens out' to consider the wider implications concerning the role of the EU-US relationship in international politics and the place of institutions in international relations more generally. It reviews the evidence presented in the thesis to determine whether the three hypotheses laid out above point to an institutionalisation, decentralisation and 'privatisation' of transatlantic decision making. It also questions what impact, or lack

thereof, new decision making processes have had on the overall cycle of transatlantic governance. In short, it asks not only who governs and how, but what difference it makes? To what extent has the decision making structure allowed the EU and US to manage relations characterised by co-operation and competition, and at what price does 'effective' management of the dialogue come? In other words, how does transatlantic decision making fare in the debate on technocratic governance? The anti-globalisation protests at the WTO ministerial meeting in Seattle (1999), at the EU Summit in Göteborg (2001) and the G-8 Summit in Genoa (2001) demonstrate the general lack of popular support for governance structures which exist above the nation-state. Is the legitimacy of transatlantic governance undermined by the absence of a broad acceptance of transatlantic institutions?

Chapter 2

Governing through the NTA: A Decision-Making Model

Finding a single theory that can accurately characterise the new transatlantic relationship is difficult because the NTA encompasses a number of non-traditional security and economic policy areas. Moreover, EU-US relations span a number of realms of theory, including various international relations theories, regional integration theories, and transnational or global governance theories. This chapter seeks theoretical explanations for EU-US institution building and policy making from a number of different sources. The study examines transatlantic relations at the highest level of interstate negotiation while considering transatlantic policy making at the most micro level, thereby not limiting itself to the confines of either the international relations or comparative politics literatures. In order to address the multiple layers of analysis that exist in EU-US relations, it is necessary to draw on themes and concepts from multiple theoretical approaches.

One aim of this thesis is to determine why the EU and the US decided to reinvent the relationship in the 1990s. On a general level, this means questioning how international relations are structured in the increasingly globalised, post Cold War era. More specifically, the focus is on the decisions that institutionalised the transatlantic relationship. What does the existing literature convey about why institutions emerge and the scope for co-operation through institutions such as the New Transatlantic Agenda (NTA)? Transatlantic institutions are characterised not just as a forum for co-operation but as a process designed for conflict management and policy output.

A second aim of the chapter is to explore, within the literature, the scope for policy co-ordination through the transatlantic institutions. It is argued that EU-US

relations extend beyond diplomatic agreement into the realm of global governance. An important part of the theoretical debate on EU-US relations thus extends past the question of why states co-operate to also address how states co-operate. How have the EU and US organised decision-making procedures and what determines how and which policies are pursued? To summarise, this chapter develops a number of themes including: the process of institution building, communication within transatlantic institutions, the output of policy co-ordination and the role of the NTA and TEP as governance structures.

Section 1 examines the prospects and motivation for co-operation through institutions using the established IR debates between neorealists and neoliberal institutionalists and between rationalists and constructivists. It argues that rationalist and constructivist approaches are not mutually exclusive, as demonstrated by the fact that rationalist approaches offer 'sound' social science explanations for interstate co-operation at high political levels, but that communication between other actors is under-emphasised. Section 2 examines EU-US relations not just as a process of co-operation, but as a process of governance. The reaction of states to globalisation is considered, as is the role of policy networks in the process of global governance. Section 3 extends the governance debate and questions the capacity of the EU and the US to govern at a transatlantic level under the constraints of domestic institutional structures. It is argued not only that the EU but also the US suffers from a capabilities-expectations gap. Finally, in light of the complexities of 'multi-level' or 'federal' governance, section 4 seeks to build a decision-making model for transatlantic governance which explains both who governs and how. Drawing on Pollack and Shaffer's (2001) three tiered model of transatlantic levels and Peterson and Bomberg's (1999) model of (EU) decision making, the new transatlantic decision making model

describes a process whereby intergovernmental, transgovernmental and transnational actors make, set and shape transatlantic policy. It also acknowledges that different theories might 'best' explain different stages and different levels of the transatlantic policy making process.

1) International Relations Theory: Institutions, Communication and Interests

International relations (IR) literature is a logical starting point for a theoretical discussion on the transatlantic relationship, because ultimately transatlantic relations are the result of diplomatic-strategic relations, cross border transactions and communication between sovereign powers.⁷ Broadly, international relations theories explain fragmentation (caused by political and economic conflict) and integration (through for example alliances, treaties and agreements) in the international system. In short, IR sheds light on what drives co-operation and conflict between the EU and the US.

Different IR theories offer very different views of relationships in the international system, be they international, inter-state, intergovernmental or transnational. This thesis explores debates between international relations theories about why states co-operate generally and why the EU and US chose to institutionalise the relationship in the 1990s. It questions further not only why they should choose to co-operate but how. What does the outcome of individual policy agreements and declarations tell us about the purpose of the new dialogue and how actors operate within it?

⁷ These characteristics are drawn from Brown's (1997) definition of international relations.

The Old Debate: Neorealism and Neoliberalism

Great changes in the international political and economic systems that marked the 1990s launched international relations theorists into a frenzied search for a model qualified to explain structural shifts away from the Cold War towards a 'new world order'. The neorealist-neoliberal debate emerged in the early 1990s as an extension of the Cold War discussions about the prospects for co-operation and conflict as determined by the structure of the international system and the process of international negotiations. Most international relations theorists tried explaining post-Cold War transformations with concepts derived from realist and liberal international relations theories. The neorealist-neoliberal discourse revealed the first signs of a breakdown in the clear divide between realist and liberal paradigms (with realist conceptions of conflict on one side of the line and liberal notions of co-operation on the other), but the two theories have always maintained different assumptions about the nature of conflict and co-operation between the EU and the US.

The logic of neorealism

Neorealism is based on a clear set of assumptions. It is argued that the structure of the international system, rather than the decisions made by individual agents, shape changes and determine outcomes in international politics (Waltz 1986: 71). The state is the primary level of analysis, and because states are unitary agents, domestic and non-state actors are not considered major players in international negotiations. Waltz (1986:89-90) argues that it is states that 'set the scene' and 'set the rules of the intercourse'.

Neorealism rests on the logic that states are more likely to be in conflict than to co-operate because decisions are determined by the structure of the international

system which is characterised by unrest and anarchy. In a system that lacks order, conflict is inevitable because states are preoccupied with material gains such as security and power.⁸ International institutions are deemed largely unable to mitigate the constraining effect of anarchy on interstate co-operation (Baldwin 1993: 8). However, neorealists concede that states may bargain mainly when they wish to avoid the high cost of conflict, to preserve the peace and manage economic conflict (Waltz 1979: 111-114, 194-199; Henderson 1998: 15). Generally the scope for co-operation within neo-realist theory is limited.

In the early post Cold War years neorealists argued that the transatlantic relationship was not defined by similar cultures, values, ideology and historic ties but by the relative distribution of power between the allies (Krasner 1993: 21). EU-US co-operation was viewed as a reaction to structural shifts which left the international system less predictable and more dangerous (Mearsheimer 1990b). European interest in pursuing the new transatlantic dialogue was seen as a way to keep America engaged in European security, amidst rising fears that it would return to isolationism.⁹ The US's interest in co-operating with Europe was seen as a way to maintain 'a seat at the European table' and gain access to European markets in light of the growing threat of 'Fortress Europe.'¹⁰

Whether they portrayed the international system as hegemonic (see Keohane 1984), unipolar (Huntington 1991) or multipolar (see Mearsheimer 1990a, 1990b),

⁸ Waltz (1986: 99) argues that, 'among men as among states, anarchy or the absence of government, is associated with the occurrence of violence'. Grieco (1990: 40) adds, 'Wishing to remain independent agents, states always assess relationships including cooperative arrangements based on common interests- in terms of their impact and their relative capacity.' Power is also considered to be fungible, so it is argued for example that military power can translate into economic power.

⁹ 'Declinists' argued that the US has lost its 'competitive edge', due to imperial over-stretch (Kennedy 1989: 472) and the relative power gains-such as monetary reserves, trade, technology of its allies (Japan and Germany) (Krasner 1993: 22-23)

¹⁰ Fortress Europe was a phrase used in the late 1980s and 1990s to illustrate the fear that the Single European Market would build a common external tariff wall around Europe that would block US imports.

neorealists tended to reject the possibility of a true transatlantic partnership, arguing that power-motivated behaviour would engender mostly conflict in EU-US relations. Because neorealists characterise the relationship in terms of specific deals rather than general principles (Krasner 1993: 41), their analyses stress individual disagreements rather than overarching agreements. Disunity in the Uruguay Round of the GATT provided ample ammunition for neorealist attacks on the transatlantic partnership, as did the EU-US failure to agree on a new approach for the Millennium round of the WTO. Neorealists tend to downplay the expanded scope of the transatlantic relationship through joint agreements, in areas of non-traditional foreign policy co-operation, such as human rights, energy conservation, trafficking in women, and the promotion of democracy world-wide. Rather they emphasise state attempts to maintain minimum sovereignty loss. In short, neorealism does not explain patterns of co-operation (Milner 1997: 7; Haas 1992: 2) and in doing so disregards the prospect for transatlantic institutionalisation. The remainder of this chapter questions whether neorealism makes the relationship seem much more hostile and endangered than it really is.

The logic of neoliberalism

Neoliberal institutionalists share many realist assumptions. For example, they agree on the primacy of the state and of international over domestic politics. However, they contend that neorealists were too pessimistic about the prospects for co-operation, both during and especially after the Cold War (Keohane 1993b: 277; Baldwin 1993: 5). Institutionalists argue that states' actions are still very much interest driven but they are more willing to admit that co-operation is likely when states have mutual interests prompted by economic and ecological interdependence and that they will continue to

co-operate as long as global threats plague the international environment. 'Complex interdependence' connects states, and the build up of institutions, shared values and norms are seen as a way of facilitating co-operation in order to maintain peace and stability (Keohane and Nye 1977; 1986).¹¹ Neorealists and institutionalists hold similar views about the underlying rationale driving international co-operation. Institutionalists borrow the realist conception of 'distribution of power' to explain the motivations of states. Keohane (1993: 288) argues that political leaders, in order to serve a state's interests, must anticipate the likely actions of partners or foes when seeking to maximise expected utility gains.

So institutions are believed to be a way for leaders to make the international environment more predictable. Institutionalists question Waltz's emphasis on the structure of the international system, preferring instead to concentrate on the process of international politics, which they see as a process for the management of conflict (Keohane and Nye 1993:4-5). Where mutual interest exists, international institutions acting as 'brokers and negotiators' serve state interests by mediating policy co-ordination among powerful actors. They influence the policy agenda by opening channels of communication, creating value networks between states and providing focal points of co-ordination (Keohane et al 1993:8; Keohane and Nye 1993:3, 7). International institutions also reduce the likelihood of conflict by creating opportunities for negotiations, reducing uncertainty about others' policies and affecting leaders' expectations of the future (Keohane 1993b: 284).

The acceptance by neoliberals that collective action might be possible through institutions- albeit qualified - helps explain why the EU and US would undergo a

¹¹ 'Complex interdependence' is defined by Keohane and Nye (1989: 249) as 'a situation among a number of countries in which multiple channels of contact connect societies (that is, states do not monopolize these contacts): there is no hierarchy of issues; and military force is not used by governments towards one another.'

process of institution building (through the TAD, the NTA and the TEP) and institution enlargement (of NATO and the WTO). Even during the Cold War, the development and survival of post war institutions such as the IMF, the World Bank, the WTO, NATO and the EU validated institutionalism (Keohane 1993: 284). In the early post-Cold War years Keohane (1993: 285) predicted that international institutions would increase in number, scope and regulatory reach. NATO has not only remained involved in Europe but has undergone a process of enlargement and reinvigoration. The WTO broadened and deepened the economic principles upheld by the GATT.¹² The Treaty of Maastricht increased the scope and depth of European institutions, and made way for the institutionalisation of the transatlantic relationship through the TAD, the NTA and the TEP. EU and US leaders have created institutions to try and diffuse conflict and much of the transatlantic dialogue is conducted through institutionalised networks.

Institutionalism is a more logical analytical framework- than neorealism- for a thesis that seeks to explain why the EU and US would choose a strategy of institutionalisation. Institutionalism accepts that states have an interest in building 'institutions' and that states choose to build institutional ties- such as networks- in order to foster co-operation. Institutionalism is more limited, however, in addressing the second question, which is how states interact within those institutions. By downplaying the impact that domestic actors' have on international politics, it fails to recognise the range of actors and multiple levels of networks which are involved in the process.

¹² For example, the WTO membership broadened in 2001 to 141 countries and opened up negotiations with China. The WTO also introduced dispute settlement mechanisms to the multilateral trading system.

The New Debate: The Rationalist-Constructivist Divide

A number of approaches to international relations emerged in the late 1990s that questioned the shared neorealist and neoliberal assumptions about the primacy of international decision making and of the unitary action of states. Milner (1997), Risse (1995a) and Putnam (1993; 1998) stressed the importance of multiple actors and multiple levels in international negotiations. The idea that domestic and international politics were not separable, and that domestic agents- be they political institutions, domestic groups, state or non-state actors- influenced international negotiations, united a number of emerging IR theories. Co-operation in general and the importance of international institutions specifically ceased to establish a clear distinction between paradigms. A new debate emerged in the late 1990s centring around actors' motivations for pursuing institutional arrangements. Two factors contributed to rationalist-constructivist debate. On the one hand Legro and Moravscik (1999) argued that the divide between realist and liberal camps became less structured as realist, institutionalist and liberal studies 'rallied' around the idea that states are rational actors motivated by self-interest. It was argued, 'The category of 'realist' theory has been broadened to the point that it signifies little more than a generic commitment to rational state behaviour in anarchy- that is "minimal realism"' (Moravscik and Legro 2000: 184).

On the other hand the rise of rationalism was countered by a resurgence of constructivist approaches to international relations. Pollack (2001) argues that constructivist theories, typically criticised by rationalists for failing to produce rigorous, 'good social science' because they do not focus on empirical work or testable hypotheses, had by the end of the 1990s significantly matured through works such as

Hooghe (1999a, 1999b) and Checkel (1998; 1999).¹³ Checkel (1998) noted that constructivists had demonstrated that social construction matters- if not when, how and why it occurs. Ontological, methodological and epistemological differences remained intact, if not overstated. But constructivists managed, at least, to broaden the theoretical debate about the role of culture, ideas and norms in international relations (Risse 2000).¹⁴

The rationalist- constructivist divide is summarised by the distinction between the logic of consequentialism - associated with rationalists- and the logic of appropriateness - used by constructivists (who themselves have 'borrowed' the concept from institutionalism: see March and Olsen 1998; Peters 1999; Boekle *et al* 2000). The two logics, explained below, offer competing explanations for why the EU and the US chose to establish new transatlantic institutions, and why under those institutions dialogue has been encouraged between policy makers as a means of attaining interest convergence or norm compliance in a number of policy sectors. Both constructivists and rationalists concede that institutions and communication 'matter' between agents but they offer different explanations as to why (Checkel 1998, 1999).

The 'logic of consequentialism'

The logic of consequentialism is based on realist assumptions that ultimately the goal of actors is to maximise their material gains. Rationalist theories- which can incorporate both neorealist and neoliberal approaches to international relations- are united by claims that actors are motivated by self interest. They seek to realise

¹³ He argues that scholars like Checkel and Hooghe have sought to understand conditions under which norms constitute actors and subject their hypotheses to falsification.

¹⁴ Generally, rationalists argue that there are ontological, methodological and epistemological differences between rationalism and constructivism. Constructivists are criticised for failing to maintain falsifiable hypotheses or employ causal explanations. Ontological and methodological differences stem

preferences and use strategic action to attain utility maximisation. Game theorists have attempted to bridge the gap between domestic and international politics to explain the outcome of interstate bargaining. Moravcsik (1998) argues in the context of the EU that preferences are formed prior to interstate bargaining between chiefs of government. Putnam (1993: 70-71) describes diplomacy as a 'two level' game where leaders simultaneously try to rationally calculate strategies that successfully appease both levels. Putnam's dual game theory envisions America's position during international negotiations as a product of international and national interest and the European Union's as a reconciliation of the global, the Community and the national levels (Putnam 1993: 80). The underlying thesis of the logic of consequentialism is that the EU and the US choose to co-operate only where it is in their best interest to do so. The decisions to pursue the Transatlantic Declaration, the New Transatlantic Agenda and the Transatlantic Economic Partnership can be characterised as interstate bargains that represent both EU and US attempts to secure gains- be they security assurances or economic welfare.

The 'logic of appropriateness'

Constructivists argue that the logic of consequentialism oversimplifies the decision making process. While rationalists tend to focus on the behaviour and policy outcomes, social constructivists tend to concentrate on the larger process characterised by communicative action and discourse between actors (Risse 1995b: 6-7). Constructivists argue that self-interest is not the sole instigator of international politics, rather they emphasise common values, norms and institutionalised decision-making procedures that determine the way democracies interact in the international system

from constructivists' focus on individuals rather than state behaviour. Risse (2000) and Checkel (1998) argue however that the gap between rationalist and constructivist methodologies is shrinking.

(Lumsdaine 1998: 6).¹⁵ The logic of appropriateness suggests that actors are guided not by material gain but by a desire to adhere to 'rule-based' systems. The rules that actors follow are directly tied to their identities which are determined by shared ideas and norms. Like institutionalists, constructivists argue that norms and shared information can foster co-operation. Norms are not a product of actors' interests but rather precede them, and states' interests are defined through social communication (see also Boekle *et al* 1999; Ruggie 1998). Under the logic of constructivism, policy transfers – through the exchange of expertise and ideas - are part of a process of policy learning where agents' beliefs may be altered through the dialogue process (Stone 2000).¹⁶

Constructivists emphasise the importance of communication and Risse (2000) argues that 'communicative action' extends beyond the logic of appropriateness to encompass a 'logic of truth seeking or arguing.' He argues that, 'international institutions create a normative framework structuring interaction in a given issue area. They often serve as arenas in which international policy deliberation can take place' (Risse 2000:15). The transatlantic community is viewed as sharing a collective identity, as well as values and norms which arguably constitute the 'common life world' discussed by Risse. Transatlantic institutions, such as the NTA, which act as policy forums, make up the structured 'normative' framework and the 'new transatlantic dialogue' fulfils a number of conditions which precede 'truth seeking' behaviour. One is the institutionalisation of issue areas; a conscious effort by actors to construct a 'common lifeworld' through the build up of dialogues. These dialogues seek to compensate for the uncertainty of interests or a lack of knowledge between

¹⁵ Norms are defined by Peterson and Bomberg (1999: 53) as 'principles of 'right action' serving to guide, control or regulate proper and acceptable behaviour in a group.'

¹⁶ Policy transfer refers to a process whereby actors learn from one another about 'best practices.'

actors in certain policy sectors and the build up of non-hierarchical relations within dense, informal, network-like settings (Risse 2000:19).

Multi-level Communication, Multiple Motives?

Both rationalist and constructivist approaches to international relations shed light on the transatlantic decisions under scrutiny, particularly those which established transatlantic institutions in the 1990s and sought policy convergence in areas of shared interest. Checkel (1999) argues that both rationalists and constructivists capture and explain important elements of the norm compliance process, and that the two paradigms are not mutually exclusive. Could it be that different levels of interstate interaction are driven by different rationales?

Rationalist explanations for co-operation are more convincing than constructivist explanations at high political levels where, for example, institution building and overarching agreements are clearly the results of interest driven cost/benefit calculations. It is argued in this thesis that these agreements are a way to maintain the alliance between Europe and America, which both sides had an interest in protecting. Transatlantic leaders worked under the knowledge that common values were not enough to keep the alliance together. Under a rationalist institutionalist approach to IR, it can be argued that transatlantic institutions were created as a way of fostering shared interest in co-operation and establishing norms. The TAD, the NTA, and the TEP were stressed as ways to facilitate goals such as liberalising the transatlantic marketplace, burden sharing in Eastern Europe and combating transnational challenges. Chapter 3 discusses in more detail the establishment of these institutions and the interests that drove them.

On the second point of interest- the conduct of dialogue and production of policies under transatlantic institutions- constructivist arguments are harder to dismiss. The NTA specifically outlines a number of policy sectors where the EU and US have a broad interest in co-operating. It can be argued, however, that this agreement forms the boundaries or establishes the rules, for actor compliance¹⁷ on a number of shared norms. At the level of daily interaction between actors through transatlantic dialogue, the emphasis is on communication and information sharing. An important test for constructivism comes from examining the level of importance of the transatlantic dialogue. The distinction between rationalist and constructivist explanations for communication between actors is summarised by Checkel's (1999: 10) statement,

Using different language to make the same point many rational choice scholars emphasise so-called simple learning, where agents acquire new information as a result of interaction. At a later point (that is, after the interaction), this information may be used to alter strategies, but not preferences, which are given. Not surprisingly, all this rationalist theorizing reduces communication and language, which are central to any process of social learning, to the 'cheap talk' of agents with fixed identities and interests. The result is to bracket the interaction context through which agents interests and identities may change.

On the other hand,

Specifically, the constructivist value added should be to explore complex social learning, which involves a process whereby agent interests and identities are shaped through and during interaction. So defined, social learning involves a break with strict forms of methodological individualism.

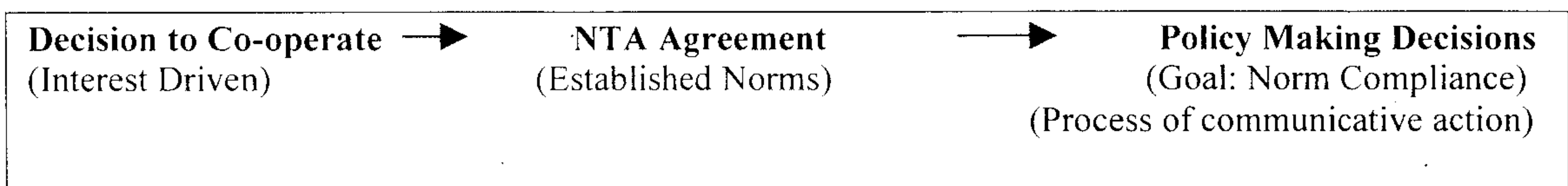
From a theoretical perspective this thesis seeks to test whether the construction of the NTA has resulted in a process where communication between transatlantic actors is 'cheap talk' which may be used to foster a general sense of co-operation but not to

¹⁷ Compliance is defined by Checkel (1999: 3) as the extent to which agents act in accordance with and fulfilment of the prescriptions contained in international rules and norms- and not socialisation.

change preferences (as rationalists explain) or if, as constructivists contend, we find a complex social learning process whereby agents' interests and identities are shaped through and during interaction (distinction made by Checkel 1999:10). The real question is whether actors have 'fixed' preferences in negotiating agreement under the NTA or whether the output of policy agreements under the NTA is actually shaped through transatlantic dialogue?

To summarise, (see table 2.1) it is argued here that the decision to build a framework for co-operation is, as explained by rationalists, interest driven. However, the NTA established common norms and constructed a rule based system within which the actors have communicated on specific issue areas. It is then possible that transatlantic policy decisions are the result of communicative action and fulfil norm compliance within a rules based system. In short, the argument is that the decision to establish a rules based system is rational (as discussed in chapter 3) but the jury is out on how actors operate within that system. The goal of this thesis is to determine whether the communication between transatlantic actors leads to a convergence of preferences or is simply a means of fostering co-operation through understanding.

Table 2.1 Transatlantic Decisions in Theory



2) The Governance Literature: Responses to Globalisation

In both the comparative politics and European studies literatures, interstate co-operation is viewed not only as the product of political and economic shifts in the

Compliance research focuses on centrally on short term processes coercion, sanctions etc.

international system, but also as a policy response to a structural shift in power from governments to markets. Increased transnational movement of goods, services, money, people, technology and ideas have made it increasingly difficult to govern as individual states. Globalisation presents a number of economic and political challenges to the way that states govern as the movement of production and capital blurs the lines of control between the state and the market. It is not just the relative power of other states that matter, but the impact of market forces and transnational actors, such as multinational corporations and transnational terrorists. The literature on global or transnational governance questions how states balance the goals of economic liberalisation, through the deregulation of markets, without undermining the capacity of the state to deliver public goods such as social welfare and law enforcement. Global governance approaches to international politics shed light on why the EU and US have chosen to emphasise the importance of policy co-ordination in individual policy sectors, particularly dealing with economic liberalisation and ‘global challenges’, under the NTA.

The new challenges that arise from globalisation have led some to argue that state is ‘shrinking’ (Sbragia 2000) or being hollowed out (Strange 1996). The reality is that individual states are becoming increasingly unable to govern alone in a world characterised by rising transnational challenges and increasing economic interdependence. Political integration is one way to secure collective action, however, state reluctance to give up sovereignty means formal integration arrangements- except and even in the case of the EU- are limited. Attempts to integrate the transatlantic marketplace economically through various agreements have been rejected by states, mainly France, given the underlying fear of lost sovereignty (see chapter 3). Looser forms of ‘governance’ at an international, regional or plurilateral level are a way of

coping with external challenges that the state cannot manage alone (Rosenau 1992:19).¹⁸ International governance denotes a shift in authority from the state to the international level, but where is authority transferred to and what decision-making forums serve as means of governing? How do different institutional arrangements allow actors to perform the functions of governance at a global or transnational level? It is argued that global or transnational governance is conducted on three main levels, first through formal international institutions, second through government-to-government networks and finally through private and public policy networks.

Governance without Government: State Extension, not Extinction

Traditionally global governance was seen to emanate from international institutions. In the early post Cold War years, the concept of a 'New World Order' was promoted by President George Bush (Senior) who argued that a new form of collective governance would emerge in the 1990s based on co-operation within international organisations. International institutions were championed as a way to deregulate barriers to trade while regulating global markets in labour, money, goods, and ideas. Murphy (2000:794) notes, however, that rising globalisation and integration did not coincide with a clear cut growth in the autonomy of international organisations. The putative ideological foundations of the New World Order -- democracy and economic liberalism -- were not enough to influence states to give up sovereignty. Instead of shifting up to a supranational system of government, 'governing' functions were shifted down to public networks at both an intergovernmental and transgovernmental level (see section 4 below).

¹⁸ The term plurilateral is used by Pelkamns (1998) to describe co-operation between regions, in this case between the EU, which is a regional form of governance and the US.

The question of whether states could govern without a central authority has been confronted by scholars preoccupied with the idea of 'governance without government'. For example, Rosenau (1992:51), holds that informal governmental mechanisms -- as well as international organisations -- can exercise governance. He argues that, 'Governance without government', based on shared norms, does not require the exclusion of national or sub-national governments from the analysis, but it does presume the absence of some overarching governmental authority at the international level (Rosenau 1992:7). The functions of governance may be limited when compared to government's rules because networks lack sovereign authority and are not established by law or are enforceable through the police. Still, Finkelstein (1995: 357) agrees that global governance can encompass many of the functions that governments perform at home.¹⁹ Furthermore, governance above the state can be conducted not only through formal rules and regulations (see Cable 1999) but through shared norms, values and ideas (see Haas 1992) even in the absence of formal international organisations.

Given the lack of centralisation of authority at an international level, many scholars began to recognise that broader forms of institutionalised networks perform the functions of governance (see Ruggie 1998: 88). The emergence of public networks- made up of state actors- reinforced the idea that the state was not, as the New World Order suggested, due to disappear but rather as Slaughter (1997) argued likely to disaggregate (see also section 4). That the NTA is an attempt to impose governance through national bureaucrats supports the argument made by Nicolaïdis

¹⁹ The list of such functions is quite a long one. It includes information creation and exchange; formulation and promulgation of principles and promotion of consensual knowledge affecting the general international order, regional orders, particular issues on the international agenda, and efforts to influence the domestic rules and behaviour of states; good offices, conciliation, mediation and compulsory resolution of disputes; regime formulation, tending and execution; adoption of rules, codes,

and Howse (2001:1) that 'In the long term, the nation-state may prove to be more resilient than many argue, but only if it is able to adapt, evolving or accepting modes of governance that permit both legitimate and effective accommodations with the many entities, both above and below the state which increasingly shape the public world in our century'.

Delivering Public Goods via Private Actors

One way states have adapted to the growing need for transnational governance is through the employment of private, or non-state, as well as public institutions. Modes of governance include decision-making forums such as policy networks which bring together state and non-state actors, particularly in regulating economic activity which is increasingly borderless. Murphy (2000: 795) highlights the role of private authorities in regulating transnational economic and social life through, for example, private bond rating agencies, global oligopolies, global and regional industry cartels, international mafias. He adds that

much of the impetus for contemporary public international regulation comes from transnational interest groups, including associations of progressive firms attempting to impose the same costs for environmental and social standards on their competitors, and of course, traditional consumer groups, labour groups, environmentalists, and so forth.

This thesis examines how these types of interest groups have played a role in regulating the transatlantic marketplace and influencing transnational governance. It should be noted that many political as well as economic services are provided by non-state actors. For example NGOs run refugee camps, provide disaster relief and carry

and regulations; allocation of material and programme resources, provision of technical assistance and

out development projects (see Murphy 2000). Ronit and Schneider (1999: 244) agree that 'where control by neither market nor state is possible or desirable, mainly because these forms of control are less cost effective or less legitimate, global governance mechanisms alternatively can be created by private organisations which make efforts to influence the policy process'. That concept is explored in chapter 6, where 'contracting out' to NGOs is examined in the EU-US anti-trafficking in women policy.

'Effective' Governance: Private and Public Input in Policy Networks

In order to 'govern' at a transnational level, actors usually must participate in institutionalised forums. The decentralisation of global governance means that many public and private networks of actors perform the functions of governance. The policy networks literature tries to come to grips with the shift from a strong executive to a more segmented mode of governance characterised by bargaining within and between networks (Rhodes 1997: 4), at the national and international levels.

A policy network is a forum where numerous actors, all of whom have the ability to affect policy outcomes, exchange resources and information in order to facilitate reconciliation, settlement or compromise between different interests (Peterson 1995: 77; Rhodes 1997: 11). Policy networks are based on the premise that agents, be they regulatory agencies, interest groups, enterprises, think tanks or academics, participate in the policy process by working as partners on joint problem solving (Jachtenfuchs and Kohler Koch 1995: 9). A variety of specialised 'communities' of agents may form alliances and collectively try to control or influence decision-making within policy networks. These include epistemic communities which, as Haas (1992: 3) explains, are networks 'of professionals with recognised expertise

development programs; relief, humanitarian, energy, disaster activities; maintenance of peace and order.

and competence in a particular domain and an authoritative claim to policy relevant knowledge within that domain or issue-area’.

A strong case can be made to suggest that policy networks and epistemic communities can effectively become ‘institutions’, provided they are characterised by substantial stability, patterns of expectations between actors (that is, interest groups expect to be consulted and governmental actors may even rely on them for information and advice in policy making) and a membership that holds common values (see Peters 1990: 119). The test for transatlantic networks- at both a transgovernmental and a transnational level- is whether they display these properties.

Another question this thesis asks is: of what significance is the organisation of actors in policy networks? The literature on policy networks and epistemic communities is consistent with the institutionalist literature insofar as all are fundamentally concerned with norms such as shared knowledge, information and communication. Institutions, policy networks and epistemic communities are all functionally similar in that they are believed to facilitate co-operation by defining problems, identifying compromises between different interests and devising international solutions for government (Haas 1992: 15; Peterson 1996: 29; Keohane et al 1993). Policy networks and epistemic communities are also identified by constructivist forums which can, in effect, institutionalise ‘policy learning’. For example, Stone (2000: 66) notes that think tanks act as ‘policy entrepreneurs’ by providing some of the conditions for policy transfer: developing knowledge, assessing policy options and drawing lessons. In essence they try to promote policy learning by ‘teaching’ governments about preferred policy outcomes. Policy networks are visible at the domestic level²⁰, the EU level²¹ and the transatlantic level²² (see below) as

²⁰ See Marsh and Rhodes 1992 and Rhodes 1997.

²¹ See Peterson 1995, Peterson and Bomberg 1999.

structures of governance (Rhodes 1997:57). Policy networks are often considered to be a more 'effective' mode of governance than, say, formal international institutions, because they bypass political problems by concentrating on bureaucratic and technocratic policy collaboration. They bring different interest groups into the policy making process and provide a forum for many state and non-state actors, thereby trying to compensate for the complexity of multi-level decision making. Peterson and O'Toole (2001: 46) note that policy networks are likely to remain and even increase in importance in both Europe and America because, 'Policies dealing with ambitious or complex issues are likely to require networked structures for execution and complex issues will continue to be on the policy agenda.' A growing interest in resolving technical disputes, for example over biotechnology, and in harmonising and mutually accepting regulatory standards, means that policy networks are also likely to remain as important features in transatlantic governance.

If policy networks have become an important new mode of transatlantic governance, one effect is to raise new questions about the 'legitimacy' of EU-US decision-making forums. Peterson and Bomberg (1999: 269) argue that, 'governance by policy networks is not very democratic: the same type of 'democratic deficit' which plagues the EU is becoming visible in many of the world's most important international institutions'. Where policy networks are powerful, the policy-making process is typically very technocratic and yields debate that is high above the head of average citizens. It also shifts problems from the political arena, where they are dealt with by elected officials, to the technocratic arena, where bureaucrats have more room for manoeuvre. The technical need to facilitate 'effective' governance has been challenged by demands of legitimacy, and broader influence, particularly from private

²² See Peterson 1996:29.

interest groups (Peterson and O'Toole 2001: 328). In the case of transatlantic governance, the Commission and the US Administration have attempted to make the process more open and transparent by allowing a wider range of actors to participate. Chapters 4 and 5 show that these attempts are considerably undermined by an imbalance of power and resources between business and non-governmental organisations and by the limited participation and influence of legislators' networks. Nonetheless, as discussed in section 3 below, networks are an important means of facilitating co-operation between two polities that lack centralised authority to govern at either a domestic or international level.

3) Transatlantic Governance: Capabilities and Expectations

Transatlantic policy making is both a product of institutionalisation and a process of transnational governance. In order to understand how the EU and the US collectively govern at the transatlantic level, however, we turn first to the composition of EU level and US domestic decision-making processes in order to determine: who speaks for Europe and who speaks for the US in transatlantic negotiations? The nature of transatlantic decision making is complex because both powers are characterised by multiple layers of actors that impact on the capacity of the EU and the US to act as external actors. Two lenses can be used to characterise the complex nature of the EU and US systems of governance.

First, multi-level governance approaches to the EU challenge rationalist, state-centric theories such as intergovernmentalism (see Moravcsik 1998) which presume that EU decision-making is dominated by Member States. Marks *et al* (1996: 342) argue that, 'An alternative view is that European integration is a polity creating process which authority and policy-making influence are shared across multiple levels

of government -- subnational, national and supranational'. In this view decisions are the result of shared competencies between multiple layers of actors. Recently scholars have also begun to apply this approach, which has traditionally been restricted to the study of the EU, to the US. Thus, it is argued that it too can be considered a multi-level system of governance due to shared competencies between separate national as well as state institutions (Smith 1997; Peterson and O'Toole 2001).

Another way to compare the EU and the US is through the 'federal vision' which according to Nicolaïdis and Howse (2001) stresses the 'process of governance between multiple layers of competency'. 'Cooperative federalism', in which powers and competencies are shared and treated as shared between levels, is another way of characterising the shared competencies of domestic actors, which the authors argue implies shared authority. Peterson and O'Toole (2001: 300) note that, 'federalism usually gives rise to less formal intricate structures within which a large number of actors, each wielding a small slice of power, interact.'

Both approaches stress multiple layers of decision making and the input of multiple actors into a process of 'shared' competency and 'shared' governance. The EU clearly has become a multi-level polity characterised by an intermeshing of European and national institutions and with competencies that are shared by actors at different levels (Blank et al 1994: 3-7, 39-40). The US foreign policy-making process, contrary to state-centric decision-making models, is also characterised by a separation of powers between domestic institutions. The input of non-governmental groups is substantial and often formally guaranteed, meaning that multiple actors are involved in the process of US preference formation. One important effect is to make transatlantic decision-making an extremely complicated process.

Who Speaks for Europe?

A revealing barometer of the extent to which competencies are shared between European institutions in foreign policy making is the number of articles that have the basic objective of determining 'who speaks for Europe'?²³ In external relations competency is shared between the Member States and the Community and between the Commission and the Council (and to a lesser extent the EP).²⁴ In the Common Foreign and Security Policy (CFSP), Europe lacks a clear spokesperson - despite the appointment of a High Representative, Javier Solana -- because pillar two is fundamentally intergovernmental (see Allen 1998). From the viewpoint of this thesis, which deals primarily with trade or low politics, it is important to note that the Commission has more competence in foreign economic policy. On trade policy the Commission has exclusive competence to negotiate on behalf of the Community, but even then the EU does not speak with one voice when negotiating with US, or with any external actor (see table 2.2 and Meunier and Nicolaïdis 1999: 482). While the Commission acts as trade negotiator, it is subject to the Council's approval of a negotiating mandate and then ratification. In areas of mixed competency the Commission is subject to more intervention by the Member States, including in a number of areas where it has agreed to co-operate with the US for example on services and intellectual property. Smith (1998: 79) has argued that shared competencies in the external trade policy of the Union result in a 'negotiated order' where responsibility is shared and action is the result of a 'negotiated process'.

²³ See for example Allen (1998); Meunier and Nicolaïdis (1999); Meunier (2000).

²⁴ See for example Piening (1998) Peterson and Sjørnsen (1998).

Table 2.2 Competency in EU Decision Making

<u>Article 133</u>	<u>Authorisation</u>	<u>Representation</u>	<u>Ratification</u>
<u>Exclusive Competence</u> *Most Trade Policy	133 Committee, Council (QMV)	Commission	Council (QMV) informal veto
<u>Mixed Competence</u> *Services and IP	133 Committee Council	Commission	Council, Parliamentary ratification

Based on Meunier and Nicolaidis 1999: 481

Rivalry between the Commission and the Council and between EU institutions and the Member States compounds claims that the EU is a semi-formed polity because it lacks the political authority to conduct a coherent foreign policy (Laffan 1997:4). Multiple layers of decision-making create problems of boundary control and boundary definition (Smith and Woolcock 1993:19). Although the Commission is able to exercise strategic authority in some areas of policy making, it is clear that institutional deficits and the lack of a single EU negotiating authority adds to the EU's 'capabilities-expectations gap' (see Hill 1993, 1996).

Two sets of negotiations in particular highlight the incapacity of the Commission to 'deliver' in negotiations with the US in light of Member State intervention. For example in 1992 the French forced a watering down of the original Blair House Agreement, on extending international trade rules to agriculture, after US officials leaked its content. Commissioner Brittan was reprimanded by the Council and reminded by the French Prime Minister of his role as a 'servant of the Council' (see also Meunier and Nicolaïdis 1999). Commissioner Brittan again ran into problems with the French when negotiating the New Transatlantic Marketplace Agreement of 1998. After blocking the agreement, the French Prime Minister accused Brittan of 'running off to negotiate a free trade agreement without a mandate'.

In particular, the recent growth in the power of the European Parliament – including in EU relations with the US -- has made the governance of the transatlantic relationship a more ‘multi-level exercise’. A good recent example is European legislation, supported strongly in the EP, to regulate airline hush-kits, which prompted a bitter EU-US trade dispute (see chapter 4). In short, it can be argued that the EU’s emergence as a multi-level polity considerably complicates transatlantic governance.

Who speaks for America?

EU negotiators are not the only ones with their ‘hands tied’ in transatlantic negotiations. It can be argued that the US is also a multilevel system of governance because power is shared between federal and states levels (see Smith 1997). Power shifts take place between the executive and legislature and between state and national institutions. Political parties complicate US decision making by exerting power through separate institutions, exemplified by the friction between a Republican Congress and a Democratic executive during the Clinton era.²⁵ Many scholars have claimed that divided government in the US impedes international co-operation, undermines trade agreements and slows economic liberalisation (see also Milner 1997; Lohman and O’Halloran 1994). For example Karol (2000: 826) notes that the varied levels of support political parties have for liberalisation affects US decision-making, as does Congressional approval of Executive powers, such as Fast Track negotiating authority.

While the Executive has the capacity to make foreign policy, Congress has a role in shaping it (Peterson 2001a). Congress passes the laws that are often at the heart of EU-US disputes. For example it introduced US extraterritorial legislation (see

²⁵ For discussions on the role of US politics in transatlantic relations see Smith and Woolcock 1993; Heuser 1996; Peterson 1994, 1996; Smith 1997.

chapter 3) and the Carousel Retaliation Act (see chapter 8) which exacerbated the Helms-Burton and banana disputes. Congress also has the power to 'make or break' projects which require approval of budget lines. Chapter 5 discusses for example how the Senate Finance committee undermined the State Department's attempts to fund the Transatlantic Environmental Dialogue. Finally, the federal system of government in the US means that state legislators also have the capacity to shape foreign policy. Again, the MRA negotiations were complicated by state control of the regulation of services sectors and by domestic regulatory agencies (see chapter 7). In short it is argued here that the US also suffers from the capabilities-expectations gap which is usually applied exclusively to the EU, particularly when the administration is unable to contain disputes fuelled by Congress or implement regulatory agreements.

Overcoming the Capabilities Expectations-Gap?

A basic argument developed in this thesis is that domestic politics matter in transatlantic negotiations. To understand transatlantic governance, the dialogue must be understood not only as a diplomatic interaction but as a complex decision making process, which takes place at multiple levels and involves multiple actors. Multi-level governance approaches are helpful in explaining how domestic actors influence the transatlantic process and why negotiations between the Commission and the US Administration are often much more complicated than they at first appear.

Multi-level governance also reinforces the usefulness of policy networks as analytical tools. Networks are a way for EU and US negotiators to accommodate the interests of many domestic actors before final decisions are reached. Peterson and O'Toole (2001: 301) note that networks have become 'default institutions', because both the EU and US are multi-level systems of governance but also because both sides

are decentralised rather than centralised systems of governance, with the EU ostensibly governed by the principle of subsidiarity and the US governed by federalism. The next section examines in more detail the types of networks that have been facilitated by the new transatlantic dialogues and how those networks operate within a transatlantic system of governance.

4) A Transatlantic Decision Making Model

This thesis is not only interested in the potential for policy co-operation or the capacity for political solidarity in transatlantic relations, but also with the transatlantic dialogue as an evolving process. To understand transatlantic governance it is essential to examine not only the big decisions that mould the contours of the process, but also the day to day decisions which determine the policy output. This section seeks to build a decision making model that can account for different levels of actor interaction and different stages of the policy process. The transatlantic decision-making model outlined below seeks to explain not only who governs but also how they govern.

To distinguish who governs it is useful to draw on and Pollack and Shaffer's (2001) model of transatlantic governance, which describes three levels of co-operation created by the NTA. At the intergovernmental level the high level contacts between chiefs of government (COG) lead to decisions which are constrained by the domestic process. The day to day contact between lower-level officials takes place at the transgovernmental level. Here civil servants work with their counterparts to determine ways to co-ordinate and harmonise policies. Finally, the transnational level is occupied by the direct people to people links created by the 'building bridges' chapter of the NTA. This is where private actors work through the civil society process to coordinate strategies through networks such as the TABD, the TACD and the TAED.

To understand how these different types of actors participate in the transatlantic policy process it is useful to draw on Peterson and Bomberg's decision making model which argues that different types of decisions are made at different levels by different sets of actors exercising different rationale (see Peterson 1995). Peterson and Bomberg (1999: 10) explain in the context of the EU that history-making decisions transcend the day to day policy process, establish the scope for policy making and address questions of change in governance (see table 2.3). Policy setting decisions determine which choice of action should be pursued by policy makers. In other words policy setting decisions determine which policy option will be pursued. Finally, policy shapers determine how to address policy problems. By formulating different policy options they address the problem of 'how do we do it?' (Peterson 1995:73-74; Peterson and Bomberg 1999:16). The decision making model outlined below argues that these intergovernmental, transgovernmental and transnational actors exercise decision 'making', 'setting' and 'shaping' capabilities through transatlantic institutions.

Table 2.3 A Categorisation of Decision Making

History- Making Decisions	Policy Setting Decisions	Policy Shaping Decisions
<ul style="list-style-type: none"> ➤ Transcend the day to day policy process ➤ Alter legislative procedures, rebalance the relative power of institutions ➤ take place at the highest political level and ➤ are political decisions 	<ul style="list-style-type: none"> ➤ determine which choice of action should be pursued by policy makers ➤ deal with specific details of policy ➤ are taken at the systemic level, deal with very specific details of policy and are thus ➤ are technocratic decisions 	<ul style="list-style-type: none"> ➤ involves decisions about how policy problems can be addressed ➤ involves day to day communication ➤ takes place at the sub-systemic or meso- level of policy making and ➤ can be shaped by state as well as non-state actors

Based on Peterson and Bomberg (1999)

Intergovernmental Policy Making

In the context of transatlantic dialogue, intergovernmental actors represent the highest level of government at EU-US Summits (Pollack and Shaffer 2001). The President of the United States, the Commission President and the leader/s of the Council Presidency represent the intergovernmental level. It is at this highest level of exchange that the most significant transatlantic decisions are made. In the context of the transatlantic relationship these actors are policy makers, because they are responsible for 'history making decisions'. History making decisions in the transatlantic policy process are those which form the pillars of EU-US institutionalisation. They create transatlantic institutions and establish the scope for policy reach by outlining broad intergovernmental commitments to co-operation in certain policy sectors. In other words history-making decisions in the context of the transatlantic relationship are decisions that conclude, 'we will co-operate.' The TAD, the NTA and the TEP were all products of such decisions, even if these institutions now in themselves are largely responsible for determining where the transatlantic process will move and at what pace it would do so.

High level political decisions made at the intergovernmental level are best explained in the transatlantic policy process by rationalists.²⁶ Decisions made at the transatlantic level are the product of rational decisions made on behalf of the Americans by the US President and of Europeans by the President in office of the Council and the President of the Commission. Power relations were obviously at play during the proposed New Transatlantic Marketplace agreement, in which a lesser agreement (or lowest common denominator bargain) was agreed to at the interest of

²⁶ Peterson and Bomberg (1999:9) identify liberal intergovernmentalism and neo-functionalism as 'best' theories for explaining and predicting decision-making at what they call the EU's 'super-systemic' level, where history-making decisions are taken.

the French. EU support for the TEP was used as a bargaining tool to get the US to make concessions on Helms-Burton (see chapter 3).

Intergovernmentalism sheds light on one part of the transatlantic process, but cannot account for the whole of the transatlantic dialogue. While rationalists offer suitable explanations for big decisions taken at the highest level, they do not necessarily account for interaction between transgovernmental or transnational actors. More emphasis needs to be placed on how decisions taken at the top are constrained by decisions at the bottom. Drawing on Moravcsik's (1993: 25) intergovernmental logic, Pollack and Shaffer (2001) note that COGs can restrain domestic actors (including Member States) by altering the domestic ratification process, or in the case of the NTA and the TEP by avoiding it altogether. They can influence domestic groups through side payments (for example making concessions on US sanctions in order to get member state support for the TEP) and through manipulating information about the agreements. Nonetheless, both sides are constrained by a lack of consensus at the top because EU and US negotiators often find their 'hands tied' in transatlantic negotiations by transgovernmental and transnational actors who exert pressure on leaders' decisions and influence the process directly through policy setting and policy shaping. Intergovernmentalism is less suited for explaining the day to day process which determines policy options and policy details (Peterson 1995; Peterson and Bomberg 1999).

Table 2.4 Actors in the New Transatlantic Dialogue

<i>Intergovernmental Actors</i>	<i>Transgovernmental Actors</i>	<i>Transnational Actors</i>
President of the US	EU Ministers- US Cabinet	TABD
President of the Commission	SLG	TACD
Council Presidency Leader	NTA Task Force	TAED
	Transatlantic Working Groups	TALD
	Transatlantic Legislators Dialogue	
	Europol- FBI	

Transgovernmental Decision Setting

The scope for influencing the transatlantic policy process extends well beyond the intergovernmental level because transgovernmental and transnational actors are able to ‘set’ some policies – that is, to make choices between policy alternatives – as well as to shape policy, or to determine which options are permissible (or not) and what their detailed content will be. The decisions to agree the TAD, NTA and TEP ‘made history’ in that they institutionalised a number of transgovernmental and transnational networks (see table 2.4; chapter 4). In transgovernmental networks, state actors on either side now work directly with their transatlantic counterparts. Slaughter’s (1997: 184) conception of transgovernmentalism explains how states have adapted to new global challenges without transferring authority to non-state actors. She argues that states have disaggregated into separate, functionally distinct parts. These parts- courts, regulatory agencies, executives, and even legislatures- are networking with their

counterparts abroad, creating a dense web of relations that constitutes a new, transgovernmental order.

Between the EU and the US, these networks are formed by exchanges between the EU Foreign Ministers, the EU Commissioners, and the US Cabinet. These transgovernmental networks were institutionalised originally in the Transatlantic Declaration and have continued to take place on a regular basis. In addition, exchange has taken place between the Commission and the USTR, the European Parliament and the US Congress, and the FBI and EUROPOL under the NTA framework.

Transgovernmental networks are responsible for policy setting and shaping decisions. The power to set policy typically rests with state actors such as agencies of the state in the US and EU ministries represented in the Council. The US Cabinet, EU Council Presidency and EU Commissioners effectively set policy, through for example (see also below) the MRA agreement (signed by the USTR and the then DG I Commissioner) and the Positive Comity Agreement (signed by the US Attorney General, the Federal Trade Commission, the Commissioner for Competition and the President-in-Office of the Industry Council).²⁷ Certain agency directors can also set policy in some capacities. For example, the Implementing Arrangement for Co-operation in the Fields of Metrology and Measurement Standards was signed by the National Institute of Standards and Technology Director and the EU Commission's Director-General for Research (see chapter 4).

In other cases the role of agency directors and DGs are confined to shaping policy through various EU-US dialogues. The SLG Steering Group shapes policy by setting the agenda for summits, as do the TEP Steering Group and the Troika political directors' dialogue. The 'expert level' dialogues, (i.e. the transatlantic working groups,

²⁷ The Commission's 'setting' decisions are still subject to ratification by the Council and the European Parliament under EU decisions making rules (see Peterson and Bomberg 1999).

the NTA Task Force and the TEP working groups) shape the agenda by identifying and working towards specific deliverables and by suggesting possible policy solutions. Other ‘building bridges’ dialogues also serve a shaping function. For example exchanges between Europol and the FBI have been launched with the intention of finding joint solutions to deal with transnational crime. Networks of aid officials have co-ordinated EU and US projects in Central and Eastern Europe and Africa.

Table 2.5 Transatlantic Decision Making

Type of Actor	Type of Decision
Intergovernmental	History Making
Transgovernmental	Policy Setting and Policy Shaping
Transnational	Policy Shaping

Transgovernmentalism has been pursued by states because it is a pragmatic approach to international governance. It compartmentalises the state into functional units that then serve as effective problem solving mechanisms (Slaughter 1997: 195). Transgovernmental networks are effective because they bring relevant parties together, and they are more flexible than international institutions. Most importantly, they introduce a bias towards compromise in foreign policy making by expanding the reach of regulations while keeping loss of sovereignty to a minimum. The logic behind transgovernmental networks represents a new mode of transnational governance, whereby networks of sub-national and supranational counterparts, who performs the

functions of a world government, create a genuinely new world order (Slaughter 1997: 195).

Whatever the underlying rationale- to be determined later in this thesis- the creation of institutions below the intergovernmental level allows states to decentralise some parts of the decision making process. The decentralisation of decision making aids the process of transatlantic governance, because as Slaughter (1997: 195-196) argues the disaggregation of the state 'makes it possible to create networks of institutions engaged in a common enterprise even as they represent distinct national interests.' It creates opportunities for domestic institutions to establish common causes with their counterparts, sometimes against the will of fellow branches of government.

Still, these networks often do not reflect the growing scope and depth of the transatlantic policy making process. Strictly transgovernmental networks alienate important non-state actors from the policy making process, thereby limiting both their effectiveness and legitimacy (Slaughter 1997: 197). The fact that most important negotiations are now surrounded by a mixture of transnational and transgovernmental agents, working together as transatlantic policy networks, illustrates another growing trend.

Transnational Decision Shaping

Whereas transgovernmentalism represents a disaggregation of the state, the rise of transnational networks highlights the increased role played by non-state actors. Non-governmental actors influence transatlantic decisions taken at the top by exerting pressure through the domestic process and participating in institutionalised networks.

The Transatlantic Business Dialogue (TABD), the Transatlantic Consumer Dialogue (TACD), and the Transatlantic Environment Dialogue (TAED) are all

examples of transnational policy networks. The transatlantic dialogues are transnational networks, in that they are composed of non-state actors who have an interest or an expertise in the given area. Their role is to advise EU and US state actors on problems and to provide expertise in respective policy sectors. These dialogues can also be characterised as policy networks because they bring government and interest groups to one table. Epistemic communities are also gaining prominence in transatlantic governance, due to the very technical nature of policies addressed at the transatlantic level, particularly within the regulatory sector. Peterson (1996: 76) recognizes as epistemic communities three bilateral working groups formed in 1994 on foreign policy co-ordination, Eastern Europe, and international crime and identifies joint panels of experts that have been assembled to devise cooperative strategies on issues related to trade, science, technology and environmental protection (Peterson 1994: 418). Expert level meetings and seminars have also been employed to combat cyber-crime, the financing of international terrorism, organized crime in Eastern Europe and the informational society (SLG 1997).

Transatlantic policy networks play an important role in 'shaping' transatlantic policy. Their influence is typically exerted in early stages of the transatlantic policy making process where decisions about the substance of the transatlantic agenda are decided. It is at the sub-systemic or meso level (see Peterson 1995) of policy making that policy shapers provide the government with specialised knowledge required to negotiate policy agreements. At the transatlantic level, the TABD, the TACD and the TAED each present the EU and US governments with suggested policy routes. The goal of these networks is to find areas where they feel the government can co-operate and provide transgovernmental actors with 'ready made' policy solutions.

Different theoretical explanations explain the role played by transnational networks. Schaffer and Pollack concentrate on IR theory and the question of why transnational networks emerge. They draw on scholars such as Keohane and Nye (1977) and Risse (1995) who seek to explain the role of non-state or society actors with liberal international relations theories. Risse argues that domestic structures and varying abilities build coalitions between NGOs and international institutions affect the capacity for society actors to build transnational networks. Peterson's interest in policy-shaping decisions leads him to concentrate not so much on why networks form but what function they perform once they do. Peterson and Bomberg (1999) explain policy shaping in the context of policy network literature. They argue that this level of decision making is technocratic due to the specialised knowledge required to decipher policy details and formulate policy solutions (Peterson and Bomberg 1999:21). Drawing on both liberal international relations theory and policy network analysis helps one understand how transnational actors come together, and what benefits are reaped from governance through networks.

Towards a Synthesis

Rationalist and constructivist approaches within international relations theory agree that institutions matter, but they offer different motivations for why they are pursued by states. It has been argued that different types of decisions may be best explained by different types of rationale, so rationalists and constructivists' approaches may best offer explanations for different actors' decisions. Rationalists offer perspective on high level political or history-making decisions that are interest driven, while constructivists may better explain the role of lower level civil servants' 'setting' or 'shaping' decisions.

The existence of multiple types of actors and multiple types of decisions points to the difficult task faced by transatlantic actors trying to govern in an increasingly transnational world. Networks are one way that states seek to co-operate. In the case of EU-US relations, networks are formed to accommodate different levels of domestic actors, including state and non-state actors. Multi-level governance in the EU and the US highlights the fact that negotiators have to contend not only with their foreign counterparts but with domestic rivals. One of the aims of the NTA has been to take domestic actors and make them transatlantic. The result, it is argued, is a complex structure of dialogues comprised of intergovernmental, transgovernmental and transnational actors who 'make', 'set' and 'shape' policies. In order for shaping decisions to take place, however, at least some logic of constructivist thinking must be present. In order for actors to jointly shape a decision, their dialogue must extend beyond the realm of cheap talk. Thus, EU-US relations offer an interesting test case for the rationalist-constructivist debate.

Finally understanding how the EU and US 'govern' means exploring how different actors influence policy negotiations. Thus, the remaining chapters of the thesis are designed to track the input, and where possible the policy output, of different transatlantic actors. Chapter 3 starts by examining the role of intergovernmental decision 'makers' through three history making decisions – those that created the TAD, the NTA and the TEP -- and thus established the institutional and policy reach of the new transatlantic dialogue. Chapter 4 examines in more detail the role that transgovernmental networks play in policy negotiations, and chapter 5 discusses the participation of formal transnational networks in transatlantic decision shaping.

Chapter 3

The Institutionalisation of EU-US relations in the 1990s

This chapter traces the institutionalisation of the transatlantic relationship in the 1990s, focusing in particular on two factors. It assesses the extent to which policy issues have been placed in a bilateral policy forum. The chapter examines the creation of formal EU-US dialogue structures to underpin the 'new' transatlantic dialogue. Thus, the focus is on bilateral agreements between the US and the EU, which are the result of intergovernmental history making decisions and on the build up of interstate institutions, including formal intergovernmental, transgovernmental and transnational networks.²⁸ Three questions are crucial to understanding the institutionalisation of the transatlantic relationship. First, how was the relationship institutionalised? Second, why was it institutionalised? And finally, what are the repercussions of the EU-US institution building strategy?

We first consider how EU-US relations were institutionalised. Three transatlantic agreements signed in the 1990s form the pillars of EU-US institutionalisation: the Transatlantic Declaration (1990), the New Transatlantic Agenda (1995), the Transatlantic Economic Partnership and the adjoining Transatlantic Partnership on Political Co-operation (1998). These agreements marked a shift in the focus of European-American relations. While the Cold War was characterised by either multilateral relations within NATO, the UN or the GATT, or by bilateral relations between the US and individual Member States, the creation of transatlantic institutions in the 1990s marked the beginning of a formal bilateral dialogue between the US and the EU.

The second question addressed in this chapter concerns the motivation for institutionalisation. Successive agreements expanded the relationship in scope and substance, suggesting that the political will and institutional capacity to pursue agreements increased over time. In that respect each subsequent agreement can be characterised as a step or ‘building block’ in a long-term process of institutionalisation and transatlantic policy integration.²⁹ Notably, this strategy reflects the nature of integration within Europe. As Frost (1997:71) argues, ‘Just as Jean Monnet’s vision of a united Europe found initial expression in small practical steps, supporters of a building-blocks approach argue that more ambitious steps could be undertaken at a later date’.

Finally, this chapter seeks to establish whether and how much transatlantic institutions matter. Here, we come to grips with the most basic shortcoming of institutionalist theory (see Peters 1999): the inability to gauge precisely how much the behaviour of social actors are shaped or altered by institutional structures. We are unable to provide a causal analysis of the effect of transatlantic institutions on the nature of co-operation between the EU and the US, but rather offer evidence based on interviewees’ perceptions about the effect that institutionalisation has had on the transatlantic process. We rely not only on the capacity of the transatlantic dialogue to produce concrete policy output or ‘deliverables’, but also on the capacity of transatlantic institutions to forge the channels of communication which, according to institutionalist theory, act to foster co-operation.

²⁸ The emphasis is on formal established decision-making networks rather than ad hoc contact between actors.

²⁹ The term ‘building-blocks’ is embedded in jargon taken from a European Commission (1995) strategy paper (See also Euracom September 1995. It refers to the transatlantic strategy to secure closer relations and increase the scope for co-operation gradually through the incremental removal of specific obstacles to economic liberalisation and modest committal to political projects.

The chapter is divided into four sections. Section 1 examines the ‘old’ transatlantic relationship from the post World War II period until the end of the Cold War. The following sections examine the three agreements that established the boundaries of a ‘new’ transatlantic dialogue. Section 2 examines the launch of the TAD, and the creation of the first formal, bilateral, transatlantic institutions. Section 3 discusses the expansion of institutionalisation to the transgovernmental and transnational levels and the establishment of a more comprehensive framework for co-operation under the NTA. Section 4 considers the further institutionalisation of EU-US relations via the blossoming economic dialogue through the TEP. Each section considers why transatlantic leaders chose to further institutionalise the relationship and how the agreements were designed to meet their preferences. Each also considers the significance of the new transatlantic institutional framework.

1) European-American Relations through the Cold War

America and Europe chose to co-operate under the Western Alliance throughout the Cold War, yet bilateral initiatives between the US and EU did not materialise despite the Community’s agreements with numerous external actors (see table 3.1). Two attempts were made to forge a more equal ‘partnership’ first, through Kennedy’s Grand Design and second, with Nixon’s New Atlantic Charter, but both initiatives failed.

American Hegemony in the Post War Period

Europe and America set out in the early post War years to build a transatlantic partnership that would forge and subsequently reinforce multilateral institutions governed by western ideals and dominated by European and American power.

America took a leading role in the 1950s in constructing an international order based on democracy and capitalism. The US vision for Europe was one in which American ideals could be exported, and Europe became a partner, albeit the weaker or junior partner, in building the security, economic and political institutions that anchored the western order including the Bretton Woods monetary system (1944)³⁰ the GATT (1947), the UN (1944)³¹ and NATO (1947).

During this period American power superseded that of any other state. The dollar dominated the economic system. NATO, although technically an agreement between major powers (Calvocoressi 1991: 175), was practically controlled by American military power. The US's leading role in the Western order led to the depiction of the early post-war years as a rising period of American hegemony (see Keohane 1984; 1989). The international economic system, according to hegemonic stability theory, was able to develop into a liberal order because of the presence of American supremacy (Ruggie 1998: 64; Keohane 1989). It was not only US leadership that defined the relationship, but also Europe's willingness to co-operate to protect its shared interests, as noted by Featherstone and Ginsberg (1996: 6). Thus, in the foundational period of the current transatlantic relationship Europe was a dependant partner (Smith 1990: 104; 1996: 90).

Diverging Interests and Kennedy's Grand Design

Western Europe gradually became a stronger partner within the European-American alliance, as it pursued economic and political integration through the Western

²⁵ The Bretton Woods system created an international financial order by establishing a system of fixed exchange rates and the principle of currency convertibility. This new type of economic management introduced new institutions, the International Monetary Fund (IMF) and the World Bank, which developed new codes of conduct for international monetary and financial affairs (Eichengreen 1995: 26; James 1987: 95).

European Union (1948), European Coal and Steel Community (1952), the European Economic Community (EEC) (1957) and the atomic energy community (Euratom) (1957). The US supported European integration because American policy makers considered European unity crucial to strengthening democracies against communism, resolving Franco-German differences, reintegrating Germany, salvaging America's export markets and reinforcing efforts to build a new multilateral trading system (Hogan 1984: 6).³²

The US first began to take serious notice of the new EEC during the Dillon Round of the GATT when trade negotiators encountered the new Common Agriculture Policy (CAP), which imposed variable levies on certain sectors affecting foreign imports, for example the poultry trade. The US chose to pursue bilateral retaliation against the EEC during the 'chicken war'³³ (see Piening 1997: 106), but despite the ongoing disputes over this and other products, US negotiators chose to conclude the Dillon Round without securing a suitable compromise over the CAP. At this stage in European-American relations US commitment to European unity, the Western Alliance and the multilateral trading system took precedence over the domestic interests of American chicken farmers (Curtis and Vastine 1971: 23-25).

The divergence of European economic interests was coupled with growing independence on foreign policy issues. The Berlin Crisis (1961) increased tension between the US and West Germany.³⁴ However, the most notable cause for drift in the

³¹ Despite Russian membership, the UN was perceived as a Western dominated society (Vadney 1987: 41).

³² The US promoted European integration through the Marshall Plan, an aid package worth \$12.4 billion. The US supplied financial aid for recovery and redevelopment in Europe on the condition that decisions about allocating the funds be made jointly by European states (see Calvocressi 1991; Duigan and Gann 1994: 34-60; Eichengreen 1995; Frellel 1996: 25-44; Hoffman and Maier 1984; Hogan 1984

³³ Curtis and Vastine (1971: 21) note that the system of variable levies- the central idea of which is that the price of an import will always be raised to at least an equal level- is a barrier to trade because it creates uncertainty for US exporters who can never be sure of their costs of entry into the EEC market.

³⁴ While the latter strongly favoured German unification, the American position recognised that a division between East and West Germany was crucial to maintaining stability in US-USSR relations.

Atlantic Alliance was the anti-Americanism of the French President Charles De Gaulle. Kennedy's vision of an outward looking Europe directly contradicted De Gaulle's 'protectionism' (Lundestad 1998: 61). De Gaulle's opposition to 'American imperialism' directly interfered with the American desire to see Britain become a member of the EEC. In 1963, De Gaulle rejected the UK application, questioned British motives for joining and described the UK as 'America's Trojan horse' (Lundestad 1998: 65-67). The transatlantic security alliance became subject to severe transatlantic tensions when De Gaulle withdrew France from NATO's integrated military command in 1966.

Amidst concern about the weakening alliance, President Kennedy announced the 'Grand Design' in 1962, a two-part plan designed to foster 'a partnership of equals' between Europe and the United States. The first component of Kennedy's plan was the Trade Expansion Act (TEA) passed by Congress in 1963. The TEA was designed to rapidly boost the liberalisation of trade in agriculture and industry.³⁵ The second component of the Grand Design was an envisioned 'declaration of interdependence' between the United States and a united Europe. Kennedy's Grand Design was symbolic in recognising first, the new role of the EEC in the international economy and second, the need to re-forge the weakening security alliance.

The Grand Design had only marginal effects. New trade measures helped make the Kennedy Round of the GATT a success. Tariff levels were cut by 36-39 percent as a result of the five-year negotiations affecting \$40 billion of world trade (Curtis and Vastine 1971: 230). However, controversy surrounding EEC agriculture policy

Henry Kissinger (1994: 577) reports in his memoirs that encounters with the West German Chancellor Konrad Adenauer, 'painfully served to bring home to me the extent of the distrust which the Berlin crisis had engendered between heretofore close allies.'

³⁵ The TEA aimed to facilitate a more comprehensive agreement on the reduction of tariff barriers to trade. It created the position of Special Representative for Trade Negotiations, a cabinet level position designed to deal with US trade interests and it established the office of the USTR. The position gave

remained. A cohesive agriculture policy led to a strong European negotiating position, and it became increasingly clear that American and European interests diverged in the economic arena. The EEC's single voice in GATT negotiations marked the shift in the balance of power. Curtis and Vastine (1971:231) explain that,

The United States found itself seated across the negotiating table from tough-minded representatives of a strong and truly independent new economic unity. Perhaps the Kennedy Round was the first major post-war economic negotiation in which the United States found itself confronted with a bargaining partner of equal strength.

On the other hand, the lack of overall political unity in Europe contributed to the downfall of Kennedy's political declaration (Peterson 1996: 36). While the President spoke of 'an alliance among equals', it was widely believed that the US had an interest in maintaining its position as world leader by making Western Europe a tightly integrated junior partner (see also Carroll and Herring 1996). De Gaulle rejected the notion of an 'equal' partnership. The failure of the US and France to agree on a political framework agreement points to differing views of the international order. During this early period of fragmentation, Smith (1990: 107; 1996: 90) argues that the EU took on the role of a 'putative partner'. The alliance forged in the 1950s remained, but the 1960s marked an era of interest diversification and developing tension in the transatlantic partnership.

Political and Economic Friction and the New Atlantic Charter

European-American relations in the 1970s and 1980s faced further challenges that undermined communication and co-operation in transatlantic relations. Between 1970-3 Nixon employed new economic policies to compensate for the balance of payments problem caused by US military spending in Vietnam. A unilateral decision

US trade negotiators standing equal to that of their European equivalent and gave the President new

to devalue the dollar and end the Bretton Woods system returned international currencies to a fluctuating rather than fixed rate system. The 'Nixon shocks' caused a rift in European-American relations and provoked a fresh attempt to reinvest in the transatlantic relationship. In 1972, the European leaders called for a 'constructive dialogue' between the US and the European Community.³⁶

Nixon made another attempt to refocus transatlantic relations and put the partners back on track by declaring 1973 the 'Year of Europe'. In the spirit of the Grand Design he called for a 'structure of peace' and a 'New Atlantic Charter'. The Charter was intended to minimise conflict, reinforce security ties and increase economic co-operation (Landes 1977: 22; Smith 1984: 17). Yet, like the Grand Design, the Year of Europe failed under the pressure of diverging economic and political interests (especially in the Middle East) and the breakdown of the international monetary system. In 1973 the decision to back different sides in the Israeli-Arab war soured US-European political relations, and the resulting oil crisis had adverse affects on economic relations not least because it was followed by deep global recession (Peterson 1996: 39; Smith 1984: 17; Tsoukalis 1986: 14).³⁷

Trade relations were also bedevilled by large fluctuations in the value of the dollar. Europe faced high stagflation³⁸ and grew short-tempered with the US policy of 'benign neglect'.³⁹ Europe employed emergency protectionist measures to protect its industries, and trade wars broke out over cheese and textiles (Smith 1984: 17; Wallace and Young 1996: 131). Meanwhile, the EC made attempts to consolidate its voice and

tariff cutting powers which Kennedy hoped to use in the GATT Round (Curtis and Vastine 1971: 9-14).

³⁶ In 1966 the EEC signed a treaty merging the executives of the European communities. The result being one Commission and one Council but different rules governing both. The name of the EEC also changed to the European Community (EC).

³⁷ The US supported the Israeli government in the Israeli-Arab war, while European states chose not to follow suit in order to protect economic interests in the Middle East.

³⁸ Stagflation is used to describe a combination of high inflation and high unemployment in an economy.

strengthen its foreign policy position in the early 1970s through the creation of the European Political Community (EPC) and the European Monetary System (EMS)⁴⁰.

After the failure of the Atlantic Charter, EC-US relations in the 1970s resembled a 'partnership of rivals' (Mally 1974: xv) or, at best, an 'uneasy partnership' (Dahrendorf 1974: 67). The relationship became more competitive as American hegemony started to decline (Featherstone and Ginsberg 1996)⁴¹ and the roles of Europe and the US in the transatlantic relations shifted again. Smith and Woolock (1993: 5) argue that the US attitude towards the international system turned from one of guardianship to one of ambivalence.

Discord in the 1980s

Perhaps the most critical period in European-American relations came during Reagan's presidency (1980-88), a period that accelerated the shift away from the early post-war co-operation to a relationship polluted with more hostility, uneasiness and confrontation. Supply-side economics, the US budget deficit, high interest rates and the over-valued dollar met with opposition on Continental Europe (Smith 1984: 219; Tsoukalis 1986: 7-12).⁴² Industrial and agricultural trade disputes over steel, Airbus, oilseeds, feed grain, pasta, citrus fruit and beef caused 'dangerous' levels of trade friction (Touskalis 1986: 2). The Uruguay Round got off to a shaky start in 1986 and fear of potential European protectionism heightened with agreement on the Single

³⁹ Tsoukalis (1986:9) describes 'benign neglect' as the American failure to entertain European calls for international economic co-operation in light of the adverse reaction of European economies to US unilateral policies.

⁴⁰ The EMS was a system of linked currencies often referred to as the 'snake'. This was an attempt to combat the disorder in European currencies brought on by the end of the fixed exchange rate system.

⁴¹ As discussed in chapter two, the concept of US hegemonic decline is controversial. Some observers downplay the fall of American power. In response to claims of America's declining hegemony Susan Strange (1982:119) argued that, 'The US authorities make decisions that rock the markets and dislodge foreign governments, but none of these can deflect the dollar from its course.'

European Act in 1987 (Smith 1984: 219). The single market initiative was commonly suspected to be a device to create a 'Fortress Europe', which restricted market access for US imports.

Furthermore, foreign policy differences arose over Afghanistan, the Middle East and martial law in Poland. The latter triggered a dispute over the use of extraterritorial legislation when the US, in an attempt to punish Soviet behaviour, contemplated extraterritorial sanctions against European companies involved in building the Siberian Pipeline. The EC protested over the American ban on trade with the Soviet Union, and as a result the embargo was lifted after a few months (see Demaret 1986: 133- 134; Touskalis 1986: 12-14).

Some argue that the 1980s were the 'coolest' period ever in EC-US relations (Lundestad 1998: 111). While the overarching security interests prevented a complete disintegration of the transatlantic partnership, the relationship in the 1980s bore little resemblance to that started in the 1950s. Thus, the end of the Cold War found the partners growing further apart rather than closer together.

The Cold War

To summarise, European-American relations underwent clear shifts throughout the Cold War. What started as a solid foundation based on European dependency, developed into a more balanced partnership as the EC grew in size and strength. As the balance of power shifted, conflicts over trade disputes and foreign policy increased. These problems were exacerbated by the fact that little communication took place between European and American policy makers. The need for dialogue was recognised through the creation of ad hoc structures in conjunction with European

⁴² Some monetary co-operation did occur through the Plaza Agreement of 1985, whereby the G-5 agreed to devalue the dollar, and the Louvre Accord of 1987, when the G7 which attempted to stabilise

Political Co-operation in 1974 (Frellesen 2001: 4). Dialogue was conducted through other fora such as NATO, the GATT or on the margins of the UN General Assembly (Gardner 1997: 9). However, both Kennedy's declaration of interdependence and Nixon's New Atlantic charter failed, leaving the transatlantic allies without formal bilateral channels of communication until the 1990s.

Poor communication meant that tension in European-American relations went unmanaged; often policy disputes escalated because there were no mechanisms for containing them. Featherstone and Ginsberg (1996: 28) argue that, 'American policy flip-flopped between ignoring or discounting Europeans and overpowering them with calls for co-operation. The EC for its part cried out for recognition of its interest but failed to develop a coherent policy towards the US'.

Nonetheless, the partnership was held together by a common interest in protecting democracy and economic liberalisation. Multilateral institutions served as anchors for the western alliance and the international political and economic orders. An equally important source of cohesion was the common security threat and the military alliance built to safeguard western values. Common values and common threats formed the 'glue' that kept the partnership intact.

2) Breaking Ground - The Transatlantic Declaration

The remainder of this chapter focuses on the creation of new transatlantic institutions after 1990. What influenced the decision to build specific bilateral institutions? How did the Transatlantic Declaration, unlike the Grand Design or the Year of Europe, facilitate further steps to fortify the relationship throughout the 1990s?

exchange rates (Smith 1984: 219).

The context of European-American relations changed in the late 1980s in direct response to radical transformations in the international political system. As noted in chapter 1 the geopolitical shifts resulting from the end of the Cold War (1989) and the internationalisation of the economic system altered the playing field of EC-US relations. The withdrawal of Soviet power from Eastern Europe raised questions generally about the future of the transatlantic alliance and specifically about the role of NATO. Increased capital flows, global investment and foreign trade sparked greater interdependence. The single market programme enhanced the EC's effectiveness in international trade negotiations thus making it a more competitive partner for the US. These changes created uncertainties and transposed perceptions about how the transatlantic relationship should be defined.

Towards Institutionalisation

Common ideas, values, culture and multilateral institutions were the foundation of the transatlantic relationship throughout the Cold War. When the Cold War ended, however, leaders on both sides of the Atlantic recognised that 'nostalgia' could not be the only binding force.⁴³ The withdrawal of a common security threat widened the gap between the EU and the US.

On the EU side fears arose over the possibility of an American return to isolationism. Isolationist tendencies in the US political arena represented by vocal minorities, particularly in the US Congress, were mostly exaggerated. Although President Bush was perceived as more Europe friendly than Reagan, the Deputy Secretary of State, Lawrence Eagleburger dismissed the prospects for equal partnership:

Regardless of how big the EC gets, or what issues European governments devolve to common decision-making, the need for a strong American voice in Western affairs will not be diminished.... While we expect Europe to shoulder more of the burden for the West's defence... the (US) President will remain the pre-eminent spokesman for the free world in the decade ahead (quoted in Devuyt 1990: 13).

Although education about the single market diminished American perceptions of Fortress Europe, there was recognition that the 1992 programme made the EC a more competitive political force in the international system. In contrast to the Cold War period, American politicians found it increasingly difficult to justify economic trade losses with Western Europe to the domestic population. The dissipated security threat of the Cold War meant that the US now held less bargaining power over its allies, but was also less willing to compromise its economic interests for the sake of the political alliance (Devuyt 1995:15).

While transatlantic leaders realised that common ideas by themselves could not be the basis of a transatlantic partnership, they identified mutual interests in promoting democratic transitions in CEE and the NIS and in protecting the multilateral institutions established to maintain the international political and economic order. In particular it was clear that EU and US co-operation clearly was needed to complete the Uruguay Round of trade talks, and both sides had incentives to encourage Japan and other Asian economies to liberalise and open their markets (Peterson 1996: 122).

The TAD was not the first attempt to build a transatlantic partnership but the first to emerge with the EU able to act as an actor in its own right (Frellesen 2001). By this time, the EU had also extensively engaged in dialogue through bilateral co-operation, commercial and/ or free trade relations with a number of third countries (see

⁴³ One of the most widely quoted persons on this point is the former US Speaker of the House Newt Gingrich. He claimed in 1995 that, 'we will drift apart unless we have projects large enough to hold us together... We're not going to stay together out of nostalgia...' (quoted in Gardner 1997: 62).

table 3.1). Perhaps above all, the re-unification of Germany was a clear signal to the US that the EU could stand as a 'pole of attraction' for Central and Eastern Europe (CEECs), thereby promoting democracy and economic liberalisation in the region (TPN 1995: 4). The US welcomed the prospects of burden sharing due to constraints on its foreign affairs budget, which increasingly made it a 'superpower on the cheap' (Peterson 1996, Heuser 1996). President Bush recognised the important role of the EC in Central and Eastern Europe at the G-8 Summit in 1989, prior to the signing of the Transatlantic Declaration. He declared:

We believe a strong, united Europe means a strong America....a resurgent Western Europe is an economic magnet, drawing Eastern Europe closer, toward the commonwealth of free nations (quoted in Gardner 1997: 6).

A month after the fall of the Berlin wall in 1989, Bush's Secretary of State, James Baker, made a memorable speech in Berlin outlining plans for a policy of 'New Atlanticism' to compliment Bush's 'New World Order' (see table 3.2).

The concept of closer transatlantic co-operation was clearly supported by the President of the European Commission, Jacques Delors, who wished to see Europe's political links upgraded along with the Commission's status in Washington.⁴⁴ The Irish Presidency of the EU's Council of Ministers also displayed great interest in closer transatlantic ties, with the Irish Prime Minister, Charles Haughey, engaging in negotiations with President Bush on a structure for consultation, which was later incorporated into the TAD (Devuyst 1990; Peterson 1996).

To summarise, there was widespread recognition in the early 1990s that better mechanisms were needed to manage a relationship characterised by complex interdependence (see Featherstone and Ginsberg 1996). A number of factors helped create a favourable atmosphere for the launch of a new phase in transatlantic relations

in the 1990s: the political will expressed by European and American leaders; the realisation of common interest in securing the multilateral trading system; and the need to tackle the security threat posed by instability in Central and Eastern Europe.

Table 3.1
A HISTORY OF EC TRADE AGREEMENTS
1975- 1995

1975

The Lomé Convention (including 65 African, Caribbean and Pacific countries) Israel, Mexico, Sri Lanka

1976

China, Algeria, Morocco and Tunisia (the Magherb countries, Pakistan, Canada

1977

Egypt, Jordan and Syria (the Mashreq countries), Lebanon

1980

ASEAN countries (Agreement of South East Asian Nations), Yugoslavia, Australia, Brazil

1981

India

1983

Bolivia, Colombia, Ecuador, Peru and Venezuela (the Adecan Pact countries)

1984

Yemen

1988

Central and Eastern European countries

1990

The United States*

* In contrast to the other agreements pursued by the Commission, the TAD was not strictly a trade agreement.

⁴⁴ In contrast to its predecessors, Bush granted Delors head of state treatment when he visited

The Transatlantic Declaration, and its emphasis on bilateral consultation, marked the beginning of the institutionalisation of the EU-US relationship. Signed on 23 November 1990, the TAD is a short document that identifies common goals and transnational challenges. The partners recognised common interest in pursuing economic liberalisation, educational, scientific and cultural co-operation and in fighting international crime, terrorism and environmental degradation. While it briefly identified goals and 'principles' of this partnership, it failed to provide even a proposed agenda for meeting those goals. Its significance lies not in its content, which has been described as cosmetic, (Featherstone and Ginsberg 1996) superficial, (TPN 1999) 'minimalist', (Peterson 1996) and lacking in substantive innovations (Devuyst 1990). Rather, the TAD served two important functions. First, it symbolically restored a mutual political commitment to transatlantic partnership. Secondly, it introduced an institutional structure to the transatlantic dialogue.

Table 3.2 – Main Recommendations of James Baker's 'New Atlanticism' Speech (1989)

- foster institutional and consultative links that would keep pace with European integration and institutional reform
- create regular and intensive bilateral consultations to contain trade disputes
- initiate consultation between EPC working groups and the US
- conduct more formal consultation on the environment
- secure greater US input on the discussion of common European technical standards
- instigate closer bilateral co-operation on the distribution of aid in East European economies

An Infrastructure of Co-operation

The political commitments outlined by the TAD were not 'new' ones. They had long been a part of western diplomatic jargon. The distinguishing factor of the TAD was found in the document's 'Institutional Framework for Consultation' where a bilateral structure of co-operation for transatlantic relations was outlined. The TAD gave birth to a number of transatlantic 'institutions'. First, it formalised three sets of bilateral meetings between the Presidents of the United States and the European Council, the EC Foreign Ministers and the US Secretary of State and the EC Commission and the US Cabinet. Second, it included provisions for informal ad hoc consultations between the Presidency Foreign Minister or the Troika and the US Under-Secretary of State. Third, it called for briefings made by the Presidency to US Representatives on European Political Co-operation meetings at Ministerial level. Finally it recognised the need for dialogue between European and US legislators (see table 3.3).⁴⁵

Table 3.3
The Institutional Framework Created by the Transatlantic Declaration

Formal structure

President of the European Council	↔	President of the United States
EC Foreign Ministers	↔	US Secretary of State
EC Commission	↔	US Cabinet (later sub-cabinet)

Ad Hoc Dialogue

US Under-secretary of State	↔	Presidency Foreign Minister (Troika)
-----------------------------	---	---

Briefings on European Political Co-operation

Council Presidency	⇒	US Representatives
--------------------	---	--------------------

⁴⁵ Prior to the 1990s, ad hoc meetings were conducted between Troika political directors and US Under-secretaries and annual meetings between Troika political directors and the Assistant Secretary of State for European Affairs (Gardner 1997: 9).

Although purely consultative in nature, the TAD constructed ‘an infrastructure of co-operation’, which laid the foundation for a stronger EU-US relationship in the 1990s (Smith 1997: 20; Smith and Woolcock 1993: 111). The logic behind the TAD assumed that the institutional framework for consultation would open lines of communication, create networks, result in information sharing and hopefully reduce the impact of disputes in transatlantic relations. It was the first step in the creation of a political framework specifically geared for EC-US relations, and it symbolised that a ‘new’ era in transatlantic relations had finally begun (see Gardner 1997).

A Faulty Design?

While the TAD did get the ball rolling, its shortcomings were clearly visible. In addition to lacking substance, the mechanisms introduced by the TAD were ineffective. Summits tended to be isolated events that did not build on one another and showed no clear line of progress, not least due to the rotating EU Council Presidency and the changing priorities of different Member States.⁴⁶ Bilateral cabinet meetings were abandoned in 1991, because they were found to be redundant of multilateral meetings. Consultations at this level tended to take the form of briefings rather than exchanges of dialogue (Gardner 1997: 11-13).

The lack of substance and relatively weak mechanisms were the result of domestic restrictions on both sides. Underdevelopment of the Community’s first pillar and Member State sensitivity over national sovereignty undermined the TAD. Although the concept of a European ‘Common Foreign and Security Policy’ had been introduced prior to 1990, the mechanisms for CFSP were not negotiated until the

⁴⁶ Gardner (1997: 12) notes that although Presidencies such as the Dutch, Luxembourg and Spanish were positive for transatlantic relations, but the French delayed or blocked every concrete initiative to improve US-EU consultations, ‘because of a Gaullist hyper-sensitivity about Washington’s *droit de regard* over European affairs’.

Maastricht Treaty was signed in 1991, and pillar two's intergovernmental structure did not produce a unified European voice on foreign policy issues. Member States and the European Commission turned their attention towards pillar one issues, most notably the internal negotiations on a draft treaty for EMU and the necessary directives for a unified common market (Featherstone and Ginsberg 1996: 32). The decision to sign the TAD but not to follow up on its pledges increased US perceptions of the EU's 'capabilities-expectation gap'.

Some Member States, led by France, showed a blatant lack of interest in a new transatlantic commitment. Given the EC's new status as a foreign policy actor, there was apprehension about being overshadowed by the US (Featherstone and Ginsberg 1996: 32). A Commission official argued that, '(The EC) wanted to make sure it kept its own identity. There was no interest in looking for partners at the political level and no interest in what was being done by others'⁴⁷.

Despite its shortcomings, the TAD's architects acknowledged its role as a starting point. The TAD was created as a 'living document', in other words it encouraged the addition of further 'building blocks' to its foundation.⁴⁸ By 1994 leaders on both sides were already discussing propositions to build on the TAD.⁴⁹ Three expert working groups were set up at the Berlin EU-US Summit in July 1994 to identify political areas where the EU-US could pursue joint co-operation (see table 3.4). A group on international crime, which was strongly supported by Germany, the US, and the European Commission, considered how EU-US co-operation could combat problems of drug trafficking, nuclear smuggling and money laundering in light

⁴⁷ Interview with Commission official, Brussels, September 1999 (6).

⁴⁸ In particular the Declaration states, 'Both sides are resolved to develop and deepen these procedures for consultation so as to reflect the evolution of the European Community and its relationship with the United States' (TAD 1990).

⁴⁹ See statements made by Clinton, Santer and Delors, to the EU-US Summit (1994).

of growing black markets in the former Soviet Union.⁵⁰ The CFSP group, pushed by the US State Department, sought ways to improve consultation and burden sharing with the EU on potential geopolitical hot spots. Finally, the group on Central and Eastern Europe assessed the capacity of the EU and the US to work together in promoting economic and political reform in CEE (Gardner 1997: 57-58).

Table 3.4 The Berlin Working Groups

<i>Working Group</i>	<i>Task</i>
International Crime	Study the potential for EU-US co-operation on drug trafficking, nuclear smuggling and money laundering
Common Foreign and Security Policy	Detect ways that the EU and the US could react to the outbreak of hostilities and co-ordinate humanitarian assistance to troubled areas, particularly in the Third World
Central and Eastern Europe	Assess the capacity of the EU and the US to encourage political and economic reform through co-ordinated foreign aid and technical assistance

The results were mostly disappointing. The working group on international crime immediately met with suspicion by EU Member States that feared it was an attempt by the Commission to exercise control over JHA. The CFSP working group was unable to agree on a mechanism for consultation, thus exposing the weaknesses of the second as

⁵⁰ Germany favoured co-operation on international crime due to its close proximity to CEE and the Commission saw it as a means of getting Justice and Home Affairs (JHA) policy in through the back door (Gardner 1997: 56). US State Department and Commission officials argued that the push for JHA co-operation came from the US side since its introduction into the EU through Maastricht. Interviews with US Embassy Official, Dublin July 1998 (1), the European Commission, Brussels, September 1999 (6) and the US Mission, Brussels, September 1999 (7).

well as the third pillar. The working group on Central and Eastern Europe was able to identify areas of potential co-operation but backed down from making substantive proposals due mainly to internal EU divisions on the role of the Commission (Gardner 1997: 57-59). Although the working groups were set up as a temporary mechanism, their failure to agree on concrete proposals exposed weaknesses in the dialogue structure and helped leaders recognise the need to tie together loose ends (Frellesen 2001; Gardner 1997: 60). The consensus was that a stronger political commitment to a transatlantic partnership was needed.

3) The NTA- The Cornerstone of the Transatlantic Foundation

If the TAD was the groundbreaking move to create a structured dialogue, the New Transatlantic Agenda (NTA) can be described as the cornerstone of this transatlantic architecture. The NTA gave new structure, focus and drive to transatlantic relations. It introduced new mechanisms for monitoring progress and implementing change, and produced a dedicated agenda, thereby adding substance to transatlantic relations.

A Widening Gap

The NTA arose amidst calls for the further development of transatlantic relations, based in part on the realisation that the TAD had failed to revolutionise the relationship as well as the emergence of new transatlantic tensions. The widening gap between the EU and the US was inflamed by the obvious lack of transatlantic unity in the Gulf War and Bosnia, both of which resulted in bilateral (involving the US and individual EU states) but not transatlantic political and military actions (Peterson

1996: 67- 73).⁵¹ Old as well as new baggage interfered with attempts to close the Uruguay Round. Disputes over agriculture subsidies, beef, bananas, oilseeds, canned fruit and Airbus meant that there was much talk in the early 1990's of looming trade wars⁵².

The war in Bosnia was particularly damaging for Europe, because the failure to come to a common position exposed the weakness of the CFSP. The lack of European cohesion also spilled over into monetary and trade policy. The Maastricht Treaty was not ratified on the first attempt in Denmark and was controversial in other European countries. European monetary co-ordination was stalled by serious recession in European economies. As noted in chapter 2, France refused to sign the Blair-House agreement after the Commission negotiated a deal on agriculture subsidies with the US to facilitate closure of the Uruguay Round. One Commission advisor recalled, 'This was not a good time in EU-US relations. [Blair- House] created a very bad atmosphere'.⁵³

The 1992 US Presidential election also exposed a shift in the focus of American politics. Clinton's domestically focused campaign, the lack of European experts in the Cabinet and the White House's failure to deal with the Union on an equal basis were seen as discouraging signs for EU-US relations.⁵⁴ For example, when President Delors asked for a meeting with President Clinton to resolve the Blair-House dispute he was initially granted only 15 minutes (Smith and Woolcock 1994: 470). The capacity of the US to act decisively on the international stage was diminished further when the 1994 US Congressional election returned a Republican

⁵¹ This point is disputed by Piening (1997: 45) who claims that Gulf War was a truly international action due to the fact that EC backing was an essential precondition for US-led military action. He notes, however, that a weak security dimension in European integration meant the EC's contribution was up to individual states rather than the Community.

⁵² Interview, US Embassy London, January 2000 (16).

⁵³ Interview Commission Secretariat, Brussels, September 1999 (16).

majority in both Houses of Congress, thus introducing institutional rivalry fuelled by party politics into US foreign policy (see also Heuser 1996: 77). Fears arose in Europe once again of a shift to isolationism in US foreign policy (see also Peterson 2001a).

The New Transatlantic Agenda

Domestic opposition on both sides to the idea of a comprehensive political or economic agreement discouraged the US Administration and the European Commission from pursuing ambitious proposals, including one for a Transatlantic Free Trade Area (TAFTA), in 1994-5.⁵⁵ Still, important actors on both sides acknowledged the need to at least reinvest in a more effective transatlantic relationship. They played a key role in the New Transatlantic Agenda negotiations.

Perhaps surprisingly, given initial doubts about his commitment, Clinton himself emerged as an advocate of a transatlantic partnership. He generally engaged with European issues and was able to develop a personal rapport with Delors that had not existed with Bush (Gardner 1997: 6; Lundestad 1998: 117). Stuart Eizenstat, then Ambassador of the US Mission to the EU in Brussels, pushed both sides relentlessly to

⁵⁴ Clinton's campaign slogan, 'It's the economy stupid!', seemed to emphasise the shift in focus from foreign policy to trade policy.

⁵⁵ Although the TAFTA was the subject of a Commission feasibility study and supported by the US Speaker of the House Newt Gingrich, German Foreign Minister Klaus Kinkel, and Commissioner Brittan it was not pursued because it was feared that TAFTA would not comply with international or domestic commitments. It was argued that the TAFTA ran the risk of alienating Asian economies and creating an exclusive 'rich men's club'; that it would have to have included difficult sectors such as agriculture and audio-visual services in order to comply with GATT rules; and that domestic opposition to a comprehensive treaty curbed the debate on the TAFTA. EU Member States, most notably the French, feared 'Washington's insinuation into EU policy making' (Gardner 1997: 55), while Congress opposed infringements on American sovereignty. Peterson (1996: 115) notes that during the Uruguay Round, 'Congressional Republicans, led by Senator Dole, voiced alarm about the threat posed to US sovereignty by the WTO, and initiated a debate which in some respects resembled Europe's struggle to ratify Maastricht'. For more on TAFTA see Frost 1997; Gardner 1997: 76-78; Heuser 1996: 82, 105-107; Hindley 1999.

sign the NTA. On the EU's side, the Spanish Council Presidency of late 1995 injected new enthusiasm into the process of negotiating the NTA.⁵⁶

The New Transatlantic Agenda was signed at the EU-US Summit in Madrid in December 1995. It was a six-page document that recognised the need to strengthen the transatlantic partnership in light of new challenges. As depicted in table 3.5, the NTA created four chapters of EU-US co-operation that built on, but did not replace, the TAD.

The NTA outlined a common agenda or framework for co-operation under each of the headings shown in table 3.5. The adjoining Joint Action Plan (JAP) outlined specific areas where the partners could pursue deeper co-operation and identified priorities. The New Transatlantic Agenda had a significant impact on the process of transatlantic institutionalisation because it created new scope for policy co-ordination and new institutions to administer the policy making process. The individual chapters of the NTA established policy sectors and issue areas where the EU and US aimed to co-operate and produce 'deliverables', in the form of joint agreements, statements and initiatives.

Table 3.5 THE FOUR CHAPTERS OF THE NTA

Promoting peace, stability, development, and democracy around the world	Responding to global challenges	Contributing to the expansion of world trade & promoting closer economic relations	Building Bridges Across the Atlantic
---	---------------------------------	--	--------------------------------------

⁵⁶ The Spanish are credited with being very supportive of the NTA, in part perhaps because it was seen as a 'deliverable' and a merit to their Presidency. Interview, Commission official, Brussels, September 1999 (9).

The transatlantic partners have had varied success in producing deliverables under the NTA. Bilateral co-operation between the EU and the US under the first NTA chapter only became possible after the creation of the Community's pillar 2 (CFSP) in 1993, thus when the NTA was signed in 1995 the initial scope for joint action was limited. Since 1995 the EU and the US have issued a number of joint statements on co-operation (see table 3.6). However, the capacity of the EU and US to act on issues has been restricted. Phillipart and Winand (2001: 452) argue, for example, that projects in Africa were limited to areas of low politics, such as health care and democracy building, and that at its core the 'global partnership' is really restricted to European regional issues. On the other hand development co-operation and humanitarian assistance are cited as two of the most successful policy sectors of the NTA.

The EU and the US were also been able to pursue a number of low key projects under the global challenges chapter of the NTA, which like the first chapter, was pre-empted by the Masstricht Treaty and the creation of the EU Justice and Home Affairs Pillar. The scope for global challenges co-operation under the NTA is broad if not deep. Many initiatives, statements and declarations have arisen out of the chapter, however the concrete rewards of individual projects are often limited (see below). Nonetheless, the partners have co-operated in creating the international law enforcement centre in Budapest, the Italian Judiciary Training Centre, the anti-trafficking in women information campaigns in CEE (see chapter 6) and regional environmental and energy projects in Russia, the Ukraine and Moldova. Efforts to fight drug trafficking included the Caribbean Drugs Initiative and the Precursor Chemicals Agreement. A major set back, however, was failure to address environmental challenges by reaching an agreement over the Kyoto Protocol.

Table 3.6 Examples of NTA Deliverables

NTA CHAPTER	STATEMENTS, DECLARATIONS, AGREEMENTS
I:	<ul style="list-style-type: none"> -Joint Statement on South East Europe (2000) -Joint Statement on Northern Europe (1999) -Joint Statement on Chechnya (1999) -Declaration on the Middle East Peace Process (1998) -Joint Statement on Co-operation in the Western Balkans (1998)
II:	<ul style="list-style-type: none"> -Energy Research Co-operation Agreement (2001) -Statement on Communicable Diseases in Africa (2000) -EU-US Biotechnology Consultative Forum (2000) -Declaration on the Responsibilities of States on Transparency Regarding Arms Exports (2000) -Joint Statement on Common Principles on Small Arms and Light Weapons (1999). -Statement on EU-US Shared Objectives and Close Co-operation on Counter --- Terrorism (1998) -Declaration on Common Orientation of Non-Proliferation Policy (1998) -Statement on Caspian Energy Issues -Precursors Chemical Agreement (1997) -Joint Initiative on Trafficking in Women (1997) -Caribbean Drugs Initiative (1996). -Regional Environmental Centers Ukraine, Russia,
III:	<ul style="list-style-type: none"> - Safe Harbour Agreement (2000) - The Veterinary Equivalency Agreement (1999) - The Positive Comity Agreement (1998) - Statement on Co-operation in the Global Economy (1998) -The Mutual Recognition Agreement (1997) -Customs and Co-operation Agreement (1996)
IV:	<ul style="list-style-type: none"> -Statement on Building Consumer Confidence in e-Commerce and the Role of Alternative Dispute Resolution (2000) -Statement on Transparency and the New Transatlantic Agenda Dialogues (1999) -Science and Technology Agreement (1998) -Higher Education and Training Agreement (1997) -TALD (1998), TAED (1998); TACD (1998); TABD (1995)

The economic chapter of the NTA was arguably the most ambitious and where the most concrete results have been produced. Under the NTA the EU and the US signed agreements to remove non-tariff barriers to trade in the form of certification and testing requirements through the Mutual Recognition Agreements (1998) (see also

chapter 7) and the Veterinary Equivalence Agreement (1999), of competition rules through the Positive Comity Agreement (1998), of customs requirements in the Customs and Co-operation Agreement (1996) and on data protection through the Safe Harbour Agreement (2000).⁵⁷ They made headway at the multilateral level through the TRIP agreements and the Information Technology Agreements. Economic co-operation was also re-enforced through the Transatlantic Economic Partnership (1998).

Finally, the fourth chapter of the NTA focuses on ‘building bridges’ across the Atlantic aimed to broaden science and technology co-operation, people to people links across the Atlantic, information exchanges and culture and parliamentary links (NTA 1995; JAP 1995). Under the ‘building bridges’ chapter the EU and the US have fostered co-operation between scientists (through the Science and Technology Agreement, 1997),⁵⁸ and educators (through the Higher Education Agreement, 1998). The main achievement of the chapter however, has been the creation of interest group ‘dialogues’ such as the TACD, TAED and TALD to rival the Transatlantic Business Dialogue (see chapter 5) and the strengthening of parliamentary ties through the Transatlantic Legislators Dialogue (TLD) (see chapter 4).

To facilitate policy output under the policy framework for co-operation, the NTA also introduced new transgovernmental institutions to manage the new

⁵⁷ Each of these agreements seek to increase trade through the removal of NTBs to trade. The Customs and Co-operation Agreement (see above) simplifies customs procedures making it easier to import and export products with the transatlantic marketplace (EU Press Office 1996:1). The bilateral Positive Comity Agreement (1998) enhanced co-operation between EU and US competition agencies. The Veterinary Equivalency Agreement (1999) applies the principle of mutual recognition to veterinary standards and increases exchange between the US Department of Agriculture and the EU Commission for Agriculture and Rural Development in order to increase the trade in animals through mutual recognition of standards. The Mutual Recognition agreements seek to eliminate duplicate testing standards to goods and services.

⁵⁸ The Science and Technology Agreement (1997) draws on a number of actors as it seeks a means of co-operation (be that joint task forces, studies, conferences, training, information exchanges) in a number of areas where scientific standards form barriers to trade, for example in agriculture, fisheries, communication, intellectual property, and biotechnology policies.

transatlantic dialogue and to seek out deliverables. The NTA added two main mechanisms- the Senior Level Group (SLG) and the NTA Task Force- to help drive, co-ordinate, organise, monitor and implement the agenda for EU-US Summits (see chapter 4).

The Scope and Depth of the NTA Framework

The underlying purpose of the NTA is to generally fortify the transatlantic partnership and specifically re-enforce commitments to shared interests in promoting economic liberalisation, increased 'soft' security and the spread of democracy. Does the NTA achieve this aim? Three factors serve as indicators of the success of the NTA: the proficiency for conflict resolution, the reach of bilateral policy co-ordination and the build up of institutions.

First, the failure of the EU and the US to resolve or 'manage' transatlantic trade disputes within the NTA framework is widely believed to be a downside of the system. The NTA specifically re-emphasises the need to resolve bilateral trade disputes and to seek 'amicable and co-operative solutions to our disputes and to the smooth functioning of the WTO dispute settlement mechanism.' Despite attempts to create an 'early warning system' (see chapter 4) that could effectively curb differences before they become disputes, coverage of the EU-US relationship in the 1990s was overshadowed by talk of transatlantic trade wars on bananas (chapter 9), beef (see also Skogstad forthcoming), GMOs (see Young 2001), Foreign Sales Corporations (FSCs) (see also Stehmann 2000) and hush kits (see also Peterson 2001a). The EU and the US were accused of failing to manage potential trade wars and of undermining the multilateral trading rules.

On the other hand, have trade disputes over bananas and beef, for example, threatened to sever ties between the EU and the US? The general consensus among interviewees is that while co-operation and conflict in transatlantic relations are inseparable, disputes have not undermined the overall effectiveness of the NTA. One US official argued that the disputes have had little impact on the NTA.⁵⁹ European officials have argued the importance of minding the discrepancy between first, the scope of disputes vis-à-vis co-operation and second, of media coverage for dispute vis-à-vis the NTA agreements.⁶⁰ A Commission (2001: 6-7) report states that,

At most, 1-2% of the trade and investment flow is affected. Such questions, however, tend to attract media attention far beyond their economic importance. As a result, trade irritants are sometimes blamed for casting a shadow over other aspects of the relationship between the European Union and the United States. In reality there is little risk of negative spill-over from individual disputes into the overall political relationship which is broader and deeper than ever before.

Another US official argued that the NTA has been useful for information exchanges on technical disputes, for example through the Biotechnology Consultative Forum.⁶¹ The NTA process has been less successful in resolving bigger disputes- such as bananas and beef-where EU and US domestic interests directly collide. A Council Presidency official argued, 'where there are disputes, our hands are usually tied at a political level.'⁶² The key, however, is in the capacity of transatlantic institutions to manage disputes in the 'amicable' fashion outlined by the NTA. President Prodi acknowledged that this was one area where more work was needed when he admitted

⁵⁹ Interview, USTR, by telephone, 2001 (58).

⁶⁰ Interview, European Commission, DG Trade, Brussels, 1999 (15); Council Presidency Official, Brussels, 1999 (5), Commission Delegation to the US, Washington 2000 (31).

⁶¹ Interview, US Congress Staff Member, Washington 2000 (39).

⁶² Interview, Finnish Council Presidency, Brussels, 1999 (5).

after the June 2000 EU-US Summit that, 'We decided that megaphone diplomacy would be replaced by telephone diplomacy'.⁶³

Nonetheless, a positive attribute of the NTA process is that EU-US officials continued regular dialogue throughout the trade disputes, and that the NTA process continued to churn out 'deliverables'. One EU Commission official argued, 'The NTA became the new 'glue' in transatlantic relations.'⁶⁴

The second measurement of the NTA's success centres on the substance of the transatlantic dialogue. Philippart and Winand (2001: 50) argue that the NTA creates a global adjustable framework for action and widens the scope of the relationship. As one of the main purposes of the NTA is to seek out issue areas where EU-US co-operation is feasible, policy output is an important measure of the NTA. The result, as noted in table 3.6, is a mixture of joint agreements, statements and declarations. The quality of 'deliverables' has however been criticised first, because joint action is limited in comparison to joint consultation.⁶⁵ Donfried (1996: 8) indicates for example that, 'Even some officials have criticised the plan as a glorified laundry list that is long on rhetoric and short on substance. The two sides agree on many principles and general goals but few specific initiatives are outlined'. Second, an argument can be made that the NTA deliverables are fairly insignificant given that many of them were already being discussed in other policy-making forums. For example the Positive Comity Agreement builds on a previous competition agreement signed in 1991, the MRAs were under discussion as early as 1992 and one Council official argued that the SLG simply hijacked the success of individual departments.⁶⁶ Pollack and Shaffer

⁶³ *Financial Times* (2000) 'New Tact but EU-US Disputes Remain', 1 June.

⁶⁴ Interview, Commission Official, DG External Relations, Brussels 1999 (6).

⁶⁵ Interview, Commission Official, DG External Relations, Brussels 1999 (9).

⁶⁶ One Commission official notes in the case of competition policy, that many within the department preferred to remain separate from the NTA, fearing its broad agenda would undermine the departments specific agenda (2).

(2001) describe, 'a repackaging of existing bilateral initiatives.' Thus, it can be argued that the NTA warrants claims that it is both broad and boring.

The policy output is, on its own, an inadequate measure of the scope of the NTA. Officials argue that an over-emphasis is placed on deliverables. Some argue the document was specifically designed to be non-controversial in light of domestic opposition to a more comprehensive treaty.⁶⁷ Peterson (1996: 16) argues that, 'it (NTA) reflected a conscious effort by administrations on both sides—particularly the American—to find and exploit as many productive areas of co-operation as possible without attracting wider attention'. The NTA did not create a new bilateral organisation. Rather it stressed the need to funnel ideas through existing multilateral institutions such as NATO, OSCE, the G-7 (8) and the WTO where possible. On the other hand it sought to establish a common threshold of co-operation between the EU and the US in a range of policy sectors. Negotiating between bureaucrats, rather than legislators, increases the threshold for co-operation particularly on 'technical' policies as it de-politicises the process.

Finally, the institutionalisation of the structure is arguably the most visible and most significant change brought by the NTA (see also chapter 4). Both EU and US officials stressed the important role of the NTA in 'bringing everyone to the table' and establishing dialogue through regular contacts.⁶⁸ A US official argued that increased information exchanges, brought more wisdom to negotiations. A Commission official argues that understanding one another's policies and preferences was a pre-requisite to acting on them.⁶⁹ Finally, one Commission official conceded that the NTA process served to manage the 'day to day' relations between the EU and the US suggesting

⁶⁷ Interview, EU Commission Delegation, Washington 2000 (31); US State Department, Washington 2000 (41).

⁶⁸ Interviews, Finnish Council Secretariat, US Mission and European Commission, (2, 5, 4) September 1999.

that, 'Closer contact and more consultation slowly breeds more broad understanding.'⁷⁰

Overall, it can be argued that the NTA symbolised a renewed commitment to the EU-US partnership (see also Philppart and Winand 2001: 50). The new mechanisms in the NTA represented a shift from joint consultation to joint or parallel action. The NTA- JAP framework identifies areas of collaboration and sets an agenda for further increased transatlantic co-operation. The new institutional mechanisms gave new direction to the summits, making them more useful mechanisms. As a whole, the NTA placed renewed focus on transatlantic relations and increased the prospects for co-operation by creating an ever-increasing drive for deliverables. The institutionalisation of the relationship provides greater capacity for the management of technical disputes. In short, the NTA gives the relationship more shape and direction.⁷¹

Still, it has been widely acknowledged that there are gaps in the NTA. As an architect of the NTA, US Ambassador Eizenstat (1997) argued the NTA deserved 'a, 'B+, a good solid grade with room for improvement'. An EU negotiator clarified in terms of substance that the NTA deserved a C, if not lower, but agreed that the institutional aspects of the NTA warranted an A. Thus, like the TAD the NTA is a living document, because it sets flexible goals in different issue areas. Although it does add a more or less permanent structure (Frellesen 2001), it is organic in the sense that the mechanisms in place ensure the agenda can grow with the dialogue.

4) Adding On: The TEP

There was a push to facilitate closer co-operation in the economic chapter of the NTA, after the six month report card (May 1996) revealed that Madrid's expectations had

⁶⁹ Interview 31.

⁷⁰ Interview 6.

not been met in a number of areas, particularly in the attempt to build the New Transatlantic Marketplace.⁷² The lack of concrete deliverables prompted claims that the NTA had run out of steam. However, those working within the NTA process acknowledged the merit of further institutionalisation. Agreements, particularly in the economic sector, helped build confidence between EU and US negotiators and the TABD. Finally, the continued disputes over bananas, beef and extraterritorial sanctions reaffirmed the need for further transatlantic commitment as a means of facilitating trade and containing conflict.

Debates raged on throughout 1997 and 1998 over how to deepen the transatlantic economic commitment.⁷³ On March 11, 1998 the European Commission approved Brittan's proposal for a comprehensive trade treaty, the New Transatlantic Marketplace Agreement (NTMA).⁷⁴ The NTMA plan proposed a comprehensive agreement that would remove non-tariff barriers to trade across the Atlantic; commit the EU and the US to eliminate industrial tariffs through multilateral negotiations by the year 2010; establish a free trade area in services; and lead to further bilateral liberalisation in areas such as government procurement investment and intellectual property. Brittan argued that the NTMA agreement was an opportunity to adapt and

⁷¹ Argued by US Mission official, Brussels, September 1999 (7).

⁷² Gardner (1997:89) notes that while these reports were premature given the scale of commitments and timely process, they exposed shortcomings in the following areas; the testing and certification on telecommunications equipment, telecommunications terminal equipment, information technology, electrical safety, electro-magnetic compatibility, pleasure boats and veterinary biologicals, pharmaceuticals, telecommunications and international maritime transport.

⁷³ Assistant Secretary of Economic Affairs Larson demanded a New Transatlantic Marketplace initiative that would secure open and honest markets and specifically liberalise the telecommunications, aviation and capital sectors (Larson 1997). US Secretary of Commerce, William Daley, spoke of joint efforts between the political and business communities to define the meaning of a barrier-free 'transatlantic marketplace', to establish realistic targets and to designate further steps in the process (Daley 1997). Grossman (1998) pragmatically identified the need for consultations with Congress, the private sector and non-governmental organisations in order to clarify an American position on the NTM initiative.

⁷⁴ The initiative sights the advantages in a single comprehensive agreement, '...designed to use an economic instrument to give a much broader impetus to the overall political relationship; to produce important economic benefits and to provide a new mechanism and stronger incentives to prevent and resolve disputes' (European Commission 1998: 3-4). The aggressive nature of Brittan's proposal represented his longing to see the EU display leadership in the international system. Brittan himself

apply the lessons learned from the SEM to the EU-US process of economic liberalisation. However, while the EU and the US had incentive to pursue further institutionalisation, there was domestic opposition to anything that resembled first, the TAFTA and second, the Commission taking too much control of external negotiations.

A decision taken by the EU General Affairs Council, one month before the London Summit, ensured that the Commission's NTMA proposal never made it onto the summit agenda. It was opposed by the Member States, mainly France,⁷⁵ who argued:

- that strengthening bilateral (rather than multilateral) market opening, particularly through the use of a transatlantic dispute settlement mechanism, undermined the WTO;
- that the agreement was not feasible in light of the ongoing extraterritorial Helms-Burton dispute surrounding the US Helms-Burton law
- that the agreement would carry negative implications for EC audio-visual services and agriculture policies
- that the Commission did not have a mandate to negotiate the agreement.⁷⁶

The French rejection of the proposal was troublesome for a Commissioner so intent on equalizing the credibility of the EU as a partner for the US. Brittan had earlier claimed, 'It is inevitable that we should now face the United States as an increasingly

cited the unanimous approval of the proposal in the Commission as evidence, 'that the European tiger is beginning to roar' (Brittan 1998).

⁷⁵ But also Germany, The Netherlands, Italy and Spain.

⁷⁶ French President Chirac commented at a press conference shortly before the General Affairs Council's discussion that the NTMA represented 'a personal initiative by Sir Leon Brittan who all alone went off to negotiate a free trade area between the United States and Europe, without a mandate' Adding, 'It is unacceptable for a Commissioner to negotiate without a specific mandate from the Council. This must be clearly stated so it does not happen again' (quoted in Sheil 1998: 4). One government source adds, 'The French felt like the whole thing was thrown in their face.' Taken from an interview with a US Official conducted July 1998 (1). (See also *That Awkward Relationship* 1998: 1; Buckley 1998: 1)

equal partner, sharing world leadership more and more as we develop still our own capacity to act together in a united and effective way'.⁷⁷ Instead, the Commissioner's attempts to prove that the EU could take a leading role in transatlantic relations backfired, and his worst fears about the action capacity gap of the Union were brought to the surface by internal bickering.⁷⁸

Table 3.7 THE THREE PRONGS OF THE TEP

	ACHIEVE NEAR MARKET ACCESS GAINS FOR GOODS AND SERVICES AND AGRICULTURAL PRODUCTS
	PROMOTE MULTILATERAL AND BILATERAL TRADE LIBERALISATION OF GOODS, SERVICES AND CAPITAL
	EXPAND AND DEEPEN THE TRANSATLANTIC DIALOGUE BETWEEN NON-GOVERNMENTAL ORGANISATIONS, PARLIAMENTARIANS AND GOVERNMENT ON TRADE AND INVESTMENT

The Transatlantic Economic Partnership

The conflicting pressure (mainly from the Americans) to secure some type of economic agreement at the 1998 London Summit, coupled by the lack of domestic support for a comprehensive treaty saw the launch of another compromise, the Transatlantic Economic Partnership (TEP). The TEP ensured that neither party went

⁷⁷ Quoted in Eurocom, May 1997, available, <http://www.eurunion.org/news/eurocom/1997/ecom0597.htm>

⁷⁸ Had the dispute made it onto the May 1998 Summit Agenda, it would have been unlikely to pass US approval either. The initially positive American response to the NTMA proposal soon turned lukewarm because Brittan's proposal failed to address agriculture. Interview, US Embassy, Dublin July 1998 (1).

away empty handed from the summit, and it maintained many of the goals of the NTM while avoiding the political controversy associated with Brittan's proposal.

The TEP aimed to tackle bilateral regulatory barriers to trade and to find common positions for the Seattle Round of the WTO. It set the goal of reducing barriers to billions of dollars of trade through a three pronged market opening approach (see table 3.7). The year 2000 was set, somewhat over-ambitiously, for substantive developments in a number of specific sectors (see table 3.8). Finally, the TEP looked to the expansion and deepening of the transatlantic dialogue between non-governmental organisations, parliamentarians and government officials on trade and investment issues (US Mission 1998). In this sense the agreement complimented the market opening objective with a 'commitment to the highest labour, health and environmental standards' (Pickering 1998: 4).

The TEP was followed in September 1998 by the TEP Action Plan, which like the NTA Joint Action Plan sets a more specific agenda but also includes target dates for actionable goals. Building on the success of MRA's, the TEP Action Plan highlighted the need for mutual recognition agreements in services, particularly in intellectual property, food safety and biotechnology. It also contained sections on regulatory co-operation and harmonisation of standards to facilitate the removal of technical barriers to trade.

In addition, the TEP Action Plan added to the transatlantic institutional structure by creating the TEP Steering Group, a construct which is similar to the NTA Task Force but which deals only with economic issues. The TEP Steering Group was charged with monitoring, implementing and reviewing TEP objectives, providing a 'horizontal' forum for transatlantic civil society and a mechanism for early warning on

potential trade disputes. It also established specialised TEP working groups at the expert level (see chapter 4).

The TEP represented another compromise in the transatlantic partnership building. It was announced parallel to the Transatlantic Partnership on Political Co-operation (TPPC) agreement, which represented a commitment to intensify consultations for more effective political co-operation and established a new set of principles for applying economic sanctions. Specifically the TPPC secured a US commitment to end extra-territorial sanctions against EU companies. In an act of 'creative conflict management', EU-US leaders managed to put aside their longstanding disputes over the US extraterritorial legislation and secondary boycott provisions of the Iran-Libya Sanctions Act (ILSA) and the Helms-Burton Act in order to gain the Member States' approval for the TEP (Krenzler and Wiegand 1999: 14)⁷⁹. Under the TPPC the US maintained the right to use sanctions when diplomatic and political options failed and the EU agreed that maximum effort be taken to ensure that economic sanctions remained multilateral rather than unilateral. Consultation at senior levels was stressed as a prerequisite to imposing sanctions and a number of guidelines were set out to govern situations warranting action by the EU and the US.

In return for the US compromise on Helms-Burton, the EU also made further political commitments on JHA co-operation, an area that the US was eager to pursue further. Statements on non-proliferation and counter-terrorism led to some joint efforts in Iran, but the majority of the language used only uttered vague commitments to pursue co-operation in other regions. There are still glaring foreign policy gaps in transatlantic relations, which surfaced most obviously during the crisis in Kosovo.

⁷⁹ The use of the word managed, not resolved, should be stressed here because Helms Burton Act was not actually repealed. That would have required an act of Congress. Krenzler and Wiegand (1999:16) note, 'Of course nothing guarantees that Congress will refrain from passing such sanctions, thus ignoring the Administration's wishes in conducting US foreign policy'.

What good is the TEP?

The troubled TEP negotiations revealed something about its content and its implementation. The TEP was criticised for its substance, particularly by Europeans who had favoured a more comprehensive agreement. It was argued that the TEP was ‘not overly ambitious,⁸⁰ that the agreement was the ‘result of bad political thinking’⁸¹ and that ‘it would never work properly.’⁸²

First, the TEP was scrutinised for failing to manage trade disputes, in particular the banana and beef disputes which overshadowed the December 1998 EU-US Summit (see also chapter 8). Unlike the NTMA, however, the TEP did not contain a dispute settlement mechanism, rather it committed both parties to jointly approach the WTO Dispute Settlement review in order to increase the transparency and functioning of the panel (TEP Action Plan 1998). Second, the TEP was perceived as a forum for reaching EU-US consensus before the Seattle Round. Frost (1998:3) argued that, ‘The failure of the Brittan initiative may have cleared the way for more focused thinking about global trade liberalisation in the WTO’, but here too the TEP failed as the lack of EU-US consensus in Seattle contributed to the demise of the Round. Finally, the TEP was opposed by NGOs who feared the lack of transparency in the decision making process. The controversy surrounding the content of the TEP led the transatlantic decision makers to promote two new ‘civil society’ dialogues- the TAED and the TACD- in conjunction with the trade agreement under both the NTA’s fourth chapter and the TEP’s third prong (see chapter 5).

⁸⁰ Interview, British MEP, September 1999 (17)

⁸¹ Interview, Commission, September 1999 (16).

⁸² Interview, Commission official. Washington, October 2000 (32).

Faith in the TEP was undermined further in the first years of its implementation. In 1999 it appeared that the TEP had either stalled or died.⁸³ The TEP demonstrated that the EU and the US were still grappling with different visions of the transatlantic partnership. Americans argued that the Europeans were ambivalent to the TEP because they thought the agenda should be more ambitious. One USTR official argued, 'It is hard to succeed when they load it with topics that are not going anywhere!' On the other hand Europeans argued that the Americans were unable to deliver' particularly in the services sector.⁸⁴ MRAs negotiations were held up by the US because individual states, rather than any centralised body, had control over services certification and the US Administration was unable or unwilling to seek legislation from Congress to uphold the TEP (see also chapter 7).⁸⁵ EU officials also argued that US officials were stalling in working groups.⁸⁶ A British MEP complained, 'The US cannot guarantee that every state will be on board. The reality is the opposite of usual perception that the process is upheld by Community decision making.'⁸⁷

The limited scope of the TEP and the initial problems implementing it also pointed to a lack of political will in EU-US relations. At the time, it was argued that there was little interest in Brussels or Washington for new transatlantic initiatives (Frost 1998). The EU was preoccupied with enlargement and the launch of the Euro. American politics were divided between the Republican Congress and Democrat Administration over the Clinton scandal, and both sides were pre-occupied by the US election.

⁸³ Interviews at the European Commission, Brussels, September 1999 (9, 15) and the Commission Delegation, Washington, October 2000 (32).

⁸⁴ Interview, 2, 6, 17.

⁸⁵ Interview 9, 20.

⁸⁶ Interviews at the Council Secretariat, the Commission, and TABD officials, Brussels, September 1999 (3, 6, 18, 20).

Table 3.8
SECTORS COVERED BY THE TEP

- improving science and regulatory co-operation
- reducing regulatory barriers
- lowering red tape costs to benefit consumers
- working to keep electronic commerce duty free
- advancing core labour standards
- developing common approaches to trade related environmental areas
- recognising the central role of intellectual property rights as a basis for economic, scientific, and artistic creativity
- opening transatlantic economies to include a wider variety of interests

Source: TEP 1998.

By the time President Bush took office, it seemed the TEP was back on track. The TEP Steering Group was making regular reports to the EU-US Summits, and the progress on science and regulatory co-operation overshadowed the fact that no progress had been made on agriculture or audio-visual services. Negotiations for new MRAs in goods and in services were underway in 2001 (see also chapter 7). The TEP process produced EU-US Guidelines/Principles on Co-operation and Transparency in Establishing Technical Regulations (2000), aimed at improving the transparency and

⁸⁷ Interview 17.

effectiveness of planning and developing regulatory proposals. In addition, the EU-US Biotechnology Consultative Forum was established to head off an upcoming dispute over GMOs.

Conclusion

The underlying thesis of this chapter was that EU-US relations have changed in the 1990s as a result of three agreements the TAD, the NTA and the TEP. These agreements ensured the institutionalisation of the transatlantic relationship on a more equal basis outside the confines of NATO. Each agreement added a 'block' to the transatlantic 'framework' by outlining principles and goals for co-operation and by establishing institutions to manage policy co-ordination.

Domestic opposition to an overarching transatlantic treaty ensured that the EU and the US strategy for co-operation focused on relatively 'safe' or 'soft' policy objectives. As a result the NTA process is often criticised on the basis of that its deliverables are non-controversial.⁸⁸ However, the real weight behind the TAD, the NTA and the TEP is not only its 'deliverables'- which are an important part of 'focusing' the dialogue (see chapter 4)- but rather in its capacity to forge a formal dialogue structure. The agreements ensured the creation of networks which foster communication between political leaders, officials and business and civil society on both sides of the Atlantic. In theory, it is these 'institutions' that increase the threshold for co-operation. One Commission official argued, 'The logic of the NTA is similar to

⁸⁸ The term 'NTA process' is used throughout the text to generalise about the transatlantic process, as it is the most comprehensive of the three agreements.

the thinking behind the EU. If we are constantly talking, it is less likely that we will be fighting.’⁸⁹

The reality is that the institutionalisation of the relationship in the 1990s created a new forum for transatlantic policy making. However, the TAD, the NTA and the TEP, as ‘history making’ agreements, only indicates a general direction for policy co-ordination rather than specific agreements. It is the transgovernmental and transnational institutions that are charged with ‘setting’ and ‘shaping’ transatlantic policies. The next chapters note that even where the political will exists at the top, the policy process is influenced from the bottom up.

⁸⁹ Interview, Commission Official, Brussels, May 2000 (29).

Chapter 4

Setting and Shaping the Transatlantic Dialogue: The Transgovernmental Policy Process

Transatlantic institutionalisation has altered the way the EU and the US interact. In contrast to the traditional style of international diplomacy that characterised the Cold War, there is now a ‘political process’ that surrounds EU-US decision-making. The transatlantic agreements created institutions for enhanced dialogue between the EU and the US. These mechanisms were designed to foster co-operation and curb conflict in the transatlantic relationship. Their objective is to produce ‘deliverables’, provide a forum for dispute settlement and foster co-operation through increased dialogue and information exchange. The institutions created by the TAD, the NTA and the TEP form the structure of the transatlantic policy process and the pillars of transatlantic governance.

This chapter examines both the mechanisms and the procedures that make up the transgovernmental policy-making process and the transgovernmental actors that operate within it. In reference to the second hypothesis outlined in chapter 1, it seeks to establish the extent to which the new institutions provide a forum for decentralised policy setting and shaping. What role do transgovernmental actors play in the transatlantic policy making process? In other words what room has the institutionalised EU-US structure-established by intergovernmental decisions- allowed for other governmental actors to influence transatlantic formation? It argues that the scope for actor access is vast, given the complex nature of EU, US and transatlantic decision making structures.

This chapter is approached in the following way. Section 1 examines EU-US Summits, where intergovernmental and transgovernmental agreements are announced. The remaining sections evaluate the ‘sub summit’ procedures, in other words the mechanisms and process that deal with early stages of decision making. Section 2 explores the ‘political process’, the ‘economic process’, and the ‘NTA process’, and describes the structure of dialogue created by these processes. Section 3 evaluates the trade dispute settlement process established in part by the ‘Early Warning System’ (1999). Finally, section 4 evaluates the impact of the transgovernmental process. It questions why the decentralisation of transgovernmental decision setting and shaping ‘matters’ in the context of transatlantic governance.

1) The EU-US Summit

The biannual EU-US Summit is the primary forum for intergovernmental exchange in the NTA process, consisting of the highest level of contact between the Presidents of the US, the Commission and the Council Presidency. As established under the TAD, these intergovernmental meetings were originally designed as stand alone events. However as the NTA process emerged, a number of ministerial level meetings held in conjunction with or in close proximity to the summits also became institutionalised. The preparation for summits became more complex with the creation of economic, as well as political institutions under the TEP. EU-US Summits developed into an event rather than a meeting whereby economic and foreign policy ministers, US Cabinet officials and EU Commissioners held separate, parallel talks, followed by a joint plenary session and finally, the actual summit meeting.⁹⁰

⁹⁰ The attendance of EU-US summit fluctuates depending on where the summit is held. For example the US Secretary of State attends, but other US Cabinet members may not if the summit is held outside Washington D.C.. The Vice President attends only when the US hosts the summit.

The EU-US Summit has two important functions. First, it is a forum for intergovernmental consultation. It brings together top 'political' officials and places topical or timely issues, including disputes, on the table for discussion. The idea is that the EU and the US try to come to a common position on how to approach situations in third areas. They use summits to discuss means of co-ordinating diplomatic co-operation in hotspots such as the Balkans, Kosovo, East Timor, Chechnya and the Middle East and for discussing strategic issues such as the European Security and Defence Policy (ESDP) and its relationship with NATO. The summit is also used to discuss pending disputes over bananas, beef and EU Airbus subsidies. The London Summit was, for instance, crucial to the settlement of the Helms Burton dispute over US extraterritorial legislation.⁹¹

The second function of EU-US Summits is to both initiate and assess policy output in issue areas incorporated under the NTA framework. The transatlantic policy process is a cycle of decision making that begins and ends with the biannual summit. It is where decisions are 'made' about the general scope for co-operation and where deliverables are announced (see figure 4.1). Deliverables are an important part of the process and a major goal of summit leaders because they legitimise the process by producing concrete results. As one US official argues, 'Advisors have to keep telling leaders why they are doing this (attending EU-US Summits)'.⁹² The summits encourage foreign policy and economic policy co-ordination because they create deadlines for progress reports and exert pressure on lower level officials to produce results.⁹³ EU and US officials use the summit to flag important issues for further

⁹¹ Interview, Commission official Brussels, 1999 (11); US Mission Official, Brussels, 1999 (7).

⁹² Interview, Commission Secretariat official, Brussels, September 1999 (16).

⁹³ Interview, US State Department, Washington DC 2000 (33).

development.⁹⁴ In short, as one Council official observed, ‘The summits are a good way to see where we are.’⁹⁵

EU and US officials generally describe the summit as a useful mechanism, at least rhetorically.⁹⁶ However the enthusiasm for the event varies depending on domestic political arenas, the quality of potential deliverables and the enthusiasm of the EU Presidency. For example, Clinton was accused of being distracted during the December 1998 Summit when Congress was simultaneously voting on whether to impeach him over the Lewinsky affair.⁹⁷ Similarly the EU’s attention to the summit waned during the Santer Commission scandal and there was no real interest on the US side in meeting Commissioners before the hand-over to Prodi.⁹⁸ The December 2000 Summit also served as more pleasantries than purpose, while the EU awaited the arrival of the new US Administration.

EU-US Summits are a way to keep the EU Presidencies, and thus the European Council, engaged in the transatlantic dialogue because the host state actively prepares the summit, which is hosted in every other Presidency’s national capital.⁹⁹ It is a mechanism for small states to assert their role as international actors. For example the Finnish Presidency was able to address ‘Northern’ issues in the December 1999 Summit.¹⁰⁰ Many interviewees noted the varied importance that individual EU Presidency’s attach to the EU-US Summit. For example the Irish, Dutch, and British Presidencies were credited with successful summits given their good channels of communication with the US. Another US official argued that,

⁹⁴ Interview, Commission official, Washington DC 2000 (31).

⁹⁵ Interview, Council Presidency, September 1999 (5).

⁹⁶ Interviews 1, 2, 3, 4, 5, 6, 7, 9, 11, 15, 16, 18, 22, 31, 33, 41, 44, 45.

⁹⁷ Similar accusations have been made about banana negotiations which also took place in December 1998 (see chapter 8).

⁹⁸ Interview, Commission Brussels, September 1999 (11).

⁹⁹ Expressed in interviews with US State Department and Commission officials, Brussels, 1999, 2000 (7,33).

¹⁰⁰ Interview, Commission, Brussels, September 1999 (9).

Generally small Member States have better Presidencies. They recognise their limitations with resources, and prepare years in advance. The Finns are a great example. They are very good at organisation and set realistic agendas.¹⁰¹

Critics, on the other hand, have downplayed the importance of EU-US Summits, claiming they had become mere 'photo opportunities' rather than decision making forums. Reporting on the May 1998 Summit in London, the Economist claimed that EU-US Summits 'might normally be expected to produce a batch of dreary photo-calls and a heap of pointless platitudes.' EU foreign ministers have been accused of participating in the summits because, 'it is fun to be in a picture with the US President'.¹⁰² Further scrutiny has come from NGOs who claim that EU-US Summits are a place for 'PR statements' and 'parade shows'.¹⁰³ Despite conflict over which private actors attend the summit (see chapter 5) it is acknowledged by NGOs that attendance is more of a symbolic gesture than a serious lobbying forum.

EU-US Summits are also criticised for having too broad an agenda and not producing substantial joint action. A TAED official argued that, 'The summit is not a vehicle for getting things done, the agenda is too broad.'¹⁰⁴ A limited number of themes are usually highlighted at the summits. However, issues receive only superficial attention at the intergovernmental level due to time constraints. Meetings usually end up being only 2-3 hours long, which, officials point out, is not enough time to work through the technical details of policies. Furthermore the frequency of summits is blamed for creating a 'tread mill' process whereby deliverables are recycled and resold (see also below).¹⁰⁵ A Commission Report (2001) argued that, 'to make co-operation more action-orientated, EU-US Summits need to become more

¹⁰¹ Interview, US Mission official, Brussels, September 1999 (7).

¹⁰² Interview, Commission official, Brussels, September 1999 (2).

¹⁰³ Interview, TACD Secretariat, London, January 2000 (23).

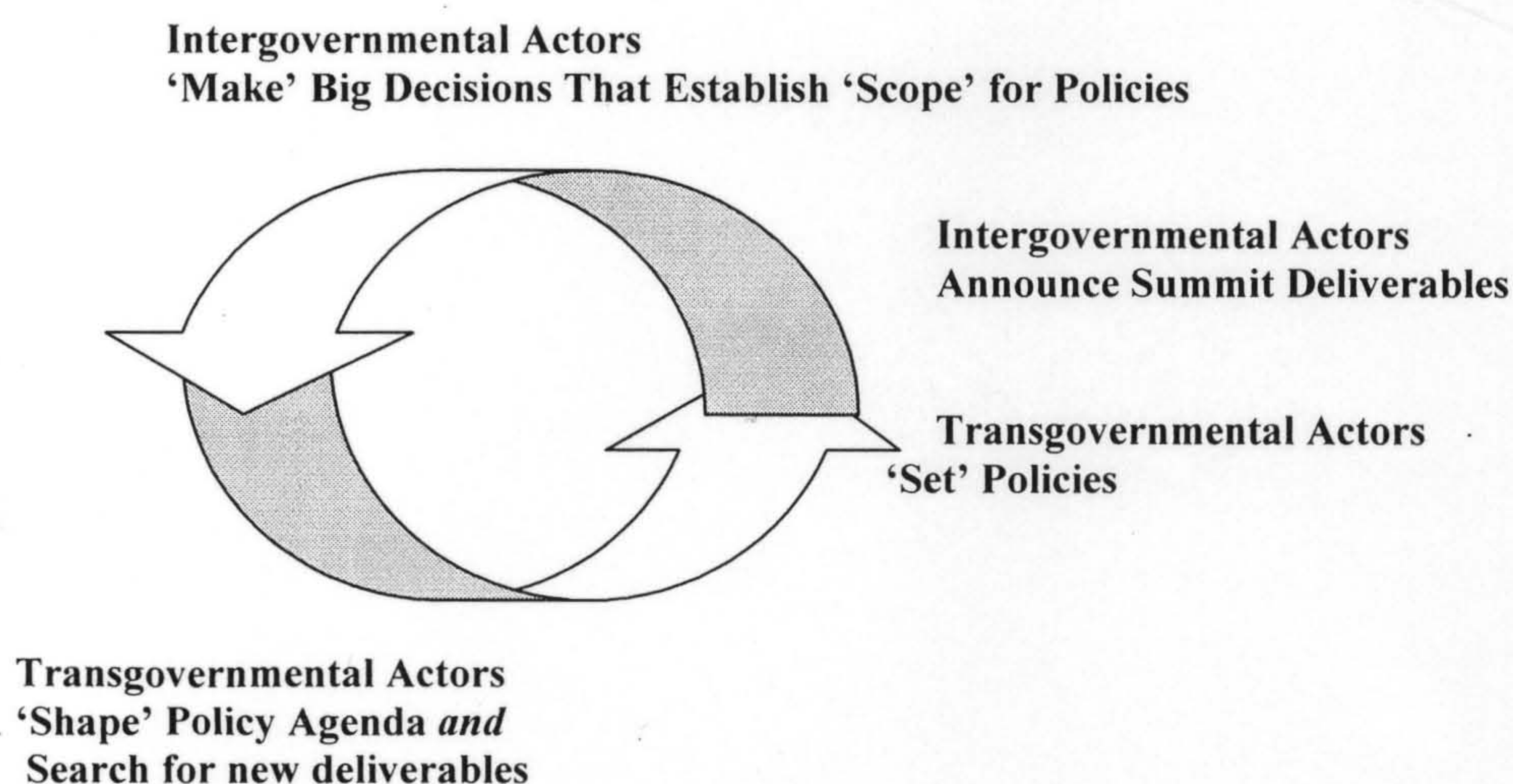
¹⁰⁴ Interview, US NGO, Washington, October 2000 (30).

¹⁰⁵ Interview, Commission official, Brussels, September 1999 (9) (15).

focused and to define clear priorities. Efforts should concentrate on the most important challenges-strategic themes- facing the EU and the US today.'

The point is, however, that EU-US Summits alone cannot facilitate the number of goals established by the NTA. In addition to the time constraints on intergovernmental actors, many heads of state, and even those in ministerial positions, do not hold the expertise required to formulate technical policies, for example in the area of regulatory co-operation. The consensus among interviewees is that while the summit is a focal point of the policy process, most contact takes place below the intergovernmental level.¹⁰⁶ One Commission official argued that the summit 'launches the practical arrangements' for seeking out specific policies.¹⁰⁷ It is argued here that EU-US decision making must be considered in the broader context of the policy making process. This process begins at a much lower, 'sub-summit' level where junior officials play an important role. The remainder of this chapter will therefore examine different types of 'sub-submit' exchange where policy proposals are scrutinised and debated by transgovernmental actors before final decisions are made.

Figure 4.1 The NTA Policy Cycle



¹⁰⁶ Interview, TABD September 1999; Interview Commission official, Washington 2000 (31).

¹⁰⁷ Interview, Commission Delegation, Washington October 2000 (31).

2) The NTA Processes: Political and Economic Decision ‘Taking’

While intergovernmental actors make decisions that indicate where transatlantic co-operation will be pursued, it is transgovernmental actors who decide how the EU and the US can co-operate through the decision-making processes established by the NTA/TEP framework. The ‘plurality’ of processes is stressed because the transatlantic decision making process mirrors EU decision-making structures. The TAD, the NTA and the TEP have established three branches of governmental dialogue to accommodate the different competencies of EU external negotiators.

Generally, the idea behind the sub-summit process is that specific policies for co-ordination within the reach of the NTA/TEP framework are ‘fetched’ from the bottom ranks of the transatlantic dialogue and are passed up through lower levels of consultation, finally making their way onto the agendas of EU-US Summits. The economic ministerial dialogue, the foreign policy ministerial dialogue and the SLG form the head of three separate branches of transgovernmental dialogue (see figure 4.2). This section explains these three transgovernmental processes and discusses how the TAD, NTA and TEP mechanisms have created a formal process for decision setting and shaping at a sub-summit level.

The Political Process

The political process refers to the process of dialogue built upon TAD mechanisms. It begins when the new Council Presidency assumes its role in the Council of Ministers, shortly after the previous EU Summit and EU-US Summit have concluded. Once the hand over takes place the political dialogue is initiated in a meeting between EU-US foreign ministers and the EU Commissioner for External Relations. Events and

circumstances may dictate further contact at the ministerial level (prior to the summit) either under this framework or through ad hoc Troika dialogues.¹⁰⁸

A number of US-Troika dialogues were established after 1990 to support the foreign policy dialogue. In addition to the ministerial Troika dialogue, there is now interaction at the political director level and at working group level. These transatlantic working groups mirror the CFSP working groups in the Council and are significant because they are the only cross pillar working groups.¹⁰⁹ These groups were established in 1995 as an extra level of expert exchange, and they deal with a range of issues outlined in table 4.1.¹¹⁰ Finally, the Troika dialogue is anchored by regular exchange between Heads of Mission and US Ambassadors.

Table 4.1

The Transatlantic Working Groups
<ul style="list-style-type: none">• Law Enforcement Co-operation • Middle East Experts • United Nations • Security • OSCE • Iran Trilateral • Human Rights • Turkey, Cyprus and Malta • Consular Affairs• Soviet./ Newly Independent States • Latin America • Non-proliferation • East and South Asia • Conventional Arms Exports • Terrorism • Central Europe • Western Balkans • Africa • Drugs • Disarmament

Combined these dialogues form the 'traditional' political dialogue (see also Frellesen 2001) and the first branch of EU-US co-operation. The traditional political dialogue is a unique process. The Troika dialogue reflects the complex structure of EU decision-making, and the foreign policy dialogue is particularly important because it covers issues that remain under Member States' control.

¹⁰⁸ The Troika format traditionally included the Commission, the successor, the predecessor and current Council Presidency. Under Amsterdam, however the 'new' Troika includes the Presidency, the Commission and the new CFSP High Representative, Javier Solana Madariaga.

¹⁰⁹ Interview, Council Secretariat, Brussels, September 1999 (3).

¹¹⁰ Interviews, Council Secretariat and Finnish Presidency, Brussels, 27 September 1999 (3,5).

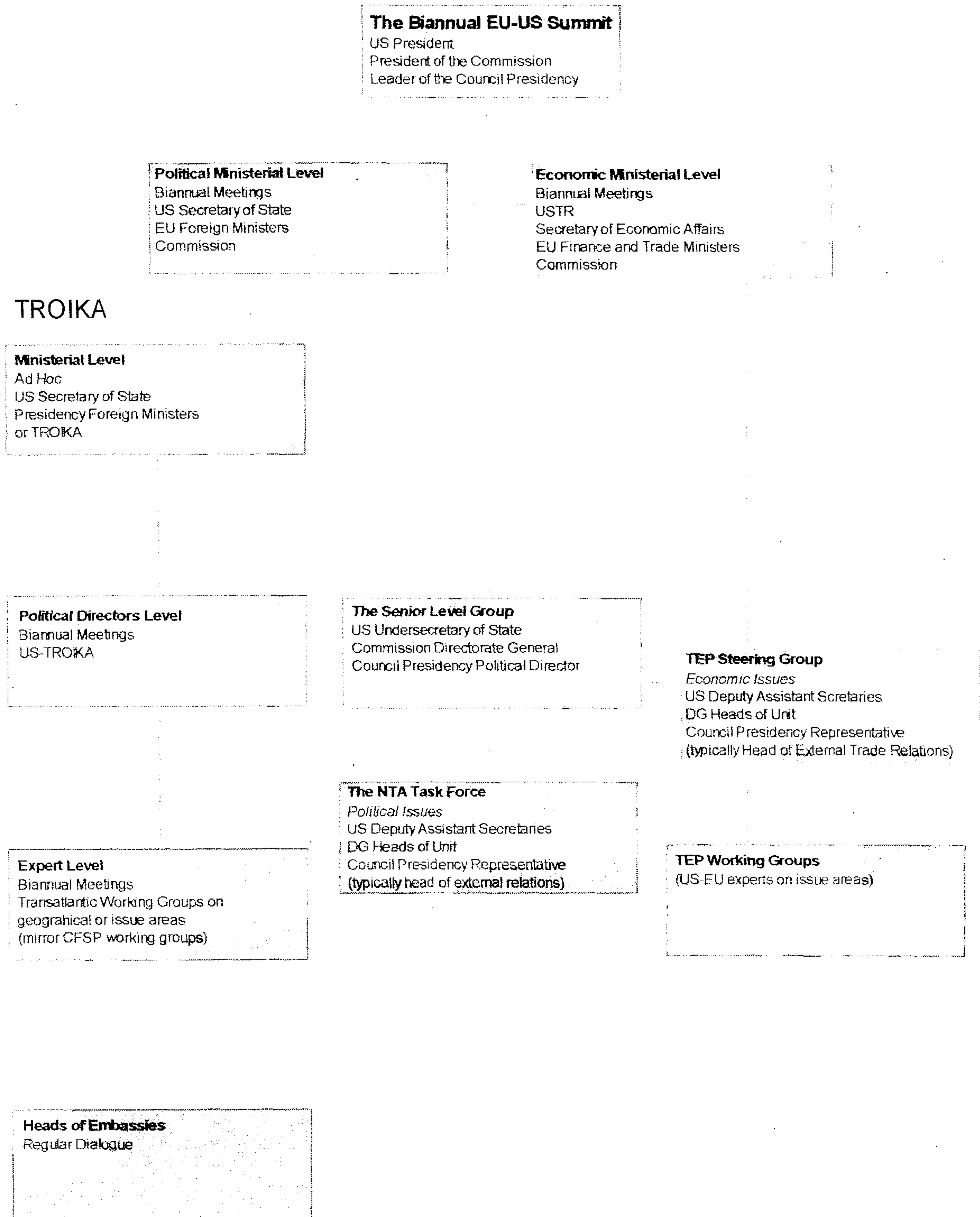
The Economic Process

According to Article 133 of the EU treaties, the Commission has the competence to act on behalf of the Union in trade negotiations providing it works within the Council's mandate. The TEP emphasises new areas of trade which fall into 'grey' areas, or areas of mixed competence in EU decision making. There was thus the need to add new mechanisms to the transatlantic economic dialogue. The TEP Steering Group (SG) and the TEP working groups were established by the TEP Action Plan to study sectors for further liberalisation. These mechanisms form the economic branch of the transatlantic dialogue under the ministerial level dialogue.

The members of the TEP Steering Group hold a similar rank to participants in the NTA Task Force. The Steering Group consists of the US Deputy Assistant Secretary, the DG Heads of Unit for Trade and a Council Presidency Representative, usually the head of external relations for trade. It meets two or three times during the course of a Presidency and reports directly to the SLG. It can also filter into the economic ministerial dialogue through the structure of the independent agencies.

The TEP Steering Group deals with economic points in detail, and its purpose is to fulfil the goals of the TEP by fostering multilateral as well as bilateral trade. In that respect, the TEP Steering Group was originally designed to find compatible strategies for the WTO round, to identify areas where transatlantic services could be liberalised and to act as an 'early warning' system (see section 3) by identifying possible areas of conflict. It also fulfils the task of fostering EU-US economic co-operation and preventing conflict more generally. In a style similar to the SLG report (see below), the Steering Group Report takes stock of EU-US economic relations and the progress in achieving TEP goals.

Figure 4.2 The Structure of the Transatlantic Dialogue



The Steering Group is assisted by the TEP working groups which are sector specific and thus mirror the sectors laid out by TEP including, agriculture, trade, services, global electronic commerce, etc. These groups, like the transatlantic working groups, meet prior to the summits and their contacts increase as the cycle nears completion. Their main task is to find areas where the EU and the US can work together under the TEP framework and to report any progress or problems to the Steering Group.

The NTA Process

The NTA added new filter mechanisms to the transatlantic policy process. The level of exchange and the capacity to produce ‘deliverables’ was stepped up by these new mechanisms. The Senior Level Group (SLG) and the Task Force serve as the contacts between the economic and the political or Troika dialogues and as focal points of the process. They form the supporting branch of the transatlantic dialogue.

It is the job of the SLG to ‘shop for deliverables’, determine what should be on EU-US Summit agendas and monitor the implementation of the NTA. Its purpose is therefore to help correct the problems that incurred under the TAD format by being a force of focus and continuity in-between EU-US Summits, thereby ensuring that summits do not become separate unrelated meetings.

SLG membership is less exclusive than EU-US Summits but is nonetheless limited. There are roughly six members of the SLG. US representatives include Under-Secretaries for political and economic affairs in the State Department, and the Commission delegates are drawn from the Directorates General for external relations and trade.¹¹¹ The Council Presidency has political and economic delegates that represent the Member States, meaning SLG membership varies depending on the

country holding office. Additionally representatives of the Article 133 committee, which deals with detailed trade issues, and foreign ministers may be present depending on the topics on the agenda.

The SLG meets twice every six months. The first meeting takes place soon after the Presidency switches hands to 'get things moving'. The second is held closer to the summit date to finalise the agenda and confirm the contents of the SLG Report. The SLG report is a report card of EU-US progress that is compiled before the the EU-US Summit. In addition to scrutinising NTA progress, the report card has been employed as a means of drawing positive public attention to the NTA process in order to combat negative media coverage of trade disputes.¹¹² The SLG serves an administrative function by taking a broader number of issues, 30 or 40 points, and slimming down the agenda prior to the summit. It identifies issue areas that are most likely to produce deliverables and slots these into the summit agenda.

The SLG is aided in its quest for economic deliverables by the TEP Steering Group and for political deliverables by the NTA Task Force. The Task Force passes potential deliverables up through the NTA structure to the attention of the SLG. While the SLG is the link between both the political dialogue and the economic dialogue, the NTA Task Force is a fusion point between the traditional political dialogue and the NTA process. The NTA Task Force works closely with the transatlantic working groups in its search for possible deliverables. It may instruct the working groups to pursue co-operation in a particular sector or be alerted to progress by the working groups in advance. The Task Force then investigates and passes on details to the SLG.

¹¹¹ Before the structural changes made by Prodi to the Commission in 1999, the Commission typically put forward the appropriate DGs Chef de Cabinet (Interview, Commission official, Brussels, September 1999 (9)).

¹¹² This practice has not been overly effective, as fewer people access government web sites than media sources. One Commission official summed up the public scope of the SLG report by describing its

In addition to seeking out deliverables, the Task Force deals with the day to day monitoring of transatlantic relations. It meets four or five times per presidency and communicates via additional videoconferences. Other expert meetings are also conducted, usually on an ad hoc basis depending on events, and individual working groups have been set up by the Task Force to investigate potential co-ordination of specific policies. For example there is a high level consultation on humanitarian aid and a Task Force on communicable diseases.¹¹³

Task Force meetings are much larger meetings than those conducted at SLG level, and the membership for these meetings is not formalised. Regular attendees include US Deputy Assistant Secretaries in the State Department, DG Heads of Unit and various Council Presidency representatives.¹¹⁴ A number of aids, interpreters and departmental officials also tend to sit in on Task Force meetings. Thus, a system of rotating chairs is usually adopted to accommodate different participants depending on the nature of the topics being covered.

Prior to the institutionalisation of transatlantic relations both the political and the economic processes were confined to the hierarchy of government structures meaning lower level civil servants influenced the summit agenda only through their own ministers. Now direct access has been designated to 'sub summit' level contacts through the Senior Level Group, which sets the agenda for the EU-US Summit. The TEP Steering Group and the Troika dialogues influence the summit by filtering into both the ministerial level and the SLG. The TEP Steering Group reports directly to the

purpose as 'all to convince the six or seven academics who care to read the report' (Interview, Brussels, September 1999 (6)).

¹¹³ Interviews with EU and US officials, Brussels, 27-30 September 1999. See also Frellesen 2001.

¹¹⁴ The Finish delegation sent the Director General for the Department of external economic relations, and the Germans were represented by the head of the external EU department and the head of bilateral desk for German-American relations. The Austrian delegation sent the head of North America positions, and the British presidency was represented by Dick Stay, the head of external relations and the man who services council work. Interview Commission official, Brussels, September 1999 (9).

SLG as does the Troika political dialogue, and the Transatlantic Working Groups funnel into both the NTA Task Force and the SLG. The result is that the three branches of governmental dialogue work both separately and in sync and that a dense layer of networks has been created to support and assist transatlantic policy makers in seeking out new areas of co-operation. The NTA institutions, including the SLG and the NTA Task Force, are cross pillar institutions (see also Frellesen 2001), assisted by the Task Force the SLG 'monitors' or 'manages' the process in order to facilitate increased co-operation.

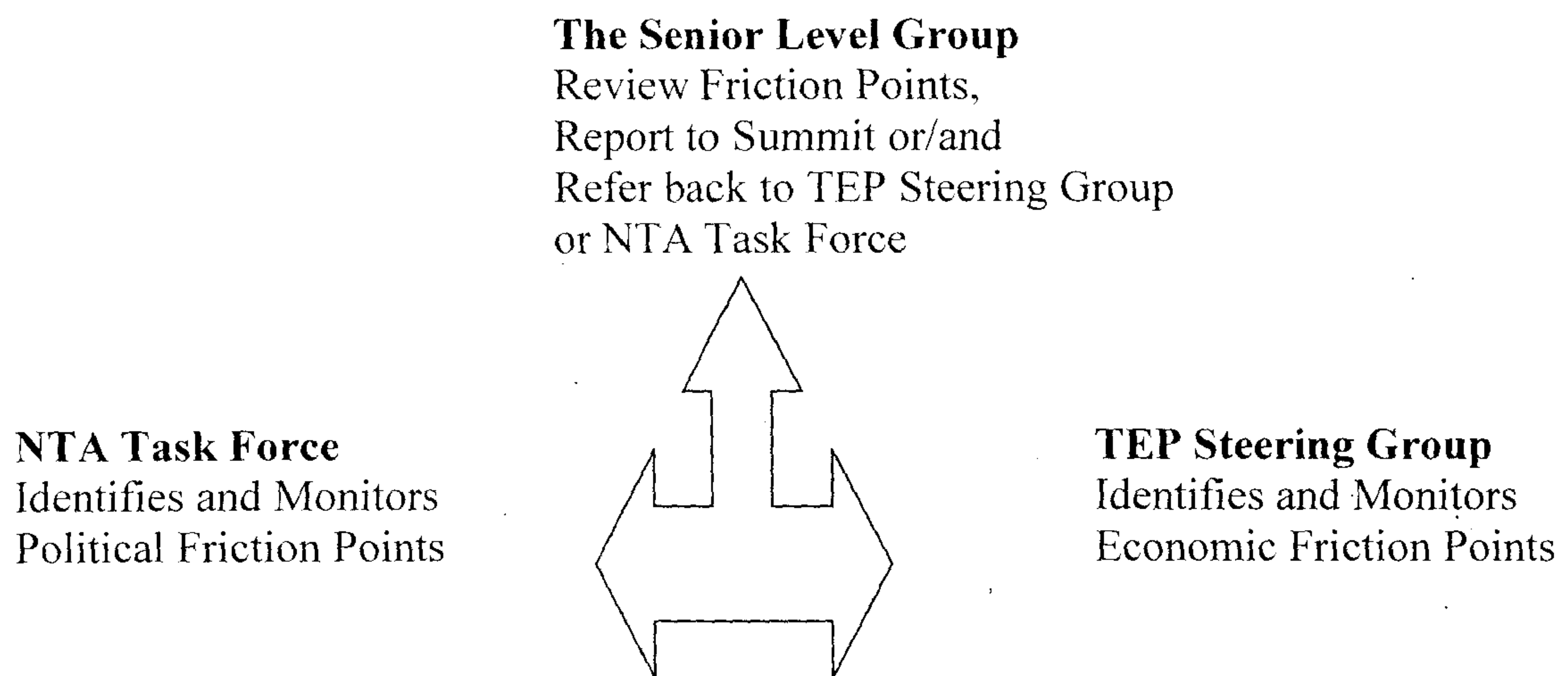
3) The Early Warning System process

In addition to serving as forces of 'integration', a number of EU-US trade disputes have highlighted the need for transatlantic institutions to act as dispute settlement mechanisms. The concept of an 'Early Warning System' had been an underlying theme in the institutionalisation process since the Transatlantic Declaration. In the past this simply meant that at sub-cabinet level meetings, items on the agenda were earmarked for consideration. Under the NTA and the TEP, the SLG, NTA Task Force and TEP Steering Group meetings set aside time for raising 'friction points' before they become major disputes (Devuyst 2001: 296). The Bonn Summit (1999) tried to make the Early Warning System more pragmatic by establishing 'institutionalised' rules and procedures.

It was agreed that existing institutions, the TEP Steering Group and the NTA Task Force, would serve as the primary mechanisms for early warning, with the Steering Group covering trade and investment issues and the Task Force covering political issues. The Senior Level Group would review early-warning items in its preparation for the EU-US Summit. The TEP Steering Group and NTA Task Force

were then charged with assigning contact points, facilitating consultations and agreeing on timelines for reporting back on items highlighted as potential transatlantic policy frictions (see figure 4.3; Early Warning Statement 1999).

Figure 4.3 The Early Warning Mechanisms



The logic behind the Early Warning System fits into the larger institutionalist thesis identified in chapter 2. First it is argued that by identifying conflict, exchanging information and creating awareness at an early stage, possibly contentious legislation may be avoided in order to prevent conflict in EU-US relations. One US mission official argues that, 'We need to tell people in advance that the problem is coming, then we will be ready when the regulation comes into effect.'¹¹⁵

The case most cited by EU and US officials that highlights the need for early warning system was the dispute over 'hush kits'. The hush kit dispute revolved around EU legislation banning planes from being fitted with devices that reduced the noise levels emitted by older aircraft. By the time US industry and Washington woke

¹¹⁵ Interview, US Mission official, Brussels, September 1999 (7).

up to the fact that this legislation hampered US trade (US companies exclusively manufacture hush kits), it was already in its second reading in the European Parliament (see Peterson 2001). Many officials contend that had the EWS system been in place, early dialogue could have prevented the dispute. One US official even claims to have been told by MEPs, 'that had they known they would have written the legislation differently.'¹¹⁶ The hush kits case highlights two important features of transatlantic dispute resolution, first, the role of the legislators in the transatlantic process and, second, the power of domestic economic interests.

Another underlying feature behind the early warning concept is the desire to get both EU and US domestic policy makers to consider the external implications of internal policies.¹¹⁷ Legislators are central players in the early warning system, because decisions made by them go far towards determining the capacity that international negotiators have to negotiate agreements, particularly in the US. Thus, the early warning system emphasises the need to 'beef up' the Transatlantic Legislators Dialogue (TLD), another product of the NTA's 'building bridges' chapter. The TLD brings legislators together at the committee level and creates awareness in Congress and the European Parliament of the impact of decisions made in either House.¹¹⁸ EU and US officials argue that the TLD has a crucial role to play in the early warning system.¹¹⁹

The implementation of the early warning process was slow moving following the Bonn Summit statement. Initially, the strategy was to get people talking and to assess ways in which the Early Warning mechanisms might operate. The Commission

¹¹⁶ Interview, US Mission official, Brussels, September 1999 (7).

¹¹⁷ Interview, EU Commission official, Brussels, September 1999 (4).

¹¹⁸ In June 2001 a Commission official noted, 'The TLD is in a state of 'impasse' after the election of the new US Congress. The EP is working to reactivate it.' (Interview 62).

¹¹⁹ Interview with Commission and European Parliament September 1000 (10, 18) and US TLD October 2000 (40).

discussed the possibility of employing a strategy of 'impact assessment'.¹²⁰ Derived from Article 133 committee discussions, impact assessment would mean having proposed policies stamped with a trade impact 'clean bill of health'. The idea was to increase communication between internal DGs and for US policy makers to ensure that national US interests were considered in the EU's internal policy processes.¹²¹ US officials stressed the importance of transparency in the Early Warning System, suggesting that the Transatlantic Regulatory Guidelines (2000) were a means of furthering early dispute resolution. As one official stressed, 'We are interested in more regulatory to regulatory discussion of eventual trade disputes. It works into the early warning mechanisms by ensuring we catch things early on.'¹²²

The early warning system is also designed to keep both sides informed of potential threats posed by Congress and the European Parliament.¹²³ The system sparks an inter-agency process that identifies the domestic issues that should be raised for the Task Force, the TEP Steering Group, the SLG and the Summit. Officials on both sides stressed the importance of the early warning system as a means of developing contacts, comparing notes, exchanging information, pulling together a vast array of contacts, elevating issues from the bottom up and highlighting potential problems.

However, the early warning system is criticised as an ineffective conflict resolution mechanism. Although the Commission (2001) report states that the early warning mechanism for trade and investment under the TEP/NTA mechanisms works 'satisfactorily', the need for a more structured process of conflict resolution has been highlighted by EU and US officials. One US official argued that, 'The SLG gets

¹²⁰ Interviews with Commission officials, Brussels, September 1999 (2,9).

¹²¹ Interviews US Mission officials, Brussels, September 1999 (4, 7).

¹²² Interview, USTR, October, 2000 (41).

contentious issues on table, but neither side follows up on the Early Warning System to take things off the agenda. The system needs to be more action orientated, to concentrate on finding solutions.' A TABD official observed that, 'On the practical application of the Early Warning System, the government had this great idea. It basically made a commitment to principles but has not followed through on it.'¹²⁴ The lack of concrete action has led a number of officials to argue that the system is 'hot air', 'blown up to look big for the summit', and 'a publicity stunt'.¹²⁵

Doubts surrounding the Early Warning System are rooted in a number of technical and political obstacles to the application of transatlantic dispute resolution mechanisms. On a technical level, it is questionable whether an impact assessment process would be either feasible or effective. Cross checking all new domestic legislation poses impossible time constraints and entails a large amount of paper work. As one Commission official notes, 'The real Early Warning System, if it were to work, would develop such close links, for example that the guys who make chimney regulations would know each other and sit down together before hand to work out regulations. This is unrealistic.'¹²⁶ In addition US officials have noted resistance from the Commission and Member States to increased transparency in the early stages of domestic decision making.¹²⁷ A European Parliament official pointed out that the European environmental committee does not like the idea of catering to the US.¹²⁸ A Commission official, by contrast, notes that, 'no one wants to mark legislation WTO incompatible'.¹²⁹

¹²³ Interviews at the US State Department, USTR, Council Presidency, and Council Secretariat 1999-2000 (33.41.5.3).

¹²⁴ Interview, US TABD, Washington, March 2000 (53).

¹²⁵ Interview, Commission officials, Brussels, September 1999. (6,11).

¹²⁶ Interview with former member of the US delegation to Washington, Brussels, September 1999 (6).

¹²⁷ Interview, USTR Official, October 2000 (41).

¹²⁸ Interview, European Parliament Secretariat, September 1999 (10).

¹²⁹ Interview with Commission official, Brussels, September 1999 (9).

A more fundamental problem for transatlantic dispute resolution is the view that no amount of dialogue will eliminate conflict rooted in deep political interest. Specifically, the Early Warning System will not work in areas where disputes are interest driven because transatlantic dialogue will not change the domestic opinions of actors, particularly actors who do not participate in the transatlantic dialogue. The Financial Times reported that,

The EU knew its ban on hormones-treated beef and its bananas regime would infuriate Washington- but imposed them all the same. Bill Clinton signed sanctions laws penalising investors in Cuba, Iran and Libya, even though the EU had repeatedly warned that doing so would strain relations.¹³⁰

Likewise a Commission official notes, ' We are quite convinced that if we look at audio visual policy, problems with fundamental ethical issues, or consumer policy, that the Early Warning System will not take away conflict.'¹³¹ The consensus among officials is summarised by the statement of one UK official who argued that, 'The Early Warning System is only strong as the political will behind it'.¹³²

The US Congress, as a staunch protector of US domestic interest, has been identified as a major obstacle to the Early Warning System. The potential to resolve conflict through early contact was disregarded by a Commission official who stated that:

(The Early Warning System) won't control Congress. Early Warning works between Administrations but not Congress. Congress is unpredictable. One or two Senators can wreck the system and Congress does not care about Europe- for example, they knew Helms Burton would upset Europeans but in Congress international relations do not change constitutional make up and domestic political habits are hard to overcome.¹³³

¹³⁰ Quoted from Jaw-jaw, Financial Times, 23 June 1999.

¹³¹ Interview, Commission official, Brussels 1999 (2).

¹³² Interview, UK Foreign Office, January 2000 (21).

¹³³ Interview Commission delegation, Washington 2000 (31).

A US official agreed that the Early Warning System was not tied to Congress 'but to the desire for the Administration to get in early and deal with things cooked up in the Commission.'¹³⁴

Nonetheless, many EU and US officials have argued that the TLD should be directly linked to the Early Warning System. It is argued that the shortcomings of the system are tied to the limited scope and weak institutionalisation of the TLD. As the TLD is mostly an extension of the permanent US and EU delegations in Congress and the European Parliament, membership is limited to members with a transatlantic interest. There is no contact between relevant committees, or between the Senate and the European Parliament, and insufficient contact between the TLD and the SLG.¹³⁵ TLD officials have complained about the lack of access to the EU-US Summit.¹³⁶ The limited reach of the TLD in the US Congress is demonstrated by the fact that a senior staff member for the Subcommittee on Trade in the House was unaware that the TLD existed. It was argued that, 'If we are out of the loop as trade people, they may be mis-targeting resources.' It can be argued that the TLD fails to raise awareness of relevant people and cannot compensate for the domestic interests of Congress, for example in the banana dispute (see chapter 8). Commission officials have described the TLD as a 'dialogue of the deaf' and TLD officials admit that while the dialogue has the potential to defuse disputes, such as the hush kits case, it has not solved any policy disputes.¹³⁷

In short, the Early Warning System is mostly a bureaucratic tool that seeks to raise awareness. It has yet to bring legislators together, thus undermining its capacity to act as a concrete dispute prevention or resolution forum. European and American policy makers accept that the Early Warning System, as exercised by the NTA

¹³⁴ Interview, TLD Secretariat, Washington 2000 (40).

¹³⁵ Interview, US Congress, Washington, October 2000 (40).

¹³⁶ Interview, European Parliament, September 1999 (10).

institutions, will not be a solution to all 'political' transatlantic disputes- such as the banana or beef cases- but argue that increased dialogue between experts could defuse technical disputes. Expert level contact through, for example, the Biotechnology Forum, is regarded as useful for preventing a fully blown dispute over GMOs.¹³⁸ At this stage of transatlantic integration it may well be, that the early warning system has done little more than 'give these experts a dose of 'transatlanticism' (Frellesen 2001).

4) Decentralised Policy Setting and Shaping

To summarise, this chapter has outlined the existence of transgovernmental actors and the roles they play in the transatlantic decision making process. This section seeks to determine the extent to which transgovernmental actors are involved in policy setting and policy shaping. It is argued here that the existence of dense, sub-summit level networks illustrates the important role that transgovernmental actors play in the policy process.

First, while intergovernmental actors 'make' the decisions that establish policies through history making agreements, transgovernmental actors, at a ministerial level, 'set' transatlantic decisions by signing policy agreements between the EU and the US. For example, the Mutual Recognition Agreement was set by the USTR and the then DG I Commissioner); the Positive Comity Agreement was set by the US Attorney General, the Federal Trade Commission, the Commissioner for Competition and the President-in-Office of the Industry Council and in the case of the Implementing Arrangement for Co-operation in the Fields of Metrology and Measurement Standards,

¹³⁷ Interviews with US, EU TLD officials and Commission officials, September 1999; October 2000(10, 40, 11, 18).

¹³⁸ Interview, House Subcommittee on Trade, October 2000 (39).

agency directors for the National Institute of Standards and Technology and the EU Commission's Director-General for Research 'set' the transatlantic policy.

The limited number of transatlantic agreements signed suggests that a small number of actors actually set agreements, but many more transgovernmental actors play a role in shaping transatlantic decisions through the institutions characterised in this chapter. When asked the general question, 'who shapes transatlantic decisions', interviewees returned a wide range of responses. Some pointed to domestic agencies – the USTR, the State Department, DG Trade, DG External Relations, and actors such as the Article 133 Committee and the Council Working Groups- others to individuals. For example a Commerce Department official suggested that Charles Ludolph was instrumental in getting the MRAs moving in the US, while a US State Department official credits one anonymous official with keeping US interest in combating trafficking in women. Most indicated and went to great lengths to explain the roles played by NTA institutions. Thus, the second question addressed by this section, why do these transgovernmental institutions matter?

The Intergovernmental Summit

To recap, the EU-US Summit is the focal point of the transatlantic calendar. It has two main functions: Intergovernmental actors use the summits to discuss topical issues, political hotspots and trade disputes. On a technocratic level it is the place for policy initiation and policy output. As an event, the summit creates the impulse to produce deliverables every six months. In short it is a decision 'making' forum.

The EU-US Summit is highly criticised, particularly in the EU, where there has been a push to make it a more effective policy producer. It is argued that the summit structure undermines the quality of NTA deliverables. Deliverables lack substance

because the pressure to produce them leads officials to try to co-ordinate as long a list of potential deliverables as possible.¹³⁹ The pressure to produce deliverables every six months means that many statements and declarations are superficial or re-cycled. The frequency of the summits has been highlighted by a number of officials as a source of ‘NTA fatigue’.¹⁴⁰ Officials argue that time consuming preparation for meetings and the short time span between summits undermines the quality of deliverables. A Commission official argued that, ‘We cannot deliver in six months! It turns the process into a conveyor belt; deliverables get resold or turned into sudo deliverables.’

¹⁴¹ A Communication from the Commission to the Council (2001) suggested that an annual summit should replace the biannual format.¹⁴²

EU-US Summits are where ‘big decisions’ are made, but the scope for intergovernmental decision taking is limited by time constraints. The Commission Communiqué (2001) made the case for summits being more focused, having clearer priorities and a limited number of strategic policy themes. The need to ‘manage’ the dialogue highlights the important role played by the NTA institutions at a sub-summit level, specifically the Senior Level Group. The densest level of contacts take place at lower levels between the political and economic working groups. In what resembles a pyramid structure the SLG connects the ‘expert’ level and the ‘political’ level. It pulls the NTA process together.

¹³⁹ Interview, Commission official, September 1999 (6).

¹⁴⁰ Arguments to this effect made by Commission officials in Brussels (1999) and Washington (2000) (6, 4, 15, 31, 33, 55) as well as a Finnish Council Presidency Representative, Brussels, September 1999 (5) and a US State Department Official, Washington 2000 (44).

¹⁴¹ Interview, Commission official, Brussels, 1999 (9).

Transgovernmental Institutions

The importance of NTA institutions is further highlighted by the fact that transatlantic decisions are complicated by technical as well as political differences. Even where the EU and the US agree at an intergovernmental level to pursue co-operation, facilitating joint action is difficult. Both the EU and the US have demonstrated ‘capabilities-expectations gaps’ in different policy sectors. For example, US officials argue that the weak EU JHA pillar blocks more aggressive EU-US co-operation under the global challenges chapter of the NTA, whereas EU officials argue that the US federal system blocks co-operation on TEP services.¹⁴³

Given the many obstacles to policy co-ordination, caused by for example structural differences, the NTA institutions are designed to get experts talking and to get transgovernmental actors to assess how the EU and the US can co-operate under the ‘mandate’ of the NTA. The vast range of working groups, which are unparalleled in any other dialogue, identify areas where the EU and the US can co-ordinate efforts (see chapters 6 and 7). The SLG is the filter of the process. It is a cross-cutting institution that brings together political and economic officials and facilitates interagency co-ordination. Overall, one Commission official argues, ‘It means getting bureaucrats to work on new subjects and new challenges.’¹⁴⁴

Like the summit, there has been some debate recently on the effectiveness of the NTA institutions. In principle the SLG should serve as the ‘engine’ room of the NTA, driving the process by seeking out deliverables and elevating them to the political level it. Others have argued that the SLG is more like a waiting room or a ‘mailbox’ particularly for issues areas that do not make it onto the summit agenda. In addition it

¹⁴² One Commission official argued, however that the Council favours the biannual format so that each member state has the opportunity to head the EU-US Summit. (Interview 9)..

¹⁴³ Interviews, US Mission, Council Secretariat and Commission September 1999 (3,6,7,).

¹⁴⁴ Interview, Commission Delegation, Washington DC, October 2000 (31).

has been argued that the SLG could be more fruitful if there was better follow up on deliverables.¹⁴⁵ However, enforcing the follow up of all issues is time consuming and resource intensive. The Commission (2001) argues that the NTA process should be adjusted to increase the managerial role of the SLG and to give the NTA Task Force a more operational responsibility. The push from the Commission to decentralise more ‘shaping’ duties is demonstrated by its argument that, ‘The Senior Level Group should provide the oversight and drive while the Task-Force is responsible for monitoring and ensuring the operational follow-up’ (Commission 2001).

Finally the Early Warning System outlined in section 3 demonstrates the need to fortify stronger conflict resolution and prevention systems in EU-US relations. Although in theory the system is designed to foster dialogue and exchange information which may prevent future conflicts, over for example hush kits, in practice the system is most likely to on technical, rather than political, issues controlled by bureaucrats. Although legislators can potentially play a crucial role in the early warning system, the system as it is designed does not foster enough contact between NTA institutions and legislators. The weak TLD and the domestic orientation of the US Congress is also blamed for the ineffective system. In reality it is legislators that have a more vested interest in protecting domestic over international or transatlantic interests.

Transgovernmental networks, technocrats and transparency

The new type of governance employed at the transatlantic level marks a distinct change from traditional diplomacy. Decisions are now being made by a variety of actors at various levels of decision making. What has developed is both a bottom up and a top down process. Much more emphasis has been placed on decision ‘shaping’

¹⁴⁵ Interview, US State Department, Washington DC, October 2000 (44).

and 'setting', thus a degree of control over the decision making process has been transferred to the transgovernmental level.

Transgovernmental communication is seen as a means of facilitating increased co-operation because technocratic decision setting and shaping lowers the threshold for disagreement between actors, in part because the NTA process is designed to find areas where the EU and the US can co-operate. In short it de-politicises issues by placing them in the hands of policy experts. Undemocratic decision making has been somewhat intentionally melded into the transatlantic policy making process. As discussed in chapter 3, some of the steps towards transatlantic institutionalisation were purposely designed not to attract attention. They are bureaucratic agreements that avoid legislation and the involvement of Congress. The method of institutionalisation used by the EU and the US is comparable to European integration by stealth. Thus, like the EU, transatlantic decision making encounters similar problems of legitimacy.

The nature of the policies pursued by the NTA further illustrates the function of the bureaucratic decision taking. New technology and concentration on regulatory standards means that the policy making process has become very technocratic and tends to yield debates high above the head of average citizens. Policy networks and epistemic communities have been employed to assist decision-makers. The need for 'expert' consultation and the employment of transgovernmental rather than strictly intergovernmental networks means that policy makers often rely on non-elected bodies to 'shape' decisions that affect the general population. Still, many transgovernmental institutions deal with 'low' rather than 'high' security issues. Co-ordinating humanitarian aid, law enforcement co-operation and education can be facilitated by dialogue between policy experts rather than politicians.

Technocratic decision making under the NTA has highlighted the need for transparency in the process and the input of civil society. The next chapter identifies how transnational networks have been brought into the NTA as a means of increasing transparency in the policy making process, thereby securing the wider legitimacy of transatlantic decisions.

Conclusion

The transatlantic mechanisms created in the process of institutionalisation have led to the creation of dense networks between the EU and the US. These networks, in turn, became transatlantic decision making forums. Here, communication between EU and US counterparts forms the closest thing there is to a transatlantic 'policy process'.

The transatlantic structure, however, has had to accommodate different competencies of decision making in the EU and the US and thus separate processes have been established. As a result, there are multiple layers of contact in the transatlantic dialogue, represented by three different branches of governmental dialogue. While the EU-US Summit is the intergovernmental forum for decision making, many transgovernmental actors influence the process in a shaping and setting capacity at the sub-summit level. These institutions, particularly the Senior Level Group, formulate the impulse for co-operation by seeking out deliverables, and by producing a forum for conflict prevention under the early warning system.

As noted in chapter 3, the capacity of the NTA process to facilitate co-operation and prevent conflict is highly criticised. This chapter discussed the limits of the NTA institutions. It was argued that the ability to defuse political disputes and to make transatlantic policies rests on the political will of intergovernmental actors. Many more actors have a capacity to shape and set the policy details under the

'mandate' of policy reach established by history making decisions. The need to coordinate many different tiers of policy shaping highlights the important role that NTA institutions play in 'managing' the transatlantic dialogue.

Finally, the technocratic nature of bureaucratic decision shaping and setting has raised some questions about the legitimacy of the process. The next chapter discusses transatlantic attempts to 'legitimise' the process by giving transnational actors an institutionalised role in shaping transatlantic policies.

Chapter 5

Transnational Policy Shaping and the Transatlantic Civil Society

The institutions created by the New Transatlantic Agenda (NTA) have increased the scope for transgovernmental actors to influence transatlantic decisions. This chapter examines how the NTA and the Transatlantic Economic Partnership (TEP) have also encouraged the build up of transnational networks. Ad hoc dialogues between, for example, educators and scientists were sponsored through the NTA process as a way of 'building bridges' across the Atlantic. This chapter focuses on interest groups that were formally invited to participate in the policymaking process, including the Transatlantic Business Dialogue (TABD), the Transatlantic Consumer Dialogue (TACD), the Transatlantic Environmental Dialogue (TAED) and the Transatlantic Labour Dialogue (TALD). The chapter discusses the implications of the input of business and 'civil society' into the transatlantic decision making process and questions whether these dialogues point to a 'decentralisation' of transatlantic decision 'shaping' to private, transnational networks. It is argued that while all of these dialogues clearly participate in the process, only the TABD is a true policy 'shaper.'

The main aims of this chapter are to analyse the institutionalisation of the networks, the level of formal access they are given to transatlantic decision takers and the impact they have had in 'shaping' transatlantic decisions. The organisation and orientation of the dialogues is discussed, as is the frequency of contact with transgovernmental and intergovernmental actors. Measuring the 'impact' of these dialogues is more difficult. As this research is interview driven, the success of these dialogues is measured by the impact that both their member and EU and US officials 'perceive' them to have had on the transatlantic policy process.

Finally, in relation to the wider discussion on the institutionalisation of the transatlantic relations, this chapter questions why the transatlantic dialogues make a difference to the transatlantic policy process. What encouraged the transatlantic architects to offer government sponsorship of private networks, particularly in the US where this runs against the norm? It is argued that the dialogues were seen as useful additions to the NTA process first, as a way to gain effective policy solutions, and second, as a means of making the policy process more open and transparent.

Section 1 examines the TABD. Section 2 looks at the TACD and TAED and section 3 discusses the TALD, or lack thereof. Each section outlines the creation of the dialogues, their structures and policy recommendations, their access to, and impact on, the transatlantic process. Section 4 assesses the capacity of these groups to serve as policy advisors. It is argued that the inclusion of multiple groups with a variety of interests and varied access to the process creates problems for policy ‘setters,’ but that issue orientated, multi-dialogue task forces are one way to facilitate consensus building between the dialogues.

1) The Transatlantic Business Dialogue

The Transatlantic Business Dialogue is the most established of the transatlantic dialogues. It was conceived (in 1994) and launched (in 1995) before the NTA, but has been hailed as a major success story of the new transatlantic dialogue.

The TABD was the invention of the late US Commerce Secretary Ron Brown.¹⁴⁶ A formal business dialogue was seen as a means of securing greater US business support for the Commerce department, which was under threat from Congress, and a way to boost the impact of European business on EU level

¹⁴⁶ Brown (1994) argued, in a speech to the American Chamber of Commerce in Brussels that EU-US business co-ordination on transatlantic trade issues was an important part of liberalisation.

negotiations. The TABD was also conceptualised as a way to secure greater support for the US in transatlantic negotiations. As Cowles (2001: 232) argues, 'US government officials were convinced, moreover, that their negotiating position would coincide much more closely with the US-EU business communities stance than would that of the European Commission.'

Although the creation of the TABD was initially controversial in the US, the main challenge was to gain European support for the process.¹⁴⁷ Cowles (2001: 238) notes that European business lacked organisation at the EU level. The Commission's DGI initially opposed the creation of a business dialogue without labour, consumer or environmental dialogues. The Transatlantic Policy Network (TPN), a dialogue between legislators and businesses, was influential in getting European industry and officials involved. The TPN was able to draw on its extensive European business contacts, and active TPN members, such as Ford, Xerox, Daimler Chrysler, EDS and AOL, also became heavily involved in the TABD.¹⁴⁸

In the end, it was the support of US Commerce Secretary Brown, Commissioner Brittan (External Relations) and Commissioner Bangemann (Enterprise) that facilitated the inauguration of the TABD. They invited industry leaders to comment on the creation of a transatlantic business forum. The Commerce Department and the Commission also actively participated in the first TABD meeting in Seville.¹⁴⁹

Despite differences European and American business approaches to the dialogue, the launch was deemed a success and the group reached consensus on over

¹⁴⁷ Cowles (see 2001 and 1996) argues that American businesses, the State Department and the USTR were initially lukewarm to the idea. In particular the US agencies feared it was a way for the Commerce Department to shape trade negotiations.

¹⁴⁸ The close relationship between the TABD and TPN is demonstrated in part by the fact that they share office space as well as contact lists.

70 joint recommendations. A few months later roughly 60% of the TABD recommendations resurfaced in the NTA and the Joint Action Plan noted the governments' intent to take the recommendations of the TABD into consideration when creating the New Transatlantic Marketplace (see also Cowles 2001).

How the TABD works

The TABD is not a traditional lobbying organisation. Rather, it is a forum for consensus reaching between European and American business with the aim of boosting trade and investment. The overall purpose of the TABD is to assist the government in facilitating trade liberalisation.¹⁵⁰ As one TABD official argued, 'Industry consensus is a policy tool.'¹⁵¹ Since its creation the TABD has aimed to promote integration between the EU and the US by providing progress reports of where the American and European industry feel co-operation is both necessary and feasible. It produces biannual recommendations on specific policy sectors.¹⁵² It exerts political pressure on USTR and the Commission to follow up on recommendations. Following the EU-US Bonn Summit (1999), the TABD also decided to participate in the Early Warning System, expanding its policy reach to areas of potential dispute. It is credited with convincing the Commission to push back policy changes on metric labelling and a gelatine ban, both of which had the potential to erupt into EU-US trade disputes.

Throughout the 1990s, the TABD became both highly institutionalised and organised. Despite the insistence by its participants that the TABD is a process as

¹⁴⁹ Cowles (2001: 243) notes, for example, that American business-people arrived at the meetings carrying Commerce Department briefing packs.

¹⁵⁰ Interview, TABD Participant, Brussels, September 1999 (20).

¹⁵¹ Interview, TABD official, Brussels, September 1999 (14).

¹⁵² These include but are not limited to the Information Technology Agreement, E-Commerce, Intellectual Property Rights and the Mutual Recognition Agreements.

opposed to an organisation, it has nevertheless developed into a transatlantic 'institution'.¹⁵³ It held annual CEO meetings since 1995 (see also table 5.1),¹⁵⁴ established two small secretariats (with less than five permanent staff) in Washington and Brussels and appointed rotating company chairs (CEOs), one American one European, to lead the dialogue in annual terms.¹⁵⁵

The TABD chairs are just a fraction of the many companies who have a stake in the TABD. Growing participation, from an initial 60 to 200 CEOs, gave the process broader legitimacy. The TABD is carried by a number of companies who, as active members, participate more regularly in specific policy sectors through TABD working groups. A TABD official admits that in some sectors the number of companies involved is small, but that, 'in general if a corporation lends their CEO to something, they are highly engaged.' Membership of the TABD is open, but it has been criticised in the past for excluding certain sectors- such as generic pharmaceutical firms and small and medium sized enterprises.¹⁵⁶

The build up of TABD structures points to a growing interest in effectively managing the process.¹⁵⁷ Each of the TABD's company chairs (see table 5.4) has

¹⁵³ Interview, TABD participant Brussels, September 1999 (20). See also Cowles 2001.

¹⁵⁴ The meetings were held in Seville, in Chicago (1996), Rome (1997), Charlotte (1998), Berlin (1999) Cincinnati (2000) and Stockholm (2001).

¹⁵⁵ The TABD chair companies provide office space for the American secretariat (in Europe the secretariat is housed with the TPN) and provide the budget for TABD costs. The precise figure of the budget is difficult to pinpoint. It varies from year to year depending on the co-chair companies, and can vary from \$250,000-\$500,000. This sum funds the EU and US TABD offices, the secretariat salaries and TABD functions. However, the total costs of the TABD are difficult to quantify because the funding arrangement between the TABD and the participant companies are based on a 'loose structure'. Mid Year Meetings, receptions and conference costs often have separate sources of funding, in the case of the conference there is local sponsoring from the host cities. Interviews, US TABD, EU TABD and TABD participant, Brussels and Washington 1999, 2000 (14, 20,53).

¹⁵⁶ Generic firms initially complained that they had been kept out of the process, but were later brought into the TABD pharmaceutical working group and Small and Medium Sized Enterprises (SME) were given a voice in the process through the Transatlantic Small Business Initiative and the priority group on SMEs. The Transatlantic Small Business Initiative was launched for companies that were outsized in the TABD. It holds summit meetings and operates on a working group structure, but is largely represented in the political arena by the TABD.

¹⁵⁷ Originally, the TABD was based on four working groups- (1) regulatory issues (2) trade liberalisation (3) investment and (4) third country relations. Following the Seville meeting 15 working groups were established. The Tenneco and Mead leadership (1997) introduced more issue managers to

played a role in developing the dialogue.¹⁵⁸ In 2001, the TABD chairs created a CEO level 'Leadership Team' to deal with developing 'priority issue' areas (see figure 5.1). In addition, 17 'expert' level groups, an expert Steering Group and Issue Managers were established to interact with working level government contacts in a range of policy sectors.

The new TABD structure aimed to 'create more energy in the dialogue by focusing CEO and government attention on more defined and actionable issues.'¹⁵⁹ The leadership team encouraged proposals from TABD members to bring forward projects that were specific and detailed. Business leaders feared that the TABD would develop into a chat shop rather than a decision shaping forum.¹⁶⁰ Thus, the TABD chairs stressed the importance of concrete action- through strategic action and detailed policy recommendations. The new structures were designed to take technical issues and elevate them to higher political levels. The goal was to produce 'ready made' policy solutions, thus increasing the 'impact' or shaping capacity of the TABD. The introduction of the Early Warning priority issues reaffirmed the TABD commitment to dispute management and the new expert groups demonstrated the focus on monitoring not only ongoing policy negotiations but also implementation. For example, six of the groups dealt with policy sectors where MRAs had been or were being negotiated (see chapter 7).

get more companies involved and put the working groups under three core areas- the Transatlantic Advisory Committee on Standards, Business Facilitation and Global Issues. By 2000 the structure of the TABD expanded to five working groups and roughly 40 issue groups, each of which was also co-chaired by an American and a European company.

¹⁵⁸ Cowles (2001) notes for example that the Tenneco-Philips team (1997) tried to make the TABD more efficient by getting more companies involved at a higher level. Daimler-Benz AG and Warner-Lambert (1998) focused on the implementation of TABD recommendations and introduced the TABD Scorecard (see below). Xerox and Suez Lyonnaise des Eaux tried to re-enforce small informal contact between CEOs and high level decision makers as well as expert level contacts between TABD participants and Agency Directors, such as the Secretary of Commerce.

¹⁵⁹ See www.tabd.com

¹⁶⁰ Interview, TABD participant, Brussels, September 1999 (20).

The TABD process centres around the annual CEO conference, which typically takes place a month before the EU-US Summit. The meeting is used first, to identify areas of business consensus, and second as a forum for CEOs to meet with high level officials in the US Administration, the Commission, Congress and the European Parliament.¹⁶¹ TABD formally presents its recommendations to officials after the meetings. In addition, TABD chairs have had the opportunity to discuss issues with intergovernmental actors at numerous EU-US Summit meetings (see table 5.2).

While the EU-US Summits are useful for publicity and even for short discussion of key issues, the real point of access for TABD members lies elsewhere. The importance of expert level talks is demonstrated by the appointment of issue managers and working level government contacts, which also take place at the annual meeting. Expert discussions are incorporated, with the results of the CEO dialogue, in the CEO Conference Report. Another mechanism that incorporates both CEO level and 'expert level' input is the Mid Year meeting and annual TABD Scorecard, which monitors government follow up on TABD proposals. Further policy recommendations are produced as a result of frequent working group and issue group meetings. Each issue manager has an EU and US government contact and the US Administration has created an interagency task force to work with the TABD. The TABD structure results in dense levels of formal and informal government-business contacts.

What an impact

Establishing a causal relationship between TABD recommendations and transatlantic policies is troublesome, not least because much contact between the TABD and the

¹⁶¹ Government attendees of the TABD summit have included the EU Commissioner for Trade, the EU Commissioner for Enterprise and Information Society, the US Commerce Secretary, the USTR, the US

EU and US governments is conducted informally or behind closed doors.¹⁶² Government response to policy recommendations is arguably important, but do the acknowledgement of those proposals, the initiation of policy changes, or implementations of recommendations define success? One accomplishment was simply the establishment of a European-American business dialogue. However, the many perceptions about the TABD, outlined below, emphasise the capacity of the dialogue to impact transatlantic policy making.

The TABD Scorecard is one attempt to assess where the EU and the US have acted or failed to act on the basis of formal TABD recommendations. The 1999 Scorecard estimated that the governments had taken concrete action on several of TABD's policy proposals. A TABD participant suggested, 'About one-third our proposals are solidly on their way. Another one-third have not necessarily implemented [yet] but are by definition successes.'¹⁶³ US Vice President Al Gore reaffirmed the success of the TABD, claiming the governments had implemented 50% of 129 TABD recommendations.¹⁶⁴ The overall majority of interviewees argued that the TABD had played an important role in the NTA process.¹⁶⁵ A testimony to the value of the TABD is the continued business and government commitment to the process five years on.¹⁶⁶ The TABD is arguably an important part of the business community,¹⁶⁷ a powerful lobby¹⁶⁸ and an important player in the NTA process.¹⁶⁹

Vice President and the WTO Director.

¹⁶² Access to the annual meeting between officials and CEOs is closed to both the press and academic observers. Access became more restrictive with the Berlin CEO Conference as CEO demand for invitations increased. The author was offered access to the press core, but not to working group or plenary meetings in either 1999 or 2000.

¹⁶³ Interview TABD participant, Brussels, September, 1999 (20).

¹⁶⁴ Speech given to TABD at Charlotte Meeting 1998.

¹⁶⁵ Including TABD officials and participants, EU and US officials and NGOs.

¹⁶⁶ A Commerce Department official noted for example that at least three staff members in the Europe office devoted 50 per cent of their time to the TABD prior to its annual meeting.

¹⁶⁷ Interview, Brussels, September 1999 (20).

¹⁶⁸ Interview TABD office and US Mission Brussels, September 1999 (14, 4).

¹⁶⁹ Interview, US Mission, Brussels, September 1999 (7).

Officials argued that it provided leadership and direction in NTA negotiations and facilitated the MRAs (see chapter 7), the Safe Harbour Agreement and multilateral agreements on intellectual property rights and Information Technology.¹⁷⁰ A Commission official argued that, ‘the TABD plays an important and positive role. It helps determine priorities, keeps us on track and makes us deliver on time or else explain why we cannot.’¹⁷¹ The Journal of Commerce stated, ‘Organised, plugged-in and persistent, the business dialogue has been setting the tone for trade talks between Brussels and Washington.’¹⁷² Cowles (2001: 230) contends that, ‘the TABD has played a critical role not merely in setting the agenda for transatlantic trade discussions, but also participating in US-EU negotiations and shaping domestic-level support for their agenda.’

A number of TABD members initially complained about the slow government response to many of its proposals, but they came to realise that full implementation of its recommendations would be timely (Cowles 2001). A TABD participant argued that, ‘traditionally members are permanently grumbling about the reaction time, but we are still on board.’¹⁷³ Generally, TABD participants are impressed with the level of access that TABD membership allows and the impact that the dialogue has had on the policy process. The benefits to one company- EDS- were summarised by a representative who argued that, ‘Taking TABD leadership has both provided credibility for EDS staff in their consequent and subsequent involvement in actual negotiations with government, and led to tangible results. For example, the ongoing moratorium on

¹⁷⁰ See also Cowles (1996: 21). argues, ‘Economically, the TABD has provided government leadership with clear negotiating direction and has improved the prospects for trade liberalisation. Politically, the TABD has emerged as an important component of larger transatlantic relations’.

¹⁷¹ Interview, Commission Delegation Washington, October 2000 (35).

¹⁷² Journal of Commerce, 5 February 1998

¹⁷³ Interview, TABD participant, Brussels, September 1999 (20).

imposing tariffs on E-commerce would probably not have occurred without the TABD or some other vehicle.’¹⁷⁴

A voice of dissent in the appraisal of the TABD comes in response to claims that business has played a dominant role in the policy process vis-à-vis other dialogues (see also below). In particular, Commission officials have argued that the TABD is not as important as it perceives itself to be. It has been accused of being self-congratulatory and a product of government rhetoric.¹⁷⁵ Another Commission official added that it was impossible to tell if transatlantic policies were the result of TABD. A USTR official agreed, stating that, ‘things are not just happening because the TABD says so.’¹⁷⁶ Nonetheless, even sceptics agreed that the TABD was ‘shaping’ if not ‘making’ policy. One NGO argued, ‘even if they are not as powerful as they say, they still have extra clout.’¹⁷⁷

2) The Transatlantic Consumer and Environmental Dialogues

Building ‘people to people’ links was identified by the NTA as an important tool for securing broad public support for the transatlantic partnership. Originally, the idea was to create a civil society dialogue that could incorporate business, trade unions and citizens associations.¹⁷⁸ The TEP invited consumer and environmental groups to participate in the process ‘on issues relevant to international trade as *a constructive contribution to policy making*.’¹⁷⁹

¹⁷⁴ Interview, TABD Participant, Brussels, via email 1999 (27).

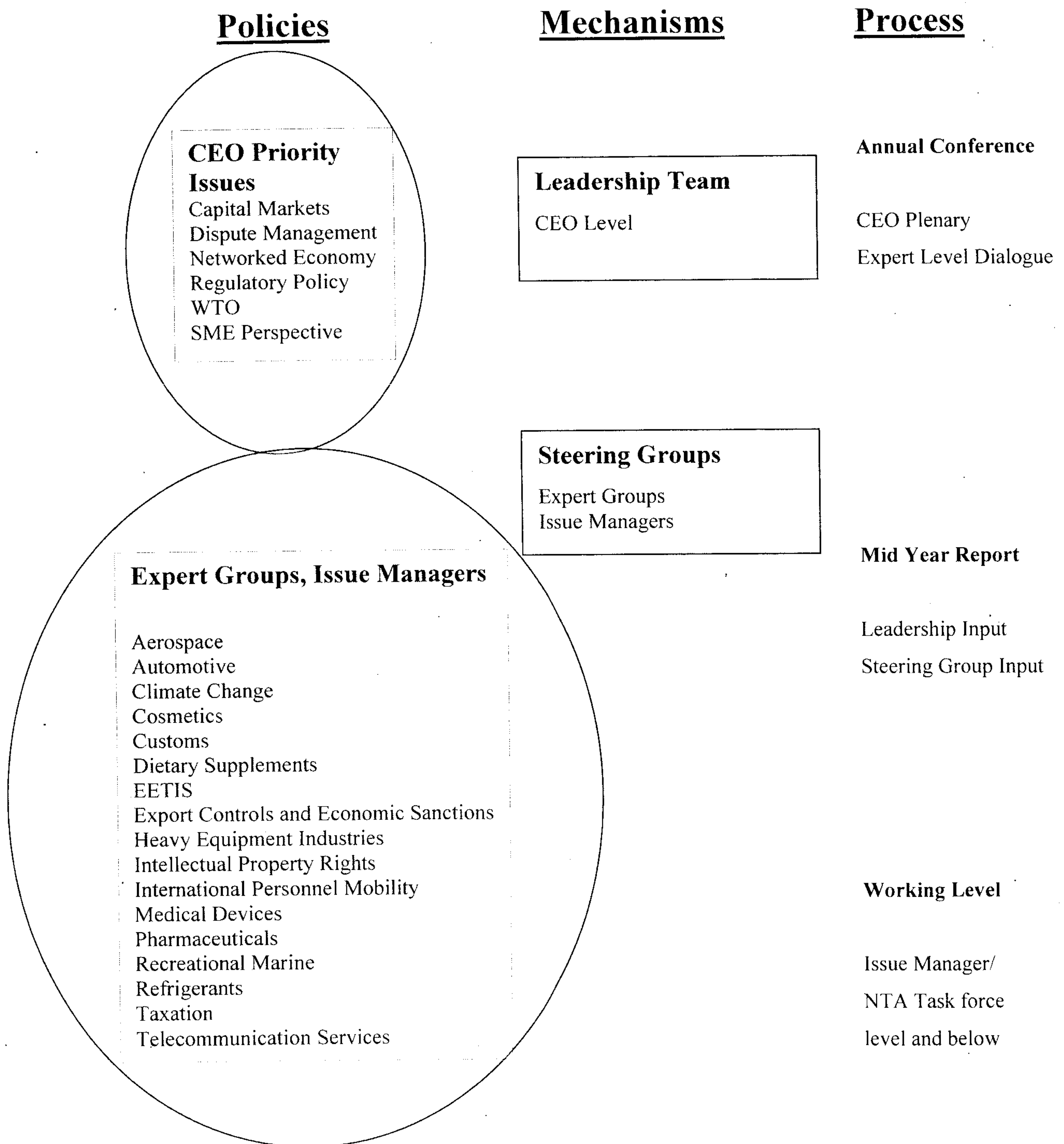
¹⁷⁵ Interview, Commission official, September 1999 (6).

¹⁷⁶ Interview, USTR official, October 2000 (42).

¹⁷⁷ Interview, US NGO, October 2000 (50).

¹⁷⁸ The idea rose out of a 1999 NTA ‘building bridges’ conference. People to People Conference Report.

Figure 5.1 The TABD Structure (2001)



¹⁷⁹ Italics added by author.

The decision to include consumers, environmentalists and workers in the transatlantic dialogue was the result of pressure from NGOs, the European Commission and eventually the US State Department. The success of the TABD sparked criticism from the NGO community who in 1995 argued that the decision-making capacity of the TABD within the NTA was unbalanced by an absence of civil society input.¹⁸⁰ The initial push from NGOs for access to the TABD was denied, but NGO lobbying efforts raised awareness in the EU and US administrations of the growing need to legitimise the process.¹⁸¹

Consumers International (CI) lobbied the Commission, particularly DGI, who Cowles (2001:242) contends, had previously advocated participation from the 'wider public interest.' The Commission's mandate to support consumers and environmentalists increased with the Amsterdam Treaty, and DGI gained support for civil society dialogues from the Health and Consumer Protection and Environmental Protection DGs (Bignami and Charnovitz 2001: 24). Growing opposition from the US NGO Public Citizen to the TABD and increasing demands from environmental groups put pressure on the US State Department.¹⁸² Finally, NGOs used formal channels to respond to the US Federal Register notice on the TEP.¹⁸³

Although the main push for the civil society dialogues came from the Commission, the State Department was crucial in securing US funds for the consumer and environmental dialogues. Unlike the business dialogue, the NGO dialogues could not be launched without a financial commitment from the governments. Funding was found with relative ease on the European side where the Commission had a history of

¹⁸⁰ The TACD (Doc 1-99) argues that public interest groups demands since 1995 to participate in the process did not result in formal, or even inconsistent informal dialogue despite government support for the TABD.

¹⁸¹ Interviews. TACD Secretariat. London. January 2000 (23-24). Commission Delegation, Washington, October 2000 (34).

¹⁸² Interview. TACD Secretariat. January 2000 (23-24).

funding NGOs. However, the US government does not generally fund the private sector. In this case the US Information Agency (USIA) within the State Department was able to find funds for both the TACD and the TAED under a scholarship budget line subject to approval by the Senate Finance Committee.¹⁸⁴ Consumer International- the designated grant receiver for the TACD- was given roughly \$60,000 from USIA and 110,000 euros from the Commission. The US based National Wildlife Federation (NWF) and Brussels based European Environmental Bureau were given \$100,000 from USIS and 200,000 euros from the Commission.

Government sponsorship of the TACD and TAED in general and the use of public funds specifically enabled, but also undermined, the initial attempts to build both dialogues. Unlike European NGOs, many US groups were not accustomed to receiving public funds and few organisations allowed government funding.¹⁸⁵ US NGOs feared that the consumer dialogue and environmental dialogues were attempts to legitimise the liberalisation policies employed under the New Transatlantic Marketplace. The Corporate European Observer (CEO), which had developed into a NGO 'TABD' watchdog, argued that the consumer and environmental dialogues symbolised attempts to 'greenwash' the TEP.¹⁸⁶ TAED and TACD members objected to being hired to patronise government policies or to act as 'contracted civil society'.¹⁸⁷ The TAED, which contained no pro-globalisation NGOs, stressed that its creation in response to bilateral government initiatives under the NTA was in no way intended to legitimise these procedures (TAED Press Release, May 3, 1999). The

¹⁸³ A NWF Trade Discussion Paper 1998 argues that the TEP seems to be largely the result of TABD input.

¹⁸⁴ Interview, TAED participant, Washington DC, October 2000 (30).

¹⁸⁵ The TAED had problems finding a US NGO to manage the grant before the NWF reluctantly agreed to accept the funds. Three quarters of the TACD original Steering Groups' charters prohibited public funds. Interview, TACD Secretariat, via telephone March 2000 (24); TAED official, Washington October 2000 (30).

¹⁸⁶ CEO 1998a; 1998b, see also De Brie 1998.

European Environmental Bureau (EEB) stressed in its funding application to the Commission that, 'financial support for the TAED should not lead to management of the agenda of TAED by the sponsors, but rather by the participants.'¹⁸⁸ Public Citizen President Ralph Nader tried to block the creation of the TACD by arguing that it would create the 'illusion of consultation and participation' and be misused as a public relations ploy.¹⁸⁹

The divide within the consumer dialogue on the issue of trade liberalisation surfaced at its first meeting in September 1998, which was attended by roughly 50 consumer groups. The meeting was overshadowed by the dispute between Public Citizen (led by Ralph Nader), which opposes trade liberalisation, and Consumer Union (led by Rhona Karpatkin), which supports it as a means of increasing consumer choice.¹⁹⁰ A 'devastating' speech by Nader and three outbursts from American consumer groups during the first meeting led one EU official to argue that, 'the meeting was a disaster. The groups needed to figure out how to organise themselves.'¹⁹¹ In the end, the vote to establish the TACD was won by a narrow margin. Faced with the decision to be on the inside or outside of the process, Public Citizen became a Steering Group Member.¹⁹²

The TAED experienced similar, if not as dramatic, challenges in getting off the ground. It held its first official meeting in May 1999. Again, there was some disagreement on whether government officials should participate (see Bignami and Charnovitz 2001). An American NGO indicated that, 'there was a lot of hesitation at

¹⁸⁷ Interview, European Commission Delegation, Washington DC, 2000 (34). TACD Secretariat, London, January 2000 (23).

¹⁸⁸ A Draft Political Assessment of on Year. TAED May 2000.

¹⁸⁹ See also Bignami and Charnovitz (2001).

¹⁹⁰ Interview European Commission Delegation and US State Department October 2000 (34, 47). See also Bignami and Charnovitz 2001.

¹⁹¹ Interview, Commission Delegation, Washington DC, October 2000 (34).

¹⁹² Interview, Commission Delegation, Washington DC, October 2000 (34).

first about the TAED on the US NGOs side, and there is still a great deal of uneasiness about what the governments have in mind for these dialogues.’¹⁹³

European NGOs pushed hard for the TAED. In the letter of invitation to join, the leader of the EEB, John Horletz, argued that the TAED could increase the effectiveness of co-operation and joint action among groups, provide highly effective mechanisms for challenging concerns to policy makers and enable NGOs to serve its members and the public with up to date information. TAED membership was officially opened to all NGOs, but no attempt was made to recruit ‘free market’ environmentalists (Bignami and Charnovitz 2001: 40). Public Citizen also took a TAED Steering Committee seat. Friends of the Earth (1999) argued that TAED participation members should monitor the use of the TEP to promote a new WTO Round and unbalanced power relations between actors in the process.

The difficult birth of the TAED and TACD highlights differences in approaches to private-public relations in Europe and the US. Most problems setting up the dialogues stemmed from the culture of interaction between NGOs and the US Administration, which is generally described as ‘hostile’, ‘adversarial’ and guided by ‘great distrust’.¹⁹⁴ One US State Department official pointed out that, ‘The concept that TACD should make decisions with the US government goes against everything US NGOs stand for.’¹⁹⁵ The US Administration is required to publicly seek and accept comments from non-governmental actors under the Federal Administrative Procedures Act, but many NGOs were not accustomed to receiving government response to their recommendations unless they had demonstrated the capacity to block trade initiatives or make a public impact (Bignami and Charnovitz 2001: 41). The result is that

¹⁹³ April 1999, TIES interview with Jake Caldwell.

¹⁹⁴ Interview TACD participant and USTR official Washington DC October 2000 (42, 50).

¹⁹⁵ Interview, State Department official, Washington DC, October 2000 (47).

American NGOs are more accustomed to using lawsuits than dialogue to shape policy.¹⁹⁶

The initial response of American officials to the TACD and TAED demonstrated the poor relationship between NGOs and the US government.¹⁹⁷ Early problems with the TACD were attributed to its management by USTR, which was accused of being critical and belittling of the dialogue.¹⁹⁸ Part of the problem was that the TACD co-ordinator was charged with fostering a dialogue that – at times- went against the grain of USTR’s trade agenda. The shift of the TACD co-ordinator to the State Department- where the TAED was co-ordinated- helped to foster better dialogue. TACD officials argue that the State Department was more diplomatic and granted consumers more meetings.¹⁹⁹ The Bureau for Business and Economic Affairs, led by Tony Wayne, and the Under Secretary of State for Global Affairs, Frank Loy, are credited with supporting the dialogues and overcoming gaps between NGOs and the US Administration.

Still, the general perception is that TAED and TACD were quickly able to gain a better rapport with the Commission. European NGOs were perceived to have a better working relationship with each other and with the Commission because private-public dialogue is arguably an important part of the European decision making process. European groups are described as having a more ‘cordial’ relationship with the Commission²⁰⁰ and the Commission works under the assumption that it needs civil society input.²⁰¹ One US official argued that, ‘there is greater sympathy among both

¹⁹⁶ Interview, TACD participant, Washington DC, October 2000 (50). See also Cowles 1997

¹⁹⁷ The comments of one official demonstrate the extreme position that, ‘There is nothing we can learn from TACD, TAED.’ Interview US Embassy London January 2000 (22). Others argued that the TACD and TAED simply existed to oppose the TABD. Interview, USTR Washington DC, October 2000 (41).

¹⁹⁸ Interview, European Commission Delegation, Washington DC, October 2000 (34).

¹⁹⁹ Interview, TACD Secretariat, London, January 2000 (23).

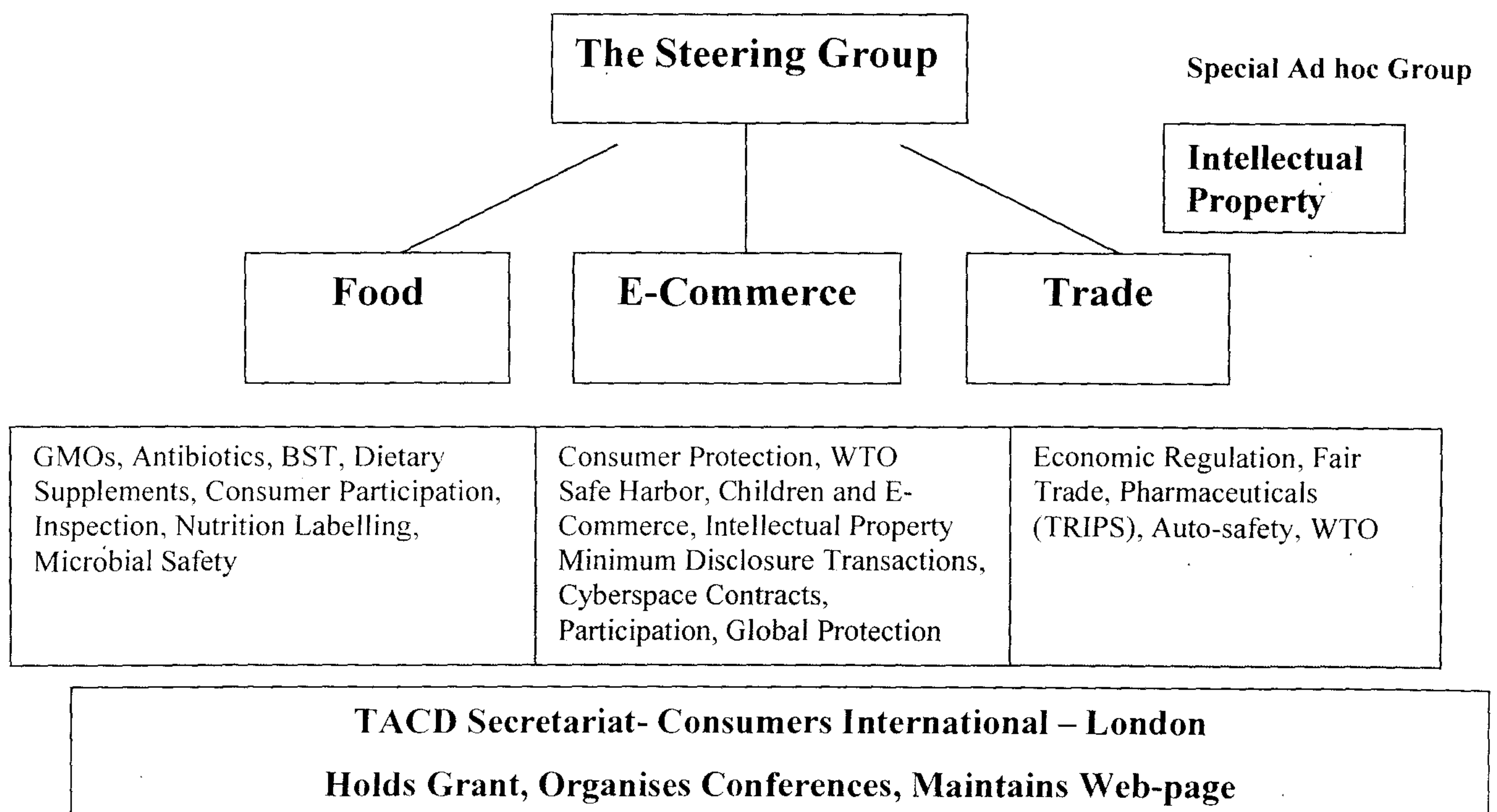
²⁰⁰ Interview, TACD Participant, Washington DC, October 2000 (50).

²⁰¹ Interviews, USTR, Washington October 2000 (42) and Council Secretariat, Brussels, September 1999 (3).

sides of consumers for the way things are done in Europe. The EC has a different way of dealing with consumers. US Consumers believe they get more access and respect in Europe.’²⁰²

Once more, the Commission exerted pressure on US actors in the NTA Task Force and SLG meetings to establish the consumer and environmental dialogues, because the interests of civil society coincided with European positions on several looming trade disputes with the US. The TAED and TACD have made recommendations that support many of the Commissions’ policies on food safety, privacy, electrical waste and the Precautionary Principle.²⁰³ A TACD official argued that, ‘where there is EU-US policy stalemate, civil society comes nearer to EU positions. Politically it is in the interest of EU to have US consumer movement on its side.’²⁰⁴

Figure 5.2 The TACD Structure



²⁰² Interview, USTR, Washington, October 2000 (42).

²⁰³ Interviews, TACD Secretariat and US Embassy London, 2000 (23, 22). Commission Delegation, TACD Participant, Washington 2000 (34, 50) and Council Secretariat and Commissioner, Brussels, September 1999 (3, 11).

²⁰⁴ Interview, TACD Secretariat, London, January 2000 (23).

In general, Commission support helped legitimise the TAED and TACD process in the eyes of US NGOs, as groups in America realised they could draw on the success of their European counterparts.²⁰⁵ After initially releasing a joint press release that criticised the TEP Action Plan, the TACD and TAED began making policy recommendations, on a range of issue areas, to EU and US officials (see figure 5.3, 5.4). TAED focused on safe energy sources, biotechnology, waste management and emissions standards.²⁰⁶ The TACD, despite its shaky start, was also able to make over 20 concrete recommendations at its second meeting, focusing on e-commerce, food safety and multilateral investment rules (see table 5.5).²⁰⁷

Organisation in the TACD and TAED

Institutionalising the consumer and environmental dialogues was a complicated task. Suspicion of government involvement meant that the groups chose to organise themselves, but the shaky start to both dialogues delayed the establishment of organisational structures. American NGOs, who had less experience working at an

²⁰⁵ Interview USTR and US State Department October 2000 (42, 47).

²⁰⁶ To summarise, the TAED recommended the removal of subsidies for environmentally unfriendly energy sources (such as coal), demanded that sustainability assessments be applied to a number of WTO agreements and expressed its opposition to the multilateral TRIPs, Technical Barriers to Trade and SPS Agreements. It aired concerns about biotechnology, eco-labelling and the Precautionary Principle, the MRAs and Chemical and Electrical Waste Management (WEEEs). It stressed transparency in transatlantic and multilateral decision making, urged both governments to support the Kyoto Treaty and to stop challenging environmental legislation at the WTO. The message to the EU-US Summit, Lisbon May 31, 2000 was that, 'Until such time as parity exists between environmental governance and multilateral trade rules, we demand that both the United States and the European Union immediately agree to mutual moratorium on WTO challenges and threatened challenges.'

²⁰⁷ The TACD has had a more technical focus on the transatlantic process because many consumer concerns are with regulatory issues. It made recommendations on consumer protection and E-Commerce, and in particular urged the EU and US to abandon the Safe Harbour agreement. It sided with the Commission on disclosure information for E-Commerce, argued GMOs should be labelled to ensure consumer choice, opposed the use of animal antibiotics and Bovine Growth Hormones and stated that the precautionary principle should apply in scientific cases where the evidence is not conclusive. While European scientists argue that the hormone is associated with different types of cancer the FDA claims Bovine Somatotropin, or BST presents a 'manageable risk'. The US supports using biotechnology while European governments have argued with consumer and environmentalists in favour of the precautionary principle and of mandatory labelling.

international level, had to establish how to work together (Bignami and Charnovitz 2001).²⁰⁸ Moreover, financial and time constraints made it difficult to encourage groups to take on managerial posts.

The TACD soon emerged as the most institutionalised of the civil society dialogues. The group established one secretariat, at Consumer International (CI) in London, because CI was an international NGO and was able to accept grants from the US government and the Commission. Individuals at CI are credited for their role in managing the dialogue.²⁰⁹ The creation of a Steering Group put a core group of NGOs in charge of leading the dialogue (see table 5.4). Most of the other 60 consumer organisations participate in the TACD in the three working groups on food, electronic commerce and trade and Issue Managers are appointed for each main issue in the working groups (see figure 5.2). Each working group is co-chaired by EU and US managers who are in contact before annual general meetings to discuss the agenda, to commission reports, or identify areas for action. Within the groups, joint EU and US Issue Managers are charged with monitoring specific policy sectors. In general the groups interact through email list-serves and are working towards having more direct contact. TACD officials describe a fairly constant stream of communication between members.²¹⁰

The TACD leadership has worked to produce effective mechanisms capable of producing concrete policy recommendations. It holds annual summit meetings similar to those of TABD where working group and high level discussions are held with EU

²⁰⁸ Interview, European Commission Delegation, Washington DC, October 2000 (32).

²⁰⁹ Interviews, USTR and US State Department, Washington DC, October 2000 (42, 47).

²¹⁰ Email correspondence. TACD Secretariat, June 2001, (61), Interview, US NGO, Washington, October 2000 (50).

and US officials.²¹¹ The Steering Group publishes a report of summit findings and presents them to the appropriate government officials before the biannual EU-US Summit. The December 1999 Summit in Washington D.C. was the first to which the TACD was invited.

The TAED established similar structures to the TACD. It has five working groups (see figure 5.3) who meet in conjunction with the annual general meeting and carry out informal contact through Issue Managers. Certain working groups have designated issue co-ordinators for policy areas that overlap working groups. The Steering Group guides the dialogue and has decision making authority over funding, budget activities and the output of TAED documentation. It meets at an annual general meeting, and holds additional strategy meetings throughout the year. Unlike the TABD and TACD, the TAED does not have a secretariat. Rather it has a system of co-ordinators who perform the administrative functions of dialogue.²¹² In the past TAED grant holders (the EEB and the NWF) acted as co-ordinators. In 2000, however, the US TAED members failed to produce a co-ordinator or a number of working group chairs.

Despite early objections to the participation of government officials, EU and US officials have been well represented at TAED meetings, where both high level and expert level contact (between the working groups and officials) takes place.²¹³ Like the TABD and TACD the annual TAED meeting produces recommendations, which

²¹¹ Government representatives at TACD meetings have included the US Secretary for Agriculture, the EU Commissioner for Health and Protection, US Congressmen, the Deputy USTR, Deputy Head of the Commission Delegation and NTA Task force level representatives.

²¹² Discussion papers, articles and updates are provided on the groups' web site, which is co-sponsored by the Transatlantic Information Exchange Service Network (see www.tiesweb.org).

²¹³ Past participants include the EU Trade Commissioner, the EU Environmental DG, the Assistant and Deputy Assistant Secretary for the Environment in US State Department and EU Council Presidency representatives. Some TAED members have complained about the absence of the USTR. A Steering Group Member argued that the USTR had been asked to attend, given the attendance of Trade Commissioner Pascal Lamy, but refused on the basis that the USTR was not the level as the EU Trade Commissioner. Interview, TAED, Brussels, May 2000 (27).

representatives had the opportunity to present to EU-US Summit leaders in Washington (1999) and Lisbon (2000) (see table 5.2).

What Impact?

The failure to fill vacancies in TAED posts demonstrates the lost momentum among US NGOs caused, in part, by TAED funding problems. In January 2000 the objection of Senator Jesse Helms, in the Senate Finance Committee, to funding for the TAED blocked the approval of funds, and stopped the State Department from issuing the grant. As a US State Department official argued, 'it would take a high level decision to fund grants over Helms' objection. We hope to convince him to release the funds. If that does not work, we will not fund over his objections.'²¹⁴ The failure of the US Administration to produce funds has implications for the EU budget, because Commission funding is subject to the US's 'matched' funds. The lack of funds overshadowed the May 2000 TAED meeting in Brussels, where co-ordinators acknowledged that they had been without funds for months.²¹⁵ In November 2000, the TAED announced a suspension of activities. John Hontelez, Secretary General of the EEB and member of the Steering Committee of the TAED argued,

We have to stop our activities because the US government has not been able to provide its part of the necessary finances to run this dialogue. It has faced opposition in the Senate, and apparently, it is not giving it enough priority. The US government has always pretended the TAED is of great importance to them. This failure however does not confirm this.

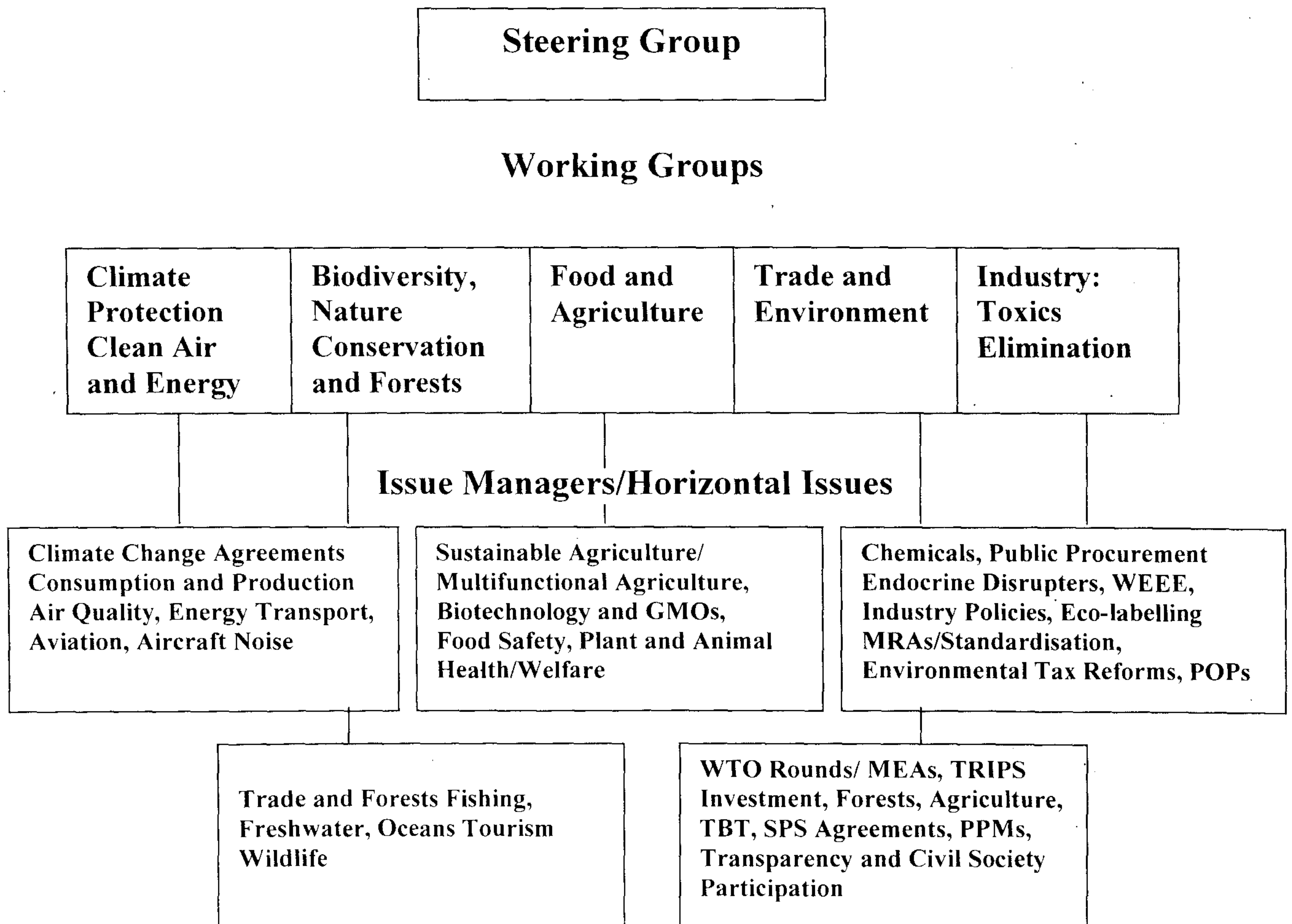
The TACD and TAED were encouraged by the US Administration to seek private sources of funding before the suspension of the TAED. State Department officials indicated that the 2000 TACD grant, which managed to pass Congressional

²¹⁴ Interview, US State Department, Washington DC 2000 (45).

²¹⁵ Interviews, TACD Participants, Brussels, May 200 (27, 28, 30).

Appropriations, would be the last. Despite earlier claims that the US Administration and European Commission should work to fund the dialogue, US officials argued that public funding was never a permanent arrangement. One official argued, 'It is not US government policy to fund NGOs.'²¹⁶ The future of the TACD hinges on the capacity of the group to find private funding, which EU TACD officials have argued that they are aiming to do in order to continue the dialogue.²¹⁷ US TACD members were less optimistic about the future, and argued the importance of first assessing the impact of the dialogue.²¹⁸

Figure 5.3 The TAED Structure 2000



²¹⁶ Interviews, US State Department, Washington, October 2000 (45, 47).

²¹⁷ Interview, TACD Secretariat, London, January 2000 (23).

²¹⁸ Interview, TACD participant, Washington DC, October 2000 (50).

The future survival and success of these groups is directly linked to their capacity to add value to wider transnational social movements (see also Buck 2000). What, if any, gains were reaped through the creation of the dialogues? In accordance with their outlined objectives, the success of the TACD and TAED rests on the capacity of the groups to build dialogue between EU and US NGOs, to increase NGO access to EU and US officials and to shape policy output. The perceived access and impact of the consumer and environmental dialogues is divided into two responses: 1) the success of the TACD and TAED and 2) their relative success vis-à-vis the business dialogue. While NGO complaints about unequal access and impact are outlined here, the competition between the dialogues is dealt with more thoroughly in section 4.

A major achievement of the TACD and TAED has been the build up of dialogues between European and American NGOs, which served as important sources of information sharing and networking. The dialogues have been described by EU and US officials as a ‘learning process’.²¹⁹ American NGOs are learning from European NGOs about the EU and about European policies, and both sides are learning how they can harmonise strategies and simultaneously exert pressure on their governments. US NGOs have found an ally in European consumer groups and on many policies in the European Commission.

Table 5.1 Dialogue ‘Summits’

	1995	1996	1997	1998	1999	2000	2001
TABD	X	X	X	X	X	X	X
TAED					XX	X	
TACD				X	X	X	X
TALD				X	X		

²¹⁹ Interview, Commission Delegation and USTR, Washington DC, October 2000 (34, 42).

The TACD, in particular, has been praised for overcoming differences between US NGOs.²²⁰ As one official argued, ‘the success of the TACD is just overcoming the Consumer Union-Public Citizen gap and getting American consumer groups on speaking terms.’²²¹ TAED representatives agree that the environmental dialogue has also jumpstarted co-operation. Another source suggested that, ‘People are coming together. There is more common ground and no clear divide between European and American NGOs on trade.’²²² Environmental Protection Agency (EPA) officials agreed that transatlantic dialogue between the groups was significant, arguing that, ‘first they must get comfortable at the table with each other because governments respond when constituencies are united and focused’.²²³

In one respect the dialogues have successfully fulfilled the objectives of the NTA: they have ‘built bridges’ across the Atlantic. The real test for participants, however, is their capacity to act as ‘policy shapers’. Here the results are less visible. First, members of the TACD and TAED have complained about the level of access vis-à-vis the business dialogue. Second, consumers and environmentalists have argued that the civil society dialogues do not have the same influence in the decision making process to that exerted by the TABD.

Table 5.2 Dialogues’ Access to EU-US Summits

	1995	1996	1997	1998	1999	2000	2001
TABD	X	X	X	X	X	X	X
	X	X	X	X		X	
TACD					X	X	
TAED					X	X	
TALD				X		X	

²²⁰ Interview, Commission Delegation, Washington DC, October 2000 (34).

²²¹ Interview, Commission Delegation, Washington DC, October 2000 (34).

²²² Interview, US NGO, Washington DC, October 2000 (30).

On the one hand TACD and TAED members have gained access to both high level and working level officials through the annual general meeting (see table 5.3). The TACD and TAED each have contact persons in the State Department and the US Mission in Brussels at a working level. The TACD and TAED have increased the formal level of access that consumers and environmentalists have to policy makers.²²⁴

Bignami and Charnovitz (2001) argue that:

Groups like Consumers International have, for years, hammered out common positions among member groups and taken these positions to the Codex, the United Nations, and various other international organizations. They have had observer status in the United Nations and the Codex (but not the WTO). They have educated the public and campaigned on various issues. Never, however, had they been promised direct, formal access to policymakers in the course of intergovernmental negotiations.

However, the access that consumer and environmental groups have gained is overshadowed by the comparable access allotted to the TABD. Controversy arose before the 1999 Bonn Summit over TABD's access to EU-US Summits. Despite the fact that the TAED and TACD had written to summit leaders to request access, the German Presidency, urged on by the US Commerce Department, refused invitations to the civil society dialogues.²²⁵ The TAED and TACD- supported largely by the Commission- publicly denounced the unequal access given to the TABD. In response, the Washington 1999 Summit statement included an annex for equal handling of the dialogues.²²⁶

In general the change in summit procedures was seen as a symbolic win for the non-business dialogues, as EU-US Summits are arguably not their best point of

²²³ Interviews, Environmental Protection Agency, Washington DC, October 2000 (48, 49).

²²⁴ Interview, USTR, Washington, October 2000, (42).

²²⁵ NGO groups argued that the Council Presidency was persuaded by the German Chancellor Schroeder, who hails from a largely industrial region. Interview, TACD Secretariat, January London, 2000 (23).

²²⁶ It was agreed that EU and US authorities should meet formally with all of the dialogues at least once every six months, that working level contacts should facilitate routine interaction and that a rotating schedule for summit attendance should be put in place.

access.²²⁷ Commission officials argued that private sector input would be more effectively aimed at working group level and have pushed for dialogue access to SLG rather than summit level meetings. One official argued, 'it is not much use if you haven't got your point across before then. They need to concentrate on early stages of policy decision making where recommendations can be much more detailed. You have a better chance of influencing the expert than the political boss.'²²⁸

However, access to transgovernmental actors is also a source of contention among the transatlantic dialogues. The TABD has both higher and more frequent access to officials. NGOs note that the TABD gets higher level officials at its meetings, including the US Vice President and the WTO Director.²²⁹ The TABD has a designated 'agency' that acts as its partner- the US Commerce Department- while the TAED and TACD have a small number of designated people within the State Department. Unlike the Commerce Department a State Department official pointed out that, 'we cannot only take consumer or environmental consumers on board.'²³⁰ The TABD also has crosscutting support from the US interagency committee that deals with its issues. TABD members also benefit from informal contact with governmental officials. One NGO official argued that, 'where TABD has more access is at a daily working level- lunches and receptions, meetings every month. It is a huge policy-lobbying machine.'²³¹

²²⁷ Rather, it has been argued that the Summits serve as photo opportunities Interview, TAED and TACD participants, London (1999) and Washington (2000) (23, 30).

²²⁸ Interview, Commission, Brussels, September 1999 (15).

²²⁹ While government presence at TACD and TAED annual meetings has increased, NGOs argue that they do not have the same level of representation. One US NGO contended, 'We did not have the Vice President at our annual meeting. We are lucky to get one US Cabinet member.' Interview, (23, 50).

²³⁰ Interview, US State Department, Washington, October 2000.

²³¹ TACD Secretariat (23-24). Email correspondence (63).

Table 5.3 Formal Access for the Transatlantic Dialogues

TABD	TACD	TAED
Regular Attendance at EU-US Summit	Limited Access to EU-US Summit	Limited Access to EU-US Summit
High level contacts at annual CEO meeting	High level contacts at annual general meeting in plenary	High level contacts at annual general meeting in plenary
Working Group contact at annual CEO meeting	Working Group contact at annual general meeting prior to plenary	Working Group contact at annual general meeting prior to plenary
Mid Year Meeting	Steering Group Planning Meeting	Steering Group Planning Meeting
US Interagency Co-ordinators	TACD Contact Person in State Department	TAED Contact Person in State Department
Regular Issue Manager – Working Level Contacts		

The real problem with the NTA dialogue process is not just that NGOs do not feel like they have access to officials, because formal dialogue *has* increased through the TACD and TAED. Rather, the real gap between the TABD and the TACD is in the number of policy recommendations that have influenced transatlantic decision setters.²³² NGOs claimed that the success rates of the TACD and TAED- if measured against the TABD's 50 per cent rate- would be significantly lower.²³³ Some argued that none of their proposals had been adopted. Others noted that NGO input had helped change the thinking on some policies, for example on the better access for

²³² A TACD official notes, 'It is not that the structures are not working well, but that they are working better for the TABD.' Interview TACD Secretariat, January, London (2000) (23-24).

medications in developing countries and greater contact over GMOs and product labelling. Overall however, the dialogues have not produced the same concrete gains that the TABD has. The TAED Scorecard argued that government responses to recommendations (in grades from A-F) were significantly below average.²³⁴ The TAED slammed the US government for its ‘total failure to act or failure to act appropriately’ on a wide variety of issues.²³⁵ Sixty-five consumer groups echoed the same sentiment, that the EU and the US had largely ignored consumer trade policy recommendations, in an annual report (2000).²³⁶ The message is that ‘the overall impact of the TACD has not been enough, but we are encouraged by the achievements of the first few years and believe we can further establish the dialogue as an important part of transatlantic trade policy-making.’²³⁷

To summarise, the TACD and TAED have increased formal access for consumer and environmental NGOs, but the quality of access has been called into question. As one NGO observes, ‘they are telling us what they are doing, rather than taking our advice. We have access but we don’t learn specifics. TAED participants argue that US officials seem to be just going through the motions.’²³⁸ The low key government response to TACD and TAED proposals fuelled claims that the governments were not taking the groups seriously – or as seriously as they take the TABD. Government officials stressed the importance of the TACD and TAED as dialogue structures. A State Department official argued, ‘Whether or not their policies

²³³ Interviews with European and American NGOs London, Brussels and Washington, January, May and October 2000 (23,24,27-30, 50).

²³⁴ The Commission’s response to GMOs received the highest mark (a C+). Interview (6).

²³⁵ TAED-TACD Press Release ‘Transatlantic Consumer Dialogues Release Annual Reports, Slam Government for Lack of Responsiveness.’ 6 June 2000.

²³⁶ TACD press release, ‘US & EU Consumer Groups Call for Swift Action to Balance Trade Dialogue March 30 2000.

²³⁷ Email correspondence with TACD Secretariat, June 2000, (63).

²³⁸ Interview, American NGO, Washington DC, October 2000 (24).

are adopted, they are widely understood and seriously considered.’²³⁹ To participants, however, faced with funding problems it is important that the TACD and TAED serve as more than ‘talk shops.’ The consensus is that ‘talking shops’ are useful, but that the TACD can only gain support to continue as an efficient lobbying organisation. A TACD official argued, ‘Consumers and environmentalists are not downplaying dialogue, but they expect more concrete results, in part because TABD gets them.’²⁴⁰

Table 5.4 Active Dialogue Members

TABD	TACD	TAED
<ul style="list-style-type: none"> • Price Waterhouse Coopers • Electrolux • Xerox • United Technologies Corporation • Lafarge • Suez-Lyonnaise • Daimler Chrysler • Philips Electronics • Warner-Lambert • Tenneco • Ford 	<ul style="list-style-type: none"> • Consumers International • Danish Consumer Council • Consumer Federation of America • US Consumers Union • US Public Interest Research Group • EuroCoop • Kepka • Italian Consumer Council • Consumer Federation of America • Public Citizen 	<ul style="list-style-type: none"> • European Environmental Bureau • Community Nutrition Institute • World Wildlife Federation • German League for Nature and the Environment • National Wildlife Federation • Edmonds Institute • Center for International Environmental Law Biodiversity Action Network • Public Citizen

²³⁹ Interview, US State Department, Washington DC, October (2000).

²⁴⁰ Interview, TACD Secretariat, London, January 2000 (23).

Table 5.5 Policy Positions of the Transatlantic Dialogues

	TABD Position	TACD Position	TAED Position
Biotechnology			
<input type="checkbox"/> Safety	Supports establishment of a science-based proof that GMOs are harmful	Supports establishment of science-based proof that GMOS are not harmful	Supports establishment of science-based proof that GMOS are not harmful
<input type="checkbox"/> Labelling	Against GMO Labelling	Supports mandatory labelling	Supports Mandatory labelling,
E-Commerce	Supported Safe Harbour Agreement	Opposed Safe Harbour/Supports right to Privacy	
Precautionary Principles	Argues the PP should only be based only on sound science	Favours use of PP in consumer, health, safety, Environment regulations	Favours use of PP in consumer, health, safety, Environment regulations
TRIPS	Supports full implementation of TRIPS	Against using TRIPS to block production of medicine in developing countries	
Climate Change	Argues Kyoto emissions standards are non-tariff barriers		Supports implementation of Kyoto Treaty
The European Waste Electrical Equipment Directive (WEEE)	Identified as an Early Warning candidate		Supports WEEE and industry responsibility for safe waste disposal.
Participation And Regulatory Guidelines	Supports Transparency and the Regulatory Guidelines	Supports Transparency and the Regulatory Guidelines	Supports Transparency and the Regulatory Guidelines

3) The Transatlantic Labour Dialogue

The goal of promoting co-operation on labour issues is found in the NTA and TEP. The economic chapter of the NTA makes broad reference to internationally recognised labour standards and employment issues. In May 1997 the AFL-CIO and ETUC agreed to initiate the dialogue under government sponsorship at the Bridging the Atlantic ‘people to people’ conference in Washington. A year later the TEP Action Plan outlined a number of commitments to increased dialogue on labour between

workers, employers and NGOs and business and labour advisory groups (see also Knauss and Trubek 2001).²⁴¹

The Transatlantic Labour Dialogue is the least developed formal NTA dialogue. The first meeting of the TALD, held a month before the TEP, coincided with an international labour summit. Its formal launch came with the submission of a joint statement to the EU-US Washington Summit in 1998. However, its second meeting was postponed until June 1999. Even then, the meeting took place at an international (G-8) meeting, and no official statement was ever released. The American Federation of Labour and the Congress of Industrial Organisations did issue a letter to President Clinton and Chancellor Schroeder before the Bonn Summit (June 1999). They agreed to support human rights clauses in international agreements and to broaden the labour agenda for the WTO. In December 2000, it issued its first real recommendations to EU-US leaders. Six months later, however, the TALD again appeared to be static.²⁴²

Hope for the recovery of the TALD was bleak, because its structure was flawed from the beginning. Knauss and Trubek (2001) argue that the TALD lacked substantive expectations; was set up only as a small and quasi-private dialogue; was neither bilateral nor transatlantic and was a low priority for labour leaders.

First, although the TALD produced more substantive results in 2000, there was no sign of establishing an organisational structure, a secretariat or formal objectives. At the London meeting in 1999, labour leaders agreed to hold periodic reviews of the trade union dialogue, co-ordinate their positions on the planned Euro-American social and employment initiatives and initiate a Euro-American working group. None of these tasks was completed and there was no subsequent commitment

²⁴¹ It also included a commitment to end child labour.

²⁴² The 2001 EU-US Summit Statement from Gotenburg stated, 'We support the Transatlantic Environment Dialogue and the Transatlantic Labor Dialogue in their efforts to rejuvenate their activities.'

on behalf of the labour dialogue to pursue a transatlantic policy agenda. The TALD is basically a dialogue between the AFL-CIO and the EUTC. Its meetings have included only a handful of people and have not even been held as separate events. Knauss and Trubek (2000) note that, 'merely trying to find out what transpires at its meeting can be an exercise in frustration. In sum, there is little to indicate that either labor organisation has given the forum any serious attention.'

Those involved with the TALD agree that it is not a forum for policy shaping, and is only marginally a forum for dialogue. It is argued that the TALD is not transatlantic because the structure of international trade unions dialogue pre-dates the NTA. The international orientation of global labour movements creates diplomatic problems for EUTC and AFL-CIO, and it was feared that a transatlantic based dialogue stood the risk of getting 'their (affiliates) noses out of joint'. The international structure of the labour movement also explains the TALD's focus on multilateral rather than transatlantic issues. Most of the December 2000 statement focused on multilateral trade liberalisation, the MAI, sustainable development, the UN Rio +10 meeting and Aids Drugs to Africa (see figure 5.4).²⁴³ There appears to be a lack of interest in the transatlantic level, because the TEP is not viewed as a substantial policy forum. A TALD representative argued, 'Trade unions are exerting an inside track at the WTO level. If the bilateral level becomes more important, then the TALD will follow.'²⁴⁴

Consequently, the TALD is little more than a modest exchange between a European and an American labour federation. Given its lack of commitment and clear lack of influence, the labour dialogues- even more so than the consumer and environmental dialogues- cannot survive without government support. The labour

²⁴³ Although it should be noted that TALD did broach the subject of EU-US approaches to Burma.

²⁴⁴ Interview, TALD official, Brussels, September 1999 (13).

movement is not willing to commit the resources to fund a transatlantic dialogue. One European labour representative argued that, 'You are not going to reinvent the trade union organisation for a one-fifth the cost of a plane ticket. If they want us involved, they have to put their money where their mouth is.'²⁴⁵

The labour movements' resistance to be drawn into the NTA process means that the TALD has had no impact on the transatlantic policy shaping.²⁴⁶ One official even bluntly stated, 'There is no labour dialogue.'²⁴⁷

Figure 5.4

The Transatlantic Labour Dialogue

Co-ordinators: AFL-CIO- EUTC

Meetings: London 1998 and Bonn 1999

Statements: May 1998, December 1998, December 2000 Summits

Interests: The MAI, GATS and public services, TRIPS and AIDs drugs in Africa, Sustainable Development

4) Transnational Decision Shaping

The creation of the NTA dialogues has ensured that private actors have more access to transatlantic decision takers at both a high political level and a working level. While business, consumer, environmental and labour dialogues have all gained a formal role in the process, only the TABD has emerged as a true policy 'shaper'. A combination

²⁴⁵ Interview, TALD, Brussels, September 1999 (13).

²⁴⁶ Interviews Commission, Brussels (1999) and US State Department, Washington DC (2000) (9, 44).

²⁴⁷ Interview, US State Department, Washington, October 2000 (58).

of factors contributes both to the effectiveness of the dialogues and the wide-range of government responses to the recommendations.

Organisation, Focus and Funding

EU and US officials have, in the past, blamed a lack of cohesion, organisation and interest in the NTA process for the inequalities in actor access and policy adoption. The civil society dialogues, when compared to the business dialogue, have been characterised as weak, unorganised and plagued by internal bickering. There were claims that the TACD and TAED were less influential because they were new to the process. They have even been described elsewhere as ‘toddlers in the policy playpen’.²⁴⁸

The ability of the private dialogues to organise themselves is directly linked to their capacity to produce cohesive proposals. Consensus among domestic groups and between EU and US actors is considered a major strength of the dialogues. The TABD is undisputedly the most developed transatlantic dialogue. It is highly organised and its proposals carry weight because they bear the approval of 200 CEOs.²⁴⁹ In short, the TABD is arguably a ‘well oiled machine.’²⁵⁰

In contrast, however, it has been argued that since the launch of the other dialogues, that the strong management of the social dialogues was needed in order to overcome differences between groups.²⁵¹ One US official argued that, ‘the TABD plays a different role than the other dialogues, which is to come to a common position and give recommendations. This is not what the (TACD, TAED, TALD) have done-

²⁴⁸ Quoted in Peterson 2001.

²⁴⁹ Interview Council Presidency and European Commission, Brussels, September 1999 (5, 15).

²⁵⁰ Argued by TABD official, Brussels, September 1999 (14).

²⁵¹ Interviews, Commission, Brussels, September 1999 (15, 6).

they don't agree.'²⁵² Reaching consensus between NGO groups is more complicated because they are constituency based and have funding commitments to other organisations.²⁵³ The civil society dialogues also had more trouble getting off the ground because of internal policy differences. Initially, US consumers groups were unable to agree on whether to start a dialogue, let alone agree on policy proposals.

To some extent the criticisms levelled at the civil society dialogues were warranted in the early days of their implementation, but the groups- not including the TALD- recognised the need to organise themselves. The TACD, which was arguably the most incoherent after its first meeting, subsequently emerged as the most coherent civil society dialogue. Officials argued that the initial dispute between Public Citizen and Consumer Union was (mostly) set aside and that Consumer International and the Steering Group had worked hard to ensure that the consumer movement had a common face. The TACD – three meetings on- was described as very organised and very disciplined.²⁵⁴ A dialogue that was earlier described as 'rude' and 'confrontational' was argued to be proficient. A US official observed that,

If they are tearing their hair out they are not showing the governments. By the time they sit across from us, they are very, very professional. They do not wash their dirty laundry in public. The Steering Committee presents a united front. They spend a lot of time co-ordinating and they are coherent.²⁵⁵

Before its suspension, the TAED co-ordinators had also argued that the dialogue needed a more focused agenda, clear strategy and better organisation. A draft assessment of the TAED-presented at the 2000 meeting- emphasised the need to make the working groups more effective and criticised in particular the Trade Working

²⁵² Interview, US Mission, Brussels, September 1999 (4)

²⁵³ See also Aaron *et al* (2001) who argues that, 'when NGOs are brought together to discuss common issues but discover that they differ significantly in their political agendas and operating style, it can be a complicating factor.'

²⁵⁴ Interview, USTR, Washington DC, October 2000 (42).

²⁵⁵ Interview, US State Department, October 2000 (47).

group for failing to overcome internal differences. In response to vacant US posts, the report noted that, 'there are bottlenecks with regards to willingness to and/or ability of lead groups to invest sufficient time in co-ordination.'²⁵⁶

The orientation of the TAED and TACD's proposals has also distinguished them from the TABD. A credit to the TABD is its focus on policy details that are specific to the NTA institutions and the goal of the NTM. Although the TABD has a priority group that deals with the WTO, it has used global forums like the GBDe, to address multilateral issues.²⁵⁷ The TACD and TAED, on the other hand, have debated the need to allow non-transatlantic NGOs into the dialogues. Like the TALD, there has been a tendency for these dialogues to focus on multilateral or domestic rather than transatlantic issues. They have been accused of presenting broad proposals and of less effectively providing ready-made solutions. This is in part because they concentrate on issue areas where the EU and US disagree, for example over GMOs, BVT and beef. A TACD representative argued that, 'TABD is doing the governments' job for them. Civil society is not as focused on technicalities. It is about following reactions of process.'²⁵⁸

In reality, however, the TACD- more than the TAED- has successfully shifted the focus of the dialogue to address a number of transatlantic 'policies'. For example it has continuously emphasised the EU-US Safe Harbour Agreement and employed research staff to follow the transatlantic MRAs. On the TAED it was claimed that, 'Broad proposals are still a problem. Contrary to business, many groups have less experience co-operating with each other. Each has its own agenda, and some

²⁵⁶ TAED Assessment of the Dialogue 2000.

²⁵⁷ At a global level, the Global Business Dialogue on Electronic Commerce (GBDe) was launched in 1998 to develop a global consensus on the industry principles for the policy debates on electronic commerce. The GBDe share interests, overlapping membership and secretariat staff. Interview, TABD, April 2001 (53) See also Cowles forthcoming.

²⁵⁸ Interview, TACD official, by telephone, June 2000 (24).

recommendations reflect that.’²⁵⁹ It was also argued that proposals- such as the demand to the end multilateral disputes dealing with environmental legislation- could not be seriously addressed in the NTA. Rather, ‘to bring it to a stage where these dialogues can be used, we need to get to next stage to-have more concrete, operational proposals.’²⁶⁰

Officials acknowledge that the quality of organisation and proposals is hindered by the funding problem encountered by the civil society dialogues. This obstacle is demonstrated by the suspension of TAED activities. A TACD official explained that NGOs cannot afford to hire researchers and lawyers to come up with policy setting details.²⁶¹ The lack of resources makes it harder for these groups to establish their own networks and to penetrate the established networks of ‘working lunches’ and drinks receptions in Brussels and Washington. The funding problem is also most acute because the future of the dialogues-particularly the TAED and the TALD- depend on it. Still, funding will be a permanent source of inequality. One MEP argued that, ‘They will never have the same influence (as TABD). They don’t have the same money or clout.’²⁶²

Outsiders and Insiders in the Policy Process

In many respects, consumers, environmentalists and industry are competing to influence transatlantic decision making because they hold different- sometimes directly opposing- stakes in the process. The TACD and TAED share many of the same goals, which is reflected in a number of joint statements they have issued about the TEP and participation in the NTA process more generally. Furthermore, all of the

²⁵⁹ Interview, Commission Delegation, Washington DC, October 2000 (32).

²⁶⁰ Interview, Commission Delegation, Washington DC, October 200 (32).

²⁶¹ Interview, TACD Secretariat, London, January 2000 (23-24).

²⁶² Interview, European Parliament, Brussels, September 1999 (17).

groups have supported the implementation of the transatlantic regulatory guidelines, which highlight the need for transparency- and thus increased access- for the dialogues. However, table 5.5 outlines a number of policy areas where the TABD holds different interests to the TACD and TAED. For example the TABD and TAED disagree over the implementation of the Kyoto Treaty, because the TABD argued that emissions standards would adversely affect the competitiveness of industries. The TABD and the TACD disagree over the Safe Harbour Agreement because the TACD believes that the agreement does not adequately protect privacy. The TABD has identified a number of European environment directives- including the WEEE as possible Early Warning System candidates (TABD 2000).

Competition between the groups is fuelled by different policy interests. It is demonstrated by the aim of the NGO and business aims to counter the influence one another. Public Citizen helped organise protests of the TABD CEO meeting in Cincinnati 2000. Lori Wallach, Director of Public Citizens' Global Trade Watch, argued in a guest article in the Cincinnati Observer that, 'TABD does not stand for Truly Appalling Backroom Deals, but it should.'²⁶³ Both the TACD and TAED have emphasised the importance of monitoring the TABD. The sentiment is returned by the business community. Cowles (2001: 263) argues that,

Indeed, the US-EU business community tends to view the creation of 'other dialogues' in the US-EU relationship- the Transatlantic Labor Dialogue, the Transatlantic Consumers Dialogue, the Transatlantic Legislators Dialogue- not merely as an attempt to introduce civil society into US-EU relations, but also to counteract the growing influence of the TABD.

One of the biggest obstacles faced by consumers, environmentalists and labour is not only that the groups are competing with the TABD, but that many of their interests

²⁶³ Quoted in 'Closed-Door process needs change.' Guest Column in Cincinnati Enquirer 19 November 2000.

conflict with the agenda of the New Transatlantic Marketplace.²⁶⁴ The TAED in particular consists of many groups that oppose trade liberalisation. Although there are many pro-liberalisation groups within the consumer dialogue, it has been noted that breaking down regulatory barriers- a goal of the NTA and the TABD- has the potential to undermine health and safety standards (see also chapter 7). One of the first actions of the TACD and TAED was to oppose implementation of the TEP Action Plan because of its inadequate commitment to sustainable development and transparency. As one official pointed out, 'the TABD says things the governments want to hear. Its interests are seen as more compatible with the goals of the TEP and the NTA.' Adding, on the other hand that, 'TAED argues against the WTO. No one wants to hear this.'²⁶⁵

The TACD and TAED have also become 'outsiders' in the policy process partly because they challenge the legitimacy of the NTA. While all of the dialogues have argued the need for increased transparency in the transatlantic decision making, only NGOs have spoke out against the de-politicisation of issues, specifically under the TEP. It is argued that decisions related to TEP should be taken by democratically elected bodies in a transparent, participatory and accountable way in order to protect social standards. Opposition to the process as well as the policies means that, as one TACD official argued, 'they created monsters that do not now want to play by the rules.'²⁶⁶

²⁶⁴ One US official suggested for example that, 'the governments have accepted that consumer views are valid, but NGOs have not accepted that liberalisation is good.' Interview, USTR, Washington DC, October 2000 (42). See also Aaron *et al* (2001).

²⁶⁵ Interview, European Commission, Brussels, September 1999 (6).

Increasing Transparency, Finding Consensus

The EU and the US have attempted to make the NTA process legitimate by bringing in different groups, laying out guidelines for equal access for groups and encouraging public participation and transparency under the Joint Regulatory Guidelines. In addition, NTA and TEP policies must follow domestic channels of decision making. In the US, public notices of agreements are posted in the Federal Register. The Commission uses formal channels of communication under the Commission's Social Forum to gauge the wider public views on policies.

Competition between actors has complicated transatlantic decision making. The threshold for consensus between groups is high because so many interest groups with very different interests have been given a formal role in transatlantic decision making process. Some officials have argued that inviting participation from the civil society dialogues has weakened the process because it undermines 'efficient' decision taking.²⁶⁷ In response to this problem, transatlantic actors have sought ways to encourage the dialogues to reach consensus amongst themselves.

First, they supported the idea of 'multi-dialogue' meetings between business and civil society.²⁶⁸ In 2000, the first multi-dialogue meeting was co-organised by European Partner for the Environment and the Luso Foundation with funding from the

²⁶⁶ Interview, TACD Secretariat, London, January 2000 (23-24).

²⁶⁷ Interview, Commission Secretariat, September 1999 (16).

²⁶⁸ The principles for government relations with the Transatlantic Dialogues calls for dialogue between the dialogues. Despite the government's encouragement, there was very little outreach between the dialogues before 2000. The Luso American Development Foundation (the secretariat of the Donors Dialogue) tried to organise a meeting in 1999 but failed to gain enough support from the dialogues or from the governments. The TACD argued that it needed to first get itself organised. Commission officials worried that the dialogue was exclusive. A TABD official argued that it clearly had different interests than the other dialogues. One participant (20) noted that, 'this would mean compromise- that is the governments' job not businesses.' TAED and TACD members reiterated their suspicion of the TABD and the need for governments to strike a balance between interest groups. (Interviews with the Commission, Brussels, 1999, US State Department and US Commerce Department, Washington, 2000 (9, 42, 52).

Commission.²⁶⁹ The multi-dialogue meeting was launched to increase awareness of each other's activities and to explore mechanisms for understanding. All of the dialogues, barring the TALD, attended.²⁷⁰ The meeting's concentration on one policy sector- Sustainable Development- helped focus the dialogue. Groups were also pulled into the dialogue by assurances that the meeting would not be used to negotiate any common positions but rather to allow groups to exchange views. Participants in the meeting were cynical about gaining any concrete results from the first meeting, but the second meeting held in January 2001 is a testament to the multi-dialogue's continued support.

Second, EU and US officials worked with different dialogues to establish cross interest policy networks or 'issue-orientated' task forces. The need to focus on cross cutting interest groups and specific policy problems was also addressed by the governments in the TEP. To date the most successful task force was the Biotechnology Consultative Forum which managed to produce agreed results from the science, business, academic and NGO communities. TACD members originally argued the Forum could not be used as a justification of consumer support.²⁷¹ However, the participation of an EU Steering Member helped balance the representation.

Finally, officials argue that the Legislators Dialogue could be a potential instrument for closer dialogue between the dialogues.²⁷² As discussed in chapter 4, however, the TLD contact with the NTA process is under-developed. To date, the TLD has had good relations only with the TABD and little to no contact with the

²⁶⁹ The European Commission (DG External Relations) provided support for the project. Additional contributions to help cover the costs of the two US resource persons were provided by the US State Department and the Heinrich Böll Foundation. In addition, each of the dialogues covered the travel costs of their respective representatives.

The role of Ron Kingham- the former co-ordinator of the TAED- was influential in gaining TACD and TAED support for the meeting. Telephone correspondence, March 2000 (23-24).

²⁷¹ The US had chosen a consumer representative who was opposed by US consumer groups for having previously been employed by the GMO giant Monsanto Corporation. Interview, TACD Secretariat, via telephone, March 2000 (24).

TACD and TAED. Its capacity to balance the dialogues is also undermined by the fact that the TABD is perceived to have more direct access to the bureaucratic process than it actually does.

Conclusion

This chapter sought to establish if and how the private NTA dialogues have played a role in shaping transatlantic decisions. It discussed the interaction between private actors in new transnational networks and between private and public actors at a number of levels- both transgovernmental and intergovernmental. Finally, it questioned the impact of private decision shaping forums on the overall process of transatlantic decision making.

A number of themes arose in this examination of the transatlantic dialogues. The motivations for inviting participation from the TABD and TACD, TAED and TALD varied. The TABD was brought into the process to help the EU and US facilitate the goals of trade liberalisation laid out in the New Transatlantic Marketplace. It has been largely encouraged by the US government whose officials believe it to have been a good lobbying partner. The TALD dialogue was brought in to advise the EU and US on aspects of the marketplace relating to labour issues. The consumer and environmental dialogues were pushed by the Commission to balance the interests of the process. The Commission found an ally in the TACD and TAED on policies where it was in dispute, or about to enter a dispute with the US, for example over GMOs, the WEEEs, and data protection. Encouraging civil society participation was also seen as a way to increase transparency in the Transatlantic Economic

²⁷² Interview, European Parliament, September 1999 (10).

Partnership after the US government came under fire from domestic NGO groups worried about the de-politicisation of social and environmental regulations.

Increasing the participation of domestic groups at the transatlantic level has not necessarily made the process more balanced. Above all, there are wide ranges of interests covered by policy network. There is also a gross imbalance of power and resources between big business and civil society. While the TABD has been deemed largely successful in shaping policy and the TACD claims to have had some impact in shaping decisions, the TAED and TALD have been less effective. While the TABD has very much found itself an 'insider' in the process, civil society has remained somewhat on the 'outside'. The argument, thus, is that the TABD is the only formal dialogue, of the four, to support the hypothesis that there has been a decentralisation of decision shaping powers to private actors.

Chapter 6

The Transatlantic Challenge to Transnational Trafficking in Women

Globalisation and political instability in newly democratised states have given rise to global challenges that cross borders and elude national efforts to curb trafficking in drugs, nuclear material and migrants. The end of the Cold War ushered in a period of economic instability in Central and Eastern Europe (CEE), Russia and the Newly Independent States (NIS), creating social circumstances which gave rise to organised criminal networks. Weak democracies are unable to contain these networks, and Western democracies are increasingly unable to police their borders. The rise of transnational crime is problematic not only because it crosses borders, but because it crosses the borders of developed countries (Ruggerio 2000:189). Trafficking does not stem from Eastern Europe alone, but the rise of criminal trade from Eastern to Western Europe means that criminal activity originating in CEE creates new challenges for the EU, the US, who as developed countries are the main recipients of trafficked women (see figure 6.1).

The increased mobility of capital and people means that individual states, both developed and developing, are unable to adequately target the problems of international crime and international terrorism alone. The idea that cross border crime must be managed through national, regional and international co-operation became accepted wisdom throughout the 1990s. The US government set up FBI training centres in Budapest and Bangkok to train local authorities to fight transnational crime and terrorism. The EU set up Council working groups to deal with terrorism, police co-operation and organised crime under the Justice and Home Affairs Pillar. At the international level 189 states signed the UN Convention on Transnational Organised

Crime in December 2000. A transatlantic framework for increased law enforcement co-operation was created under the global challenges' chapter of the NTA.

This chapter examines EU-US co-operation in combating trafficking in women as a case study of joint co-operation in law enforcement, fighting global challenges and transatlantic policy-making. In 1997, and again in 1999, the EU and the US co-hosted two information campaigns. The first was in Ukraine and Poland and the second, in Bulgaria and Hungary. A third, Russian campaign is under negotiation. EU-US co-operation in trafficking in women is discussed in the context of this thesis because it is an important indicator of the factors that instigate and impede co-operation in the area of Justice and Home Affairs. Trafficking in women is not only an issue of transnational crime, but also of human rights, migration, and labour.

Transatlantic co-operation in the area of trafficking in women is distinct, first because it is rather low key in terms of visibility when compared with economic co-operation under the NTA. EU-US policy on trafficking in women is much less integrated than it is for example in the case of the Mutual Recognition Agreements. Second, the implementation of joint projects in this area affects the EU and the US only indirectly, because the transatlantic anti-trafficking information campaigns are run in third countries. Thus, in contrast to the MRA case, the interest of outside states that are affected by the transatlantic information campaigns directly impacts how the EU and the US can co-operate.

This chapter seeks to explain the decision making process that led the EU and the US to join forces in fighting trafficking in women. First, it questions why the EU and the US chose to co-operate in this area: What informed the intergovernmental 'political decision' to co-operate on trafficking in women? This question is addressed in section 1, where the national and international political climate on trafficking in

women is discussed in relation to the decision to establish a transatlantic policy on trafficking in women. Here it is argued that the EU and the US were able to co-operate on trafficking because it was framed as a human rights issue as well as a law enforcement policy.

Once it is established why a joint policy on trafficking in women was pursued, the focus of the chapter turns to how transatlantic officials chose to co-operate. Here the two hypotheses introduced in chapter 1 are again tested. The chapter examines first, whether there is evidence of a decentralisation of decision making to transgovernmental actors. In other words, section 2 questions how prominent transgovernmental actors are in the setting and shaping the policy on trafficking in women. Second, this chapter asks if there has been a shift of decision 'shaping' powers to transnational actors. Section 3 examines the role NGOs played in shaping the decision making process. Section 4 questions the significance of transatlantic co-operation on trafficking in women, both in the context of the international movement against trafficking and the global challenges pillar of the NTA. What does this case study tell us about the larger NTA political agenda and the scope for co-operation in the field of Justice and Home Affairs?

1) The Political Decision to Target Trafficking in Women

At the May 1997 EU-US Summit in the Hague, US President Clinton, Commission President Santer and the Dutch Council Presidency agreed to co-operate on trafficking in women and issued a statement committing both sides to work together to combat the problem. The details of the project were finalised six months later and announced at the following summit. Two years later the EU and the US endorsed a second project, and in 2001 negotiations for a trafficking information campaign in Russia

were underway. This section seeks to explain the political or 'intergovernmental' decision to pursue co-operation in this area. The concern is not with the details of the transatlantic projects that were decided in between the May and December 1997 EU-US Summits, but rather with why transatlantic leaders chose to co-operate in the first place.

Nor does the chapter give an in depth analysis of the nature of the problem of trafficking in women. Rather, it concentrates on the intergovernmental response to the problem. More extensive coverage of illegal trafficking in migrants and women is found mostly in the sociological literature.²⁷³ For our purposes it should be noted that trafficking in women is a problem, which is both global and extensive. It is a governance problem that has been tackled at the national, EU, transatlantic and international level. The International Organisation of Migration (IOM)(1998a) believes that millions of women are trafficked each year, and it is estimated that trafficking in women and children is a business that generates \$7-12 billion dollars annually (OSCE 1999).²⁷⁴ The Congressional Research Service notes that trafficking in women and children is considered the largest source of profits for organised crime after drugs and guns (Miko 2000).

In order to determine why the EU and the US have effectively addressed the problem of trafficking in women, we must first identify the problem. Defining trafficking in women is difficult, as many different interpretations exist. For some it is important to make a distinction between trafficking and smuggling, because trafficking involves a lack of consent. Martin and Miller (2000: 969-970) argue,

Trafficking in persons means the recruitment, transportation, transfer harboring or receipt of persons, either by the threat or use of abduction, force, fraud,

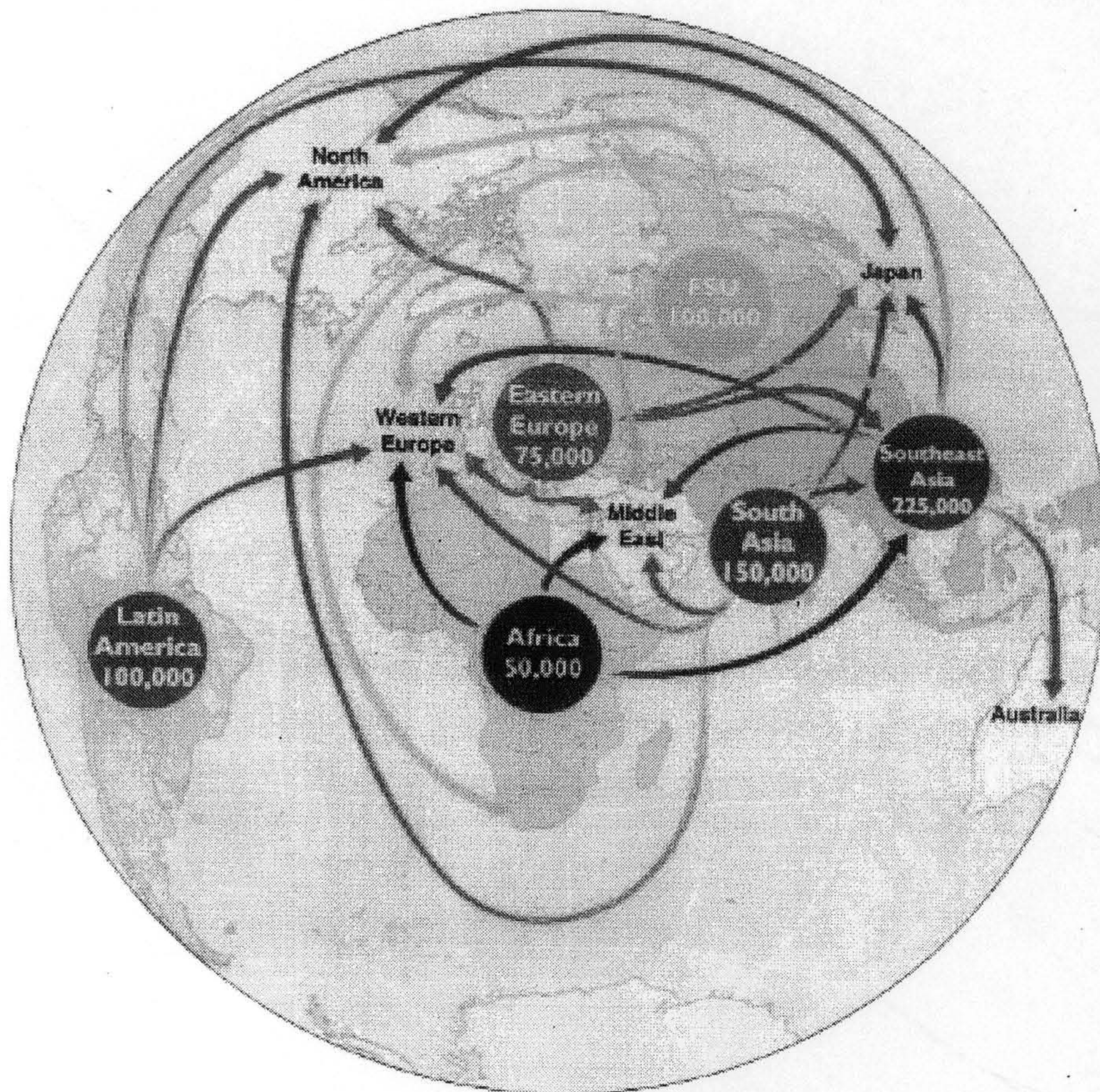
²⁷³ See rather Hughes 2000; Ruggerio 1997; Taylor and Jamieson 1999.

²⁷⁴ Hughes (2000: 627) argues that it is difficult to know exactly how many women have been trafficked because the trade is secretive, women are silenced, the traffickers are dangerous and not many agencies are counting.

deception or coercion or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person.

Figure 6.1

Global Trafficking in Women and Children:
Major Source Regions and Destinations (U)



Source: US State Department, Bureau on Population, Migration and Refugees.

A broader definition is given by Hughes (2000: 627-628) who acknowledges that many women initially consent voluntarily to work abroad in the sex industry, but without the knowledge that they face physical abuse, exploitation and enslavement. Her definition includes trafficking, which 'may be the result of force, coercion, manipulation, deception, abuse of authority, initial consent, family pressure, past and present community violence, economic deprivation or other condition of inequality for women.'

Varying definitions of trafficking highlight different aspects of the problem. The rise of voluntary illegal migration to the EU and the US creates problems of border control more generally. The desire of persons to migrate illegally due to economic conditions means a criminal market has emerged for smuggling migrants. The line between smuggling and trafficking is blurred in the trade in women. Trafficking is an immigration problem because many women seeking work (both legal and illegal) in the West agree to be voluntarily smuggled across borders, only to find themselves trapped into trafficking schemes. NGOs, the IOM and academics question the voluntary nature of involvement in trafficking networks, because as Hughes (2000:636) argues 'Even women who voluntarily travel to engage in prostitution do not anticipate the level of manipulation, deception, and coercion to which they will be subjected.' The international definition of trafficking put forward by the UN Protocol on Trafficking acknowledges that trafficking in persons occurs even when payments are given or received to achieve the consent of a person having control over another person.²⁷⁵ Thus, fraud and deception as well as coercion and abduction constitute trafficking.

²⁷⁵ The full definition of trafficking used by the UN Protocol on Trafficking (2000) includes, 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of

The point is that trafficking is a multifaceted problem for states. First, it is linked to smuggling which means that it is a border control problem, particularly for the EU where the numbers of women trafficked from Eastern Europe to Western Europe are estimated to be around 500,000.²⁷⁶ The involuntary movement of persons aggregates the problem for states because trafficking is a violation of international law and international norms banning slavery. Trafficking in women is both a transnational crime and a human rights violation. In short, EU and US interest in combating trafficking in women is linked to all three dimensions of the problem: It is an immigration/migration issue, a law enforcement violation and an infringement of human rights. Still, to understand what drove the EU and the US to co-operate in combating trafficking in women, we have to first get to the root of the problem and examine the factors that drive the trade in women.

A Criminal Market Built on Human Rights Violations

One way to approach the problem of trafficking in women is to analyse it as a transnational crime, which is driven by the demand for an illegal market in women (Talyor and Jamieson 1999, Hughes 2000, Schoelenhardt 1999). In market terms, the trade is driven by a demand for women sex workers in the West and a supply of impoverished women and criminal networks in the East. The direct impact of the crime is not just that it crosses borders but that it crosses EU and US borders. The demand for trafficked women exists mainly in countries with thriving sex industries,

force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.'

²⁷⁶ The number of women trafficked to the US from CEE countries is significantly lower. A CIA (see O'Neill 1999:13) report estimates that 4,000 women are trafficked from Europe to the US each year. However, the report notes that trafficking is a bigger problem from certain states, claiming, 'Some Florida law enforcement officials, for example, claim that the state is being inundated with trafficked women from Russia, Ukraine and Central Europe.'

including Germany, the Netherlands and the US.²⁷⁷ A criminal market exists for the involuntary trade in women because sociologists note that there is a demand for prostitutes that could never be supplied voluntarily (Hughes 2000).

Three factors facilitate the criminal market for the trafficking trade. First, globalisation and political instability drive the supply side of the market. Globalisation increases the mobility of persons, which facilitates trade, and free capital allows criminal money to be moved easily throughout the world. In short, 'Privatisation and liberalisation of markets have created wider and more open marketplaces throughout the world' (Hughes 2000 630-631). New technology, specifically the internet, has increased communication and resulted in rapid and unregulated movement of human capital (Stoecker 1998; 1999).

The globalisation of capital has made it difficult for individual states to combat the problem of trafficking, but illegal markets have emerged within countries in part because there are not appropriate laws in place to prevent it (Schloehardt 1999). Newly developing democracies lack appropriate laws to protect trafficking victims and prosecute traffickers and demand countries have only a recent history of criminalising the traffickers rather than the trafficked.²⁷⁸

The free movement of capital and people and increased communication through advanced technology facilitates the movement of people and funds, which in turn propels the trade in trafficking in women. Trafficking is an attractive business because the profits from trafficking in human beings rivals that of drug trafficking but

²⁷⁷ Hughes (2000: 646) notes that Germany and the Netherlands are the most popular destinations for trafficked women in Europe because prostitution is legal. O'Neill (1999:13) reports that the sex industry is among the primary sources of trafficked women in the US.

²⁷⁸ An OSCE (1999) report states, 'In the vast majority of destination countries, trafficking is approached primarily as an illegal migration or prostitution problem. Consequently, most law enforcement strategies target the people who are trafficked, not the criminal networks that traffic them. Assuming the State intervenes at all, it is the victims who are arrested and deported while the traffickers continue to operate with near-impunity. Few victims - in the destination country or upon return to their country of origin - receive any assistance, protection, or legal remedy against their traffickers.'

the penalties are minimal. For example while the sentence for drug trafficking in the UK is up to 20 years imprisonment, the sentence for trafficking in humans usually carries a two to three year sentence.²⁷⁹ In the US the statutory maximum for involuntary servitude is 10 years, as opposed to a life sentence for trafficking 10 grams of LSD (O'Neill 1999:43). The traders in this illegal market consist of amateur traffickers, small groups of criminals as well as international trafficking networks (see Scholenhardt 1999). However, it is widely acknowledged that organised crime largely fulfils the role of supplier (Taylor and Jamieson 1999).

Organised criminal networks are able to exploit the trade in trafficked women because countries with developing economies and emerging democracies fill the supply side of the market. Traditionally Asian countries were the lead suppliers in the trafficking trade, but the post Cold War transitions to democracy and private market economies in CEE, the NIS and Russia created new markets for transnational crime in general and illegal trafficking in women specifically. Difficult economic circumstances fuelled illegal activity and forced people to seek work abroad. The illegal trade in women increased note Martin and Miller (2000), because women bore the brunt of economic restructuring. In Ukraine, for example, IOM notes that women represent up to 90% of the newly unemployed.²⁸⁰

Trafficking in women is a law enforcement problem, because it involves the illegal transport of people across borders as well as kidnapping, forced labour and slavery like practices²⁸¹. However, it is a difficult problem to confront on a criminal level, because international law enforcement co-operation is superficial and

²⁷⁹ It should be noted that there is no offence of trafficking under UK law. Rather, most traffickers get prosecuted under prostitution laws (living off the earnings of a prostitute) and the average sentence is 3 years (max. possible is 7) (Email Interview with UK NGO 61). See also 'Captive Market' Kate Holt, *The Sunday Times Magazine* 18 February 2001.

²⁸⁰ IOM (2000) Ukraine Project Report.

²⁸¹ See Miko (2000)

international human rights laws are rarely enforceable (see below). Little to no action was taken against traffickers prior to the 1990s despite the United Nations' (UN) 1948 Universal Declaration of Human Rights, which claims 'No one shall be held in slavery or servitude'. It is the classification of trafficking in women as a human rights violation, however, which helped gain momentum for international anti-trafficking movements. The international, national and indeed transatlantic responses to trafficking prior to 2000 addressed the problem through education and aid rather than criminal prosecution. It was the combined interest in trafficking in women on a migration, human rights and law enforcement platform that made bilateral, plurilateral and multilateral action possible.

National and International Responses to the Problem of Trafficking

International interest in targeting trafficking in women is demonstrated by its prominence on the agenda of the (UN) and the Organisation for Security and Co-operation in Europe (OSCE).²⁸² Trafficking is addressed in the Stability Pact for South Eastern Europe (1999). The 2000 UN Convention Against Organised Transnational Crime includes a Protocol on Trafficking in Women, which is designed to help governments share information about organised crime and increase their ability to prosecute traffickers.²⁸³ International organisations have encouraged national governments actively to target trafficking in women through human rights legislation, but the UN Protocol represents the first international step towards criminalising trafficking in women.

²⁸² The OSCE's commitment to combat trafficking is seen in the Moscow Declaration (1991), the Stockholm Declaration (1997), the Human Dimensions Seminars (1997-1999), the 2000 Action Plan and the creation of an Advisor on Trafficking in the Office of Democratic Institutions and Human Rights (ODIHR).

²⁸³ The stated purpose of the UN Protocol on Trafficking in Women is to i) prevent and combat trafficking in persons, paying particular attention to women and children ii) to protect and assist victims

A number of factors prompted US domestic action on trafficking in women. McBride Stetson (2000) believes that trafficking in women came onto the US public agenda from the top down. She argues that the international human rights angle on trafficking in women prompted the Executive Branch's involvement, which eventually led to Congressional action. Specifically, the characterisation of trafficking as a women's rights issue as well as a human rights issue helped push it onto the US policy agenda. Both Secretary of State Madeline Albright and First Lady Hilary Clinton repeatedly stressed their commitments to women's issues. The precedence for US involvement on trafficking in women was the creation, of an Interagency Council on Women in 1995 by President Clinton. The Interagency Council worked with the State Department in creating an anti-trafficking 'czarina'²⁸⁴, and in establishing trafficking in women representatives in the Justice Department, Health and Human Services and the US Agency for International Development. McBride Stetson (2000:18) argues that the Interagency Council, 'which is staffed primarily with femmocrats'²⁸⁵, is the linkage between the UN's Commission on the Status of Women ... on the one hand and the federal policy makers in Congress on the other.'

Interest in targeting trafficking in women also came from the bottom up through US NGOs. Women's groups and human rights' groups actively encouraged the US Administration and the US Congress to act on trafficking. The US Administration held briefings with members of the NGO community to discuss trafficking and many NGOs worked with Republican Representative Chris Smith, who sponsored the US Trafficking Victims Protection Act 2000, which passed the Senate in November 2000. Finally, NGOs leaked information to the media in order to draw

of such trafficking, with full respect for their human rights iii) to promote co-operation among State Parties in order to meet these objectives.

²⁸⁴ The formal title for the position is the Deputy Director and Senior Advisor on Trafficking in the US State Department.

public attention to the problem. The New York Times ran an article in January 1998 based on a report by the Israeli Women's Network and a video documentation of trafficking compiled by the Global Survival Network.²⁸⁶

The Clinton Administration's commitment to trafficking in women was secured in March 1998 when the President issued the policy document 'Steps to Combat Violence Against Women and Trafficking in Women and Girls'. The document identified trafficking as a 'fundamental human rights violation' and outlined a three-tiered approach to combat trafficking in women and children. The Clinton Administration pledged to work towards *preventing* trafficking through the education of women and local authorities and job skills training, *protecting* victims through funding regional assistance of victims and finally *prosecuting* the traffickers. The US Administration worked abroad with source, transit and destination countries to prevent trafficking and protect victims. At home Congress's Trafficking Against Women Act of 2000 incorporated the three *p*'s into domestic legislation, with additional provisions for strengthening the punishment for traffickers and sanctions against foreign governments failing to meeting minimum standards in combating trafficking.

Two less normative factors dictated an EU level response to the problem of trafficking in women. First, the new supply source of trafficked women affected the EU much more directly than the US. While the US was dealing with roughly 45,000-50,000 trafficked women a year, the EU had to contend with an estimated 500,000. The geographical location of this new supply meant the problem was right at the doorstep of the EU and compounded the challenge of maintaining external borders. One US official argues, 'For the EU trafficking is definitely an immigration issue...

²⁸⁵ McBride uses the word 'femmocrats' to highlight the strong presence of women's rights supporters.

²⁸⁶ Telephone Interview, US NGO, March 2001(56).

you cannot separate it from the political debate on asylum and harmonisation.²⁸⁷ The influx of trafficked women added to the increased supply of illegal immigrants which were being smuggled into the EU.²⁸⁸

Table 6.1 A Chronology of the Trafficking in Women Policy

- **Joint Action Plan 1995** committed the EU and the US to co-operate in the fight against trafficking in women and illegal immigrants.
- **Ministerial Meeting April 1997 in the Hague** Ministers agreed to begin work on trafficking in women information campaigns and put trafficking on the EU-US Summit agenda.
- **EU-US Summit May 1997** EU and US Summit leaders agreed to pursue joint co-operation on trafficking in women.
- **November 1997** The transatlantic information campaigns are launched in Poland and the Ukraine.
- **EU-US Summit December 1997** The SLG report announced that the information campaigns had been launched in Poland and the Ukraine, and a trafficking in women statement is released as a summit deliverable.
- **April- June 1998** The first information campaigns were implemented.
- **The SLG Report May 1998** stated that US law enforcement officials and the EU Multidisciplinary Group on Organised Crime should evaluate whether to expand the initiative to discourage trafficking.
- **EU-US Summit December 1998** EU and US leaders formally agreed to extend information campaigns to Bulgaria and Hungary.
- **Transatlantic Conference on Trafficking in Women July 1998** A transatlantic conference is held in Lviv, Ukraine was held to evaluate the success of the Polish and Hungarian information campaigns.
- **SLG June 1999** reported that law enforcement co-operation continued to combat trafficking in women and children despite delays in planning the Bulgarian and Hungarian campaigns.
- **October 1999** planning stage of Bulgarian and Hungarian campaigns began.
- **January-June 2000** implementation of Bulgarian and Hungarian campaigns began.
- **November 2000** US Trafficking in Women Act was passed.
- **December 2000** The UN Protocol on Trafficking in Women was signed in Palermo.

²⁸⁷ Telephone Interview, US State Department Official, February 2001 (54).

²⁸⁸ Den Boer and Wallace (2000:517) note that 'people smuggling' became a major preoccupation of EU law enforcement agencies in the late 1990s. They argue, 'Deepening resistance to further immigration from within the EU, and the consequence tightening of border controls and of conditions for entry, created an illegal market to supply this pent-up demand, smuggling desperate people across the EU's eastern borders.'

The precedence for EU immigration policy in general and trafficking in women policy specifically was set by the creation of the Justice and Home Affairs (JHA) pillar in the Maastricht Treaty. The Treaty of Amsterdam introduced a new institutional framework for dealing with organised crime at the EU level and moved migration policy for the first time into the Commission's competency. Although the Commission had issued communications on trafficking to the Council and hosted a conference on trafficking in Vienna in 1996, increased competence on JHA allowed the Commission to take more direct action. Two vehicles were used. The DAPHNE project supports non-governmental and voluntary organisations active in the fight against violence towards women and children²⁸⁹. The STOP program (1996-2000) coordinates initiatives to fight against trafficking in human beings.²⁹⁰ European level policy in this area has been directly targeted at the applicant states, which are the source of trafficked women.²⁹¹ Finally, the Council was due to sign a Directive on Trafficking in 2001, which would harmonise Member States laws on trafficking.

The Intergovernmental Decision to Target Trafficking

We have established that trafficking is of interest to states because it is linked to migration, human rights and law enforcement policies and that the EU and the US

²⁸⁹ The programme sets up and reinforces European networks and the implementation of pilot projects, the results of which can be disseminated and shared throughout the EU. Activities focus on two principal areas: exchange of information and co-operation networks on an EU level and the raising of public awareness and exchange for best practices (DG JHA, Fight Against Organised Crime, available at <http://www.europa>).

²⁹⁰ The STOP programme supports training and information measures, studies and exchanges for those responsible for the fight against such forms of exploitation, including judges, public prosecutors, police, civil servants or the public services responsible for prevention, victim support or fighting these phenomena.

²⁹¹ DG Justice and Home Affairs web page states, 'In the future, the Commission would like to see candidate countries take a more pro-active attitude towards prostitution, giving women victims some support and helping to establish non-governmental organisations which can help these women' *Statement on organised crime and prostitution*.

have demonstrated their interest in fighting trafficking at a regional, national and international level. The US has also pursued bilateral co-operation on trafficking in women with individual Member States including Italy and Finland. EU-US co-operation was secured at the transatlantic level through the NTA framework. The NTA Joint Action Plan identifies trafficking in women as a specific global challenge in the context of immigration and asylum in 1995. In 1997, post Amsterdam, EU and US ministers met in April and decided that trafficking in women was an area where the EU and the US could co-ordinate efforts. Both partners were already pursuing individual anti-trafficking programmes and did not differ ideologically on the issue of trafficking. Thus, it was identified as an area where resources could be pooled and efforts organised to combat the problem. The political decision to go ahead with a joint trafficking project came from the intergovernmental level, as was evidenced by its prominence on the agenda of the EU-US Summit in May 1997 in the Hague. It was there that transatlantic leaders ‘made’ the decision to establish a transatlantic policy on trafficking in women.

2) Setting and Shaping Transatlantic Policy on Trafficking in Women

The intergovernmental decision to establish a transatlantic policy response to trafficking in women was addressed in the previous section in order to determine *why* the EU and the US decided to co-operate in this case. Transgovernmental level decisions are examined here in order to determine *how* the EU and the US decided to co-operate. The focus is on the administrative decisions that ‘set’ the transatlantic anti-trafficking policy. Although the political decision to co-operate on trafficking in women was taken at the intergovernmental level, transgovernmental actors established

the details of the transatlantic projects. Thus, it is argued here that the EU-US policy response to trafficking in women demonstrates the larger decentralisation of decision making at the transatlantic level.

While the political decision to co-operate on trafficking came from the top, the details that established the information campaigns were derived from the bottom. The issue of trafficking in women rose the ranks of the dialogue structure, from the NTA institutions, to the ministerial meetings and finally the EU-US Summit. Co-ordination of EU and US efforts to co-operate were handled through NTA institutions such as the NTA Task Force and the Senior Level Group. The majority of contact, however, was made on an ad hoc and informal basis. In reality, it was a small group of people who co-facilitated EU-US co-operation in this area.²⁹² Key contact persons in the US Mission, DG Justice and Home Affairs and DG External Relations established and maintained the dialogue on trafficking. The concept of an information campaign and the details of the transatlantic project were derived at the working group level. Subsequent decisions to pursue trafficking in Bulgaria, Hungary and Russia were taken at sub-summit level and were the result of the transgovernmental dialogue. For example, the SLG report states that close co-operation between US law enforcement and the EU Multidisciplinary Group on Organised Crime preceded the decision to expand the transatlantic anti-trafficking initiative (SLG 1998a).

EU and US foreign ministers effectively 'set' the policy on trafficking in women, but their decisions was directly based on the input of lower level transgovernmental actors who were charged with finding a way that the EU and the US could work together. NTA institutions were key in providing a focus for transatlantic efforts to combat trafficking in women. The SLG tracked the progress of

²⁹² Interview with US State Department officials (54, 33) and EU Commission officials (31, 26).

the information campaigns and was thus able first, to keep momentum going for the process by highlighting ongoing work in Task Force and SLG meetings and second, to serve as a problem solving forum. One US official notes that when obstacles arose, the NTA Task Force and the SLG 'kicked in', and that the NTA process helped accelerate decisions on for example funding problems²⁹³. One EU official notes that it was the NTA Task Force that provided political guidance to the co-ordinators of the process.²⁹⁴ Policy 'shaping' decisions were affected by domestic structures, bureaucratic processes and the political will of both the EU and the US as major 'demand' states along with the co-operation of the supply states where the information campaigns were run. The project thus required that officials accurately gauge the capacity for co-operation between the EU and the US on trafficking in women.

Three key transgovernmental decisions are addressed here; first the decision on where to target transatlantic efforts, second, the details of the transatlantic policies and third, who would implement the transatlantic campaign.

Where to co-operate?

The first transgovernmental policy decision was the choice concerning where to co-operate. Why were Ukraine, Poland, Hungary, Bulgaria and Russia chosen as candidates for transatlantic information campaigns? The transatlantic information campaigns were run not only where they were needed but also where they were most likely to work. The criteria for the transatlantic campaigns included countries where an organisation was established to implement the campaigns and where local government officials were willing to co-operate with the project.²⁹⁵ First, the co-operation of local

²⁹³ Telephone with US Mission official Brussels, February 2001 (54).

²⁹⁴ Interview with EU Commission Official, DG External Relations, May 2000 (26).

²⁹⁵ Interview, IOM official Budapest, April 2000 (25).

Telephone interview with US Mission Official Brussels, February 2001 (54).

government is needed because in addition to educating women on the risks of trafficking networks, the EU-US project is designed to train local authorities to spot the dangers of trafficking. Second, a non-governmental body is required to run the projects, because it is not feasible to have EU or US authorities implement the campaigns within the supply states. Each country chosen for the transatlantic campaigns was either a source or transit country for trafficking networks, a country where local government authorities showed commitment to address the problem and where non-governmental infrastructure existed to implement the campaigns.

The campaigns target major supply or transit states responsible for the movement of women from Eastern to Western Europe. Ukraine was a candidate country for the information campaigns because of its role as both a transit and a source country. Similarly Russia was targeted because Russia, along with Ukraine are two of the poorest countries in Europe and the largest suppliers of the 'Natasha trade'.²⁹⁶ Trafficking networks to move women west, from Russia use Ukraine, and Russian and Ukrainian women are reported as the 'most popular and valuable women' in the sex trade (Hughes 2000). Bulgaria is another source country, where an estimated 10,000 a year are trafficked to Northern and Southern Europe.²⁹⁷ Poland is both a demand and a transit country. The US Embassy reports that 70 percent of Ukrainian women working in the sex industry in Poland are there under duress and are controlled by the Agencija Tovazhyshka prostitution ring (Hughes 2000). Women from the NIS are also moved through Poland and Hungary into the EU.

As noted above, government co-operation is essential in this type of EU-US project because implementation takes places within the territory of sovereign states.

²⁹⁶ Hughes (2000) notes that trafficking of Ukrainian and Russian women is so widespread that these women have been labelled as 'Natashas'.

In short, government co-operation is necessary because host states can be sensitive about law enforcement co-operation and foreign government funding.²⁹⁸ One US official notes that before the campaigns were run host states were sensitive to outside queries about the problem of trafficking.²⁹⁹ Once EU and US intervention in host states was established, there were also concerns among some CEE and Russian officials that trafficking was taking up more time and attention than other areas of law enforcement.³⁰⁰ Finally, there were concerns that the burden of targeting trafficking was misplaced. Source and transit countries have pointed the finger of blame back at the West and argued first, 'You deal with the demand!'³⁰¹

The countries chosen for the first campaign were both states that expressed interest in addressing the problem of trafficking. IOM (1998) noted that the Ukrainian and Polish governments had shown a commitment to confronting migration problems and working co-operatively to protect potential victims. The Polish and Hungarian government's willingness to co-operate with the EU and the US on trafficking can be explained by their positions in the first wave of EU accession. Both governments had incentive to show the EU that it could address issues, which would compound the debate on border movement. The EU showed preference for working with countries, which were in the fast track for EU accession. The US chose to work with Bulgaria, which had a less established working relationship with the Commission than

²⁹⁷ IOM press release notes that the trafficking routes from Bulgaria are established. Women are brought through the former Yugoslavia, Romania, the Czech Republic, Poland, and Hungary to Austria, Germany and the Netherlands.

²⁹⁸ Point argued by Commission official, DG External Relations, May 2000 (26).

²⁹⁹ The interviewee argued that until recently you could not mention the 't' (trafficking) word in some of these countries. Telephone, US Mission Official, Brussels, February 2001 (54).

³⁰⁰ Telephone Interview, US Mission official, February 2001 (54). Commission official, DG External Relations, Brussels, May 2000 (26).

³⁰¹ Interview, US Mission Official, February 2001 (54).

Hungary.³⁰² The EU instigated co-operation with Russia, under the EU-Russia Partnership³⁰³, proved to be more difficult. The low level of commitment to the problem, sensitivity to outside involvement and the bureaucratic structure of the Russian government held up the negotiations. EU membership is less of a 'carrot' to lure Russian co-operation. However, its willingness to accept the information campaign may be tied to new US legislation that warrants sanctions against countries not adequately addressing the trafficking problem.³⁰⁴

Finally, the existence of civil society, particularly a strong NGO presence or field level support for international organisations, was a prerequisite for running the anti-trafficking information campaigns. Each country where the EU and the US have co-operated had a non-governmental infrastructure capable of implementing the campaign at a local level and the support of the IOM. The IOM was able to draw on NGO subcontractors in Ukraine where more research and advocacy has been done on trafficking in women and advocacy by non-governmental organisations than in any other source country (Hughes 2000). The existence of the well-established anti-trafficking NGO La Strada was a factor in the EU decision to use Poland as a host state. Policy proposals submitted by IOM field offices in Bulgaria and Hungary shaped the transatlantic decisions to co-operate in those countries. Finally, although Russia has a less established civil society than other host states, Russian based advocacy groups such as the Mira Med Institute and the Moscow Center for International Defence have expressed an interest in working with local authorities to combat the problem of trafficking.

³⁰² US officials pointed out that the EU had expressed an interest in dealing directly with countries in the first wave of enlargement. Interview US Mission Official, Brussels, January 2001 (26); US State Department Official, Washington D.C., August, 2000 (29).

³⁰³ It should be noted that while the EU's Partnership with Russia is designed to cross over into more concrete joint action, the US involvement, at least on a transatlantic level, is restricted to the information campaign.

Table 6.2

Parallel Transatlantic Information Campaigns	Campaign I	Implementation Partner	Campaign II	Implementation Partner
EU sponsored	Poland	La Strada	Hungary	IOM
US sponsored	Ukraine	IOM	Bulgaria	IOM

How to co-ordinate co-operation?

Transgovernmental actors played a crucial role in gauging what type of co-operation was possible and how the EU and US could jointly address the problem of trafficking. First, EU-US co-operation on trafficking in women materialised in the form of an information campaign. The idea was to target trafficking in women on the supply side by raising awareness of potential victims and local authorities. The aim of the information campaign was to train authorities and to build on the NGO structure in order to gain information about trafficking trends, recruitment methods and potential deterrents to the trafficking trap.³⁰⁵ The concept behind the trafficking campaigns was prevention rather than law enforcement co-operation, the emphasis being on research and strategy definition in the first phase and information dissemination in the second.

The second decision to consider is how the EU and the US chose to co-operate through the information campaigns. To claim that the EU and the US successfully pursued 'joint action' on trafficking in women is somewhat deceptive. It is more realistic to describe the campaigns as 'separate but parallel' projects. EU and US officials acted together to co-ordinate efforts, but the administration of each campaign was carried out separately. According to EU and US officials, different bureaucratic structures and funding arrangements dictated the way the EU and the US could jointly manage the problem. Logistically, it was easier to support different projects, but joint

³⁰⁴ Paragraphs based on Interviews with EU Commission Official, External Relations, Brussels, May 2000, (26) and US Mission Official, Brussels, February 2001, (54).

³⁰⁵ Interview, EU Commission Official, Brussels, May 2000 (26)

co-ordination was desirable to avoid overlap. Parallel campaigns were chosen so that the comparisons could be made between the two.³⁰⁶

Joint co-operation in the transatlantic anti-trafficking campaigns did take the form of co-funding. The EU and US agreed to match funds (approximately), co-ordinate timing and effectively employ implementation partners. The US State Department's Bureau of Population and Migration put forward \$382,000 in Ukraine and \$400,000 for the Bulgarian campaign. The Commission matched the funds with 250,000 euros for the Polish project and 268,000 euros for Hungary.³⁰⁷ The differences in internal funding mechanisms made co-ordinating payments difficult. Both EU and US officials agree that generally it is much easier for the US to deliver funds than it is for the EU. On the US side, the State Department was able to allocate funding for this project out of the Bureau of Population Refugees and Migration's budget. On the EU side, the Commission ran into problems with the original funding for Poland. They tried to fund the campaign using PHARE money set aside for human rights, but were subject to a number of conditions set out by the Council of Ministers. One Commission official notes, 'There were all types of requirements by Member States which delayed the project for half a year'.³⁰⁸ While US officials were keen in the first case to distribute the money before the end of the fiscal year, the Commission was unable to match the funds in time and implementation of the project was delayed. To avoid later delays the subsequent project was funded through a Commission

³⁰⁶ Paragraph based on interviews with a high-ranking DG External Relations Official, Brussels, September 1999 (9); EU External Relations Official, Brussels, May 2000 (26); US State Department Official, Washington D.C.; August 2000 (29); EU Commission official, Washington D.C October 2000 (31); US State Department Official, Washington D.C October 2000 (33); US Mission Official, Brussels 1999 (7); US Mission Official, Brussels, February 2001 (54).

³⁰⁷ Figures are approximate. Taken from interviews, US Population Refugees and Migration website and EU JHA website.

³⁰⁸ Interview, Commission official, Brussels, May 2000 (26).

budget, a line that is approved by the European Parliament rather than the Council, and thus subject to fewer restrictions.³⁰⁹

Who to co-operate with?

Funding issues also dictated why the EU and the US decided to use different implementation partners in the first information campaigns. The EU chose to work with the non-governmental organisation La Strada in Poland because the Commission had a history and practice of working with NGOs, and because the EU funding structure made it easier to fund NGO projects³¹⁰. The US chose to work with the IOM in the Ukraine because, as we saw with the case of the TAED, US government policy typically does not involve funding NGOs directly. The International Organisation on Migration was originally chosen because it had experience in Ukraine and a good working relationship with local officials and NGOs. The second campaigns ran with the same implementation partner, because it was decided after the first campaign that IOM, with its larger size and support structure, had done a more comprehensive job. IOM also had a better working relationship with the government, particularly in Bulgaria where La Strada has not had a habit of working with government officials. Finally, it was agreed that the projects would be more comparable if the same partner implemented them.³¹¹

In summary, the EU-US information campaigns against trafficking in women are an example of policies which were officially 'set' by high level transgovernmental actors (ministers) but heavily shaped by lower level transgovernmental officials (US

³⁰⁹ Interviews with US Mission Official, Brussels, February 2001 (54); US State Department Official; August 2000, Washington DC, (29); US Mission Official, Brussels, May 2000 (26).

³¹⁰ NGOs must go through a formal application process and compete for funding at the EU level, but La Strada was already being funded by the Commission.

³¹¹ Interview, US Mission Official, Brussels February 2001 (54). Interview, US NGO, Washington D.C, March 2001 (56).

Mission, State Department and Commission officials) transatlantic level. It was these transgovernmental actors who made crucial decisions on where, how and with whom the EU and the US would co-operate. The small number of staff dealing with trafficking, however, meant that government officials relied heavily on information from non-governmental sources. Thus, it is important also to examine the role of non-governmental organisations and international organisations in ‘shaping’ policy on transatlantic trafficking in women.

3) Shaping Transatlantic Policy on Trafficking in Women

This section focuses on the role of transnational actors in shaping transatlantic policy on trafficking in women. It tests this case study against the hypothesis that a decentralisation of decision making- in the form of decision shaping- has taken place in the transatlantic policy process. Is there evidence that transnational actors played a shaping role in the transatlantic decision making forum on trafficking in women? It is argued that while private actors clearly have a role in shaping the global governance response to trafficking, there is no formal role for transnational actors in transatlantic governance. This is the case because the role of private actors is not institutionalised under the global challenges chapter of the NTA.

Transnational Shaping

So far the decision making process for trafficking in women policy draws many parallels with the Mutual Recognition Agreements (MRAs). In both cases the political decision to pursue the policy came from the intergovernmental level, and different levels of transgovernmental actors were active in setting and shaping the mutual recognition agreements and the anti-trafficking information campaigns. However, the

case of trafficking in women, set against the MRAs, highlights a divide in economic and political policy making over the use of transnational institutions.

First, NGOs clearly participate in decision shaping at the national and international levels. On the US side, there is an active dialogue between government and human rights, women's rights and religious NGOs on trafficking in women. In particular the Global Survival Network, Human Rights Watch, the International League for Human Rights and the Coalition Against Trafficking in women have worked closely with both the US Administration and the US Congress.³¹² Feminist and human rights NGOs worked with Republican Chris Smith of New Jersey, who sponsored the anti-trafficking bill in Congress, and the US Administration held briefings with members of the NGO community to discuss trafficking.³¹³ The Under-Secretary of State for Global Affairs, Frank Loy recognised the important role played by NGOs in a testimony to Congress in 1998. His department's web page provides links to roughly 10 NGOs, including Anti-Slavery International, the Traditional Values Coalition and the International Human Rights Law Group.³¹⁴

The Commission's original communication on trafficking in 1996 also noted that combating trafficking would require the involvement of NGO's. That same year the Commission invited EU and US based NGOs to the anti-trafficking conference it hosted in Vienna. Many European NGOs including La Strada (in Poland, the Czech Republic, Bulgaria and Ukraine), Phoenix in Germany, the Foundation Against Trafficking (STV) in the Netherlands and Payoke in Belgium have established a habit

³¹²The Coalition Against Trafficking in Women formed including a number of women's rights groups including Equality Now, Planned Parenthood, International Women's Health Coalition, National Organization for Women; Women's Environment and Development Organisation; Catholics for a free Choice, Sisterhood is Global Institute, National Black Women's Health Project, Feminist Majority; Center for Women Policy Studies See McBride Stetson (2000: 6).

³¹³ In a meeting held on February 22 1999, the President's Interagency Council on Women held a briefing with over 120 representatives from the NGO community to discuss among other things the Council's initiatives to combat trafficking in women and girls. See US State Department, Highlights from NGO Public Briefing Meeting, February 22, 1999.

of co-operation with the Commission. Under the Daphne project the Commission funded 49 different NGOs projects.³¹⁵

At the international level, transnational networks work in both OSCE and UN forums. NGOs actively participated in the OSCE Human Dimensions Seminars and the Vital Voice Conference in 1997. The Human Rights Caucus was created of roughly 10 European, American and Asian NGOs to shape the negotiations of the UN Protocol on Trafficking. NGOs also keep each other informed on individual projects. One US NGO representative notes that email contact across the Atlantic is constant.³¹⁶

In contrast to the TABD, TACD and TAED, which operate as private 'institutions' in the economic chapter of the NTA, there is no formal role for human rights, women's, or religious NGOs at the transatlantic level. While NGOs may broadly shape the international and domestic decision on trafficking, there is no evidence of an institutionalisation of political non-governmental actors within the NTA. In short there is no Transatlantic Trafficking Dialogue. Despite the lack of a transatlantic specific NGO network, there is evidence that non-governmental actors shape the transatlantic anti-trafficking campaign both from the top down and the bottom up. Networks of NGOs did participate in EU, US and international decision making forums, and the two implementation partners were directly responsible for shaping the transatlantic decisions. The main non-EU US policy 'shaper' however was not an NGO, but an international organisation.

The IOM influenced the transatlantic decisions from the top down. It helped influence both where and with whom the EU and the US would co-operate. The IOM shaped the decision on who to co-operate with by submitting proposals for potential

³¹⁴ See www.usinfo.state.gov/topical/global/traffic

³¹⁵ It should be noted that there was a large response to the Daphne project, 428 proposals were received.

³¹⁶ Interview, US NGO, Washington DC, March 2001 (56).

information campaigns across CEE and the NIS. The location of field offices capable of implementing the campaign helped shape the decision on where to co-operate. The IOM feedback on the first campaign also influenced the transatlantic decision to use IOM in both Bulgaria and Hungary. In the case of Poland, shaping came from the bottom up. It was the NGO La Strada whose proposal was accepted by the Commission. Other non-governmental organisations were also important because the IOM subcontracted work out to private actors in Bulgaria, Hungary and Ukraine. For example IOM relied on Winrock International to facilitate interaction among women's NGOs and worked with La Strada in Ukraine. While this case study supports the argument that private actors have played a role in shaping the decision making process on trafficking in women, it is less supportive of claims that a privatisation of decision-making has occurred. The strong role of the IOM, rather than NGOs, as a 'manager' of the information campaigns and the limited ad hoc or sub-contracted use of private resources at the transatlantic level is indicative of the fact that transnational networks play a less formal role in shaping decisions under the political chapters of the NTA.

A Transatlantic Trafficking Dialogue?

Co-operation with NGOs at the transatlantic level is ad hoc and indirect through the IOM, but is there justification for a more institutionalised role for NGOs? Would the transatlantic global challenges framework benefit from a Transatlantic Trafficking Dialogue, similar to the TACD or TAED? What, if any, would the benefits of a formal transnational dialogue be in this sector?

The role of NGOs in preventing trafficking and protecting trafficking victims is undoubted. In addition to providing governments with information and raising awareness, NGOs can fulfil crucial services such as victim assistance. Gramegna

(1996) argues that NGOs have a 'leading role' to play in offering counselling, care and assistance to trafficked women. The OSCE notes that what limited assistance there is for victims of trafficking is provided almost exclusively by NGOs. One OSCE (1999: 14) report states that, 'In countries where legislation and institutions are weak, or where police and other authorities are complicit to trafficking, NGOs may be the only institution taking effective steps to prevent trafficking or to protect victims.'

The role of NGOs is especially important because private actors are able to fulfil functions that governments and the IOM cannot always provide. In particular NGOs are needed to establish a direct link between victims and local authorities. Johnson (1999) argues that EU Member State governments should recognise the fact that private NGO's are sometimes more able to provide necessary services because they serve as a buffer between governments and victims. The OSCE (1999: 21) report notes that victims who receive support from NGOs are more likely to co-operate with law enforcement and serve as potential witnesses. In addition NGOs provide a crucial service to governments and the IOM by providing them with valuable information about traffickers and the trafficked. For example, a video produced by the Global Survival Network first shed light on the extent of the trafficking problem in 1998. In short, one European NGO argues,

NGOs play a crucial role in the information campaigns because they are the source of first hand information, they have the direct access to victims of trafficking, but also have a broad based knowledge of local conditions-political, economic and social- needed to implement the campaigns'.³¹⁷

The importance of maintaining a link between the public and private sector is an underlying theme in the NTA. Many NGOs have expressed the need to forge a formal dialogue between non-governmental and governmental actors similar to that which

³¹⁷ Interview, European NGO, (via email) 2001 (60).

exists in the economic chapter of the NTA. Steve Warnath (1998) of the President's Council on women notes that,

in discussions with NGOs, various government officials and others we have heard that it would be helpful to convene a series of meetings in different regions of the world to facilitate government, NGOs and private sector co-operation in developing of regional strategies of prevention, protection and enforcement.

Speaking at the launch of the Hungarian information campaign, the EU Commissioner for Justice and Home Affairs Vitorino stated the campaigns should, 'stimulate the building up of important networks and partnerships between police, judicial and social authorities as well as with NGOs and other actors of civil society.' NGO representatives have argued that groups like La Strada have to be integrated into the decision making process because they know the most. Although there is some NGO involvement in implementing transatlantic policy through the IOM, some argue that there needs to be a formal role in decision making because there is distrust between NGOs and the IOM.³¹⁸

Three barriers stand in the way of institutionalising a transatlantic trafficking dialogue. First some NGOs, particularly at the local level, are unwilling to work directly with governments or with the IOM.³¹⁹ There is some scepticism in the NGO community about the use of the IOM, given its mandate as a migration organisation. In addition some organisations are sceptical of local authorities and feel they alone are better able to provide protection to victims for fear that victims, rather than traffickers, will be criminalised under domestic legal systems (OSCE 1999: 21). Second, funding a transnational dialogue could prove difficult, particularly on the US side where NGOs cannot receive over \$25,000 without undergoing a government audit. Here, it is worth

³¹⁸ This distrust stems from the fact that the IOM is a government sponsored body dedicated to organised migration. Interview, US NGO, Washington D.C, March 2001(56).

³¹⁹ Interview, US NGO, Washington D.C., March 2001 (56).

remembering the funding problems faced by the TAED in the US Senate. Finally, again as in both the TAED and TACD, there is an ideological split amongst NGOs, particularly in the US where feminist groups quibble over the language used in the UN Protocol on Trafficking. Some feminist groups disagreed with the words outlawing ‘forced prostitution’, and accused the Clinton Administration of signing a Treaty which not only gives traffickers a safety net, through consent, but which advocates prostitution.³²⁰ Despite these barriers to institutionalisation, however, building a stronger link with civil society on the political dialogue could reap the same benefits that the economic dialogue has from the TABD, the TAED and TACD. Institutionalising the political dialogue further through, for example, a Transatlantic Trafficking Dialogue would elevate the NTA’s policy of ‘building bridges’ in political sectors.

4) Implications of the Transatlantic Information Campaigns

After questioning why the EU and the US chose to co-operate on trafficking in women under the NTA, and examining how the policy was set and shaped, this section turns to an evaluation of the implications of the campaigns both in a transatlantic and an international context. It has two aims. First it seeks to explain the shortcomings of both the transatlantic and international response to trafficking in women, highlighting factors such as the sensitivity of international law enforcement co-operation and the weak JHA pillar in the EU. Second, despite these shortcomings, this section confirms the significance of the transatlantic information campaigns in light of efforts to fight global challenges at an international and transatlantic level.

³²⁰ Ten leading feminist organisations argued, ‘The position taken by the administration suggests you do not consider prostitution to be a form of sexual exploitation.’ See Wall Street Journal, ‘The Clintons’ Shrug at Sex Trafficking’ 10 January 2000. Response to ‘The Clintons Shrug at Sex Trafficking’, 12 January 2000 (<http://www.catw.org>). Interview with US NGO, Washington DC, March 2001 (56).

Low-key co-operation

The information campaigns run in parallel by the EU and the US are an example of fairly low key co-operation between states. Transatlantic co-operation against trafficking in women was limited in this case to dialogue and co-funding. Transatlantic efforts to combat trafficking were concentrated on education, or prevention, rather than protection of victims and prosecution of traffickers. EU, US, IOM and NGO officials agree that information campaigns cannot eliminate the problem of trafficking on their own, so why has such a limited approach been taken? The shortcomings of the project are rooted not only in the funding limitations discussed in section 2, rather there are larger political issues which limit the practical co-operation on trafficking in women.

The three *p*- prevention, protection and prosecution- approach to combating trafficking outlined by the Clinton Administration has been described as an optimal strategy for dealing with the problem of trafficking. However, EU–US co-operation is limited to prevention. How do the other two *p*'s figure into the EU and US efforts to combat trafficking in CEE? As noted above, NGOs have been the most effective providers of protection to victims of trafficking, and the EU and the US have both funded NGOs in the region for victim assistance. Individually the EU and the US have also introduced policies to prosecute traffickers through the US Trafficking Victims Protection Act and the Council Directive on Trafficking in Women. Together, the EU and the US have yet to co-ordinate transatlantic co-operation on protection for victims. In principle, this is a task, which might be addressed by a Transatlantic Trafficking Dialogue.

Trafficking in women is considered a law enforcement issue by the NTA, yet transatlantic co-operation does not include provisions for addressing the prosecution of traffickers. Co-operation between the EU and the US is lacking in this area in part because the institutional provisions for prosecuting traffickers at the national, EU, and international level are also weak. Transatlantic co-operation on trafficking began before the EU, the US or the UN had adequate legislative authority to prosecute traffickers. The OSCE (1999) reports that 'limited law enforcement capacity, lack of expertise at the judicial level, limited resources, and insufficient collaboration between law enforcement and other agencies results in inadequate or inefficient investigation, and adjudication of trafficking cases'. When the EU and the US pursued co-operation in the first and second information campaigns, institutional provisions for prosecution were not in place at the national, EU, international and transatlantic level. However, new law enforcement provisions have since been introduced. US legislation and the UN Protocol on Trafficking were only passed in 2000, and the EU was expected to pass the Council Directive on Trafficking in 2001. While, these new measures in no way guarantee a shift towards more in-depth law enforcement at the transatlantic level, they could well broaden the scope of EU-US collaboration on trafficking in women.

Prevention campaigns will not curb the number of trafficked women from CEE and the NIS unless the root causes of trafficking are addressed. One NGO official argues, 'you can tell 1,000 women that they will be trapped in prostitution but it is counter-productive. Many knew they would be working in sex work, but they need the money to send back home.'³²¹ Even prosecution will not deal with voluntary migration pursued out of desperation. Trafficking in women is a problem that is directly linked to the poor economic and social circumstances that accompany the transitions to

³²¹ Interview. US NGO, Washington DC, February 2001 (59).

democracy and a private market economy. These are problems that the EU and the US are dealing with both individually and together under the NTA chapter on promoting human rights and democracy and through the Stability Pact for South Eastern Europe.

Given the fact that co-operation between the EU and the US on trafficking was limited to prevention rather than protection or prosecution, the question remains, how significant was the campaign? The interviewee response to this question was mixed. The information campaigns were criticised for not getting to the root of the problem by failing to address poor economic conditions and the lack of legal economic migration,³²² and for not providing witness protection and extended stays for trafficking victims.³²³ One US official characterised the information campaigns as dominated by rhetoric rather than action.³²⁴ Another added that the EU and the US would always be capable of doing more individually than together because funding restrictions on each side meant that independent revenue would be needed eventually.³²⁵

Despite the limited nature of joint co-operation however, it is worth examining the EU-US campaigns in the context of the larger anti-trafficking movement. Policy makers argued that the decision to pursue a second and third round of the information campaigns is evidence that the projects have had worthwhile effects on the ground. One of the most significant aspects of the transatlantic information campaigns is that they increased awareness of the problem both externally and internally. First, the joint campaigns reiterated EU and US commitment to addressing the problem of trafficking.³²⁶ An IOM official in Hungary noted that EU-US backing for the IOM information campaign in Hungary raised the profile of the project. Another official

³²² Interview, US NGO, Washington DC, February 2001 (59).

³²³ Interview, US State Department Official, Washington DC, October 2000 (33).

³²⁴ Interview, High ranking US State Department Official, Washington DC, October 2000 (44).

³²⁵ Interview, US State Department Official, Washington DC, October 2000, (33)

noted that the considerable coverage of the Ukrainian project had ‘helped create a sense of urgency’ about the problem of trafficking (Escaler 1998). The EU-US sponsored information campaigns also paved the way for further action on trafficking in women in the countries where they were run. The Commissioner for Justice and Home Affairs Antonio Vitorino (1999) argued at the launch of the Hungarian campaign, that ‘previous campaigns have proved to have had considerable spin-off effects such as setting up of permanent co-ordination structures to work with the problem on a permanent basis.’³²⁷ One US official added that these campaigns helped ensure that the host countries acknowledged the problem of trafficking and lead to more ‘open will’ between the host states and the EU and US.³²⁸ Finally, the transatlantic trafficking campaigns fulfilled greater NTA commitments, by helping to forge contacts between EU and US officials dealing with trafficking and with the IOM and local NGOs. The information campaigns have allowed officials to gain experience working with NGOs and governments and build further bridges in this area. The joint EU-US initiative is seen in the international community as part of a necessary step to strengthen co-operation and co-ordination efforts among relevant governmental, intergovernmental and non-governmental institutions (IOM 1998b).

Trafficking and the NTA

The trafficking in women case sheds some light on the nature of EU-US co-operation in the area of global challenges under the NTA. To recap, the Joint Action Plan contains transatlantic commitments to combating global challenges such as organised crime, terrorism, and illegal immigration. These are policy areas where the EU and the US have a shared interest in protecting national security. The transnational nature of

³²⁶ Interview, US Mission Official, Brussels, February 2001 (54).

³²⁷ Speaking notes, launch of Hungarian information campaign November 1999.

these threats means that state responses are co-ordinated at different levels of governance. Co-operation on trafficking in women is a step towards fulfilling NTA aims to improve law enforcement capacities through joint action and the pooling of resources at a transatlantic level. The nature of law enforcement co-operation in the trafficking in women case, like co-operation on global challenges more generally, has been limited. This section seeks to explain what the trafficking case can tell us about global challenges co-operation and what the global challenges chapter can tell us about the trafficking in women case.

As noted in chapter 3, co-operation under the global challenges chapter has been less integrated than under the other chapters of the NTA. Funkt (unpublished: 35) identifies two factors which limit the capacity of the EU and the US to co-operate in fighting global challenges. First, he argues the preservation of state sovereignty and the poorly defined institutional role of EU actors in the area of Justice and Home Affairs has obstructed international law enforcement co-operation. The trafficking case is a prime example. By focusing on prevention the EU and the US chose to pursue a policy that only affected the sovereignty of the host country. Co-operation between the EU and the US is kept non-controversial as to avoid member-state or Congress intervention.

Second, the weakness of the EU's third pillar is blamed more generally for a lack of US co-operation on political issues. Justice and Home Affairs Policy was only established with the Maastricht Treaty and migration issues moved in community competence through the Treaty of Amsterdam.³²⁹ On a technical level, funding co-ordination in the trafficking case was difficult due to multi-level decision making in the EU. Co-operation on protection and prosecution was blocked by the lack of a

³²⁸ Interview, US Mission Official, Brussels, January 2001 (59).

common policy on trafficking in women in the EU before 2001.³³⁰ However, it should be noted that the US also lacked effective legislation for criminalising trafficking until 2000.

Despite the limitations of the NTA's global challenges chapter, the trafficking case is significant in the context of the development of the NTA more generally. First, the information campaigns are the only co-funded policy project under the global challenges chapter of the NTA. Co-funding represents a deeper level of integration, and a more concrete deliverable than for example joint statements. Second, the anti-trafficking campaigns represent the first operational activity within the migration dialogue established by the NTA. Despite the limited nature of the co-operation on trafficking in women, the original campaigns have served as a stepping-stone to additional projects across CEE, and Russia. The information campaigns demonstrate how dialogue between Justice & Home Affairs officials in the US Administration and the EU institutions can produce concrete results. One US official argued, 'I would like to think the success of these efforts will help pave the way for other global challenges'. That said, it was added that, 'it will be hard to replicate the kind of focus we achieved on such a specific area. Part of this has to do with the complex relationships on other global issues and the difficulty in matching specific goals.'³³¹ The trafficking in women case is an example of how the EU and the US can pool resources and organise efforts to combat global challenges, even if only on a small scale. The co-operation on combating HIV/AIDS in Africa (discussed in chapter 3) is

³²⁹ For a more comprehensive overview of the development of JHA policy see Den Boer and Wallace (2000).

³³⁰ One US official argued, 'Because JHA co-operation on the EU level is just being developed, the US still relies extensively on bilateral relations with member states, making co-operation, particularly in law enforcement, very complex.' Interview, US Mission Official, Brussels, February 2001 (54).

³³¹ Interview, US Mission official, via telephone, February 2001 (54).

a more recent example of how the EU and US officials have learned to share knowledge and co-ordinate resources to maximise their use.

Conclusion

In conclusion, the case of EU-US co-operation on trafficking in women draws many parallels with the other case studies discussed in this thesis. First, like policy making on mutual recognition agreements and banana subsidies, the trafficking case shows that the potential for co-operation is greater where bureaucratic control is exercised and Congress and member state involvement is minimal. The case analysed in this chapter is one in which the Commission and the US Administration have pursued a joint project that is both non-controversial and in the joint interest of Western states. By dealing with the supply side of trafficking through prevention campaigns in CEE, the EU-US information campaigns do not impinge on the sovereignty of either US domestic legislators or the national governments in the Member States.

If one looks at the decision making process of the transatlantic policy on trafficking in women, it is also clear that this case study shares characteristics with the mutual recognition agreements. Both policies are the result of a complex, multi-level decision making process. Intergovernmental actors under the NTA framework 'made' the political decision to pursue both policies at EU-US Summits. In both cases transgovernmental actors carried out the details of policy 'setting' and policy 'shaping'. Thus both cases support the hypothesis that transatlantic policies are the result of decentralised decision making. A major difference between the mutual recognition agreements and the transatlantic trafficking in women information campaigns, however, is the level at which private actors were involved in the decision making processes. In the case of the MRAs, the role of private actors was

institutionalised through the TABD (and to a lesser extent the TACD and TAED), however there is no formal role for transnational networks in decision shaping on the political side of the NTA dialogue. Nonetheless, private actors have exercised some functions of privatised governance, in particular by implementing the trafficking campaigns.

This chapter also established that domestic institutions and the newness of Justice and Home Affairs policy in both the EU and the NTA limit how deeply the EU and the US can co-operate on political issues. The EU-US information campaigns are criticised for addressing only one of the three *p*'s. However, it has been argued here that these campaigns are an important stepping stone both for the anti-trafficking movement and for the migration and law enforcement dialogue under the global challenges chapter of the NTA. New national, EU and international laws could increase the scope for co-operation on protecting victims and prosecuting traffickers on a transatlantic scale. The dialogue already established between Justice and Home Affairs officials in Europe and the US means that transatlantic policy on trafficking has room to grow under the NTA.

Chapter 7

Regulating the Transatlantic Marketplace: The EU-US Mutual Recognition Agreements

Ultimately the goal of the New Transatlantic Marketplace is to create a barrier free marketplace through further liberalisation of trade in goods, services and investment. A major part of that market opening strategy is to implement agreements that eliminate non-tariff barriers to trade. The Customs and Co-operation Agreement (1996); the Positive Comity Agreement (1998); the Veterinary Equivalency Agreement (1999); the Science and Technology Agreement (1997) and the Mutual Recognition Agreement (1997) are examples of agreements that aim to reduce barriers to trade in the form of regulatory, customs and competition standards.

This chapter examines the Mutual Recognition Agreements (MRAs), signed in six sectors in 1997 and under negotiation in six additional sectors, in the larger context of the transatlantic partnership. The MRAs are of economic significance because they eliminate redundant testing and certification costs affecting \$60 billion in trade.³³² Politically, the MRAs represent a spillover of integration from the European single market. The MRAs have the potential to spark further integration within the transatlantic process because they symbolize confidence building between trade officials and regulatory authorities. These agreements are important for understanding the nature of the interaction between the partners, because joint decision making in the MRA process carries wider implications for transatlantic governance.

Decision making in the MRAs is examined here as a case study of economic policy making under the NTA framework. The MRA negotiations are comparable to

³³² [\$60,000 million] A framework agreement in services is expected to affect a further \$130 billion. Source: US Mission Website: <http://www.useu.be/issues/mra0116.html>

the trafficking in women dialogue because both policies were established through intergovernmental and transgovernmental decision making. The MRAs were pursued under the NTA framework and monitored by transatlantic institutions. They represent a policy sector where transgovernmental networks of trade officials exercised considerable control over the development of the policy and where new networks of regulatory officials formed to shape policy details. The MRAs are also a test case for the policy shaping capacity of private, transnational networks, including the TABD, the TACD and the TAED in the transatlantic policy process.

The mutual recognition agreements also highlight the importance of decision making in a system of multi-level governance. The MRAs, unlike the information campaigns, were controversial among domestic actors because they affect the enforcement of domestic health and safety standards. Transatlantic institutions, which are comprised mainly of political and trade officials, had to compete with regulatory authorities in the MRA process, particularly in the US, where actors were less familiar with mutual recognition. In this case, it can be argued that the US rather than the EU suffered from a capabilities-expectations gap.

This chapter questions how the MRA process is managed and how the interest of actors is accommodated. It is argued that transatlantic institutions were key in facilitating decisions which made, set and shaped MRA policy. However, these different sets of actors were charged with finding a policy that could accommodate not only their transatlantic counterparts but domestic agents as well. In this respect the MRA case also bears resemblance to the banana dispute discussed in chapter 8.

This chapter is approached in the following way. Section 1 examines the political decision to pursue the MRAs at a transatlantic level. Section 2 discusses how domestic actors and transgovernmental actors set and shape policy and section 3

examines the role of private networks in the process, examining NGO claims that the process lacks transparency and accountability. Section 4 looks at the significance of the MRA negotiations in the larger context of the NTA.

1)- The Political Decision to Pursue Mutual Recognition

This section seeks to explain how and why intergovernmental actors made the decision to pursue the principle of mutual recognition as part of the larger transatlantic market opening strategy. The New Transatlantic Marketplace is based on facilitating trade between the EU and the US. Regulatory co-operation is crucial to improving market access as standards and certification procedures often form non-tariff barriers to trade. The purpose of mutual recognition agreements is to remove the barriers that result from additional or different regulatory requirements on either side of the Atlantic. The concept of mutual recognition denotes the acceptance of US product or service tests in the EU without duplicate testing, and vice versa. In theory this means products can be ‘approved once, accepted everywhere in the transatlantic marketplace’³³³. In practice this means that both EU and US regulatory agents must accept the standards of their counterparts. Nicolaïdis (1997a: 1) argues, ‘The recognition’ involved here is of the ‘equivalence’, compatibility’ or at least ‘acceptability’ of the counterpart’s regulatory system, the ‘mutual’ part indicates that the reallocation of authority is reciprocal and simultaneous’.

An Intergovernmental Decision

The political impetus for mutual recognition agreements came from the top. Intergovernmental actors laid out the intention to pursue an agreement on mutual

³³³ This phrase was adopted by the TABD as a slogan for the MRAs. See <http://www.tabd.com>

recognition certification and testing procedures in the New Transatlantic Agenda (1995) and the Transatlantic Economic Partnership (1998). The NTA included the aim 'to conclude an agreement on mutual recognition of conformity assessment (which includes certification and testing procedures) for certain sectors as well as the intention to identify other sectors for further negotiation. The first set of MRAs (signed in 1997) included telecommunications, medical devices, electromagnetic compatibility, electrical safety, recreational craft and pharmaceuticals and concentrated on 'conformity assessment' meaning that testing, inspection and certification of goods for either the EU or the US market can be conducted once, locally (see table 7.2). Transatlantic leaders announced their intention to expand mutual recognition to the testing and approval of services- architecture, insurance, engineering- as well as new goods- road safety, cosmetics and marine safety- in the Transatlantic Economic Partnership. The TEP outlined plans to extend mutual recognition to professional certification and in the case of marine safety to pursue a 'full equivalence' agreement or MRA +, meaning that the EU must accept marine safety equipment that has become certified under US rather than EU requirements and vice versa.

Table 7.1

A Chronology of the MRA Negotiations
(1995) NTA and NTA Action Plan outline the intention to pursue MRAs
(1996) The Senior Level Group identifies eight sectors for possible MRAs
(1997) The MRA Agreement is signed including 7 annexes.
(1998) TEP and TEP Action Plan announce the spread of MRAs to new goods sectors and services
(1999) The TEP Steering Group announces a draft framework agreement for services MRAs in architecture engineering and insurance as well as the intention to begin negotiations in marine safety.
(2000) The first MRAs- in Recreational Craft, EMC and Telecoms- move into the operational phase while sectors such as pharmaceuticals and medical devices miss deadlines for implementation.

Table 7.2 The MRA Annexes

MRA Set I- NTA (umbrella agreement signed 1997)	MRA Set II- TEP (under negotiation in 2001)
Goods <ul style="list-style-type: none"> • Telecommunications, • Medical devices • Electromagnetic compatibility • Electrical safety • Recreational craft • Pharmaceuticals. 	Goods <ul style="list-style-type: none"> • Road Safety • Cosmetics • Marine Safety (MRA +) Services <ul style="list-style-type: none"> • Architecture • Engineering • Insurance

The Motivation for Mutual Recognition

Mutual recognition is a method of trade liberalization that is both an alternate and complimentary approach to other methods of regulatory co-operation, but how did mutual recognition come onto the transatlantic policy agenda and why was it chosen over other market opening strategies, especially harmonization? Intergovernmental actors had a number of motivations for pursuing mutual recognition in addition to and

as an alternate for a strict harmonization strategy. Put plainly, the MRAs are a means of achieving increased market access at the lowest political cost.

The transatlantic Mutual Recognition Agreements are expected to affect an estimated \$170 billion of trade in goods and services.³³⁴ The logic behind the MRAs is that eliminating redundant testing reduces the cost of exporting for manufacturers. Ambassador Ralph Ives of the United States Trade Representative (USTR) argued, 'MRAs can also save regulatory agencies resources by enhancing regulators' confidence in products from MRA partners and reducing the need to test and inspect those foreign products' (Ives 1997: 32). A 1996 US government briefing reported that mutual recognition could save the Federal Drugs Administration \$1.5 million in the pharmaceutical sector alone³³⁵. Nicolaïdis (1997a: 3) argues that mutual recognition is more beneficial than harmonization in this respect because the latter does not always eliminate the cost of redundant testing procedures as governments often continue to require their own agencies to certify products.

Politically the costs of MRAs are also lower than the harmonization of domestic standards. First, mutual recognition fits into the new transatlantic framework because it is a contractual norm rather than a legal proceeding, thus it is the result of negotiations between bureaucrats rather than legislative authorities (Nicolaïdis 1997a: 1). Like the TAD, the NTA and the TEP, the Mutual Recognition Agreements bypass US domestic legislation, thus making them easier to negotiate. Second, harmonization is very difficult to achieve, because regulatory officials, particularly in the US, fiercely guard sovereignty³³⁶ (see also below). Mutual

³³⁴ The rough figures quoted from the US Mission and TABD are \$50-60 billion in trade under the first framework agreement and \$130 billion in a services framework agreement.

³³⁵ Based on the assumption that each Good Manufacturing Practices (GMP) pharmaceutical plant inspection the FDA performs costs the agency \$100,000 and 150 such inspections are performed in the EU each year (see White House 1996b).

³³⁶ Interview UK Foreign Office official, London January 2000 (21). See also Cowles 1997.

recognition results in only a limited transfer of authority because it does not require regulatory agents to change their domestic rules. Specifically, MRAs do not require the transfer of authority to a supranational body (Nicolaïdis 1997a: 4). Thus, they are less likely to attract negative attention from the US Congress or the EU Member States. Third, mutual recognition fits well into the practical transatlantic building block strategy because they are less time consuming than harmonization, which requires constant updating and amending of national regulatory systems (Nicolaïdis 1997b: 3).

Finally, support for mutual recognition stems from its external spillover from the European Single Market (Nicolaïdis 1997a, 1997b; Egan 2001a, 2001b). Although MRAs are embedded in international law in both the Technical Barriers to Trade Agreement and the General Agreement on Trade in Services, they are not the result of a WTO 'top down' strategy of liberalisation, but rather an extension of the EU's new 'Global Approach' to the internal market (see also Egan 2001a; 2001b). Nicolaïdis (1997a; 1997b) argues that EU-US mutual recognition negotiations are an example of both normative and strategic spillover. In negotiating MRAs with countries outside the Union, the EU has made mutual recognition a symbol of European integration. Strategically, the EU was able to shape the environment of transatlantic negotiations because mutual recognition is an area where EU institutions have competency. Thus, it can be argued that the US was able to draw on the EU experience and 'ride the wave' of the internal market (Nicolaïdis 1997a: 7).

Not only has mutual recognition spread from a regional to a plurilateral setting, the onset of mutual recognition within the new transatlantic marketplace has sparked a further breakdown of regulatory barriers to trade. For example, the US National Institute of Standards and Technology and the EU National Measures

Institute signed an agreement extending mutual recognition to test reports, calibration and measurement certificates provided for regulatory compliance. The Veterinary Equivalency Agreement extends the principle of mutual recognition to animal standards. Furthermore, the conclusion of the first phase of the MRAs enabled intergovernmental leaders to set the precedent for the negotiations in three new goods and three new service sectors.

Political obstacles to the MRAs

Mutual recognition in the transatlantic marketplace is not used with the same depth or scope found in the European single market. In the EU mutual recognition applies to the full equivalence of standards rather than conformity assessment certification. In other words within the EU each national government must accept the regulations of the Member States.³³⁷ On the other hand the transatlantic MRAs, barring the MRA + in marine safety, require standards agencies to test products using both EU and US standards tests. A number of factors blocked further and faster integration.

First, transatlantic institutions lack the depth to oversee and enforce the MRAs. European mutual recognition has been established legally in the EU through the Cassis de Dijon case, and is legitimately enforced by the European Court of Justice, but no overarching institution has the capacity to enforce mutual recognition.

Second, distinct political and cultural systems different negotiating styles in the EU and the US. Drawing on the logic of the single market, the EU pushed for an agreement that would cover full mutual recognition of equivalence. Contrary, the EU-US MRAs refer only to testing and certification competence (see Pelkmans 1998; Nicolaïdis 1997b; Egan 2001b) because US officials argued that in some sectors full

³³⁷ See Nicolaïdis 1997a; 1997b; Egan 2001a; 2001b

MRAs would not be compatible with domestic legal systems (Ives 1997: 28; Vogel 1998). Instead US negotiators took the position that a less ambitious, but more pragmatic strategy should be pursued, assuming the basic requirement of limiting the duplication of testing standards was fulfilled.

Third, in a situation that mimics the Seattle WTO negotiations, disagreement surfaced over where to apply mutual recognition. The US negotiators argued in favour of sector by sector negotiations on the basis that involving too many sectors would mean involving more regulatory agencies and thus increase the possibility of a higher, unreachable threshold for agreement. The EU favored a framework approach which trade officials hoped would encourage the spillover of mutual recognition to further sectors (Ives 1997; Nicolaïdis 1997a; 1997b; Egan 2001a; 2001b). The Commission, however, did insist on a ‘balanced package’. Horton (1998: 648) argues, ‘it would not agree to MRAs on telecommunications and recreational craft – viewed as advantageous to the United States- unless there also was MRA coverage of pharmaceuticals- viewed as advantageous to the EU.’

Another barrier to MRA negotiations stems from the EU and US regulatory processes, which are defined by different institutional structures and legal requirements. For example, differences exist in the right of access for private actors in either system (see below). In terms of implementation the US federal structure has been blamed for blocking more comprehensive agreements and blocking implementation, because the national level is bound legally to respect the rights of individual states, particularly in services sectors.³³⁸ Faced with this EU Commission officials have accused the US regulatory bodies of ‘not being able to deliver’.³³⁹

³³⁸ Interview, UK Foreign Office, January, London 2000 (21).

³³⁹ Interview, European Commission, DG Trade, Brussels (15).

As a result of two distinct and equally complex procedures, many actors- both private and public- play a role in setting and shaping regulatory policy. Although the impetus for agreements came from intergovernmental actors under the NTA and TEP frameworks³⁴⁰, the policy details of the MRA's were derived from negotiations among and between transgovernmental and transnational actors with consideration to the political concerns addressed in this section. Sections 2 and 3 elaborate on the role played by these actors. Each points to competing forces at work in the MRA process. One consists of transgovernmental actors fighting over their sovereign right to control the regulatory process, the other is made up of transnational actors struggling to obtain information and subsequently exert influence over international standards.³⁴¹

2) Transgovernmental Trade and Domestic Regulatory Authorities

While the political decision to pursue MRAs came from the top, the policy was set and shaped by a number of transgovernmental and domestic actors. The MRA process demonstrates the important role played by these actors, particularly in the negotiation of policy details and the process of confidence building in the transition phase of the MRAs.³⁴²

The USTR Charlene Barshefsky and former European Commissioner Leon Brittan signed the first EU-US Mutual Recognition Agreements in 1997, thus effectively setting the policy for MRAs.³⁴³ The MRA is an umbrella agreement that

³⁴⁰ One FDA official argued it was a 'political decision to have internal MRAs, there was no option on the part of technical agencies' (36).

³⁴¹ This point was made by a US Mission official in an interview conducted September 1999, Brussels.

³⁴² The MRAs undergo two phases before the agreements are operational in individual sectors. First, the negotiations follows the political decision to pursue MRAs but predates the signing of the agreement. The transition phase is a confidence building process, which follows the signing of the agreement but precedes full implementation. The operational phase of the MRAs marks the point when the agreements are in working order. The negotiation and transitional phases are the primary focus of this discussion as only three MRAs were fully operational at the time of writing.

³⁴³ EU decision making procedures require Council ratification which was given on 22 June 1998. The negotiation of the second set of MRAs has yet to be concluded.

allows mutual recognition to be implemented in seven annexes (see table 7.2). The Office of USTR and DG I (now DG Trade) aided by the US Commerce Department and DG III (now DG Industry) played a large role in setting and shaping the overarching agreement. However, the complexity of both EU and US regulatory systems dictated that many transgovernmental actors had a role in policy shaping in the individual annexes. The NTA and the TEP delegated the task of facilitating mutual recognition to trade officials within transatlantic institutions, but the technocratic nature of mutual recognition and the need for confidence building also led to the entrenchment of transatlantic regulatory networks. Examination of transgovernmental and domestic actors is interesting in the context of this discussion because it displays the interplay of interests between not only EU and the US negotiators but between domestic regulatory and trade officials, particularly in the US.

Regulatory Autonomy in a Trade Driven Process

Both EU and US regulatory systems involve a complex interplay between many different department agencies, standards setting bodies and legislative bodies. Negotiation and confidence building in the MRA process was complicated by the clashing interests of regulatory and trade officials and by the institutional ‘mismatch’ of the EU and US regulatory systems. Two main differences surfaced in the MRA negotiations: contrasting systems of regulatory accountability and cultures of regulatory autonomy (Nicolaïdis 1997a). Institutional asymmetries were a source of conflict in the MRA process, because, notes Stuart Eizenstat, ‘We found that we have entirely different regulatory regimes’ (quoted in Cowles 2001: 225). The fierce protection over autonomy exercised by the Food and Drug Administration (FDA), in the medical devices and pharmaceuticals annexes, and to a lesser extent the

Occupational Safety and Health Administration (OSHA), in the electrical safety annex, led to claims that US regulatory agents were, ‘obsessed with giving up sovereignty’,³⁴⁴.

The accountability of EU standards was brought into question because EU regulatory authorities rely more on private conformity assessment bodies (CABs) for product testing standards than their US counterparts. US regulatory agents, particularly the FDA, were opposed to the EU system of private CABs. The medical device negotiations were prolonged because the FDA was initially unable and unwilling to transfer regulatory authority to third parties. While the EU argued that private third party assessment bodies should be able to certify in accordance with FDA standards, FDA officials claimed they could not delegate the ultimate authority to approve the private third party reports or manufacturing facilities inspections (Ives 1997: 30). FDA opposition was only curbed when the FDA Modernization Act (1997) altered the scope of FDA control and allowed delegation of authority to third party assessment bodies (Egan 2001b: 15).

Nicolaïdis (1997b: 19) argues that contrary to US fears, there is a very symbiotic relationship in the EU between the private and public sector and that accountability is high because the European Organization for Testing and Certification- a government agency- oversees CABs. Two main organizations, Comité Européen de Normalisation (CEN) and the Comité Européen de Normalisation Electrotechnique (CENELEC), coordinate various national standards bodies and over 40 regulatory organizations (see also Egan 2001: 8-9).

On the other hand, it can be argued that accountability is not as visible in the US system where there is no authoritative body in charge of regulatory agents. US

³⁴⁴ Quoted from interview with UK Foreign Office Official, January 2000 (21).

regulatory policy is both highly fragmented (see Egan 2001b) and decentralised (see Cowles 1997). The US system relies heavily on voluntary conformity from over four-hundred federal and state, trade and industry associations, scientific and technical societies. The American National Standards Institute (ANSI) does serve as an ‘administrator’ and ‘coordinator’ of the private sector voluntary standardization system, however Egan (2001b: 24) notes that the ANSI does not set standards itself and that not all standards bodies are members.³⁴⁵ Thus, EU officials worried about capacity of the US to guarantee regulatory quality given the lack of accountability (see also Nicolaïdis 1997b; Egan 2001b: 14). To compensate for this problem the National Institute on Standards – an agent of the Commerce Department- created the National Voluntary Conformity Assessment Program to accredit conformity assessment in the US.

EU officials believed US accountability was further threatened by the autonomous role of many US regulatory agencies. The Federal Drug Administration, the Federal Communications Commission, the Federal Aviation Agency, the Defense Department and the National Institute on Standards and Technology (NIST) all operate separately and are governed by individual statutes from Congress. The high degree of autonomy experienced by US regulatory agencies means that sovereignty is guarded very closely. According to Cowles (1997: 35) ‘the statutory independence of the agencies meant that regulatory officials had their own independent mindset and turf to defend as well.’

Generally rivalry between trade and regulatory agencies stems not only from competition over regulatory authority, but because the trade and regulatory officials inherently perform different functions and have different goals. Ives (1997:29) adds

³⁴⁵ Including prominent organisation such as the American Society for Testing Material and the International Institute of Engineers (IIE) (Egan 2001b).

that negotiations were difficult because ‘A successful negotiation requires regulatory authorities to cooperate with trade officials...But the agencies almost speak different languages- the regulators in scientific terms, the trade agencies in economic terms.’ One US NGO simplified the divide by arguing, ‘One builds things, the other knocks things down.’³⁴⁶

Conflict between trade and regulatory officials was particularly cumbersome in the US. A delicate balance between the European Commission (both DGI and DGIII), national regulatory bodies and the private sector had already been met within the single market requirement. US regulatory agents, on the other hand did not have the same experience with MRAs and some were ‘less comfortable’ with the notion of mutual recognition.³⁴⁷ Clashes between trade and regulatory officials are most evident in the medical devices and pharmaceutical annexes of the MRA, where the FDA has US domestic authority, and in the electrical safety annex, which is under the jurisdiction of OSHA. While the FDA was not opposed directly to mutual recognition, it did express concern about the transfer of authority to private actors, EU regulatory agents and US trade officials. FDA officials were keen to demonstrate that the, ‘legal authority to regulate is placed with FDA, not Commerce, not USTR.’³⁴⁸ The FDA argued that the statutory authority of the agency could not be delegated to other bodies. Within the NTA process, State Department and USTR officials sought to convince the FDA that MRAs did not affect their statutory mission. The Modernization Act of the Federal Food, Drug and Cosmetic Act (1997) outlined Congress’s expectations for the MRAs. FDA was directed in consultation with the Secretary of Commerce to support the Trade Representative in reaching agreement

³⁴⁶ Interview with TAED official, Washington DC, October 2000 (30).

³⁴⁷ Interview with USTR official, Washington DC, October 2000 (43).

³⁴⁸ Interview with FDA official, Maryland, October 2000 (38).

with the EU on all products under the FDA's jurisdiction given that there is no reduction in standards levels (Merrill 1998: 742).

Regulatory officials were initially opposed to setting up a joint EU-US committee to oversee conformity assessment because of the potential opportunity for trade agencies to dominate (see Ives 1997) and opposed the negotiation of an overarching umbrella agreement or 'EU packaging' of the annexes driven by USTR. Sharon Holston, Deputy Commissioner for External Affairs for the FDA testified in front of the House Committee on Commerce, Subcommittee on Oversight and Investigations that, 'There were clearly times during the negotiations when DG-I negotiators operated under the assumption that trade issues were paramount in the negotiation. It was made clear to them, however, that for legal and policy reasons health and safety issues would govern.'³⁴⁹ FDA also requested a Memorandum of Understanding (MOU) with USTR to secure clear authority for the FDA in the sectoral annexes and a reserved 'observer' role for USTR in Joint Committee meetings where FDA annexes were discussed (see below).³⁵⁰ A FDA official argued, 'on anything that affected FDA, we were in charge.'³⁵¹

The MRAs are thus seen not a transfer of authority to from the FDA to EU regulatory bodies but as a 'contract for service'.³⁵² In such an agreement the role of a trading partner is not that of law maker but rather that of information source or service provider (Merrill 1998). Under the Modernization Act FDA is still responsible to Congress for the standards, thus interest in assuring that mutual recognition partners

³⁴⁹ Statement by Sharon Smith Holston, Deputy Commissioner for External Affairs Food and Drug Administration Department of Health and Human Services, Before the Subcommittee on Oversight and Investigations Committee on Commerce, US House of Representatives, 2 October 1998.

³⁵⁰ FDA official argued on the Joint Committee, that we wanted to make certain that we are spokesperson.

³⁵¹ Interview with FDA official, Maryland, October 2000 (38).

maintain the same level of equivalence. MRA negotiation and implementation was delayed, however, because the period of confidence building failed to convince FDA of the equivalence of all Member States standards. Some argue that the existence of regulatory culture in the FDA prevents the FDA from co-operating because the FDA believes in the high level of its standards.³⁵³ One FDA official argued that, 'FDA has a proud history. (Initially) we felt no need to play in this- we are used to being authoritative.'³⁵⁴ Further, the FDA had problems accepting the equality and equivalency of standards across the 15 Member States. One FDA official commented, 'FDA knew Europe was not 'whole'.' A US trade official affirmed the American perception that, 'Portuguese standards are not the same as those in the UK.' As a result of a lack of confidence between the FDA and member state regulatory officials, FDA was only able to approve testing certification in one member state, the UK, by 2001 December deadline for implementation.³⁵⁵

Ultimately the MRAs seek to reduce the cost of exporting to producers and the cost of duplicate testing for domestic regulators, however, making domestic systems MRA 'ready' is also costly. FDA officials argue that the agency has spent 'significant' in promoting MRAs out of 'nominal budgets'.³⁵⁶ Misunderstanding over the cost of processing applications for conformity assessment under the MRA led to 'differences in interpretation' between OSHA and the Commission and delayed the approval of European CABs capable of implementing OSHA assessments. OSHA claimed that it was able to charge fees for 'processing' applications for conformity assessment under

³⁵² The United States enters into an agreement with a trading partner under the expectation that the trading partner will take steps to help FDA perform its primary function of applying domestic legal standards to products imported into the United States.'

³⁵³ See Millen 1998,

³⁵⁴ Interview FDA, Maryland, October 2000 (38).

³⁵⁵ Alden 2001, Financial Times

³⁵⁶ Interviews with FDA officials, Maryland, October 2000 (36-38).

the MRA, but the Commission argued that OSHA ran the risk of duplicating fee assessment (OSHA 2000).

Further conflict in the MRA negotiations resulted from the domestic orientation of US regulatory agencies and their lack of experience with the EU single market system. Conflict arose over the FDA's refusal to accept European certification of testing reports in lieu of the full reports.³⁵⁷ FDA officials argued their statutory authority required FDA officials to review the full reports, which caused 'enormous difficulties' with EU officials in the MRA negotiations. A FDA official argued, 'there was a lot of pressure not to hold to this position- they thought we were being arbitrary'. The problem was defused by language whereby the FDA accepted that it would 'normally' be able to accept certification and by new efforts to secure a common inspector report format.³⁵⁸ One FDA official blamed delayed implementation of the FDA annexes on the fact that much documentation on the Member States legal and regulatory systems was provided in native languages. Language differences also arose in the electrical safety MRA. Although three European companies had applied for OSHA approval to certify products, two were not considered because the applications were made in French and Spanish. One OSHA official argued, 'We're a domestic health and safety agency, we don't do translations' (Alden 2001).

Balancing the Trade and Regulatory Camps

The conceptualisation of an EU-US MRA did not originate within the NTA process,³⁵⁹ however the intergovernmental decision to pursue the agreements brought mutual

³⁵⁷ Interview with FDA officials, Maryland, October 2000, (36, 37, 38) EU Commission delegation official, Washington DC, October 2000 (35)

³⁵⁸ FDA interviews, (36, 37)

³⁵⁹ FDA began discussions with the Commission as early as 1992.

recognition into the NTA decision making process and put transatlantic actors at the 'steering wheel' of the negotiations. Transatlantic institutions played a key role in pushing negotiations ahead and striking a balance between trade and regulatory authorities. First, transatlantic institutions under the New Transatlantic Agenda drove the MRA process forward. The MRA's were the result of endless negotiations of experts through the transatlantic institutions before the EU-US Summit where the MRA framework agreement was announced.³⁶⁰ The Senior Level Group and the TEP Steering Group, which bring together trade officials, were charged with monitoring the process, identifying achievable goals on a sector by sector basis and setting a number of deadlines for practical tasks. The TEP Steering Group also takes recommendations from the transatlantic dialogues, and initiates information exchanges between EU and US experts, for example by holding meetings between architects and engineers (TEP Steering Group 2000). Under the NTA process regulatory agents in the annexes were tied into the umbrella time frame and trade authorities maintained control over the overarching process. One USTR official argued that the NTA, 'essentially put USTR in charge of what they should be, management of the issues.'³⁶¹ The NTA process pushed domestic regulators to meet deadlines, and one FDA official notes, 'we've been able to accomplish much more than we thought.'³⁶²

In addition, the MRA umbrella agreement created new transatlantic 'institutions' to facilitate the existing MRAs. First, it established a new transatlantic process for designation of procedures for mutual conformity assessment. European and American domestic actors were joined in Designating Authorities which were assigned to each sector in the MRA agreement. For example, in the medical devices sector the FDA and member state regulatory bodies were charged with approving and

³⁶⁰ Interview Council Presidency official, Brussels, September 1999 (5).

³⁶¹ Interview USTR official, Washington DC, October 2000 (42).

then monitoring private conformity assessment bodies in the EU and the US and to exchange information on the acceptability of private conformity assessment bodies.

Second, despite initial objections from US regulatory agencies (see above) and NGOs (see below) a Joint Committee was created of EU and US officials. This committee is responsible for making sure the agreement functions. It thus serves an administrative role and as an extra ‘check’ for conformity assessment bodies. The Joint Committee provides a forum for discussion and helps coordinate the negotiation of extra sectors. Finally, on a working level six Joint Sectoral Committees were also established to assist the Joint Committee and oversee technical implementation.

Each of these played an important part in the confidence building process. It was the motivation of market access that drove the process forward and helped overcome the staunch protectionist positions of many domestic regulators. These new institutions are a forum for information sharing and problem solving. In short, they establish a pattern of co-operation between EU and US officials and trade and regulatory agents.

Table 7.3. MRA Institutions

Institution	Role
Designating Authorities	Approve and monitor CABs
Joint Committee	Co-ordinate the negotiation, transition of annexes between trade and regulatory agents
Joint Sectoral Committee	Oversee technical implementation
Conformity Assessment Bodies (CABs)	Conduct certification testing

The argument being made here is this: trade officials and regulatory agencies clashed in the MRA negotiations because each had a different stake in the process. Regulators

³⁶² Interview, FDA official, Maryland, October 2000 (38).

sought to protect the level of domestic standards and the authority to establish these standards. Trade officials fought to reduce different testing procedures as a barrier to trade and to keep the MRA process moving. Despite these centrifugal forces, the new level of transgovernmental institutionalization provided a forum for managing the process.³⁶³ A working relationship was established whereby trade officials maintained control over the umbrella agreement and regulatory agents retained authority in the individual annexes.

3) Transnational Input: The Role of the Transatlantic Civil Society

The MRAs are a case that also demonstrates the capacity of private and non-governmental actors to shape transatlantic policy. The TABD, the TACD and the TAED endeavoured to shape MRA decisions. Given their conflicting goals, the business and social based dialogues formed separate alignments with the regulatory and trade camps. The TABD agenda naturally aligns with trade authorities ambitions to eliminate redundant testing procedures. On the other, consumers and environmentalists have reiterated regulatory agents' fears about a reduction in the level of health, safety and environmental standards.

The Role of TABD

The TABD has been a staunch supporter of the MRAs and has been actively involved with the agreements since its creation in 1995.³⁶⁴ MRAs benefit industry because they seek to reduce duplicate testing procedures. The bottom line is that these tests are costly, and the MRAs are a means to reducing the cost of exporting. This reduction benefits the exporters directly, as a TABD advisor argues that a typical US

³⁶³ Argued by TABD official, interview, Brussels, September 1999 (14).

manufacturer may spend \$50,000-100,000 annually complying with foreign regulatory requirements (Stern 1997).

The TABD took an active interest in MRA negotiations on a political and technical level. First, it created the Transatlantic Advisory Committee on Standards (TACS) made up of industry experts from the working group on regulatory co-operation to investigate ways that regulatory standards could be harmonised on a sector by sector basis. Within four months of its creation the TACS was able to provide EU and US officials with a clear outline of where EU and US industry felt MRAs were feasible.³⁶⁵ Thus, on a technical level, the TACD was able to provide the EU and US governments with specific information that could facilitate mutual recognition in a number of sectors.

On a political level, the TABD exerted constant pressure on the EU and the US to meet these proposals.³⁶⁶ At the TABD conference in Chicago EU and US officials agreed to a deadline for agreement on MRAs in the original sectors by January 31 1997. When this deadline slipped, TABD publicly criticised the US Administration and the Commission for failing to conclude the agreement. The TABD chairs sent letters to Clinton and Santer and stepped up their campaign through frequent meetings with officials, exerting pressure on the Administration through the US Commerce department. The TABD became deeply embedded in the MRA decision making process (see also Cowles 2001a; 2001b), and had representatives present when the agreements were finally signed in June 1997 (TABD 1998). The Financial Times

³⁶⁴ While some officials (interviews 38, 39, 41) have argued that MRA negotiations existed before the TABD was created, arguably the most progress was made after the creation of the TABD.

³⁶⁵ In May 1996 it released a progress report listing priority areas for regulatory co-operation (see www.tabd.gov).

³⁶⁶ Interview, USTR official, Washington DC, October 2000 (41); US Commerce official, Washington DC, October (52).

reported ‘The key to final approval of the MRA was the Transatlantic Business Dialogue’ (June 19 1997).

The TABD has continued to monitor the progress of the annexes in the transitional phase of the MRAs. The TABD Scorecard (issued mid year since 1998) identifies government successes and failures in the individual MRA sectors. The TABD (1999, 2000) has publicly criticised the delayed implementation of the medical devices and electrical safety annexes, and warned that failure to implement all of the annexes on time would undermine credibility of the entire process.

Trade officials have continually praised the TABD for its role in the MRA process. Numerous high-ranking officials have highlighted the role of TABD, and even the TEP agreement notes its contribution. Commissioner Brittan (1997); ‘noted the vital input of TABD’. US Commerce Secretary Daley argued, ‘TABD said it was important, we heard them and we acted.’ President Clinton (1996) thanked the TABD, ‘for their leadership in achieving these agreements’ and USTR Barshefsky (1997) claimed, ‘We could not have achieved this (MRA) package without the Transatlantic Business Dialogue. EU Trade Commissioner Lamy (1999) told TABD members, ‘It is quite clear that I have much less influence over the process now than when I participated in it as a member.’³⁶⁷

TABD’s influence in the MRA process was most recognised among trade officials at a political rather than a technical level. Commerce and USTR officials argued that TABD played ‘a huge role’ in the MRA process.³⁶⁸ On the other hand, FDA officials have downplayed the role of TABD in the negotiations, referring to FDA and TABD interaction as ‘briefings’ rather than dialogue.³⁶⁹ The TABD has an

³⁶⁷ For a list of more supportive comments for TABD see, ‘What They’ve Said About TABD’ available www.tabd.com/resources/content/quotes.html

³⁶⁸ Quoted from EU Delegation Official, Washington DC, October 2000 (35).

³⁶⁹ FDA interviews (38, 39).

ally in USTR and Commerce, because its goals are trade, not regulatory in nature. The divide is a natural phenomenon because trade officials, businesspeople, regulators and the civil society dialogues do not have parallel interests in the MRA process.³⁷⁰ For example, TABD pushed for the decentralisation of regulatory co-operation between the EU and the US, a policy directly opposed by the FDA and the NGOs.³⁷¹ A TABD advisor argued that US regulatory agencies and civil society networks, who oppose the transfer of authority to business, were obstacles to the international liberalisation of regulatory standards (Stern 1996).

The role of TACD and TAED

The EU-US MRAs have been controversial among the NGO community in the US. Whereas European NGOs have had experience with mutual recognition in the single market, one US Trade officials notes, 'American NGOs do not understand the MRAs.'

³⁷² An EU official argued that American NGOs are learning from European through the TACD and the TAED,³⁷³ but many US members have opposed the MRAs on a political and technical level. On a political level, these groups have teamed up with FDA in opposing 'delegated governance', trade control over the regulatory process, and the influence of TABD.³⁷⁴ On a technical level the TACD and TAED has expressed concerns about a downward spiral of health and safety standards and the cost to consumers and government agencies.

³⁷⁰ Interview, US Commerce official, Washington DC, October 2000 (52).

³⁷¹ TABD supported FDA reforms, in order to make the agency more compliant with the EU regulatory system of private conformity assessment (Stern 1997).

³⁷² One EU official argued that on the 'European side everyone knows about MRAs because of the single market, but US NGOs believed the US Administration was telling lies.' Interview, European Commission Delegation, Washington, 2000 (34).

³⁷³ Interview, EU Commission Delegation, Washington, 2000 (34).

³⁷⁴ One TACD member argued, 'we have better communication with FDA'. Interview, US NGO, Washington DC, October 2000, (50).

Despite attempts by the trade official-TABD coalition to convince NGOs of the safety of MRAs³⁷⁵, many groups hold 'deep reservations' about the agreements (see CEO 1998b). In short they argue that MRAs could lead to a downward spiral or lowest common denominator of health, safety and environmental standards (de Brie 1999, TACD 1998:3). Environmentalists and consumers have continually argued that international standards must not be harmonised down, but rather improved (TACD 1998:3). Not all consumer groups are against MRAs completely,³⁷⁶ but the TACD has specifically asked the government to distinguish between standards which effect health and safety and those that do not. A TACD (2000) briefing paper states, 'Equivalence-based mutual recognition is inappropriate for use with substantive standards.'³⁷⁷

A second opposition to the MRAs is the cost of negotiation and implementation. It is estimated that just one sector (pharmaceuticals) cost the FDA \$10 million to comply with the MRA agreement.³⁷⁸ NGOs argue that the benefits of MRAs are direct to producers, thus cost should be shifted to the private, rather than public sector. One TAED (2000) paper maintains that, 'Given such a hefty price tag for this annex and the MRA as a whole, a case must be made directly to consumers on both continents who must be assured that there will be an improvement in their public health and safety protection to justify this cost.'

³⁷⁵ Government officials have actively tried to portray the MRAs as environmental, consumer and labour friendly. When the MRAs were signed Barshevsky argued, 'The real winners today are manufacturers, workers, and consumers, both in American and in Europe who will see reduced costs, increased jobs, and a better standard of living' (1997). At the TACD's second meeting in February 2000, the EU head of Unit for DG Trade argued that by facilitating trade MRAs would benefit consumers by creating lower prices and greater choice (Petriccione 2000).

³⁷⁶ Interview, TACD official, January 2000, London (24).

³⁷⁷ EU and US officials have argued that MRAs do not undermine health and safety because they do not change existing domestic standards. However, a TAED (2000) draft paper states that 'mutual recognition allows for imprecise, subjective comparison of what may be vastly different democratically achieved regulatory standards.' In addition, it is argued that there are no adequate provisions for amendments, termination, dispute resolution, public participation or congressional oversight.

³⁷⁸ TACD (2000).

The TACD has also vocalised opposition to the transfer of authority away from regulatory agencies and the domestic system. NGOs fiercely opposed incorporating a voluntary conformity assessment system where the transfer of regulatory authority would shift from agencies like the FDA to private conformity assessment bodies in third countries (CEO 1998a; 1998b TAED 2000). It is argued that, 'The delegation of tasks under the MRA to conformity assessment bodies in another jurisdiction runs the risk of defacto privatization of government responsibilities' (TACD 2000).

Consumers and environmentalists have teamed with US regulatory agents in supporting strong national regulatory bodies. Furthermore, TACD and TAED members sided with US regulatory agencies against the creation of the Joint Committee. Like the FDA and the FCC, consumer and environmentalists were hesitant to create an influential body that had the potential to be dominated by trade concerns rather than social standards (TACD 2000). A TAED official argued that at the core of their concerns was the fact that 'suddenly trade negotiators are in charge of regulatory policy.'³⁷⁹

A TACD briefing paper also raised concerns about the transfer of MRAs from the domestic regulatory policy to the sphere of international trade policy. It is argued that moving MRAs into the scope of foreign trade puts a cloak of secrecy over the negotiations (TACD 2000) and leads to a lack of Congressional oversight because the MRAs are an executive agreement and are thus not subject to ratification in the US. The MRAs were negotiated outside the scope of the EU or US legislative process and Congress and the European Parliament had only marginal involvement in the negotiations.³⁸⁰

³⁷⁹ Interview, US NGO, Washington DC, October 2000 (30).

³⁸⁰ The European Parliament has supported the MRAs, but continually fought for more input and consultation with the European negotiating team (European Parliament 1998). A Senate staff member

Non-governmental organisations have also directly opposed the privileged access that TABD had to the MRA negotiations. The special relationship between the TABD and the Commerce Department in MRA negotiations was a particular fixation of US regulatory officials and NGOs. Supported by the Environmental Protection Agency, they argued that the role of the TABD in the MRAs bordered on violating the US Administration Procedures Act and the Federal Advisory Committee Act (TACD 2000; 1998; TAED 2000). One TACD member argued, 'Our biggest fear is that the MRAs *are* TABD.'³⁸¹

Contrary to the TABD, the perceived input of TACD and TAED in the MRA negotiations is limited. Not one interviewee argued that either dialogue played a significant role in the output of policy. These groups became involved in the MRA discourse late in the game because they were created only after the first set of MRAs had been agreed. The TACD did not produce a briefing paper on MRAs until late 2000. A TAED statement was drafted for the May 2000 annual meeting, but MRAs were not picked up as a major 'issue area' by the Trade Working Group.³⁸² The resource gap discussed in chapter 5 highlights differences between business and civil society. Whereas the TABD has a specific committee with extensive industry resources that concentrates on regulatory co-operation, TACD relies on a small number of recently hired full time research staff and TAED on two 'issue managers'.

argued that the MRAs are not an issue that have been focused on, Interview, Washington DC, October 2000 (51).

³⁸¹ Interview, US NGO, Washington, October 2000 (50).

³⁸² Although a earlier Commission response to the TAED's 1999 recommendations about the MRAs received a response from the Commission stating, 'Due to then vary nature of the MRAs (they avoid the duplication of testing and certification), they do, per se, affect the environment.'

Transparency and Access for Civil Society

The TABD, TACD and TAED agree on two aspects of the MRA negotiation and implementation process, albeit for completely different motives. First, both consumer and business groups favour the US position of sector by sector negotiations. Consumers feared a framework approach would result in the spillover of MRAs to additional sectors whereas the TABD worried that the difficulty of negotiating an overarching strategy would prevent agreement in all or additional sectors.³⁸³ Second, both pushed for more transparency in the rule making process in order to gain increased access to government negotiations. The TABD wants access to joint sectoral meetings and to be included in the process to set up monitoring mechanisms (TABD 1999). The 2000 mid year report suggested that the rule making process should be more open to industry and that TABD should be able to comment on government guidelines before they are implemented (TABD 2000-midyear). It was also argued that TABD should play a formal role in the formation of a monitoring body for compliance with the agreements (TABD 1999). TACD and TAED members complained about the lack of adequate time for response for public comment. A TACD (2000) paper states, 'MRAs remove important regulatory processes and issues from the public realm and place them behind the opaque screen of foreign affairs.'

Government officials recognise the need to promote transparency, but deny conducting closed negotiations. Rather they stress that TACD and TAED have been briefed on MRAs, that Federal Register Notices have been published, that general public meetings have been held by USTR on the TEP and on auto safety and that the TEP Steering Committee (2000-report) calls for proposals from all dialogues. Cowles (1997: 13-14) notes the problem is not with either domestic system. Any person can

comment on ongoing regulatory procedures due to the US Administrative Procedures Act by Congress because notices have been published in the Federal Register.³⁸⁴, and different parties are invited to provide input to Commission officials, for example through the Social Policy Forum in the EU. Rather she argues the problem is with the transatlantic regulatory process, because there are no rules governing access. To gain credibility Egan (2000b: 32) argues MRAs must be put into a legal framework which is approved by the European Parliament and the US Congress.

4) The MRAs in the context of the NTA

The MRAs have been hailed the most concrete deliverable produced by the NTA process. Economically and politically the MRAs represent a step towards integrating regulatory systems in order to produce an open transatlantic marketplace. Conflict in negotiating and implementing the MRAs, however, demonstrates the obstacles faced by MRA negotiators.

First, the limited scope of the MRAs, especially when compared to mutual recognition within the EU, highlights fundamental differences in the EU and US regulatory systems. Delays in the transition and implementation periods of the MRA annexes can be attributed to a 'mismatch of systems' and the struggle for autonomy not only between EU and US regulators, but between regulatory bodies and trade officials, particularly in the US. A number of officials on both sides of the Atlantic expressed concern with delayed implementation of the agreements, particularly in the medical devices and pharmaceutical annexes. In both of these sectors the FDA was responsible for holding up negotiation and implementation of the MRAs due to

³⁸³ Egan (2001a) notes this is already the case with the umbrella agreement, where problems with sectors such as medical devices and pharmaceuticals hold up negotiation and implementation of other sectors.

conflict over certification reports and levels of equivalency.³⁸⁵ In the services sector negotiations of a framework agreement have been delayed because the US federal government did not have the authority to override state certification standards. One Commission official explains, 'it is frustrating for Europeans who say you (the US) agreed to do it and now you cannot deliver.' In this respect, it can be argued that the US, not the EU suffers from the capability-expectations gap, which is usually attributed to the EU.

Still, the MRA process is an important case study that provides insight into the capacity of NTA institutions to produce policies or concrete deliverables. One EU trade official argued that the NTA structure was crucial to the MRA negotiations because the process needed political oversight. EU and US political officials argued that the NTA process was a way of 'getting technical people to do technical things.' NTA institutions are a way of managing the dialogue between regulators and trade officials and accommodating the international interests of trade and political officials as well as the interests of domestic actors.

Another benefit of the MRAs is the bridges the process builds between EU and US regulators and trade officials as well as the business and NGO communities. The confidence building process between EU and US officials is arguably an important part of the process. An EU official argued, 'Slowly, slowly we build dialogue. To get MRA convergence we build trust between regulators on equivalency assessment.' The MRAs are also an example of a learning process where US regulators, businesses and NGOs learn from EU regulators, business and NGOs who already have experience of

³⁸⁴ Federal register notices posted by the FDA and USTR are available on their websites; <http://www.fda.gov>; <http://www.ustr.gov>

³⁸⁵ To summarise, the problem stems from the fact that the FDA does not recognise the certification and regulatory requirements of the internal market as a single system. Whereas US officials criticised the EU for its lack of a single European FDA, EU trade official argued that the FDA was too stringent in

working with Mutual Recognition Agreements in the single market. Building confidence between regulators, trade officials and civil society is a step in securing and expanding the mutual recognition and harmonisation of standards that affect trade. The agreements themselves are a step in building the new transatlantic marketplace. Phase two or the 'next generation of MRAs' builds on confidence established between the EU and the US and goes further than the first phase by implementing full equivalency in marine safety and the MRA in services. A Commerce department official argues, 'The MRAs are the first step in broader liberalisation of trade through mutual recognition and harmonisation of health and safety, environmental standards'.³⁸⁶

The MRA process is of interest in this discussion on the transatlantic dialogue because the interaction of actors under the framework of transatlantic institutions and through transgovernmental and transnational networks upholds the hypotheses made in chapter 1 of this thesis. Like the trafficking in women information campaign, the MRAs demonstrate a delegation of decision setting and shaping to a range of transgovernmental actors thus supporting the argument that the NTA has led to decentralisation in the decision making process. The role of transnational actors or a privatisation of decision shaping is also apparent in the MRAs because of the role played by the TABD the TACD and the TAED. Unlike the trafficking in women case, the MRAs also represent a more controversial policy, which is characterised by competition between domestic actors and international negotiators. In this respect the MRAs also share characteristics with the banana dispute (see chapter 8).

requesting specific language rather than general principles. Interview, US Trade official who supported a policy of 'assume it is equivalent until I know it is not'.

Conclusion

This chapter discussed the institutionalisation of new dialogues, the decentralisation of decision setting and shaping and the increased influence of private actors in MRA negotiations and transitions. Regulatory policy is a tricky sector because it deals with two politically sensitive subjects: the autonomy of regulatory authorities and the sovereignty of states to control domestic standards.

The role of domestic, transgovernmental and transnational actors in MRA negotiations were outlined above. What emerged during MRA negotiations were two coalitions: one made up of US regulatory agents and the TACD and TAED, the other of trade officials and the TABD. The first fought against decentralisation and privatisation of standards for fear that agencies like the FDA and the OSHA would lose authority to foreign private companies, thus leading to reduced levels of social protection. The TABD and trade officials supported the reduction of costs in order to facilitate trade and fulfil the goals of the New Transatlantic Marketplace.

In the end the influence of the latter is more visible. The FDA was forced to modernise, and thus accept the authority of EU private conformity assessment bodies and MRAs were negotiated in areas addressing health and safety issues despite NGO objections. TABD was deemed a success story and the USTR and Commerce had a big deliverable to report to the EU-US Summit.

Conflict between and among trade and regulatory officials highlights the importance of the NTA process. Although MRAs had been discussed before 1995, the creation of NTA institutions and the political commitment to MRAs outlined in the agreement injected focus into the negotiations. NTA institutions such as the Senior Level Group and the TEP Steering Committee provided political oversight for the

³⁸⁶ Interview, US Commerce Department official, Washington DC, October 2000 (52).

negotiation and transition phases of the MRAs. However, while trade officials drove the process forward and were responsible for setting the overarching umbrella agreement, agencies such as the FDA and OSHA retained control over policy details in annexes where they had regulatory authority. The MRAs did not transfer authority from regulatory to trade officials, but rather gave USTR and NTA officials the job of delegating tasks to the appropriate domestic actors.

Chapter 8

The EU-US Banana Dispute

The main focus of this thesis has been on the new co-operation between the EU and the US. Although the NTA has been established as an administrator and facilitator of transatlantic agreement, it has not eliminated conflict between the partners, particularly on the economic front. Trade disputes cover less than 2 per cent of total transatlantic trade³⁸⁷, but media coverage of disputes is far more extensive than it is for EU-US Summits or transatlantic agreements.³⁸⁸ Hush kits, bananas, beef, genetically modified crops and foreign sales corporations have overshadowed the TEP, the MRAs and indeed the larger transatlantic partnership. Despite increased transatlantic dialogue between EU and US actors, these disputes have prompted warning reports of looming trade wars throughout the 1990s.³⁸⁹

The transatlantic banana dispute has attracted world-wide media attention.³⁹⁰ Generally the case is of interest because it has erupted over a product which is not grown in significant quantities in either the EU or the US. It is a case that appears, at least on the surface, to pit big American corporations against small Caribbean farmers. Ultimately the dispute is of both economic and political consequence. On an economic level, the dispute represents a struggle for market access. On a political level this

³⁸⁷ EU and US officials regularly quote this figure. A US Commission official (9) argued that disputes in terms of the total economic relationship amounted to 'peanuts'. Another (15) noted that disputes covered 1-2% of trade but 95% of media coverage.

³⁸⁸ For example, a search in the Financial Times Archive cite for 'EU banana' between 1996 and 2001 retrieves 750 mostly 'very strong' matches. A search using the same dates and the term 'MRA' retrieves only 2 relevant articles (see <http://www.ft.com>).

³⁸⁹ See for example Guardian 13, 16 April 1999; The Independent 8 April 1999; Financial Times 8 April 1999; Irish Times 6 April 2001; BBC News Online 5, December 1997; 17 December 1998; January 1 1999; 4, 5 March 1999; 23 March 1999; 24 April 1999; 30 September 2000.

³⁹⁰ A search for 'EU banana' on the Financial Times 'global archive' which includes world-wide news sources returns 2993 hits between 1996 and 2001.

dispute is about the rules governing the internal trading system, and thus concerns the legitimacy and capacity of the institutions that manage it. The dispute is of interest to a broader analysis of EU-US relations, because it tests the capacity of both transatlantic and multilateral institutions to diffuse conflict.

Again, the interest lies with the institutionalisation of the dialogue in general and of transatlantic decision making specifically. The banana negotiations differ from the MRAs and anti-trafficking information campaigns because there appears to be a lack of decentralised decision ‘shaping’ by transgovernmental actors. Further, private actor input is limited to traditional lobbying through domestic institutions. While multinational corporations and transnational networks of, for example Caribbean farmers and EU banana operators, have shaped decisions, private, transatlantic dialogue structures have not.

The constraints of existing bilateral and multilateral trading arrangements and the avid interest of domestic actors on both sides of the Atlantic are key to understanding why the EU and US entered a trade dispute over bananas and why the dispute spiralled out of control for almost a decade. Section 1 maps the development of the dispute through five EU banana regimes. Section 2 focuses on domestic input into the US negotiations, while section 3 considers the Commission’s negotiating mandate in light of commitments to ACP countries, the Member States and domestic banana operators. Section 4 considers the wider implications of the dispute by questioning what impact the banana dispute had on the larger transatlantic partnership and the WTO.

The balance between ‘fair trade’ or ‘free trade’, as championed by the two partners, is a highlighted theme throughout the chapter. Two popular views of the EU-US dispute are examined: one depicts the US as a ‘bilateral bully’, the other portrays

the EU as a multilateral 'rule breaker' (see table 8.1). The chapter seeks to test which, if either, scenario accurately illustrates the role each side played in the dispute.

Table 8.1 Depictions of EU and US roles in the Banana Dispute

Scenario I- Bilateral Bully versus Third World Protector

EU officials have described the EU banana regimes as development policy, not trade policy. Throughout the banana dispute it was argued that the banana regime protected the economies of small, third world banana producing states. Among its supporters the EU was regarded as a 'third world protector', an image which becomes more vivid when one considers that the villain is the United States and US banana producing multinationals in Latin America. According to this logic the US has been deemed a 'bilateral bully' for pushing around not just the EU, but small Caribbean States and even its 'partners in crime', the Latin American banana producers. The US decision to impose 'unilateral' sanctions before the WTO ruled on the revised banana regime and to introduce Carousel Retaliation met harsh reaction in the public arena. The media, particularly in countries that strongly supported the regime, such as the UK, generally supported the governments' decision to support 'poor Caribbean farmers' and supermarkets reacted to public opinion by introducing voluntary labelling of free trade bananas.³⁹¹ The EU banana regime also gained general support from non-governmental organisations mobilising against globalisation and brought the implications of the banana dispute into the larger debate on the cost of free trade.

Scenario II- Multilateral Trade Enforcer versus Rule Breaker

US officials rejected the idea that the EU was acting as a third world protector³⁹² and instead portrayed it as the enemy of multilateral rules. It was argued that the EU was not protecting the Caribbean, but rather EU banana operators who benefit from the EU licensing scheme. The USTR Barshefsky argued, 'This is absolutely a trade issue. This is nothing more than the taking a number of import licenses from US distributors of Latin bananas and handing them over to European companies in a discriminatory manner'.³⁹³ Under this scenario the EU image of a third world protector is replaced with that of a 'multilateral rule breaker'. The EU was chastised for failing to produce a WTO compatible regime despite three multilateral rulings. US officials claimed that the EU side-stepped, stalled and at worst defied the WTO. US President Clinton argued, 'We cannot maintain an open trading system, which I am convinced is essential for global prosperity, unless we also have rules that are abided by'.³⁹⁴ The Dallas Morning News agreed, 'It is fundamentally about whether countries will respect the rules governing international trade- or slice them as they see fit and thereby encourage a return to the law of the jungle where no rules apply'.³⁹⁵

1) An Overview of the Banana Dispute

The banana dispute stems from the European Community regulation on banana imports initiated by the Lome Convention in 1975, which established preferred access to the European market for African, Caribbean and Pacific (ACP) bananas.

³⁹¹ See also BBC News, UK Gets 'Fair Trade' Bananas, 17 January 2000.

³⁹² Interviews conducted in USTR, Washington 2000 (57) and the House Subcommittee on Trade, Washington, 2000 (39).

³⁹³ Quoted in European Union Magazine (not dated).

³⁹⁴ Quoted in BBC News (1999) Clinton: It's about Rules not Bananas, 6 March.

Subsequent re-negotiation of Lome and several EU Banana Protocols ensured that ACP states maintained their traditional access to the European market. Five separate banana regimes were renegotiated during the dispute (see table 8.3). Each regime used tariff quotas and licensing schemes to alter market access for Latin American and Caribbean banana producers and transformed the practices of banana operators within the EU (see table 8.4).

Banana i: Member State Regimes

Although Lome established access for ACP exporters, the lack of an EC 'policy' on bananas prior to 1993, meant that the level of access was determined separately by the Member States.³⁹⁶ Three tariff regimes were created in accordance with different Member State preferences (see banana i).³⁹⁷ First, Germany had duty free imports, which did not discriminate between ACP and Latin American producers. Second, Benelux countries, Ireland and Denmark imposed a 20% duty on all imported bananas. Finally, it was the duty free imports for ACP states in France, Italy, Spain, Greece, Portugal and the UK that enabled Caribbean and African banana producers to stake out a share of the European market.

In 1993 Latin American banana producing countries requested a GATT panel to challenge the legality of the EC's banana regimes. The main source of contention was the third regime. The system gave preference not only to ACP states, but to domestic producers and operators.³⁹⁸ Sutton (1997: 7) notes that in the UK, for

³⁹⁵ Quoted in the Guardian (1999) Bananas: the view from America, 9 March.

³⁹⁶ Bananas were not covered by EC Common Agricultural Policy, nor by the Commercial policy (see Stevens 1996; 2000: 327).

³⁹⁷ See also Stevens 2000; Sutton 1997.

³⁹⁸ Latin American banana producers controlled virtually 100% of the market in Germany, Denmark and Belgium and 90% of the Irish and Dutch markets under the other two regimes (Sutton 1997: 7).

example, domestic companies Geest and Fyffes controlled 65% and 25% of the market share while Spain imported all of its bananas from the Canary Islands.

The first banana regime was found inconsistent with GATT rules in May 1993. However, the decision was of little consequence because the EC was able, under GATT rules, to block the panel decision from being adopted and because the Member States were already undergoing reform to create a single European policy on banana imports. The search was for a regime that could comply with the internal requirements of the Single European Market and the external requirements of the 4th Lome Convention.³⁹⁹

Banana ii: The Restrictive Tariff Rate Quota

In July 1993 the EC began implementing a single market in bananas under Council Regulation 404-93 (banana ii). It set up a three tiered banana regime with duty free quotas for ACP banana producers and a two tiered tariff structure for Latin American, or 'dollar bananas' (see table 8.4). The single European policy on banana imports sought to retain the traditional divide in the market. Latin American producers were encouraged to keep but deterred from trying to increase their share. ACP countries had a substantial tariff advantage, but faced new competition from Latin American producers (see also Steven 2000: 342-43).

Latin American producers opposed the regime on the basis that quotas reserved for ACP states restricted their level of access to the European market.⁴⁰⁰ Five Latin American countries, this time supported by the US, took the new banana regime to the

³⁹⁹ Under the Lome Convention the EC agreed that 'no ACP state shall be placed, as regards access to its traditional markets and its advantages in those markets, in a less favourable position than in the past or at present'.

⁴⁰⁰ For a more detailed discussion of the history of the banana dispute see Stevens 1996; 2000 who argues that Latin American producers were angry first, that the single market for banana restricted

GATT in late 1993. In reality it was the licensing system, not the tariff rate quotas, that were directly opposed.⁴⁰¹ US multinationals, particularly United Fruit Corporation, and some Latin American states opposed the 'B' quota system, which allocated part of the free market to EU producers. The restricted access of certain producers to the market was heightened by the allocation of category 'A' licenses, of which nearly ninety percent were given to Latin American countries (including Costa Rica, Columbia, Nicaragua and Venezuela) who had cut a deal with the EU to settle their dispute through the Framework Agreement on bananas. The result, however, was that the licensing scheme further restricted market access for the remaining Latin American banana producing countries, including Honduras, Guatemala, Mexico and Ecuador⁴⁰². The allocation of import licenses also created a monopoly for European firms, and further restricted the quantities that US companies operating in Latin America could distribute in Europe.

In January 1994 the GATT panel ruled that Regulation 404-93 was inconsistent with international trading rules, but again the EC blocked the panel report. The completion of the Uruguay Round of multilateral trade talks and the creation of the World Trade Organisation (WTO) in 1995 marked a major turning point in the transatlantic banana dispute. New rules prevented the EC from blocking panel findings and provided new procedures for dispute resolution, which included approving the challengers use of retaliatory sanctions.

Thus, the challenge to the EU banana regime made by the US, Mexico, Guatemala, Honduras (and later Ecuador) in April 1996 carried more weight than

access to Germany which had previously been duty free and second that access was restricted because the tariff quota for Latin American bananas was too low.

⁴⁰¹ This argument was made by a USTR official, interview, Washington DC, 2000 (57). The US argued that import licenses took away US business because of their allocation to French and British companies and EU ripening firms. USTR Press Release (1997).

previous complaints made to the GATT. In May 1997 the WTO found many aspects of the EC banana regime violated WTO rules⁴⁰³, and the Dispute Settlement Body (DSB) gave the EC until January 1, 1999 to comply with its ruling. Faced with the threat of US sanctions, the Commission was again charged with finding a regime that could fulfil internal commitments to the SEM and external commitments to both ACP states and the multilateral trading regime.

Banana iii: The Non- Restrictive (or Less Restrictive) Tariff Quota

After internal negotiations the European regime was revised in July 1998. On January 1, 1999 the EU began implementing the revised tariff quota regime (Regulation 1637/98 and 2362/98)⁴⁰⁴. The regime would continue to operate on tariff quota system, but the allocation of licenses was less restrictive. Moreover, the Latin American quota increased *vis a vis* the ACP quota. The re-allocation of licences on a global rather than individual basis was introduced to increase competition amongst ACP producers. Although the licensing scheme did not distinguish between ACP and Latin American producers per se, license distribution was still restrictive, because allocation was based on a historical reference period (1994-1996) when ACP imports were guaranteed by the EU regime.

The new regime again met with opposition. Caribbean states felt the global allocation of licenses would not guarantee individual states' traditional export levels and that the less restrictive licensing scheme would offer no incentive to import ACP bananas.⁴⁰⁵ The Americans believed that the licensing scheme discriminated against third country operators. US officials argued that the changes to the regime were

⁴⁰² Essentially, the Framework Agreement on bananas managed to divide the previously united front from Latin American banana producing states (Sutton 1997: 22).

⁴⁰³ The EC did exercise its right to appeal, but the decision was upheld in September 1997.

cosmetic and accused the Commission of making only a token gesture to bring the regime in line with international trade laws.⁴⁰⁶ Believing it was still not WTO compliant, the US proceeded first, to publish a list of intended sanctions in the Federal Register and second, to file another request for a WTO panel in November 1998, two months before the new EU regime was implemented. Following its implementation, the US sought WTO authorisation to impose over \$500 million in retaliatory tariffs.

In March the WTO DSB announced it needed more time before ruling on the compatibility of the new EU regime (see section 4). The US proceeded with plans to impose 100% tariffs on a range of items, but agreed not to collect the tariffs until after the panel ruled. However, the Commission argued that the tariffs, which would be backdated, would effectively prohibit (particularly small) companies from exporting. USTR Charlene Barshefsky, however, was so confident of the illegality of the EU regime that she argued: 'If you believe the regime is WTO consistent- then ship'.⁴⁰⁷

In April the WTO ruled that the EU banana regime was still inconsistent with multilateral rules and authorised \$191 million in sanctions.⁴⁰⁸ In addition to reducing the level of retaliatory tariffs, the Dispute Settlement Panel ruled that the US had acted too early in imposing sanctions. Decrying the use of 'unilateral sanctions', the EU filed a WTO dispute challenging US domestic trade legislation, Section 301 (see below).⁴⁰⁹ A panel was convened on 2 March 1999, but later ruled in favour of the US.⁴¹⁰

⁴⁰⁴ See 'The US/EU Banana Dispute: Modifications to the EC Banana Regime', DGI, External Relations 10 November 1998, www.europa.org

⁴⁰⁵ See the Caribbean Banana Exporters Association website at <http://www.cbea.org>

⁴⁰⁶ See US Administration Press Release (1998)

⁴⁰⁷ Quoted in Guardian 9 March 2000.

⁴⁰⁸ This was a significantly lower figure than that requested by the US.

⁴⁰⁹ See Commission Press Release, EC Request for establishment of a panel on Section 301 of the US Trade Act 1974. Available <http://europa.eu.int>, downloaded 29 November 2000.

Banana iv: First Come First Serve Licensing

The Commission came under further pressure to find a compatible regime when in May 2000 the US Congress passed legislation designed to maximise the impact of US sanctions on the EU in both the banana and the beef disputes. The Carousel Retaliation Act (2000) requires the USTR to rotate items on the sanction list, thus imposing constant fear on EU exporters (see section 2).

In December 2000, in the aftermath of the EU-US Summit and after a year of extensive internal negotiation, EC Agriculture ministers agreed to a radical overhaul of the banana regime. The fourth regime would mark the end of the tariff quota system which had more or less been in place since 1992, but would first allow for a transitional period governed by three tariff quotas and a 'first come first serve' allocation of licenses (see tables 8.2; 8.4).

Table 8.2 The Transitional First Come, First Serve Licensing

- ❑ Licenses allocated to the first boats to reach EU shores.
- ❑ Shippers would have to commit bananas to the vessel before submitting declaration of intent to import and to lodge a high security deposit to deter speculation.⁴¹¹
- ❑ After declaring their intention to import specified quantities, pre-allocation would be determined when vessels were within sailing distance from Europe to avoid discrimination against countries that were further away.

The fourth banana regime was both highly controversial and short-lived. The Commission argued that eliminating the quota system would make the EU regime WTO compliant, but internally, it was the subject of difficult internal and external negotiations.

⁴¹⁰ The WTO See Agence Press (1999) Controversial US Legislation Does Not Violate WTO Rules, 22 December.

⁴¹¹ This provision was introduced as a means of trying to maintain stable prices of the banana market, thus ensuring the protection of European consumers and domestic producers.

Banana v: Historical Reference Licensing

The first come first serve licensing scheme was replaced in April 2001 (just three months before it was due to be implemented) with a historical reference licensing system, similar to that used in third banana regime. The new regime (banana v) marked the end of the banana dispute between the EU and the US. European Trade Commissioner Lamy and USTR Zoellick brokered the deal on April 18, 2001, which included provisions for the end to first come first serve licensing and US retaliatory sanctions by 1 July 2001.

Under the deal, the plan to move to a tariff only system by 2006 remained, but the first come first serve licensing scheme was scratched. The EU-US agreement established two phases of three-tiered tariff rate quotas for the transitional period (see table 8.4). It was decided that a historical reference period (1994-1996) would determine interim banana licenses. The EU-US deal offered ‘something for everyone’ (see table 8.5)⁴¹² Non-traditional operators, such as Chiquita, gained access to tariff rate quotas, while traditional operators maintained the majority of Category A and B licenses. ACP producers were protected by tariff rate-quotas in the transitional phase, while Latin American producers were guaranteed the move to a tariff only regime, and the possibility of higher access to the EU market during the transition.

⁴¹² Two strong supporters of the first come first serve regime- Ecuador and Dole Foods Corporation- were the only losers in a compromised designed to make multiple winners. See Financial Times, EU Calls on Ecuador to Support Banana Deal, 18 April 2001.

Table 8.3	Chronology of the Banana Dispute
1993	
May	<ul style="list-style-type: none"> • GATT panel finds against EC Member States (banana i). EC blocks panel report from being adopted by the GATT Council
July	<ul style="list-style-type: none"> • The single market in bananas is launched with EC Regulation 404/93
1994	
January	<ul style="list-style-type: none"> • The GATT panel finds against Regulation 404/93 (banana ii)
February	<ul style="list-style-type: none"> • The EC blocks the GATT panel report on Regulation 404/93 from being adopted
1995	
January	<ul style="list-style-type: none"> • The new WTO dispute settlement provision prevents one member from blocking panel findings
1996	
September	<ul style="list-style-type: none"> • The US, Ecuador, Guatemala, Honduras and Mexico challenge banana ii under the WTO dispute-settlement mechanism.
1997	
May	<ul style="list-style-type: none"> • The WTO panel rules against the EC regime.
July	<ul style="list-style-type: none"> • The EC appeals 19 findings in the WTO panel report.
September	<ul style="list-style-type: none"> • The WTO Appellate Body upholds panel findings of EC GATT/GATS violations.
1998	
January	<ul style="list-style-type: none"> • WTO arbitrator gives EC until January 1, 1999 to comply with WTO rulings.
June	<ul style="list-style-type: none"> • European Agriculture Council adopts modifications to banana regime.
July	<ul style="list-style-type: none"> • The EU adopts a revised banana import regime (banana iii) to be implemented January 1999.
November	<ul style="list-style-type: none"> • The US argues that the new EC regime is not compatible. USTR publishes its retaliatory sanction list in the Federal Register and seeks a WTO panel on the EU Banana Regime
1999	
January	<ul style="list-style-type: none"> • Banana iii is implemented on 1 January 1999 and the United States seeks WTO authorisation to impose \$500 million in retaliatory tariffs on the EU under Article 22 of the DSU. The EU requests a WTO panel to rule on the compliance of banana iii under Article 21 of the DSU.
March	<ul style="list-style-type: none"> • The WTO panel announces it needs more time to rule on the EU banana regime. The US imposes sanctions and announces that customs duties will not be collected until the panel rules.
April	<ul style="list-style-type: none"> • The WTO panel rules that the EU banana regime is still inconsistent, and authorises US retaliatory tariffs amounting to \$191.4 million a year.
May	<ul style="list-style-type: none"> • The Commission requests a Dispute Settlement Panel on US Section 301.
2000	
May	<ul style="list-style-type: none"> • Carousel Retaliation is passed by the Senate as part of the Afro-Caribbean trade bill
December	<ul style="list-style-type: none"> • The WTO rejects the EU request for a panel on Section 301. EU agriculture ministers agree to a new banana regime (banana iv).
2001	
April	<ul style="list-style-type: none"> • Banana deal struck between the EU and the US (banana v). EU agrees to drop first come first serve licensing and implement historical references system by July 1, 2001. US agrees to drop retaliatory sanctions on same day.

Table 8.4 The EU Banana Regimes

Banana I	Member State Regimes	<ul style="list-style-type: none"> ➤ Non-preferential duty free imports in Germany ➤ 20% duty on imported bananas in Benelux countries, Ireland and Denmark. ➤ Duty free imports in France, Italy, Portugal, Spain and the UK maintained duty free imports for ACP states
Banana II	Restrictive Tariff Rate Quota	<p>Two-Tiered Tariffs</p> <ul style="list-style-type: none"> ➤ ACP states: 857,000 tonnes of duty free imports from traditional ACP countries ➤ Latin America: 2 million tonne quota at 100 ecus per tonne, rising to 850 ecus. <p>Three-Tiered Licenses</p> <ul style="list-style-type: none"> ➤ Category A licenses (66.5 %) of the 2 million tonne quota allocated to traditional operators. ➤ Category B licenses (30%) of the quota, awarded to operators with history in ACP trade ➤ Category C licenses created for new producers.
Banana III	Less Restrictive Tariff Rate Quota	<p>Two-Tiered Tariffs</p> <ul style="list-style-type: none"> ➤ ACP: 857,000 tonnes of duty free imports (to be filled globally) ➤ Latin American: 75 ecu for the first 2.553 million tonnes. A new provision, however, was that this quota would be filled globally by ACP states. <p>Licensing</p> <ul style="list-style-type: none"> ➤ Three-tiered system remained ➤ No distinction between ACP and Latin American producers for the allocation of import licenses, but license distribution based on historical reference (1994-1996) for 1999 and 2000) for a period when levels of ACP bananas had been guaranteed by the EU regime.
Banana IV	Transition to Tariff Only System/FCFS Licensing	<p>Tariff Only System</p> <ul style="list-style-type: none"> ➤ Move to tariff only system by 2006 after transitional period <p>First Come First Serve Licensing (Transitional Period)</p> <ul style="list-style-type: none"> ➤ Three quotas would be managed fortnightly or weekly to control banana prices ➤ All categories of licenses would be allocated on the First Come First Serve basis
Banana V	Transition to Tariff Only System/ Historical Licensing	<p>Tariff Only System</p> <ul style="list-style-type: none"> ➤ Move to tariff only system by 2006 after transitional period. <p>Interim Three-tiered licensing (two phases)</p> <p>Phase I (1 July 2001)</p> <ul style="list-style-type: none"> ➤ Category A- 2.2 million tonnes ➤ Category B- 353,000 tonnes ➤ Category C- 850,000 tonnes <p>Phase II (1 January 2002)</p> <ul style="list-style-type: none"> ➤ Category A- 2.2 million tonnes ➤ Category B- 453,000 tonnes ➤ Category C- 750,00 tonnes <p>Historical Reference Licensing</p> <ul style="list-style-type: none"> ➤ Historical Reference licensing based on the distributions between 1994 and 1996. 83% of A and B licenses for traditional operators and 17% for non-traditional.

2) The US negotiating position

The focus in this section turns to the motives driving US decisions in the banana dispute. It questions whether the US acted in the interest of the multilateral trading regime or multinational companies? Four US decisions in the banana dispute are considered below including the decision to file the GATT/WTO cases; to impose sanctions before the WTO ruling on the EU's less restrictive tariff quota; to target EU Member States with sanctions using Section 301 and Carousel Retaliation; and finally, to accept the banana deal.

The WTO Challenge

In both Europe and the US it is widely thought that the Clinton Administration was initially hesitant to get involved in the WTO dispute. A trade war with Europe over a product with little domestic agricultural significance conflicted with Clinton's plans to strengthen the US relationship with Europe. Why would the US enter the banana dispute when it is not a large exporter of bananas to the EU? Many EU officials have argued that the US decision to enter the dispute was dictated by Chiquita Corporation, the American based multinational banana producer operating in Latin America. US trade officials have argued that the decision to pursue the dispute was prompted by the need to accommodate a range of actors including the US Congress, Latin American banana producers and Chiquita. In the early stages of the dispute, one USTR representative stated, 'We did not consciously enter the GATT dispute. In part we did so at the request of Latin American countries.'⁴¹³ The direct US link to Latin American banana producers, however, is Chiquita. Chiquita's role in the dispute is crucial to understanding the US decision to file a WTO complaint against EU banana subsidies.

USTR involvement in the WTO dispute was secured when Chiquita applied for a Section 301 petition, requiring USTR to investigate the EU banana regime under the US 1974 Trade Act. It was the Section 301 petition that subsequently led to the US decision to join other Latin American countries in requesting the Dispute Settlement panel in 1996. Section 301 requires USTR to act if a trading practice is in violation of bilateral or multilateral trade agreements. Thus a USTR official argued that, 'There was little flexibility on this, USTR had to take the 301 Petition because GATT had found the EC in violation of rules'.⁴¹⁴

The main beneficiary of USTR's investigation into the EU banana regime was Chiquita. Chiquita reported over a billion dollars in lost revenue since the second banana regime was established in 1993, and in January 2001 it sued the European Commission for \$519 million in damages incurred as a result of the EU banana subsidies.⁴¹⁵ Despite the fact that American multinationals controlled three-fourths of the EU market, Chiquita's share dropped from roughly 40 to 20 percent after the implementation of the single market regime. In addition, while Chiquita's market share dropped roughly 20%, two other US banana multinationals, Del Monte and Dole, managed to increase their market share over Chiquita.⁴¹⁶ Both refused to enter the dispute despite their shared interest in Latin American banana plantations.⁴¹⁷

⁴¹³ Interview USTR official, Washington D.C. and by telephone 2000, 2001 (57,58).

⁴¹⁴ Still, it should be noted that the decision was unprecedented. Prior to USTR's decision to launch the 301 investigation, one USTR official argued it 'would break new ground, as this would be the first time that USTR had ever used Section 301 in connection with a product that was not exported from the US.' Quoted in Barlett and Steel (2000)

⁴¹⁵ Sutton (1997) reports Chiquita's pre-1993 market share at 43% and post 1993 at 18%. See also Alden and Bowen (Financial Times) 2001.

⁴¹⁶ Chiquita claims its losses are a direct result of the EU banana regime, however, it has also been argued by the international consulting firm, Arthur D. Little International that Chiquita's losses are due to its earlier policy of oversupplying (see Sutton 1997: 25).

⁴¹⁷ It appeared that Dole and Del Monte wished to avoid the negative press attention that Chiquita received for battling against small Caribbean producers. Both companies publicly offered their support for ACP states (despite their endorsement of first come first serve licensing, deemed detrimental to ACP states). Dole claimed that, 'precipitous change in current trading regime arrangement would cause disproportionate amount of harm to ACP and European banana producing regimes'. Del Monte reported that its activities in Cameroon, 'were part of a corporate strategy recognising the EU's need to provide

While USTR is commissioned to protect US businesses, its avid interest in the banana dispute at the beset of one company against the rest of the industry drew heavy criticism. It was widely argued that Chiquita's privileged position was secured by its CEO, Carl Linder, who had made heavy campaign contributions to the Clinton Administration⁴¹⁸. Time Magazine reported that Chiquita's CEO 'got Washington to launch trade war for him' (see Barlett and Steel 2000). Commissioner Brittan argued that US involvement in the dispute settlement process was 'driven by the fact that Chiquita is a company that gives money to political parties'⁴¹⁹.

Chiquita managed to lobby support not only from the Clinton and Bush Administrations but also from Congress. Twelve US Senators called for a formal inquiry into the EU banana regime, and USTR came under heavy pressure from Congress to exert maximum pressure on the EU to end to the dispute. Congressional interest in bringing an end to banana subsidies was also tied to the larger goal of curbing unfair EU trading practices, a particular irritant of both politicians and lobbies linked to domestic agriculture.

some form of protection to EU growers and to honour the commitments made under Lome.' See Caribbean Banana Exporters Association, EU Banana Regime: Position of Del Monte and Dole Corporations: available at <http://cbea.org>, downloaded 22 November 2000. Dole corporation refused to comment, claiming their position was well documented in the press. In reality, both companies were less affected by the EU banana regime because they had taken steps to diversify their markets. Dole invested in ACP producing states such as Jamaica, Cameroon and the Ivory Coast, and bought up European importers that held the import licences, thus, ensuring that Dole-Europe benefits from EU quota-rents.⁴¹⁷ Del Monte expanded European distribution, increasing its European business by 30 per cent, with half of its \$2 billion in revenues coming from the continent. Chiquita, who had sold its interests in the Irish based banana operator Fyffes, suddenly found itself in direct competition with companies who held European licenses. Interview USTR official, Washington DC 2000, (58); See also Alden and Bowen (Financial Times) February 16, 2001.

⁴¹⁸ See Laurance, B (1999) The Big Banana In Sunday Guardian, 7 March

⁴¹⁹ Quoted in BBC News (1999) Banana War exposes old trade divisions, 5 March. The argument over Chiquita's campaign contributions gave rise to speculation- mostly in the European Voice- that Dole's position would be more heavily protected under the Bush Administration because it had given more money to the Republican party (see European Voice 2000). However, this was disproved when the Bush Administration supported a deal opposed by Dole.

Sanctioning the EU regime

The decision to sanction the regime prior to the WTO ruling raised the stakes in the dispute and increased tension between the transatlantic partners. In late 1998 USTR came under heavy pressure to retaliate against the EU in the banana dispute. Members of Congress were frustrated with the EU's failure to implement a WTO consistent regime despite the 1997 ruling. Congress and USTR agreed that changes to the EU banana regime, which were set for implementation in January 1999, would not make the EU regime WTO compatible. In November the House approved Resolution 213 calling for the Administration to actively pursue EU compliance in the banana and beef disputes. The Resolution, later approved by the Senate states that, 'the President should develop a trade agenda which actively addresses agricultural trade barriers in multilateral and bilateral trade negotiations and steadfastly pursues full compliance with the dispute settlement decision of the World Trade Organisation' (US Congress 1998).

The decision to sanction the EU gained cross party support from influential Democrats and Republicans in Congress, and featured lobbying by many heavy weights including the Speaker of the House Newt Gingrich, Senator Trent Lott and Senator Bob Dole as well as Minority Leader Richard Gephardt.⁴²⁰ Congress exerted pressure on the Administration who in turn agreed to pursue 'all necessary action to ensure full and timely EU compliance in these cases.' White House Chief of Staff Erskine Bowles (1998) outlined in a letter to several Congress Members in November 1999 the Administration's commitment to utilising (1) domestic, (2) bilateral and (3) multilateral channels to end the dispute.⁴²¹ First, bilateral discussion with the

⁴²⁰ These politicians favoured the 'free trade' stance, while a movement of less influential Democrats has opposed the US challenge to subsidised Caribbean bananas in favour of 'fair trade' (see also below).

⁴²¹ The letter stated, 'The Administration shares your view that the World Trade Organisation cases involving bananas and beef hormones are important tests of whether the European Union (EU) intends

Commission would continue in accordance with commitments made under the NTA. Second, USTR would reserve the right to challenge the regime in the WTO. Finally, in keeping with domestic commitments, retaliation against the EU would be instigated under Section 301 of the 1974 Trade Act. Bowles also announced the Administration's intent to publish the list of sanctions in the public register for comment in November 1998 and to impose sanctions no later than March 3, 1999. The commitment to Congress locked USTR negotiators into a time frame for retaliation.

US decision-makers appeared fairly united in their decision to sanction the EU.⁴²² However, the decision to pass the Carousel Retaliation Act, ironically as part of the Afro-Caribbean Trade Bill, highlighted differences between Congress and the US Administration. It also illustrated how Congress was able to impact US trade policy directly, and how Chiquita, as a strong supporter of Carousel, was able to exert additional pressure on USTR indirectly. Carousel Retaliation gained popular support in Congress because it was designed to maximise pressure in all trade disputes with the EU.⁴²³

Two factors helped maximise the lobbying efforts of Chiquita on Carousel Retaliation. Again, the hefty campaign contributions made by Carl Linder (around \$5 million) to both parties in Congress came under scrutiny. Moreover Chiquita's interests coincided with many in Congress who were interested in putting an end to other trade disputes where agriculture subsidies and tariff rate quotas formed non-tariff

to implement WTO rulings issued against it'. The widely publicised letter is available from <http://hill.beef.org/ft/wto8.htm>

⁴²² Although it should be noted that some members of the House were opposed to sanctions and introduced House Resolution 1361 (sponsored by Democrat Representative Maxine Waters) to 'bar the imposition of increased tariffs or other retaliatory measures against the products of the European Union in response to the banana regime in the European Union.' The resolution stated that US consumers and Caribbean farmers should not pay for losses to one US company. The resolution never re-surfaced from the House Subcommittee on Trade after it was logged there in April 1999.

⁴²³ Views expressed by interviews with House and Senate staff members, Washington D.C. 2000.

barriers to trade.⁴²⁴ Chiquita gained wider political support by teaming up with the beef lobby, who had much more broad-based constituency support.⁴²⁵ The US Beef Cattlemen Association and Chiquita Corporation ran an ad campaign drawing attention to domestic opposition to the EU's banana and beef regimes (see figure 8.1). The 'Message to Congress' was that US companies were paying the price for EU non-compliance with WTO rules⁴²⁶.

The idea that the European Commission was dodging the WTO decision was popular in Congress. One Senate staff member noted that Senators felt that despite three WTO rulings the Commission, 'was doing nothing!'⁴²⁷ That viewpoint was also held in the House, where one staffer noted that, 'Once the banana case was won, Congress expected the Europeans to comply. That they don't is an affront.'⁴²⁸ US Congressman John Thune argued that,

The EU-US beef and banana disputes were important tests for these new (WTO) procedures. The EU's refusal to live with the consequences of the decision is unacceptable. It defies the purpose of the WTO and breeds further scepticism among those who want free and fair trade.⁴²⁹

Carousel Retaliation was seen as a way of *forcing* the Commission to comply with the WTO ruling, thus putting an end to the dispute. However, it was highly controversial both in transatlantic relations, where it was unanimously condemned by European institutions, and domestically where the US Administration publicly voiced concerns over the new legislation. USTR Barshefsky testified before the Senate Finance Trade

⁴²⁴ See European Union- Germany- France Report, June 1998, US Congress, Committee on Agriculture, Agriculture Trade Expansion Delegation.

⁴²⁵ The US Beef Cattlemen Association has the support of beef farmers, who are present in most US states, whereas Chiquita has no domestic agricultural base. Rather, its only direct constituency link is to its headquarters in Cincinnati Ohio.

⁴²⁶ See also US Beef Cattlemen 1998.

⁴²⁷ Interview, Washington DC 2000 (51).

⁴²⁸ Interview, Washington DC 2000 (39).

⁴²⁹ Available, <http://www.house.gov/thune.wto.htm>

Sub-Committee that she opposed Carousel Retaliation.⁴³⁰ Another USTR official noted that USTR already had the power to change the sanction list, adding, ‘if we thought changing the list would do it, we would.’

Carousel Retaliation highlights institutional rivalry between USTR and Congress on foreign trade policy. While USTR was more tuned to the external, bilateral and multilateral implications of using sanctions, Congress was acting solely in interest of domestic businesses. One House Staff member noted with irritation that, ‘Business argued that USTR should look at the products on the list to have full impact... we were baffled that USTR refused to look at it...’⁴³¹ One Senate staff member stated the view that officials in USTR simply ‘oppose authority for Congress.’⁴³²

The decision to sanction

The decision concerning which products to sanction, including a range of cheese, wine, clothing, appliances and beauty products increased the complexity of US policy towards the EU banana regime. Two factors were crucial to determining the sanctions list. First, officials asked where sanctions would most likely have an impact, and second, where minimum damage would be caused to US companies.⁴³³ Ultimately, the decision lay with USTR, however the list of sanctions was available for public comment in the Federal Register. A comparison of the original and final lists sheds some light on which other influences shaped the US decision on ‘who’ to sanction. In addition it points to domestic casualties of the banana war.

⁴³⁰ See US Administration Press Release (2000) Carousel Revised Retaliation List in EU Disputes Delayed, 20 June.

⁴³¹ Interview, House Staff, Subcommittee on Trade, Washington DC, 2000 (39).

⁴³² Interview, Senate Staff, Senate Finance Committee, Washington DC, 2000 (51).

⁴³³ Interview, USTR official, Washington 2000 (57).

The internal economic repercussions of US sanctions became apparent when US manufacturers, farmers and retailers reported lost exports and lost imports. For example, US farmers faced lost sales of raw ingredients to EU cookie producers, and Whirlpool halted shipments of certain coffeemakers.⁴³⁴ US department stores such as Nieman Marcus⁴³⁵ were forced to find alternative sources of cashmere and small retailers of, for example, bath products were unable to import products for distribution.

The damage to US companies had internal political repercussions. First, the viewpoint that US trade policy was dictated by large companies was reinforced by the fact that many large multinational companies, such as Gillette and Mattel, were able to lobby their European-made imports off the sanction list, while small companies without lobby facilities, which were often unaware of the dispute, were not.⁴³⁶ Second, damage to US companies involved in foreign trade instigated backlash from companies who condemned the use of unilateral sanctions. A spokesperson for the American Association of Exporters and Importers in New York argued that, 'We would like to see rule of law rather than [the US] acting as jury and judge.'⁴³⁷

US policy decisions in the banana dispute also had external repercussions for bilateral US relations with other states. The decision to strategically target sanctions at the regimes strongest supporters threatened bilateral relations between the US and certain Member States. In particular, the banana dispute soured the 'special relationship' between the US and the UK. While the UK had been spared from

⁴³⁴ See Cox, J (1999) 'Punitive Actions by US Felt World-wide' In US Today, March 11.

⁴³⁵ One USTR official notes that Neiman Marcus tried to lobby Scottish cashmere off the list by arguing that Chinese replacements were of lower quality (57).

⁴³⁶ See Barlett and Steele 2000. Members of Congress also lobbied to get some industries off the list. For example Congressman Bill Delahunt, a strong supporter of US sanctions, actively lobbied USTR on behalf of New England candle makers and Greeting Card Makers whose imports were on the original sanction list (Press Release 16 April 2001).

⁴³⁷ Quoted in CNN (1998) US-EU Trade War Looms, 10 November.

retaliation in the beef dispute, its strong support of the EU regime ensured it was one of the countries hardest hit by US sanctions.⁴³⁸

The US challenge to end the EU banana regime also threatened the US-Caribbean relationship. In March (1999) the Caribbean Community and Common Market (Caricom) suspended the Caribbean-US 'Partnership for Prosperity and Security in the Caribbean' or the Bridgetown Accord (1997) in protest of US sanctions. A Caricom spokesman confirmed that the suspension of the Accord was a means of communicating its disgust to the White House.⁴³⁹

Finally, the banana dispute put a strain on US-Latin American relations. In particular, the relationship with Columbia and Costa Rica was threatened when the two states signed a pact with the EU in which they withdrew their complaint against the banana regime. The deal was met harshly in the US Congress, where Senator Bob Dole [unsuccessfully] called for sanctions against these countries to be included in a budget bill (Greenwald *et al* 1996). The tension between the US and Ecuador, who chose to accept the EU's first come first proposal, was exemplified by the comments of Ecuador's Ambassador to the EU, Alfredo Pinoargote, who argued that 'Ecuador and the EU have been virtually taken hostage by the [US].'⁴⁴⁰

⁴³⁸ The sanctions placed heavy pressure on the UK government because they threatened to shut down the Scottish cashmere industry. US industry and members of Congress strongly supported targeting cashmere because threatening an already fragile textile industry would maximise pressure and hopefully convince the UK government to use its influence within the EU. Instead, the UK government turned and sharply criticised the US. In protest, the Department of Trade and Industry took the rare opportunity twice to summon the US Ambassador to the UK.

⁴³⁹ Wilkinson, B (1999) Caricom Suspends Treaty with US Over Bananas, One World News, 9 March. Available at <http://www.oneworld.org>

⁴⁴⁰ Quoted in BBC News (2000) Ecuador turns on US in trade war, 6 October. Ecuador's decision was said to be dictated by its dependence on EU imports, which kept it from imposing WTO approved sanctions.

Figure 8.1

A Message For Congress...

The image shows four overlapping message cards, each titled "WHILE YOU WERE OUT" and addressed "TO Congress".

- Card 1 (top left):** DATE 12/29/99. MESSAGE: Europe kept up its illegal trade restrictions on banana and beef imports.
- Card 2 (top right):** DATE 1/2/00. MESSAGE: The EU continued to flout numerous WTO rulings, refusing to comply with global trade laws.
- Card 3 (middle left):** DATE 12/15/99. MESSAGE: In Seattle, the EU preached the importance and value of the WTO, while simultaneously violating the WTO's underlying principles.
- Card 4 (middle right):** DATE 1/24/00. MESSAGE: Since November, Europe's illegal banana and beef practices cost U.S. agriculture and business another \$60 million in damages.

This is going to be an important year for trade. Congress will vote on whether the United States should remain in the World Trade Organization, and consider China's accession to the WTO. In both cases, the key question will be "Is the WTO working?"

Unfortunately, the ongoing banana and beef disputes with Europe show how the global system is not working as Congress understood it would. For years, the European Union has maintained illegal restrictions on banana and beef imports, refusing to comply with numerous WTO rulings and ignoring calls for a lawful resolution. Europe's illegal actions continue. During the last congressional recess alone, U.S. agricultural interests lost more than \$60 million — and this is in addition to the billions of dollars in lost business since these disputes began.

Congress can ensure the WTO works as intended by passing "Carousel Retaliation" legislation, requiring the United States to take steps to enhance the pressure on countries that refuse to abide by WTO rules. And this WTO-consistent proposal will send a strong message to all current — and future — WTO members. We urge Congress to enact "The Carousel Retaliation Act" without delay and continue its efforts to force Europe to end its illegal trade practices.

Let's make the WTO work for US.
Pass "The Carousel Retaliation Act" (S. 1619, H.R. 2991) now.

AMERICAN MEAT INSTITUTE **AMERICAN BEEF BUREAU** **AMERICAN FARM BUREAU FEDERATION**

Why accept this deal?

Three months into Bush's Presidency, the US government agreed to end the banana dispute with the EU. Why did the US government choose to accept *this* deal? From the start, the US had favoured the use of historical reference licensing over first come, first serve licensing, but a sticking point in previous negotiations had been the reference period used to determine banana licenses. It was argued that a post 1993 reference period upheld the distortions of the EU banana regime because it issued licensing on the basis of volume distribution at a time when tariff-rate quotas existed for ACP bananas. The pressing question is why the US agreed to a deal that included a historical reference period of 1994-1996 for license distribution, the same period used in the third banana regime and how was USTR able to sell the deal at home? It is argued that the compromise was struck in order to avoid the implementation of first come, first serve licensing and the subsequent use of Carousel Retaliation, which USTR had avoided using thus far.

A number of factors helped influence USTR's decision to accept the historical reference licensing scheme. First and foremost noted one official, 'We wanted to end this dispute.' The close pre-existing relationship between Commissioner Lamy and USTR Zoellick arguably incited compromise.⁴⁴¹ Still, despite early meetings between the two, Zoellick testified in front of Congress in March 2001 that the EU would face sanctions unless it could show greater flexibility on bananas. It was widely believed that the Bush Administration- like the Clinton Administration- was under pressure from Congress to implement Carousel Retaliation, which the Clinton Administration

⁴⁴¹ Interviewee (57) argued that Commissioner Brittan and USTR Barshefsky had mismanaged the dispute. A Financial Times Editorial stated that, 'Much of the deterioration in transatlantic trade relations since the mid-1990s was due to personal frictions between their predecessors, Sir Leon Brittan and Charlene Barshefsky. Messrs Lamy and Zoellick have had the maturity and good sense to rise above petty squabbling in the interests of bigger shared goals. That bodes well for the handling of future disputes.'

had shelved.⁴⁴² One USTR official argued that the perception of Congress was similar to the Administrations. They wanted the dispute solved, 'they were sick of bananas.'⁴⁴³

USTR's mission was to find a compromise that could 'best' accommodate the interests of Latin America, the Caribbean and Chiquita.⁴⁴⁴ Despite earlier objections from the Latin American producers and Chiquita, the historical reference system met a fundamental requirement of all three parties: it replaced the first come first serve system. The threat of first come first serve was particularly persuasive in convincing Chiquita to accept the historical references period of 1994-1996. Although it stood to gain a few licenses (overall the tariff quota for dollar bananas was increased by 100,000) under the banana v regime, the numbers were not drastically different to those upheld by previous regimes. However, one USTR official noted that, 'Chiquita actually mortally feared [first come first serve]. It fought until it became abundantly clear that it would be a reality.'⁴⁴⁵ In addition, Chiquita was guaranteed a definitive date for the end of the tariff rate quota system.

3) EU Decision Making in the Banana Dispute

While US involvement in the banana dispute can be mainly attributed to domestic interests, at first glance the EU position seems to be the product of external factors, most obviously its relations with ACP states. US officials have argued, however, that the EU front as third world protector is a cover for its real interest in protecting EU banana operators. This section considers the decision to maintain the tariff rate quota

⁴⁴² A Senate Staff Member argued in October 2000, that 'Congress has been put pressure on the Administration to get rid of these disputes.' Washington (51).

⁴⁴³ Interview, USTR official, Washington 2000 (58).

⁴⁴⁴ Interview, USTR official, Washington 2000 (57).

⁴⁴⁵ Interview, USTR official, Washington 2000 (58).

system, to change the regime, and finally to introduce first come first serve licensing and a tariff only regime.

Table 8.5

Favoured First Come First Serve Licensing (Banana iv)	Favoured Historical Reference Licensing (Banana v)
US Multinationals	US Multinationals
• Dole Corporation	• Chiquita Corporation
ACP States	ACP States
• None	• All
Latin American Producers	Latin American Producers
• Ecuador	• All barring Ecuador
EU Banana Operators	EU Banana Operators
• None	• All

Pressure to Maintain the Regime

The main lobbies that fought to keep the EU regime were Caribbean farmers and EU banana operators.⁴⁴⁶ EU operators favoured the historical reference period used in the regime's licensing scheme, because the time period used guaranteed more licenses for EU companies who were already trading with ACP states.⁴⁴⁷ The tariff quota

⁴⁴⁶ Through, for example, lobby groups such as the Caribbean Banana Export Association and the EU Banana Operators Association.

⁴⁴⁷ The Financial Times (1999a) reported that the regime 'largely benefit[ed] EU banana traders.'

maintained secure access for Caribbean and African bananas. Both lobby groups were able to maintain the support of Member States, particularly those with colonial ties, who in turn fought to keep the tariff rate quota regime.⁴⁴⁸

The Reaction to US Sanctions

The European Commission, the Member States and the European Parliament unanimously condemned US sanctions. Nonetheless the WTO approval of sanctions acted as a catalyst of change. Carousel Retaliation increased pressure on decision-makers to revise the regime. Although European leaders such as Blair argued that Carousel was totally unproductive, the threat of increased sanctions had the intended affect. First, some Commission officials admitted that Carousel Retaliation forced the EU to reconsider its plans for change more quickly. Second, sanctions not only instigated a backlash against the US, but also against the EU as European companies and member state governments became stuck in the crossfire of the transatlantic trade war.

In September 2000, 16 months after the WTO ruled that the EU banana regime was inconsistent with WTO rules, a number of European companies announced that they were taking legal action against the Commission. Arran Aromatics, a Scottish manufacturer of bath products, reported that it was seeking legal consultation on reclaiming damages of £2 million in lost export orders to the US (Eaglesham 2000). The Italian based Fiamm Spa, producers of batteries, announced it would be seeking L35bn compensation (Il Sole 2000) and Scottish cashmere producers threatened to

⁴⁴⁸ It should be noted, however that Germany opposed the new regime, because it previously had duty free imports for all bananas, be they Latin American, Caribbean or African. Germany challenged the single banana regime in the European Court of Justice, but the court upheld the EU wide tariff rate quota system.

sue the Commission for £5 million (Chisholm 2000).⁴⁴⁹ European companies argued they should not have to pay the consequences of ‘the European principle of preference for our former Caribbean colonies’.⁴⁵⁰ The companies backed the US argument that the Commission had failed to handle the dispute in a ‘reasonable time span’.

In response to the threatened litigation, European Commission trade spokesman Anthony Gooch argued that these companies lacked ‘a legal leg to stand on’.⁴⁵¹ It was argued that the blame was misplaced because the Commission had taken action to change the banana regime (including three major communications to the Council). Renegotiating the banana regime had been timely because of the interests of the Member States. While the UK and Germany pushed for a compromise, the southern Member States, including France and Spain, voted against the Commission’s proposal for compromise.⁴⁵²

Negotiating First Come, First Serve

The negotiations on the fourth banana regime were held up by internal disagreement between Member States and the European Parliament and external opposition to both phases of the fourth banana regime. First, some Member States,⁴⁵³ EU banana operators, ACP and some Latin American states opposed the move to a tariff only system. The Commission (1999, 2000), the Council (1999) and the European Parliament (2000) argued against ending the tariff rate quota system. However, it was

⁴⁴⁹ This claim was made before cashmere was temporally removed from the list.

⁴⁵⁰ Quote made by Ian Russell, managing director of Arran Aromatics, in Eaglesham (2000).

⁴⁵¹ Quote found in Wall Street Journal (2000) *European Firms Seek EU Damages for Banana War*, 30 August.

⁴⁵² Germany and the UK were two of the member states hardest hit by US sanctions. While Germany had traditionally opposed the banana regime, the UK had been an avid supporter. Some argue the UK sold out to the US to protect the cashmere industry. After bilateral lobbying by Tony Blair US officials took cashmere off the list arguing that the UK because it was less aggressive in its support for EU banana regime ten other countries. See Mac Farlane (2000).

⁴⁵³ Particularly, Spain, France, Portugal, Ireland and Greece: the former having strong colonial ties and the latter being small scale banana producers.

decided in July 2000 that the move was the only way to satisfy the US and end the WTO dispute. The Council asked the Commission to pursue more definitive plans for the transitional licensing scheme. However, internal conflict was publicised when agriculture ministers refused to grant the Commission a mandate to negotiate a direct move to the tariff only system should the transitional system fail to solve the dispute⁴⁵⁴.

Most parties favoured the historical preference system, but there was disagreement over which reference period would determine the licences. The US and Latin American countries preferred pre 1993 levels, but Caribbean producers and EU banana operators preferred post single market levels. There was also a question of whether the auctioning system, which was opposed by ACP states and the US, would be WTO compatible.

The decision to move ahead with first come first serve licensing met with backlash from EU banana operators, ACP states and some Latin American Countries. Banana operators from many Member States, Caribbean and Latin American teamed up in an advertising campaign protesting against the first come first serve system (see figure 8.2).⁴⁵⁵ They argued that this system would lead to serious disruption in the market. Atlanta (2000), the largest German fruit wholesaler and leading operator and distributor, told the European Community Banana Trade Association that, 'first come first served systems would force the operators to break up their shipping schedule which now are in line with the ripening cycles and the general requirements of the market'. Furthermore, it was argued that free lance traders would be able to block

⁴⁵⁴ See Smith, M 2000 (Financial Times) and EU Business 2000.

⁴⁵⁵ Run in European Voice, 23-29 November 2000, those countries included Austria, Belgium, Columbia, Denmark, Ecuador, Finland, France, Germany, Ireland, Italy, Jamaica, Netherlands, Portugal, Spain, Sweden, the UK and the Windward Islands.

ADVERTISEMENT

To whom it may concern...

Statement on the Future EU Import Regime for Bananas



The undersigned companies and (sub-) national organisations, together representing the vast majority of banana trading companies in the European market, reaffirm their strong opposition to the Commission's proposal to introduce a transitional import regime based on a "First Come - First Served"-system.

That system is in no respect suited to the characteristics and requirements of marketing a perishable product such as bananas and would lead to a serious disruption in the market.

Moreover, that proposal has been rejected by the United States, seven Latin American supplying countries and the Caribbean. If it was enacted, this longstanding dispute would not be resolved.

The undersigned companies therefore join the call by the United States, seven countries of Latin America and the Caribbean for the prompt introduction of a different system, for instance based on historical references of banana trading companies.

Austria

ADEG Österreich Handelsgesellschaft • Fruchtexpress
Grabher GmbH & Co. KG • Johann Ischia & Co. Im- und
Exportges. m.b.H. • Josef Ahoner Gesellschaft m.b.H. •
Josef Mathy Ges.m.b.H. & Co. • Obst Huber Fruchtimport
Gesellschaft m.b.H. • ZEILBERGER fruit service AG

Belgium

Banacol Marketing Belgium BVBA • BANANIC
INTERNATIONAL N.V. • Geest Europe •
Leon Van Parys N.V.

Columbia

Uniban

Denmark

Brdr. Lembecke A/S

Ecuador

COSTATRADING S. A.

Finland

Inex Partners Oy • Veikko Laine Oy

France

AGRUPRIM S.A. • COBANA IMPORT S.A.R.L. •
Compagnie des Bananes • Pomona

Germany

Afrikanische Frucht-Compagnie GmbH • Atlanta AG •
BANATRADING GmbH • Cobana GmbH & Co. KG •
Edeka Fruchtkontor GmbH • Internationale
Fruchtimport Gesellschaft Weichert & Co •
T. Port GmbH & Co.

Ireland

Central Banana Importers Ltd. • Keelings Ltd. •
N. Smyth & Co. Ltd.

Italy

ABC • Bariba • Chiquita Italia • Co-Frutta • Dal Bello •
Evergreen Trade • Simba SPA • SOCOBA • TICO

Jamaica

BECO

Netherlands

Bruigom & Visser • Chiquita • Jan van den Brink b.v. •
Velleman & Tas

Portugal

Frulgue-Agricultura, Comercio e Industria, LDA. •
Frutiban-Agrotecnica, Comercio de Frutas e Produtos
Hortícolas, LDA. • Paniberica-Agricultura, Comercio e
Industria, LDA.

Spain

Angel Rey S. A. • BARGOSA, S.A. • César Pisón e
Hijos, S. A. • Hispafrut, S. A. • Garvic, S. A. •
Hijos de Martin Moreno, S. L. • MARTIMAR Hijos
de Enrique Martin, S. A. • Meneu Distribución, S. A. •
Mercadistribucion S. A. • Mundifruit Import Export
S. A. • Reybanpack, S. A. •

Sweden

Everfresh AB

United Kingdom

Fyffes • Geest Bananas Ltd. • JAMCO • Mack Multiples
• S. H. Pratt & Co. (Bananas) Ltd.

Windward Islands

Wibdeco

For further information contact: info@atlanta.de

regular operators and that consumers would be hurt by the quality of the fruit, because companies would be unwilling to ship expensive high quality fruit given the risk of securing a license.

Caribbean banana producing countries also lobbied against first come, first serve licensing, which they believed would have disastrous effects on their economies. It was feared that the 'ship race' for licenses would disadvantage small operators and rapidly push the Caribbean growers out of the market. American multinationals also had an advantage over Caribbean exports because their established markets in Eastern Europe provided the option of shipping on to other countries, should their bid for a license be rejected near EU shores (CBEA 2000a; 2000b).

American countries also opposed the first come, first serve system. Wilson (2001) reported that, 'They fear Ecuador, the biggest exporter, will further increase its market share at its neighbours' expense because of its low production costs.' The US was not on board either. USTR officials argued that the system was not compatible with WTO rules.⁴⁵⁶ In short, as one US trade negotiator argued, 'First come, first serve will not end the dispute. Latin Americans oppose it. Caribbean producers oppose it. The Africans don't like it. Companies except for Dole don't like it.' Even the Commission admitted that 'The first come first serve system has very limited support and constitutes a particular heavy administrative burden for the EC.' Moreover, 'small time smaller operators which are not 'primary importers' could be eliminated from the markets' (European Commission 1999b). Why, then, was the banana fourth licensing scheme pursued?

⁴⁵⁶ See Financial Times (1999) 'US rejects Brussels' proposal on bananas', 11 November; Alden, E (2000) 'US and EU still split on beef and bananas' In Financial Times; December 19; The Independent (1999) 'US Rejects Banana Trade Deal', 11 November.

The decision to implement the first come first serve licensing scheme can only be explained as a compromise made in the face of internal and external pressure. Consistent WTO rulings and the threat of US sanctions meant that the regime needed to change, but negotiators had their hands tied at a political level by the Member States and the lobbies behind them.⁴⁵⁷ Commission officials argued that they had very little option in revising the banana regime; they believed that the tariff quota regime would have to be eliminated to end the dispute⁴⁵⁸.

EU Member States insisted on a transitional system tariff-rate quota system to protect ACP states. The tariff rate quotas required a licensing scheme, but finding a system which satisfied EU operators, Caribbean exporters and the WTO complainants was an impossible task. Member states were forced to choose the 'least worst' option when the Commission announced in July 2000 that without an agreement on a licensing system, a transitional shift to a tariff only regime would not be practical. Many were opposed to the first come first serve licensing, but many had stronger objections to scrapping the transitional period and moving directly to a tariff only system.⁴⁵⁹ In the end it was the Member States preference for a slow transition to protect those who had gained from previous banana regimes which placed on the agenda a licensing scheme so avidly opposed by the same.

Why a deal now?

The Commission's decision to abandon the first come first serve system was a compromise aimed at balancing multiple interests. By implementing the controversial

⁴⁵⁷ Viewpoint also expressed by Finnish Council Presidency officials, Interview, Brussels, 1999 (5).

⁴⁵⁸ Need to interview a couple of people in Brussels to see why the Caribbean Framework proposals (which had gained support from some Latin Americans and the US) was used other than the fact that it lacked concrete details. One USTR officials argued that if the EU was concerned with the Caribbean it would have taken its proposal on board.

⁴⁵⁹ See Smith, M 2000, *Financial Times*.

license system, the EU stood to alienate the banana operators and ACP farmers it had originally tried to protect. Even so the reaction of these parties to first come, first serve licensing was well noted before the Council agreed to it. So, why, in the end, did the Commission revert back to a historical reference system?

First, there were questions about the WTO compatibility of the first come first serve system. The challengers to the regime indicated that they would continue to challenge the EU banana regime at the WTO. The US threat of Carousel Retaliation implementation increased the risk of damaging sanctions on EU companies. In addition the EU-US banana deal secured US support for the EU's WTO waivers for Most Favoured Nation (MFN) status under Article 1 of the DSU, which the Commission feared it would not be able to secure.⁴⁶⁰

Second, the Commission played a crucial role in ending the dispute because it had wide discretion on the type of licensing system to be used during the transitional period. The threat of first come, first serve was originally designed to force the Member States to agree to a historical licensing system. The Commission only accepted the first come, first serve system when the Member States could not agree on a historical reference period.⁴⁶¹ Further, Commissioner Lamy argued that first come first serve was used to pressure the US to make a deal.⁴⁶² Rumours in the banana community suggested that the Commission would have abandoned the controversial licensing system either way. However, preliminary work on the system suggested contrary.

The Commission's final decision to relinquish the first come first serve system also stems from the problematic implementation of the system. One Commission

⁴⁶⁰ Although consensus is not needed to secure a waiver, if a number of countries were willing to continue fighting, the dispute would continue.

⁴⁶¹ See Commission Communication on FCFS, 4 October 2000, COM (2000) 621. Interviews with Commission official (via email) 2001(59); and USTR official (via telephone) 2001 (58).

official noted that, ‘when it came to actually putting First Come First Serve into practice, there were all sorts of technical problems - the whole system had to be created from scratch. There were serious doubts as to whether the system would be up and running by 1 July 2001 (it had already been put back from 1 April).’⁴⁶³ Failure to implement the regime, noted one official, ‘would create a real blot on the Commission’s record.’⁴⁶⁴

To summarise, it can be argued that the EU’s decision to revert back to the historical reference license system was a means of ‘best’ accommodating interested parties. EU banana operators and ACP farmers accepted that they were losing the privileges of the previous regime, and favoured historical referencing for the interim period. The EU abandoned its ally in Latin America (Ecuador) in favour of more broad based support from other banana producing states and US agreement that the WTO challenge would not continue. Finally, given the complications of first come first serve, it can be argued that the banana deal was a means of maintaining the EU’s credibility.⁴⁶⁵

4) The Wider Implications of the Banana Dispute

The transatlantic banana dispute is such an important case study, because it highlights the capacity of transatlantic disputes to undermine relations with third states. It demonstrates how conflict in the transatlantic relationship distracts from co-operation under the NTA. Finally, these combined factors illustrate the capacity of transatlantic disputes to threaten the stability and legitimacy of the multilateral trading system.

⁴⁶² See European Voice, April 13, 2001

⁴⁶³ Interview Commission official (via email) 2001 (59).

⁴⁶⁴ Interview USTR official (via telephone) 2001 (58).

⁴⁶⁵ Argued by Commission official (via email) 2000 (59).

Relations with the Caribbean and Latin America

In the end, it can be argued that both the EU and the US acted like 'bullies'. Strategically they used the position of smaller states to gain support throughout the dispute, and domestic decisions taken in the banana war carried greater implications for the smaller banana producing states.

First, the EU defended its position as 'third world champion' by arguing that the US was bullying it into a policy that would undermine Caribbean economies. Ultimately it argued that the US challenge undermined efforts to prevent illicit activity in the region, because the lost market access for Caribbean bananas would result in employment loss, drug trafficking and high levels of illegal immigration to the US.⁴⁶⁶ Thus, EU officials argued that the US challenge to the banana regime undermined EU, US and transatlantic efforts to curb drug production in the Caribbean through for example, the Caribbean Drugs Initiative (1997). A Council Secretariat official argued that the, 'The EU spent a lot of money fighting off drugs in Caribbean. The US is acting to destroy farmers.'⁴⁶⁷

Ironically, it can be argued that the EU's commitment to the Caribbean was temporarily abandoned when it agreed to implement first come, first serve licensing.⁴⁶⁸ The decision also threatened to undermine efforts to curb economic instability in Latin America. It was argued that lost employment in the banana industry could increase social tension, which in turn would fuel guerrilla movements and harm efforts to end

⁴⁶⁶ To highlight the scale of the problem Hallam and Preston (1997) note that in Dominica, for example, the banana industry is the only legal crop cultivated year round, and it supports 30% of the workforce directly and 70% indirectly (Hallam and Preston 1997).

⁴⁶⁷ This viewpoint was also expressed by officials in the European Commission (in US) and in the UK Foreign Office.

⁴⁶⁸ See also Daily Telegraph 1999.

civil conflict. Increased violence in Columbia, in turn would undermine EU and US efforts to end conflict through the hefty financial aid that has poured into the region.⁴⁶⁹

Indirectly, both the EU and the US have played the role of bully as the domestically influenced decisions taken by each has had a negative impact on smaller states caught in the crossfire. The implication for the transatlantic decision-makers is clear: disputes between the two largest trading partners risk damaging their external relations with other states. Furthermore, the banana dispute threatened both transatlantic and multilateral frameworks for international co-operation.

The Effect on the NTA Relationship

The banana dispute had the capacity to undermine the NTA process in two respects. The interest here is first, in how the banana dispute interfered with the overall process of co-operation. Did the banana dispute actually block co-operation under the NTA process? Second, the interest is in the 'perceived' damage of the banana dispute. Aaron et al (2001: 3) argue that transatlantic trade disputes have 'polluted the atmosphere, stifling a productive discussion about the larger relationship'. To what extent did the banana dispute do so? Ultimately, the test for NTA institutions is how effectively they managed the banana dispute.

Most would agree the banana dispute specifically had some impact on the NTA process. Despite the existence of the Early Warning System and institutions such as the SLG and TEP Steering Group, the banana dispute raged on for almost a decade. It was on the EU-US Summit agenda for over three years. However, while EU and US officials conceded that the banana case had a negative impact on the relationship, they

⁴⁶⁹ See also Wilson 2001.

also argued that it did not impede the overall structure of transatlantic institutionalisation or the facilitation of further co-operation.⁴⁷⁰

In general, one Commission official explained that disputes ‘take away from meetings where other issues could be discussed’.⁴⁷¹ The banana dispute was blamed for overshadowing EU-US Summits. However, while the dispute provided a diversion at intergovernmental and transgovernmental meetings, it did block the NTA process from producing a number of deliverables, most notably the MRAs, the South-Eastern Europe Stability Pact, the AIDS initiatives in Africa and even the TEP. While the dispute may have interfered with increased co-operation, the whole NTA structure survived. As one Commission official argued, ‘conflict in one field does not break apart in other areas.’⁴⁷²

The most structural damage caused by the banana dispute was to the Transatlantic Economic Partnership. One Commission official observed that, ‘TEP ran parallel to bananas, hormones, and Helms Burton. These disputes have had counter influence.’ A representative from the American Chamber of Commerce in Brussels agreed that these disputes damaged the TEP.⁴⁷³ The argument follows that the period in which the TEP stalled (most of 1999) coincided with the most hostile year in the banana dispute. But, the banana dispute was a setback rather than a stopper. In 2000, the TEP was back on track, while the banana dispute raged on. One USTR official argued that, ‘the banana dispute did not prevent any positive developments. If we both wanted something it went ahead even through the dispute.’⁴⁷⁴

⁴⁷⁰ Interview with Commission, Council Presidency, USTR officials, September (1999), October (2000) (5, 9, 15, 57-9).

⁴⁷¹ Interview, Commission official, September 1999, Brussels (9).

⁴⁷² Interview, Commission official, September 1999, Brussels (6).

⁴⁷³ Interview, US Chamber of Commerce Brussels, September 1999 (19).

⁴⁷⁴ Interview, USTR official, (via telephone) 2000 (58).

Disputes, like that over bananas, interfere with transatlantic co-operation, because they occupy time and resources of the negotiators on both sides of the Atlantic, but the actual damage in terms of overall trade is overshadowed by the larger trading relationship. European interviewees often argue that bananas affect less than 1% of trade but 95% of media attention on transatlantic relations. One USTR official agreed, noting that, 'Disputes do not offset everything else. There is \$300 million involved in disputes and \$300 billion in trade. Journalists focus on news, that news is not that the US and the EU are trading swimmingly on \$300 billion in trade.'

Thus, despite talk of a transatlantic trade war, the EU and US remain partners within the NTA structure. A major shortcoming of this structure, however, was its failure to minimise 'surface' or superficial damage to the relationship that resulted from mishandling the dispute. The structure did not stop EU and US officials from having a public 'war of words' over bananas. Despite the established dialogue structure, EU and US officials took to what Prodi has characterised as 'megaphone' rather than 'telephone' diplomacy.⁴⁷⁵

Without underestimating the real damage to the EU-US partnership, it can be argued that the perception of damage did more to undermine the partnership. The EU's failure to design a WTO compatible regime led to harsh criticism in the US where for example USTR Barshefsky argued that the EU was forcing 'a major confrontation in transatlantic trade' (USTR 1998). The key factor was the US decision to impose sanctions in March 1999. Special trade negotiator Peter Scher maintained the time had come, 'for the EU to bear some of the consequences for its GATT and WTO obligations',⁴⁷⁶ while Commissioner Brittan argued that the US's 'politically unwise'

⁴⁷⁵ Prodi commented after the June 2000 EU-US Summit, 'We decided that megaphone diplomacy would be replaced by telephone diplomacy'. Financial Times (2000) New Tact but EU-US disputes remain, 1 June.

⁴⁷⁶ Press Release, USIS 3 March 1999.

decision to take unilateral sanctions was risking damage to the WTO and EU-US relations over a minor economic issue'⁴⁷⁷. A Council Secretariat official accused the US of 'taking hostages'.⁴⁷⁸ And, the UK Minister for Trade and Industry stated that, 'I deplore the action which the United States has taken...it is completely unauthorised by any WTO procedures.'⁴⁷⁹

The hostility of the banana dispute was most apparent among domestic actors who lacked direct access to transgovernmental networks. The dispute fuelled anti-American sentiment in certain Member States' governments and negative reactions to the EU in Congress⁴⁸⁰. In particular, US sanctions alienated one of its greatest allies within the EU, leading one UK official to accuse the US of being 'irrational' and 'unacceptable'.⁴⁸¹

The dispute had a disproportionate effect in Congress, where politicians have little knowledge and even less interest in the NTA or the TEP.⁴⁸² In Congress, the perceived 'stalling' of the EU in the WTO process generated perceptions that the EU was not 'playing fair'. While Congress argued it had taken quick action to change US tax laws after the WTO's ruling in the Foreign Sales Corporation Case, the EU had not made significant changes to its banana regime. One House staff member argued that 'In 5 months we were able to pass a major change to tax law, (to) respond quickly by law. Yet, the EU has failed to comply with WTO rulings in either the beef or the banana case in almost ten years.'⁴⁸³

⁴⁷⁷ Commission Press Release (1998) No.96/98, 10 November.

⁴⁷⁸ Interview, Council Secretariat, September 1999 Brussels (3)

⁴⁷⁹ Quoted by Buerkle (1999) in the International Herald Tribune.

⁴⁸⁰ Barnaby Mason argued in BBC News, for example, that the bitter dispute over bananas added to tension mounted by American exports of genetically modified crops, the acquittal of the American military pilot whose plane killed 20 people in Italy, and disagreement over Cuba, Iran, Iraq and Kosovo (1999) Transatlantic Tensions Deepen, 5 March.

⁴⁸¹ BBC News, 3 May 1999.

⁴⁸² Interview, Staff Member, Committee on Trade, Washington DC September 2000 (51).

⁴⁸³ Interview, Staff Member, Committee on Trade, Washington DC September 2000 (51).

To summarise, the banana dispute did increase tension in the relationship and contributed to the general negative atmosphere prompted by trade disputes in EU-US relations. It's hard to determine the exact impact of these negative perceptions, but a USTR official stated that, 'When you are throwing insults at each other- it is hard to kiss and make up.' Still, the dispute was not as detrimental to the NTA process as it was perceived to be. What is more damaging to the reputation of the NTA, is that it did not have a major impact on the banana dispute. The banana dispute highlights the inability of the NTA process to 'manage' diverging interests on either side of the Atlantic (see also Aron et al 2001).

The Multilateral Trading System

Arguably the most important consequence of the banana dispute is the failure of the EU and the US to resolve the conflict through the WTO. Both sides have accused the other of breaking multilateral trading rules, and of jeopardising the multilateral trading system. The unilateral nature of US sanctions and the EU failure to bring the regime in line with WTO rulings have called into question the effectiveness and legitimacy of international rules.

First, unilateral sanctions and the introduction of Carousel Retaliation led EU officials to question the compatibility of US domestic trade legislation with the WTO. European institutions united around the view that the timing of US sanctions threatened the sanctity of the WTO. Sir Leon Brittan warned that: 'My message to the United States is a simple one: use the WTO.'⁴⁸⁴ The UK Trade Minister Brian Wilson argued, 'It is at this point that the Americans appear to have pulled the plug on the

⁴⁸⁴ Quoted in CNN 20 November 1998.

(WTO) procedures and acted unilaterally'.⁴⁸⁵ Commissioner Lamy accused the US of making up its own rules.⁴⁸⁶

Arguably the US did 'break the rules' because the DSB concluded that it had acted too early in imposing sanctions. Nonetheless, it approved the sanctions and upheld the legality of Section 301 and Carousel Retaliation. The timing of the US request for retaliation exposed a 'loop' in WTO law. The US argued that the timing of the sanctions was dictated by Dispute Settlement Understanding (DSU) Article 22, which states that the complaining party must retaliate within 20 days after the 'reasonable time' deadline for implementation, in this case 1 January 1999. However, Article 22.6 requires the DSU to grant authorisation for retaliation within 30 days of the expiration period. This left a small window of opportunity – 21 January to 31 January- for the US to request retaliation. US officials argued (under Article 22.7) that if retaliation was not made within that time period, the 'negative consensus' rule would lapse, and the DSU would have to rule under 'positive consensus', which would allow any country, including the EU, to block retaliation.⁴⁸⁷ The US requested a panel for DSB authorisation on January 14 1999, and the panel was scheduled for the 25th, within the 'window of opportunity' (see also Komuro 2000; Vallen and McGivern 2000; Ziedaliski 2000).

On the other hand, the EU requested the re-establishment of the DSB panel, which reconvened on 12 January 1999, under Article 21.5. The EU argued that the US could not retaliate until the Article 21.5 procedures had finished, or until the new EC banana regime was found to be inconsistent with WTO rules. Commissioner officials moved to suspend the US's request for a panel decision on sanctions, claiming it was

⁴⁸⁵ Quoted in McSmith and Fraser (1999).

⁴⁸⁶ See Giles, W (2000) Carousel Deepens Row over Banana Trade, In Financial Times, 9 July.

⁴⁸⁷ See Summary of U.S. Legal Position on Dispute in WTO on EC Banana Regime, USTR Press Release 12 January 1999, available on US Mission website (<http://www.useu.be>).

invalid until a Article 21.5 decision was made. The US in turn accused the EC of 'blocking tactics'. USTR Barshefsky argued, 'The EU today took the extraordinary step of shutting down the work of the WTO.'⁴⁸⁸

The dispute over Articles 21 and 22 highlighted a problem with the legal framework of the DSU. Article 21 makes no reference to the right to retaliation in Article 22 and Article 22 makes no reference to 21. The EU argued that Article 21 took precedence over Article 22. The US argued that the EU's reading of the relationship between Article 21 and Article 22 would render Article 22 inoperative because the 30 day deadline for negative consensus (under Article 22) would expire before the 90 day deadline for a DSB ruling (under Article 21.5). The US argued that the EU actions had invoked an 'endless loop of litigation.'

In this case, the timing conflict between Article 21 and 22 procedures⁴⁸⁹ was reconciled by the DSB's request on 2 March for more time to gather information, which merged the deadlines for both Article 21 and 22 DSB decisions. The conflict over these articles, however, drew attention to deeper problems in the DSU framework. The 'contradictory' drafting of Articles 21 and 22 and the 'ambiguous' language of the DSU has subsequently arisen in other cases, including the Canadian-Australian salmon dispute (see also Vallen and McGivern 2000; Komuro 2000:32).

Second, the EU failure to comply with the WTO ruling was heavily criticised, especially in Congress where the EU was seen to be undermining the credibility of the WTO. One USTR representative observed that the pressure coming from Congress was renewed after dispute settlement proceedings. He argued, 'After you battle and win, well you played the multilateral game the way the Europeans said you should and

⁴⁸⁸ 'Ambassador Barshevsky Expresses Dismay at European Union Blocking Tactis in WTO' USTR Press Release 25 January 1999.

⁴⁸⁹ The Article 22 procedures required the DSB decision by March 2, 1999, but the Article 21 procedures were not due to be completed until 12 April 1999.

now they are not implementing!’ He added that ‘Europeans are thumbing their nose at (the WTO)’. For USTR this was a tough position because they had fought hard for Congressional support of the WTO on the grounds that the new system would be a serious medium for dispute resolution.⁴⁹⁰ The message from Congress was clear: the EU needed to comply with the ruling. A Senate Finance Committee spokesperson argued that, ‘We have lost many cases but we have always complied.’

The WTO Dispute Settlement mechanism, however, does not require the EU to change its banana regime. Rather, it authorises sanctions to compensate the challenger. A Trade Committee staff member noted that, ‘Europeans have made little effort to comply, but they are entitled to do this.’ Adding ironically that, ‘Congress made sure that Uruguay would allow us to accept retaliation the same!’ Thus, the banana dispute exposed another loop in the WTO system. Gleason and Walther (2000: 16) argue that the WTO suffers from implementation problems including, ‘inadequate safety checks, incentives, and/or sanctions to encourage the promptest-possible, good faith implementation.’

For many who supported the EU’s banana subsidy regime the WTO ruling raised questions about the legitimacy of a trade policy which protects untamed liberalisation. The banana case fuelled the mobilisation against globalisation as NGOs, including TACD representatives, argued that the WTO should promote fair, if not always free trade.⁴⁹¹ The WTO was further questioned by Congresswoman Maxine Waters who expressed outrage at the WTO decision to sanction the European banana regime claiming, ‘It is time for the WTO to begin listening to concerns of

⁴⁹⁰ A USTR official argued, ‘We promised them that the WTO would not be a General Agreement on Trade and Tariffs.’ Interview, via telephone, June 2001 (58).

⁴⁹¹ It should be noted that Ralph Ives has argued that, ‘The WTO does not require free trade’, because ‘a WTO consistent regime doesn’t mean no preferences.’ (USIS Press Release, ‘US Officials Stress Interest in Resolving EU Banana Dispute’ 12 September 1998.

small farmers, labour union members, environmentalists, consumer advocates and human rights activists’.

The banana dispute was an important case because it was one of the first cases tested by WTO. While the banana case is a classic dispute, many more up and coming disputes will be more difficult to manage given their predisposition to scientific (beef), cultural (gmos) and legal (FSCs) differences between the EU and the US. What links these disputes is the fact that that strong domestic political lobbies and internal pressure will continue to ensure that EU and US interests clash, and that trade negotiators will find themselves in direct conflict between domestic and WTO interests.

Conclusion

To summarise, this chapter sought to explain which factors could explain EU and US decision making in the banana dispute. It was argued that domestic and external factors influenced both EU and US decisions in the dispute, and the banana deal, can only be characterised as a balance of interests or the ‘least worst option’.

What was also notable in the banana dispute is the way in which the dispute was handled. While many civil servants and private actors were involved in the dispute, transgovernmental and transnational networks were not prevalent. Rather the banana case was negotiated in traditional diplomatic style by high ranking, often intergovernmental, officials. Unlike the MRA or trafficking in women cases, transatlantic institutions were not instrumental in reaching an agreement on EU banana subsidies. Although the NTA institutions cushioned the impact of the dispute and kept officials talking, the dispute was not ‘managed’ through the NTA process, EU-US Summits or the early warning system. Institutionalisation did not, and some argue

could not, prevent the banana dispute because the case demonstrated the classic clash of EU and US economic and political interests. In this respect the banana case study differs dramatically from both the trafficking information campaigns and the MRAs where transatlantic institutions facilitated co-operation on a technical level.

The case also highlighted the dilemma posed by conflicting international and domestic interests. Because these will always exist, the real test for transatlantic relations is in the capacity of the EU and the US to manage disputes in a way which minimises the damage to bilateral and multilateral institutions. The negative atmosphere created by the banana dispute highlights the need to strengthen dialogue structures that can deal with conflict as well as co-operation. The way in which the dispute was handled also risked undermining the legitimacy of the WTO. In short the banana dispute exposed weaknesses of both the bilateral structure of the NTA and the multilateral trading system.

Chapter 9

Conclusions

This thesis raised a number of questions about the roles of institutions, actors, dialogue, and policy co-ordination in the process of EU-US relations. First, and foremost it asked: do institutions matter and if so why do they matter? It considered the capacity of the EU and the US not only to manage the relationship but also to exercise governance through transatlantic institutions. Second, this thesis focused not only on institutions, but also on the actors who participate in them. It sought to gauge the extent to which the process of transatlantic institutionalisation allowed different categories of actors to engage in different types of decision making. In short, it asked: who governs in the process and how?

The 'process' of transatlantic relations was dissected by specifying and analysing multiple types of decisions in EU-US policy-making and the role of multiple types of actors. Three hypotheses were set out in chapter one to help us analyse how the process works. First, it was argued that the TAD, the NTA and the TEP have created transatlantic institutions and that transatlantic actors perform functions of governance through these institutions. Second, it was hypothesised that under that institutional framework, a decentralisation of decision-making powers had been allocated to transgovernmental actors who perform both 'setting' and 'shaping' functions in the policy process. Finally, this thesis explored the role of transnational actors in transatlantic policy making. It tested the hypothesis that there has been a decentralisation of decision shaping to not only state, but also to non-state actors. Specifically, it explored the capacity of the TABD, the TACD and the TAED to influence transatlantic policies.

This chapter summarises the evidence presented throughout this thesis in relation to the three hypotheses. More generally, it asks what we have learned about EU and US relations from studying the relationship in the 1990s. The underlying argument is that the new transatlantic institutions do matter. Section 1 examines the extent to which the relationship has been institutionalised under the TAD, the NTA and the TEP. It argues that the agreements have established a structure for transatlantic governance by creating a framework for policy making and building institutions, which serve as decision-making structures.

The thesis also examined how these governance structures have altered the scope for actor input into decision making. Section 2 addresses the evidence presented for the purpose of testing the second hypothesis. It argues not only that transgovernmental networks have been institutionalised, but that their policy setting and policy shaping capacity points to a decentralisation of policy making by state actors.

Section 3 summarises the role of non-state actors in the transatlantic policy process. It specifies the varied 'shaping' capacity of the formal transatlantic dialogues and well as the wider impact that corporations, interests groups and other non-state actors have in shaping transatlantic decisions at both a transnational and a national level. Each of these sections outlines evidence presented in the case studies, both in support of and at odds with the three hypotheses.

Finally, the purpose of this thesis was not only to categorise the role of institutions and actors in transatlantic policy making, but also to question the implications of the institutionalisation, decentralisation and privatisation of transatlantic decision making. What do these recent developments tell us about EU-US relations and international relations more broadly? Section 4 recaps a number of

themes that have been addressed throughout the thesis, particularly the dilemma facing policy makers seeking to strike a balance between effective governance and legitimate governance. It suggests the need for future research on the long-term affects of transatlantic institutionalisation and the implications of the de-politicisation of transatlantic foreign policy making.

1) The Institutionalisation of Transatlantic Relations

This thesis took on three main analytical tasks:

- It sought to establish whether and how the relationship has been institutionalised.
- In the context of theoretical debates about the EU-US relationship and international relations in general, it questioned why the EU and US chose to institutionalise the relationship.
- It asked whether and why the institutionalisation of the transatlantic dialogue matters?

The thesis presented evidence to support the hypothesis that the relationship had been institutionalised into a structure of transatlantic governance. Chapter 3 explored the creation, through the transatlantic agreements, of formal structures for decision making and a policy framework for governance. The TAD and, particularly, the NTA and the TEP outlined policy areas where European and US leaders committed themselves to co-operation. The NTA Action Plan and TEP Action Plan specified the scope for policy co-ordination under the new transatlantic dialogue. The TAD institutionalised contact between heads of states via the biannual EU-US summit meeting. It also established a ministerial level dialogue as well as a political dialogue.

The density of different transatlantic institutions and dialogues is striking. EU-US decision-making structures developed through the NTA and the TEP with the creation of institutions such as the SLG, the NTA Task Force, the TEP Steering Group and the TEP Working Groups. The NTA and the TEP also encouraged the creation of the TABD, the TACD and the TAED. We are left, in this chapter, to try to come to a final judgement about whether these agreements and the dense layers of formal dialogue they created at many different levels, have complicated or simplified the process of EU-US co-operation, generally, and policy co-ordination, specifically. Is co-operation easier to achieve when more voices are heard in the policy process? Or does allowing new ‘toddlers into the policy playpen’ amount to expanding the number of actors wielding vetoes over co-operative agreements?

The TAD, the NTA and the TEP are products of intergovernmental ‘history making decisions.’ The motivation for these high level political decisions can be explained by rationalist rationale. In other words it is argued throughout the thesis that the EU and the US chose to ‘institutionalise’ their relationship because it was in their interest to do so. As the Cold War period began to fade in 1989, both sides recognised that common ideas, values, culture and multilateral institutions could not hold the transatlantic partnership together as the common security threat of the Soviet Union had throughout the Cold War. However, the EU and the US identified mutual interest in maintaining the partnership, particularly in response to new soft security threats, such as the economically and politically unstable CEE and the Middle East, and in light of bilateral economic disputes over, for example bananas, beef and milk hormones. The EU was keen to demonstrate its capabilities as a foreign policy actor, and the US welcomed the prospects of burden sharing in light of its growing need to be a ‘superpower on the cheap’.

The NTA arose out of fears that the TAD structure was not doing enough to narrow the gap between the partners. It sought more effective co-operation on policy areas where the EU had growing competence under the Maastricht Treaty. For example, Justice and Home Affairs issues, such as migration and international crime, made it onto the transatlantic agenda under the global challenges chapter of the NTA. The TEP also demonstrated mutual interest in getting more concrete economic results from the transatlantic partnership, including further market opening agreements and the containment of trade disputes.

Institutionalisation has had two broad implications for transatlantic relations. First, the creation of so many new and varied decision-making forums means that the decision making process now has multiple tiers and multiple stages. The different institutions created by the transatlantic agreements point to the institutionalised role of intergovernmental actors (through the EU-US Summit), transgovernmental actors (through, for example the SLG, TEP Steering Group) and transnational actors (through the TABD, TACD, TAED). Throughout the thesis, we have seen the capacity of intergovernmental actors to ‘make’ the high level political decisions which establish institutional change and policy expansion, but also of transgovernmental and transnational actors to ‘set’ and ‘shape’ policy.

Second, the institutionalisation of the dialogue exposes the different purposes served by the different transatlantic institutions. Intergovernmental decisions highlight the commitment of the EU and the US to fostering dialogue, and where possible policy co-ordination and conflict management.⁴⁹² Specifically it can be noted that the intergovernmental decisions to include trafficking in women in the NTA global challenges chapter and the MRAs in the economic chapter (and later in TEP) are the

⁴⁹² The overall impact of the institutions is discussed in more detail in section 4.

decisions that established the scope for these transatlantic policies. Both decisions represented a broad commitment to policy co-ordination. Their inclusion in the transatlantic policy framework put transgovernmental actors in charge of producing substantive results. The agreements also committed the EU and the US to manage disputes through continued dialogue. In the case of the banana dispute, it can be argued that the institutional structure cushioned the impact of conflict between the partners. The institutions, at least, kept people talking.

The point is that the institutionalisation of the transatlantic relationship changed the way that actors operated within the system. While it is difficult to gauge just how the behaviour of social actors is shaped or altered by transatlantic institutions, institutions at least created the opportunity for actors with different interests to formally participate in the policy making process. Sections 2 and 3 discuss, in more detail, how these actors operate with these decision-making structures.

2) The Decentralisation of Decision Setting and Shaping

The first hypothesis posited that the institutionalisation of the dialogue resulted in the creation of not only intergovernmental but also transgovernmental and transnational institutions. Chapter 4 explored the dense level of contacts that were forged between high and low level civil servants under the three transatlantic agreements. It questioned the extent to which intergovernmental actors had created room for transgovernmental actors to influence the process through the creation of economic, political and NTA institutions, and a specified early warning process. To test the second hypothesis – that power to make joint policies had been effectively decentralised from the intergovernmental level ‘downwards’ -- the thesis sought to make clear the functions of transgovernmental institutions in the process of

transatlantic decision making. The thesis sought to uncover evidence that transgovernmental actors had both 'set' and 'shaped' transatlantic policy.

The underlying question, for many scholars, is whether transgovernmental actors act independently of their political bosses or if they simply follow predetermined paths in transatlantic policy making. In other words, does dialogue between transgovernmental actors result in preference convergence? It was argued throughout the thesis that intergovernmental actors maintain control of the policy process by 'making' the decisions, which establish the scope for policy co-ordination. To an extent transatlantic agreements, particularly the NTA and the TEP, created a mandate for transgovernmental actors to work within.

However, there is also evidence to suggest that transgovernmental actors exercise some control over the process, albeit within certain boundaries. For example, chapter 4 established that a range of transgovernmental actors, at the ministerial level and at the agency level, had effectively acted as policy 'setters' by signing agreements, producing declarations or co-ordinating policies. Gauging the capacity of actors to 'shape' policy is more difficult. Unlike 'setting' decisions, written records of 'shaping' decisions often do not exist. Furthermore, a wide variety of actors have the capacity to act as transatlantic policy shapers through, for example, the SLG, TEP Steering Group, NTA Task Force, TEP and Troika working group meetings. That interviewees went to great lengths to discuss the roles of these institutions suggests that they play a role in the process, but what role exactly? It was argued that these actors effectively helped decide not that the EU and the US would co-operate, but how they could co-operate.

Transgovernmental actors fulfilled a number of important shaping functions. First, transgovernmental actors helped shape the initial policy agendas of the NTA and the TEP by identifying areas where co-operation might be feasible. Once

intergovernmental actors decide that co-operation should be pursued, transgovernmental actors continue to shape the policy agenda by outlining specific issue areas, within policy sectors, where the EU and the US could reach consensus. In short they identify ‘policy options’.

Transgovernmental actors also establish ‘policy details’ once the intergovernmental actors ‘make’ the decision to pursue a policy, in a variety of ways. Institutions like the SLG provide political oversight and establish time frames for co-operation in the early stages of policy formation. They also establish potential language for ‘setting’ decisions. In the case of trafficking in women for example, the concept of an information campaign and the details of the transatlantic project were derived at the working group level. Effectively the dialogue was set by foreign ministers at a ministerial level dialogue, where ultimately the decision to co-ordinate that policy rested. However, a dialogue between US Mission, US State Department, DG Justice and Home Affairs and DG External Relations officials determined key details of the transatlantic anti-trafficking policy including:

- where to target transatlantic efforts,
- how to technically co-ordinate the anti-trafficking plans and
- who should implement the transatlantic campaigns.

The transatlantic anti-trafficking campaigns were also shaped by the NTA Task Force and the Senior Level Group who were charged with overseeing the policy development, keeping it on the NTA agenda and acting as a problem solving forum, for example over funding problems.

The role of transgovernmental actors in the MRA case was somewhat easier to document and more significant given the higher profile and domestic implications of the agreements. The USTR and Commissioner for Trade publicly ‘set’ the transatlantic

regulatory policy by signing the MRA agreement. Many more actors played a role in shaping the policies. While trade officials exercised control over the overarching framework agreement, domestic regulators shaped the policy details in each of the individual annexes. Transatlantic institutions played a key role in pushing negotiations ahead and striking a balance between trade and regulatory authorities. The Joint Committee and Joint Sectoral Committee tried to strike a bargain between regulators and trade officials. The SLG and the TEP Steering Group monitored the process, helped identify achievable goals on a sector by sector basis and kept the negotiations to a time schedule by establishing and monitoring deadlines.

In some ways, at least, the wide range of policy shapers in the process of transatlantic decision making complicates the policy process because it makes the task of consensus reaching laborious. The NTA institutions seek to reach a consensus among policy shapers before decisions can be set. At the same time the MRA case, in particular, demonstrates the capacity of the NTA institutions to facilitate co-operation by forging compromise among a wide range of actors with different interests and with different levels of access to the policy process. In particular transatlantic institutions were credited with managing, but not overcoming, the differences between the trade camp and the regulatory camps. The banana dispute also highlighted the capacity for domestic actors to shape transatlantic policy decisions. In that case, however, the NTA institutions did not serve as decision-making forums. Rather, actors sought to shape policy by lobbying domestic institutions.

In both the trafficking in women and MRA case studies, intergovernmental actors indicated an interest in joint co-operation. Overall, the 'shaping' capacity of transgovernmental actors demonstrates that decentralised transatlantic institutions also serve as policy making mechanisms, in addition to acting as forums for the exchange

of dialogue, information and ideas. The capacity of transgovernmental actors to act as policy shapers sheds some light on the rationalist-constructivist debate outlined in chapter two. Although ultimately the scope for policy co-ordination is determined by self-interest, the policy details are derived from the transgovernmental dialogue. Arguably the institutions are more than just talking shops.

However, there is less evidence to suggest that these institutions are effective where the EU and US political leaders' interests do not coincide. As one Council Presidency official argued, 'where there are disputes, our hands are usually tied at a political level.'⁴⁹³ This argument is consistent with Slaughter's argument on transgovernmentalism: mainly that transgovernmental networks can gradually achieve political convergence, but they are less likely to contain serious political or economic conflict (Slaughter 1997: 196). In the banana case, for example, the NTA process kept up dialogue between the leaders and sheltered the rest of the policy agenda from the dispute, but transgovernmental institutions did little to manage or resolve the dispute.

The broader argument is that decision-making powers are less decentralised where high political interest is involved. Nonetheless, decentralised dialogue has been deemed an important part of the conflict management process. The creation of the Early Warning System and the Biotechnology Forum demonstrates an interest in fostering dialogue at lower levels to prevent conflict, where possible. The idea that disputes can be managed from the bottom up is illustrated by one Commission official's comment that, 'closer contact and more consultation slowly breeds more broad understanding.'⁴⁹⁴ While the potential for transgovernmental conflict management exists, the institutions are still at an early stage of developing the capacity to manage disputes.

⁴⁹³ Interview, Finnish Council Presidency, Brussels, 1999 (5).

⁴⁹⁴ Interview, Commission official, Brussels, September 1999 (6).

3) Policy Shaping by Non-state Actors

The institutionalisation of the transatlantic relationship extends to the private, as well as the public sector. The development of transnational dialogues such as the TABD, the TAED, the TACD and the TALD, was another focus of this thesis. It questioned why these dialogues were created by the EU and US governments under the NTA, how they became institutionalised, and the extent to which they have fostered communication across the Atlantic. Subsequently, we looked for evidence to support the hypothesis that decision shaping powers had been delegated to non-state actors under the NTA. The emphasis, thus, was not only on the existence of transnational networks or of transnational dialogue, but also on the capacity of these dialogues to ‘shape’ transatlantic decisions.

Chapter 5 outlined evidence to support the idea that an institutionalisation of the TABD, the TACD, the TAED (before its suspension) had occurred. Each of these dialogues established some type of organisational structures to facilitate consensus between European and American counterparts. Dialogue between these groups has resulted in a process of policy learning as American and European businesses and NGOs exchange information, share strategies and seek consensus. In particular American consumer and environmental NGOs have learned from European groups, who have more experience operating in policy networks and influencing the European Commission. The TALD was the only case examined that cannot be considered to be a serious dialogue structure. As such, the failure of the TALD means that labour actors have no institutionalised right to shape transatlantic policy.

The other dialogues established regular high level and working level dialogues with the US Administration and the Commission. It is clear that groups involved in

these dialogues communicate with (especially transgovernmental) networks of officials. But how effectively do they shape transatlantic policy?

The business, consumer, environmental (and even labour) dialogues were encouraged by EU and US officials to develop into policy shapers. The US administration was convinced that the TABD would support the US negotiating position. Generally, the EU and the US both had an interest in encouraging civil society participation to balance the power of the TABD. The Commission also believed that the TACD and TAED would become an ally in negotiations with the US over food safety and privacy. The TEP congratulated the TABD for its role in securing transatlantic agreements and encouraged consumers and environmentalists to make a constructive contribution to policy making. The dialogues' members, business and NGOs alike, have argued that the dialogues could not continue without concrete policy results.

It was noted throughout the thesis, however, that the transatlantic dialogues have had a varied shaping capacity. The TABD is the only dialogue to have had a visible impact on the policy process. It is widely praised by EU and US officials for helping find consensus on a range of policies. A high percentage of TABD recommendations have been addressed. It is credited with helping to facilitate the MRAs. On the other hand the social dialogues have not achieved similar results. Neither the TACD nor TAED claims to have had any impact on the process and the future of all of the civil society dialogues depends on their willingness and capacity to secure private funding. One NGO observed that, 'they are telling us what they are doing, rather than taking our advice. We have access but we don't learn specifics.

TAED participants argue that US officials seem to be just going through the motions.’

495

The argument made in chapter 5 was that while the TABD case strongly supports the hypothesis that a decentralisation of decision shaping has been delegated to private actors, the TACD, TAED and TALD do not. The TACD, as the most organised dialogue, has the potential to be a future policy shaper. However, time will tell if the Commission’s sponsorship of the society dialogues will prove useful in future debates on food safety, data protection and waste management.

Chapter 7 also demonstrated the shaping capacity of the TABD, but not the TACD or TAED, in the MRA negotiations. Many officials argued that both TABD recommendations and the lobbying action of TABD members had a major influence on the process. A major advantage of the TABD is that it has managed to concentrate on a number of policy sectors where common goals are held by the EU and US, most notably the facilitation of trade liberalisation as a major component of the New Transatlantic Marketplace. On the other hand the TACD and TAED have an interest in and have focused on areas where the EU and US disagree.

The banana case also demonstrated the capacity of private actors to shape transatlantic policy. However, the influence of private actors centred around national rather than ‘transatlantic’ policy makers. Chiquita corporation invoked US domestic legislation and lobbied Congress to influence US policy. Transnational consumer and development groups and banana operators were able to influence the EU’s policy on bananas. Unlike the MRA case, however, the existence of transatlantic business consensus was blocked by the lack of common economic interest. The power of

⁴⁹⁵ Interview, American NGO, Washington DC, October 2000 (24).

business' interests over 'fair trade' supporters was also demonstrated in the banana case. However, it was WTO, rather than transatlantic rules that created the bias.

In areas where EU and US business consensus exists, the TABD has started to play a role in transatlantic conflict management. By identifying early warning system issues, the transnational business group has tried to resolve and prevent transatlantic disputes that would have negative effects for industry. For example, the Commission demurred from creating a new trade dispute on metric labelling on the recommendation of the TABD.

Chapter 6 also examined the role that non-state actors play in political sectors examined by the NTA. First, the rise of transnational criminals created the need for transatlantic co-operation on trafficking in women. It was noted that a wide range of NGOs have worked with governments at the international and national levels to combat the problem of trafficking in women. This case demonstrates the capacity of the private sector to perform functions of governance because NGOs have the capacity to provide administrators with practical policy solutions, particularly at the local level. Yet, the trend in the anti-trafficking policy sector is one of moving away from directly utilising NGOs for the information campaigns, and instead working with an international organisation. That said, NGOs play an important role as they are subcontracted out by the International Organisation on Migration. It was also argued that further decentralisation of the trafficking dialogue and better private-public co-operation, through something like a transatlantic anti-trafficking dialogue, could be a way to achieve effect, 'privatised' governance in this sector, of a sort which resembles that which exists in other sectors examined by this thesis.

4) Effective and Legitimate Transatlantic Governance?

The transatlantic institutions that have been the focus of this thesis could plausibly be viewed as fulfilling their basic purpose: to inject new focus into transatlantic relations and keep both sides committed to the pursuit of a true partnership. As one Commission argued, 'the NTA became the new "glue" in transatlantic relations'.⁴⁹⁶

However, the thesis was concerned more specifically with the impact that the transatlantic agreements had not only on transatlantic relations but on the process of transatlantic governance. It was argued that the institutionalisation of the new transatlantic dialogue created a formal structure for collective transatlantic governance.

The institutionalisation of different levels of transatlantic dialogue arguably facilitated co-operation and increased the capacity for consensus reaching among transatlantic actors. The institutions created by the transatlantic agreements have increased the opportunity for dialogue, deliverables, and debate. The decentralisation of the transgovernmental dialogue has fostered a more sustainable habit of co-operation between the EU and the US. For example, the anti-trafficking information campaigns, while certainly rather modest policy actions, are the first step in forging co-operation on migration issues and other global challenges. The MRAs have helped build confidence between regulators that will effect EU-US regulatory co-operation more broadly.⁴⁹⁷ Transatlantic mechanisms may also prove useful in both the prevention and management of conflict. If the early warning system works, in practice, it could prevent some future trade disputes. While transatlantic mechanisms have been less successful at 'managing' system friction in highly political disputes, such as the

⁴⁹⁶ Interview, Commission Official, DG External Relations, Brussels 1999 (6).

⁴⁹⁷ It is perhaps revealing that after the dramatic blocking of the merger between General Electric and Honeywell (both US-headquartered firms) by the EU Commission in 2001, after the merger had been

banana case, the decentralisation of transatlantic policy co-ordination has, nonetheless, ensured that co-operation in other areas continues.

Most notably, the dense levels of contact established by the transatlantic agreements have been utilised to facilitate 'governance' between two systems where decision-making competency is shared between many different actors. The mechanisms created by the transatlantic agreements endeavour to compensate for the institutional rivalry among domestic actors, which is ever-present in multi-level systems of governance. This thesis has portrayed both the EU and the US as multi-level systems and argued that one effect of the sharing of power across multiple levels of governance is to place stark limits on EU-US cooperation. Witness, for example, the recent proposal of Gordon Brown, the UK Chancellor, for the EU-US equivalent of the study that preceded the launch of the EU's single market programme in the 1980s. On the US side, the administration of George W Bush gave no official response, as it struggled to win trade negotiating authority from Congress for a new WTO round. Both the White House and Congress were lobbied by US manufacturers of products with high duties, such as textiles, clothing and footwear, to reject Brown's proposal. Meanwhile, Brown's proposal received a cool reception at the WTO in Geneva, particularly among developing country delegates who naturally feared that the transatlantic partners were looking for alternatives to a new trade round. And, in Brussels, a senior Commission official dismissed Brown's idea as 'one of a number of balloons' being floated, and stressed that it could only proceed if backed by the Commission and other EU Member States.⁴⁹⁸

Thus, barriers to entry into new realms of EU-US cooperation are high. However, transatlantic institutions created in the 1990s act to protect existing realms

cleared by US anti-trust authorities, both the Commission and the George W Bush administration agreed to explore an upgrade in cooperation on competition matters to avoid such outcomes in future.

of cooperation from atrophy or backsliding. The sub-summit decision-making procedures essentially put lower level civil servants in charge of ‘managing’ the dialogue and increasing the international awareness of domestic actors. As Frellesen (2001) argues, the process gives experts a dose of ‘transatlanticism.’

The institutionalisation of transgovernmental as well as intergovernmental contacts is one way to compensate for the capabilities-expectations gaps incurred in both the EU and US systems, because transgovernmental actors have a joint mission to establish precisely how co-operation can be pursued. For example, transgovernmental contact between JHA, DG I and US officials enabled actors to establish how the EU and US could co-operate in a policy sector where the EU is widely perceived to be incapable of strategic action. In the MRA case, transatlantic institutions helped overcome the capabilities-expectations gap which arises from the sharing of competency between US trade officials and domestic regulators. Thus, the transatlantic dialogue is designed not only to facilitate consensus between the EU and US, but among domestic actors as well.

Above all, the transatlantic governance process is pragmatic. It is designed to facilitate policy ‘deliverables’ where the EU and the US have common interests. The transatlantic system of governance is ‘efficient’ not only because it brings possibly contentious actors into the dialogue process, but because it avoids them where possible. As bureaucratic agreements, not treaties, the NTA and the TEP de-politicise the process of governance. The decentralisation of decision-making to the expert, or working level, is a way to take many issues out of the political debate and into the technocratic arena. The privatisation of decision shaping, in the case of the TABD, is

⁴⁹⁸ Quoted in *Financial Times*, 26 July 2001 (available from www.ft.com).

also a way for the government and the business community to reach consensus on a range of liberalisation policies.

Yet, it is impossible to avoid wondering whether this effective mode of transatlantic governance comes at a price. Again, the question of how transatlantic decision-making fares in the debate on technocratic governance needs to be addressed. The debate is significant given the role of the EU-US decision making process as a case study for transnational governance more generally.

While the de-politicisation of policy making increases the threshold for co-operation, it also raises questions about the legitimacy of transatlantic governance. A number of concerns were raised throughout the thesis about governance through bureaucratic networks. First, the bureaucratic control over the NTA process has been criticised, by for example civil society groups, who argue that legislators should have a more important role in the process. The weak nature of the TLD compounds the problem, and it was argued in chapters 4 and 5 that more parliamentary dialogue could increase domestic acceptance of the NTA process.

Second, the decentralised and de-politicised policy-making process may undermine the transparency of transatlantic governance. NGOs, in particular, have argued against the incorporation of regulatory policy in the TEP generally and against the MRAs specifically. The transatlantic partners, led in particular by the US administration, have continually argued the need for more open decision making proceedings and have attempted to make the process more transparent by introducing Joint Guidelines for Regulatory Co-operation. They have also invited wider public participation through the civil society dialogues. The TACD and TAED were brought into the NTA process to legitimise the TEP. Furthermore, the guidelines on dialogue participation were established to ensure equal access for the dialogues. However, the

unequal capacity of private and NGO actors to engage in effective decision shaping highlights another problem with transatlantic decision making.

However, the relative shaping capacity of business groups over other civil society groups is not specifically a transatlantic problem. The statement made by one MEP, that: 'they (consumer and environmental groups) will never have the same influence. They do not have the same money or clout'⁴⁹⁹, could just as easily describe domestic and EU politics. The problem for transatlantic policy makers however, is that the impact of the TABD has become a focus of anti-globalisation groups who are part of larger international social movements aimed at controlling the transfer of 'governance' away from the nation state. As the civil society dialogue, particularly the TACD, continues to develop policy makers face the task of practically balancing the interests of different actors. Decision-makers will have to weigh the effectiveness and legitimacy of the transatlantic dialogue in the context of wider debates about the access and impact of environmental, consumer and labour movements at the WTO, the G-8, and the EU.

In conclusion, the NTA process has been criticised for being only a limited process of governance that fails really to deliver in terms of policy output. The limitations of the new transatlantic dialogue were highlighted throughout the thesis. However, it was argued that many deliverables have been first rather than final steps, and that the transatlantic institutions fulfil necessary functions in the process of governance. If Leon Brittan (1998:2) is to be believed, 'the results may sometimes be relatively unglamorous, but they are certainly not insignificant.' In particular it is argued that, 'the NTA has fostered a habit of contact and dialogue across broad areas

⁴⁹⁹ Interview, European Parliament, Brussels, September 1999 (17).

of our administration, which might otherwise not have been brought to talk to each other.’

Interviewees agreed that the NTA managed the daily relationship and got bureaucrats talking about ways to co-operate in a range of areas where EU and US civil servants would not necessarily have had contact. That dialogue is, arguably, the most important deliverable of the process. As one Commission official argued, ‘the logic of the NTA is similar to the thinking behind the EU. If we are constantly talking, it is less likely that we will be fighting.’⁵⁰⁰

While the ‘staying’ power of transatlantic institutions is not guaranteed, the commitment of both sides to the process of institutionalisation in the 1990s was not merely symbolic. We have seen that institutions- intergovernmental, transgovernmental and transnational - were continually developed in the years after the Transatlantic Declaration was unveiled in 1990 and that current discussions are underway to make transatlantic institutions more effective. The potential for further decentralisation over decision making to institutions such as the SLG and the NTA Task Force, is being discussed by the Commission (2001). US and European governments have also encouraged future participation from non-state actors including the TABD, the TACD, the TAED and the TALD as well as, for example, anti-trafficking NGOs (see EU-US Summit 2001; Warnath 1998). In the end, the institutionalisation of the transatlantic dialogue is best viewed as an ongoing process. Further research will be needed to assess the long term development of transatlantic institutions and the process of transatlantic governance more widely.

Research Notes

This research was primarily interview driven. In total sixty-four elite interviews were conducted (between July 1998 and June 2001) with a wide range of members of the following institutions in Brussels, Washington D.C., London, and Budapest: the US Mission, the Commission, the Council Secretariat, the European Parliament and Parliament Secretariat, the US State Department, USTR, US Commerce Department, US Federal Drug Administration, Congressional staff, European Environmental Agency, members of the TABD, the TACD, TAED and TALD and their secretariats, Anti-Slavery NGOs, UK Foreign Office, US Embassy London, European Commission Delegation DC and the International Organization of Migration (see attachment).

The idea was to obtain both public and ‘behind the scenes’ information about the input of different types of actors in the decision making process in a range of policy sectors. Intergovernmental actors’ input in the process was determined mainly from EU-US Summit statements, press releases and speeches, as access to these officials was not feasible. Policy output at the intergovernmental level is well documented, because the NTA process is driven by the desire for ‘deliverables’. However, assessing information about meetings where disputes were discussed was more problematic, as EU and US press releases tend to re-enforce their individual positions rather than the content of joint dialogue. Many official documents were obtained from the US Mission, EU Delegation to the US, State Department, USTR, and Transatlantic Information Exchange Services (TIES) websites.

⁵⁰⁰ Interview, Commission Official, Brussels, May 2000 (29).

Interviews were needed to determine ‘who does what’ at the transgovernmental level, where meetings are conducted with less transparency. It proved difficult to piece together formal, let alone informal meetings, from public records, but elite interviews proved indispensable for these purposes. A vast range of people work on the topics covered by the thesis. A number of factors influenced the selection of interviewees. Mostly civil servants working on specifically ‘transatlantic’ issues were approached, except in the policy sectors covered by the case studies, where the opinions of people working in domestic, transatlantic and international forums was sought. In most cases the number of people working on specific topics, for example on the Summits or on the TLD or the TABD or TACD and on a specific policy sectors, such as trafficking, MRAs and bananas, was limited. The project was based on the input of both high level officials and specified policy ‘experts’, often lower level civil servants. The selection of high level interviews was determined in most cases by access to officials, which proved more problematic. The strategy in most cases was to aim high and settle for who was willing and available to discuss the project. Many officials failed to answer letters, faxes, emails or telephone messages. Scheduling also proved problematic as many high level officials were unavailable or had to cancel appointments. The cost of travelling to Washington D.C. and Brussels meant that interviews, conducted in person, had to fall within limited windows of opportunity. A number of unavailable high level officials instructed members of their staff to meet with me in their place. A number of key people in the US Mission, EU Delegation to the US, DG External Relations North America Unit, to remain anonymous here, provided invaluable assistance in bridging contact to other officials and generally offered advice. Many other interviewees also suggested people I should contact for subsequent interviews.

Members of the TABD, TACD, TALD and TAED were generally willing to meet and were more available for scheduled appointments. The TABD, TACD, TAED secretariat websites proved useful in identifying people and secretariat staff often directly contacted members on my behalf. I also acted as an observer at a number of meetings. I attended the May 2000 TAED meeting as well as a number of informal meetings that were attended by TABD members. I was invited to observe the 2001 TACD meeting in Brussels, however was unable to attend given prior commitments to the US ECSA conference. I made two attempts to attend the annual TABD meeting in Berlin in 1999 and Cincinnati in 2000. However, I was told that I would have limited (press core) access to press conferences but not working groups meetings, in which case I determined that the cost of attending the meeting would outweigh the benefits. A relatively small sample of active TABD, TACD, TAED and TALD members was interviewed. The possibility of conducting a wider questionnaire was discussed with the dialogue secretariats. However, I was warned against doing so. It was argued that member responses would be more sincere in person or by telephone or email, and that many businesspeople and NGOs would consider themselves too busy to take the time to answer a questionnaire.

While the main focus on transnational actors was with these structured dialogues, a number of other private actors showed shaping capacity throughout the thesis. In particular, US Mission, Commission and IOM officials suggested I contact NGOs working on the problem of trafficking in women. A number of NGO websites were also regularly consulted. In addition, regarding the banana dispute, contact was made with European Banana operators, for whom Atlanta corporation offered a spokesperson. Dole, Delmonte and Chiquita Corporations refused to comment but

their web-sites and those of Fyffes, the US Beef Cattlemen association and the Caribbean Banana Exporters Association provided useful information.

The reluctance of interviewees to go 'on the record' was determined very early on in the interviewee process. State Department and Commission officials were particularly concerned about anonymity. In order to allow interviewees to speak freely, all interviews for the project were conducted on a strictly non-attributable basis, without a dictaphone. Most interviewees were offered, and many insisted on, obtaining a list of questions in advance of our meeting. Many interviews were followed up with email and telephone contact, and in some cases second interviews.

Interviews were conducted using a semi-structured method. Interviewees were divided by policy sector and where possible by 'rank', and asked a number of identical questions. Each interviewee was also asked specific questions relating to their role in the policy process, as well as questions sparked by interviews with other officials.

The methodology employed in this thesis was strictly qualitative. The introduction to the thesis noted that other studies on the NTA have attempted to measure policy output in quantitative terms. This thesis did not try to present a quantitative measure of what has been achieved under the NTA, for a number of reasons: It was difficult to establish a causal relationship between institutions and policy output, because institutions cannot be eliminated from the equation. In addition official documents provide only part of the picture, particularly as transatlantic policy-makers have a tendency by transatlantic policy makers to 'recycle' and 'repackage' their announcement of policy successes. The interest in the thesis was not only in substantive policy output but also on the perceptions of actors who participate in the policy process. Measuring 'perceptions' quantitatively proved impossible given the wide range of answers returned by interviewees and in most sectors the very small

sample of interviewees, as dictated by access to officials and also the often small number of people involved in individual policy sectors.

References

Books and Journals

- Aaron D, J Macomber and P Smith (2001) 'Changing Terms of Trade: Managing the New Transatlantic Economy Atlantic', Council of the US, available at www.acus.org.
- Allen, D (1998) 'Who Speaks for Europe? The Search for an effective and coherent external policy'. In Peterson, J. and Sjurgen, S. (eds) *A Common Foreign Policy for Europe? Competing Visions of the CFSP*. London: Routledge: 41-58.
- Anderson J, (1999) *Regional Integration and Democracy Expanding on the European Experience*, Oxford: Rowan and Littlefield Publishers
- Aron, R (1977) 'Europe and the United States: The Relations Between European and Americans'. In D Landes (ed) *Western Europe: The Trials of Partnership*:25-54, Toronto: Lexington Books.
- Bail, C, WH Reinicke, and R Rummel (1997) 'The New Transatlantic Agenda and the EU-US Joint Action Plan: an Assessment'. In C Bail, WH Reinicke and R Rummel (eds.) *EU-US Relations: Balancing the Partnership*. Baden-Baden: Nomos Verlagsgesellschaft.
- Baldwin, D (ed.) (1993) *Neorealism and Neoliberalism: The Contemporary Debate*, New York: Columbia University Press.
- Bignami, F and S Charnovitz (2001) 'Transnational Civil Society Dialogues' In M. Pollack and G. Shaffer (eds.) *The New Transatlantic Dialogue: Intergovernmental, Transgovernmental and Transnational Approaches*, Oxford: Roman and Littlefield
- Blank, K, L Hooghe and G Marks (1994) 'European Integration and the State', Paper presented at *American Political Science Association* conference, 1-4 September, New York.
- Boekle, H, V Rittberger and W Wagner (1999) 'Norms and Foreign Policy: Constructivist Foreign Policy Theory', *University of Tübingen Working Paper*, available <http://www.uni-tuebingen.de/uni/>

- Brooks, S (1997) 'Dueling Realisms' in *International Organization* 51 (3): 445-477.
- Bronestone, A (1998) *European Union: United States Security Relations*: Hampshire: Palgrave.
- Brown C (1997) *Understanding International Relations*, London: Macmillan.
- Buck, M (2000) 'The Role of the NTA Dialogue', Paper presented to the New Transatlantic Agenda Dialogues on EU-US Co-operation for Sustainable Development Conference, Lisbon, 6-8 June.
- Cable, V (1999) *Globalisation and Global Governance*, London, Royal Institute of International Affairs.
- Calleo, J (1982) 'The Atlantic Alliance: A View from America'. In A. Alting von Geusau (ed) *Allies in a Turbulent World*, Toronto: Lexington Books: 3-20
- Calvocoressi, P (1991) *The World Since 1945*, sixth edition, London: Longman.
- Carroll, J and G Herring (eds) (1996) *Modern American Diplomacy*, Wilmington, Del: Scholarly Resources
- Checkel, J (1999) Why Comply? Constructivism, Social Norms and the Study of International Institutions *ARENA Working Paper*, WP 99/24.
- Checkel, J (1998) The Constructivist Turn in International Relations Theory, *World Politics*, 50: 324-348.
- Cowles, M Green (forthcoming) Transatlantic Co-operation and Discord in the New Economy. Paper Presented at the *ECSA Seventh Biennial Conference* 31 May – 2 June Madison WI.
- Cowles, M Green (2001a) 'Private Firms and US-EU Policymaking: The Transatlantic Business Dialogue.' In E. Philippart and P Winand (eds) *Ever Closer Partnership, Policy Making in US-EU Relations*, Presses Interuniversitaires Europeennes : Brussels: 283-312
- Cowles, M Green (2001b) 'The Transatlantic Business Dialogue (TABD): Transforming the New Transatlantic Agenda'. In M. Pollack and G. Shaffer (eds.) *The New Transatlantic Dialogue: Intergovernmental, Transgovernmental and Transnational Approaches*, Oxford: Roman and Littlefield

- Cowles, M Green (1997) 'The Limits of Liberalization: Regulatory Co-operation and the New Transatlantic Agenda'. Conference Report. Hosted by American *Institute for Contemporary German Studies*, The John Hopkins University, 16 January, Washington D.C.
- Cowles, M. Green (1996) 'The Collective Action of Transatlantic Business: The Transatlantic Business Dialogue.' Paper presented at the 1996 Annual Meeting of the *American Political Science Association*, San Francisco, CA.
- Curtis, T and Vastine J (1971) *The Kennedy Round and the future of American trade* New York London: Praeger.
- Dahrendorf, R (1974) 'Europe and the United States: The Uneasy Partner'. In G. Mally, *The New Europe and the United States*: Toronto: Lexington Books: 67-72.
- Danna, D (2000) 'Organisations active in the field of prostitution in a comparative Western European Perspective', Paper Presented for the Workshop in the *ECPR Joint Session 2000* 'Prostitution and international trafficking as political issues.
- Demarat, P (1986) 'The Extraterritoriality Issue in the Transatlantic Context: A Question of Law or Diplomacy in L. Tsoukalis (ed) *Europe, America and the World Economy*, Oxford: Basil Blackwell for College of Europe.
- Den Boer, M and H Wallace (2000) 'Justice and Home Affairs', In H. Wallace and W. Wallace, *Policy Making in the European Union*, 4th edition, Oxford University Press, Oxford: 401-426.
- Devuyst, Y (2001) 'European Union in Transatlantic Commercial Diplomacy', In E. Philippart and P Winand Ever Closer Partnership, *Policy Making in US-EU Relations*, Presses Interuniversitaires Europeennes: Brussels: 283-312
- Devuyst, Y (1995) 'Transatlantic Trade Policy: US Market Opening *Strategies*' *Center for West European Studies*, University of Pittsburgh, Pittsburgh, PA.
- Devusyt, Y 1990) 'European Community Integration and the United States: Towards a New Transatlantic Relationship?' *Journal of European Integration* Vol. xiv, No.1.
- Donfried, K (1996) 'The New Transatlantic Agenda of December 1995: An American perspective', *European Access*, 2, April: 7-9.
- Duigan, P and L H Gann (1994) *The USA and the New Europe 1945-1993*, Oxford: Blackwell.
- Eichengreen B (ed) (1995) *Europe's post-war recovery*, Cambridge: Cambridge University Press.

- Eising, R and B Kohler-Koch (1999) Introduction, In R Eising and B Kohler-Koch eds, *The Transformation of Governance in the European Union*, London: Routledge: 1-23.
- Egan, M (2001a) 'Creating a Transatlantic Marketplace: Government Strategies and Business Strategies', Conference Report, *The American Institute for Contemporary German Studies*, Washington DC.
- Egan, M (2001b) Mutual Recognition and Standard-Setting: Public and Private Strategies for Governing Markets. In Pollack and Shaffer
- Featherstone, K and R Ginsberg (1996) *The United States and the European Community in the 1990s*, 2nd edition, London: MacMillan.
- Finklestein, L (1995) What is global governance? In *Global Governance* Vol 1 (3): 367-372.
- Frellell, R (1996) The Truman Era and European Integration in F. Heller and J. Gillingham *The United States and the Integration of Europe: Legacies of the Postwar Era*, London: MacMillan.
- Frellesen, T. (2001) 'Processes and Procedures in EU-US Foreign Policy Co-operation: From the Transatlantic Declaration to the New Transatlantic Agenda.' In E. Philippart and P Winand *Ever Closer Partnership, Policy Making in US-EU Relations*, Presses Interuniversitaires Europeennes : Brussels: 313-350
- Frost, E (1998) The Transatlantic Economic Partnership, *International Economics Policy Brief* Number 98-6, Washington D.C : Institute of International Economics.
- Frost, E (1997) *Transatlantic Trade: A Strategic Agenda*. Washington D.C.: Institute of International Economics.
- Funkt, A (1998) 'The Third Pillar of the EU and the Limits of Transatlantic Co-operation,' Unpublished paper presented to Transatlantic Governance Conference, June 1999.
- Gardner, A (1997) *A New Era in US-EU Relations? The Clinton Administration and the New Transatlantic Agenda*, Aldershoot: Ashgate Publishing Ltd.
- Geipel, G and R Manning (1996) *Rethinking the Transatlantic Partnership: Security and Economics in a New Era*, Hudson Institute.
- Giplin, R (1991) 'Three Ideologies of Political Economy'. In Stiles K and Akaha T *International Political Economy A Reader*, New York, Harper Collins.

- Gleason, C and P Walther (2000) 'The WTO Dispute Settlement Implementation Procedures: A System in Need of Reform'. *Law and Policy in International Business* 31(3): 709-36.
- Grieco, J (1990) *Co-operation Among Nations: European, America and Non-Tariff Barriers to Trade*, London: Cornell University Press.
- Grossman, L (1998) *The Political Ecology of Bananas: Contract Farming, Peasants and Agrarian Change in the Eastern Caribbean*, University of North Carolina Press.
- Guzzini, S (1998) *Realism in International Relations and International Political Economy: The continuing story of a death foretold*, London: Routledge.
- Haas, PM (1992) 'Epistemic Communities and International Policy Coordination'. In *International Organization*, 46 (1):1-35.
- Haass, R (1999) *Transatlantic Tensions The United States, Europe, and Problem Countries*, Washington D.C., Brooking Institute Press.
- Hallam, D and Lord Preston (1997) *The Political Economy of Europe's Banana Trade*, Reading: Reading University Press.
- Hasenclever, A, P Mayer and V Rittberger (1996) 'Interests, Power, Knowledge: The Study of International Regimes', *Mershon International Studies Review* 40: 177-228.
- Henderson, C. (1998) *International Relations: Conflict and Co-operation at the Turn of the 21 Century*, London: McGraw Hill.
- Heuser, B. (1996) *Transatlantic Relations, Sharing Costs and Ideas*, London: *Chatham House Papers*, Royal Institute of International Affairs.
- Huntington, S (1991) 'The U.S.- Decline or Renewal'. In Stiles K and Akaha T *International Political Economy A Reader*, New York, Harper Collins.
- Hill, C And W Wallace (1996) 'Introduction, Actors and Actions' In C. Hill (ed) *The Actors in Europe's Foreign Policy*. London: Routledge. 1996.
- Hill, C (1996) *The Actors in Europe's Foreign Policy*. London: Routledge. 1996.
- Hill, C (1993) 'The Capability-Expectations Gap, or Conceptualising Europe's International Role' *Journal of Common Market Studies*. 31 (3) 305-328.
- Hindley, B 'New Institutions for Transatlantic Trade' *International Affairs* (75) 1 (1999) 45-60.

- Hix, S (1994) 'The Study of the European Community: The Challenge to Comparative Politics' in *West European Politics* , 17 (1):1-30.
- Hoffman, S (1977) 'Uneven Allies: An Overview'. In D. Landes (ed) *Western Europe: The Trials of Partnership*, Toronto: Lexington Books: 55-110.
- Hoffman, S and C Maier (1984) *The Marshall Plan: A Retrospective*, London: Westview Press.
- Hogan, M (1984) 'European Integration and the Marshall Plan', In Hoffman and Maier (eds) *The Marshall Plan: A Retrospective*, 1-6, London: Westview Press.
- Hooghe, L (1999a) Supranational Activists or Intergovernmental Agents. Explaining the Orientation of Senior Commission Officials Towards European Integration, *Comparative Political Studies*, Vol 32: 435-63
- Hooghe, L (1999b) Images of Europe: Orientations to European Integration Among Senior Officials of the Commission, *British Journal of Political Science* Vol 29: 345-67
- Horton, L (1998) 'Mutual Recognition Agreements and Harmonisation', *Seton Hall Law Review*, Vol 29 No. 2; Seton Hall University.
- Hughes, D (2001) 'The Natasha Trade: Transnational Sex Trafficking', *National Institute of Justice Journal*, No. 246, January. See also <http://www.uri.edu/artsci/wms/hughes/natasha.htm>
- Ives, R (1997) 'The ABC's of MRAs', Statement made at the *Limits of Liberalization Conference*, 16 January, Washington D.C.
- Jachtenfuchs, M. and B. Kohler-Koch (1995) 'The Transformation of Governance in the European Union', Paper presented at the fourth Biennial International Conference of the *European Community Studies Association*, 11-14 May, Charleston.
- Jachtenfuchs, M (2001) 'The Governance Approach to European Integration', *Journal of Common Market Studies*, June, Vol 39 (2): 245-264.
- James, H (1987) 'The IMF and the creation of the Bretton Woods System 1944-58'. In Eichengreen (ed) *Europe's Post-War Recovery*, Cambridge: Cambridge University Press: 93-126.
- Johnson, D (1999) 'Trafficking of Women into the European Union'. In *New England International and Comparative Law Annual Online*. Volume 5 available <http://www.nesl.edu/annual/vol5index.htm>.

- Karol, D (2000) 'Divided Government and US Trade Policy: Much Ado About Nothing?', *International Organization*, 54 4, MIT: 825-844.
- Katzenstein, P. (1993) 'Regions in Competition' in H. Haftendorn and C. Tuschhoff (eds.) *America and Europe in an era of change*, Boulder CO: Westview Press.
- Kennedy, C (1989) *The Rise and Fall of Great Powers: Economic Change and Military Conflict from 1500-2000*, New York: Random House Vintage.
- Keohane, R (1993a) 'The diplomacy of structural change: multilateral institutions and state strategies', in H. Haftendorn and C. Tuschhoff (eds.) *America and Europe in an era of change*, Boulder CO: Westview Press.
- Keohane, R (1993b) 'Institutional theory and the realist challenge after the Cold War' in Baldwin, D. (ed.) *Neorealism and Neoliberalism: The Contemporary Debate*, New York: Columbia University Press.
- Keohane, R (1989) Neoliberal Institutionalism: A Perspective on World Politics, in R Keohane (ed) *International Institutions and State Power: Essays in International Relations Theory*, Boulder, CO: Westview Press.
- Keohane, R. (ed.) (1986) *Neorealism and its Critics*, New York: Columbia University Press.
- Keohane R (1984) *After Hegemony: Cooperation and Discord in the World Political Economy*, Princeton New Jersey: Princeton University Press.
- Keohane, R, P Haas, and M Levy (1993) *Institutions for the Earth*, London: MIT Press.
- Keohane, R and J Nye (1993) 'Introduction' R Keohane, J Nye, and S Hoffman (eds.) *After the Cold War, International Institutions and State Strategies in Europe, 1989-1991*. London: Harvard University Press.
- Keohane, R and J Nye (1989) *Power and Interdependence: World Politics in Transition*. 2nd ed New York: Harper Collins Publishers.
- Kissinger, H (1994) *Diplomacy*, Touchstone, London.
- Komuro, N (2000) 'The EC Banana Regime and Judicial Control', *Journal of World Trade*, 34 (5), Kluwer International , Netherlands: 1-87.
- Knauss, J and D Trubek (2001) 'The Transatlantic Labor Dialogue: Nothing Signifying Something'. In 'Transatlantic Governance in a Global Economy: Introduction' In M Pollack and G Shaffer (eds.) *The New Transatlantic Dialogue: Intergovernmental, Transgovernmental and Transnational Approaches*. Oxford: Roman and Littlefield.

- Krasner, S (1993) 'Power polarity, and the challenge of disintegration' in H. Haftendorn and C. Tischhoff (eds.) *America and Europe in an era of change*, Boulder CO: Westview Press.
- Krenzler, H. and A. Schomaker (1996) 'A New Transatlantic Agenda' In *European Foreign Affairs Review* 1(1), Netherlands: Kluwer Law International.
- Krenzler H and Wiegand E (1999) 'EU-US Relations: More than Trade Disputes?' *European Foreign Affairs Review* (4): 1-27.
- Laffan, B. (1997) 'The European Union: A Distinct Model of Internationalisation?' Paper presented at workshop on 'Europeanisation in International Perspective' at the University of Pittsburgh, September, Pittsburgh.
- Landes D (1977) *Western Europe: the Trials of Partnership*, Lexington, Mass, Lexington Books.
- Legro J and A Moravscik (2000) Part of Correspondence 'Brother can you spare a paradigm? (Or was anybody ever a realist), *International Security*, 25 1 165-193.
- Lergo J and A Moravscik (1999) 'Is Anybody Still and Realist?' *International Security*, Vol 24 (2): 5-55.
- Lohman, S and S O'Halloran (1994) 'Divide Government and US Trade Policy: Theory and Evidence', *International Organization* 48 (595-632).
- Lundestad, G (1998) *'Empire' buy Integration: The United States and European Integration, 1945-1997*, Oxford: Oxford University Press.
- Mally, G (1974) *The New Europe and the United States*, Toronto: Lexington Books.
- March, J and J Olsen (1998) *Institutional Dynamics of International Political Orders*, *International Organization* 52 (4) 943-969.
- March J and J Olsen J (1989) *Rediscovering Institutions*, New York: Free Press.
- Marks G, L Hooghe, and K Blank (1996) 'European Integration from the 1980s State-Centric v Multi-level Governance', *Journal of Common Market Studies*, 341-377, Blackwell Publishers, Oxford.
- Marsh, D. and RAW Rhodes (1992) *Policy Networks in British Government*, Oxford: Clarendon Press.
- Martin, P and M Miller (2000) 'Smuggling and Trafficking: A Conference Report', *International Migration Review*, 34, 3 Centre for Migration Studies, 969-975.
- Mattli, W (1999) *The Logic of Regional Integration Europe and Beyond*, Cambridge, Cambridge University Press.

- McBride Stetson, D (2000) 'The Invisible Issue: Prostitution and trafficking of women and girls in the United States.' Paper prepared for Workshop Prostitution and Trafficking as Political Issues. At the *European Consortium for Political Research Joint Sessions Workshops*, Copenhagen, April, 2000.
- Mearsheimer, J.J (1990a) 'Back to the future: instability in Europe after the Cold War', *International Security*, 15 (1): 5-56.
- Mearsheimer, JJ (1990b) ' Why we will soon miss the Cold War', *Atlantic Monthly*, August: 35-50.
- Merrill, R (1998) 'The Importance and Challenges of 'Mutual Recognition'' *Seton Hall Law Review* 29 (2).
- Meunier, S (2000) 'What Single Voice? European Institutions and EU-US Trade Negotiations', *International Organization*, 54 (1): 103-135.
- Meunier S and K Nicoloadis (1999) 'Who Speaks for Europe? The Delegation of Trade Authority in the EU', *Journal of Common Market Studies*, September 1999, Vol 37 (3): 477-501.
- Miko, F (2000) 'Trafficking in Women and Children: The US and International Response'. *Congressional Research Service Report* 98-649 C.
- Milner, H. (1997) *Interests, Institutions, and Information*, New Jersey: Princeton University Press.
- Milward, A (1984) *The Reconstruction of Western Europe 1945-51*, London: Methuen.
- Monar J (1998) *The New Transatlantic Agenda and the Future of EU-US Relations*, London: Kluwer Law International
- Moravcsik, A (1998) *The Choice for Europe: Social Purpose ad State Power from Messina to Maastricht*, New York: Cornell University Press.
- Moravcsik A (1993a) 'Integrating International and Domestic Theories of International Bargaining'. In *Double-Edged Diplomacy*, B Evans, H Jacobson, and R Putnam (eds.), London: University of California Press.
- Moravcsik, A (1993b) 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach' in *Journal of Common Market Studies* 31 (4):473-519.
- Morgenthau, H. (1985) *Politics among Nations*, fifth edition, New York: Knopf.
- Murphy, C (2000) 'Global Governance: Poorly done and poorly understood', *International Affairs*, 76 4 789-803.

- Nicolaïdis, K (1997a) 'Mutual Recognition of Regulatory Regimes: Some Lessons and Prospects', *Jean Monnet Working Papers*, Harvard University: available [www. Harvard.edu/programs/JeanMonnet/papers/97/97-07-1.htm](http://www.Harvard.edu/programs/JeanMonnet/papers/97/97-07-1.htm)
- Nicolaïdis, K (1997b) 'Negotiating Mutual Recognition Agreements: A Comparative Analysis' Paper presented at the *1997 Annual Meeting of the American Political Science Association*, 28-31 August, Washington D.C.
- Nicolaïdis, K and R Howse (2001) *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, Oxford: Oxford University Press.
- Nixon, R (1974) 'Europe and the Atlantic Alliance', In G. Mally (ed) *The New Europe and the United States*, Toronto: Lexington Books: 3-10.
- Nye, J (1993) 'Parsons and Clients: New Roles in the Post-Cold War Order' in H. Haftendorn and C. Tischhoff (eds.) *America and Europe in an era of change*, Boulder CO: Westview Press.
- O'Neill, A (1999) 'International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organised Crime,' *A CIA Intelligence Report*, <http://www.state.gov/www/global/women/index.html>
- O'Toole, L (1997) 'Treating Networks Seriously Practical and Research – Based Agendas in Public Administration', *Public Administration Review*, 57 1: 45-52.
- Pelkmans, J (1998) 'Atlantic Economic Co-operation: The Limits of Plurilateralism' *Working Document (122)*, Brussels: Centre for Policy Studies.
- Pelkmans, J (1986) *The Bickering Bigemony: GATT as an instrument in Atlantic trade policy*, in L Tsoukalis, *Europe, America and the World Economy*, Oxford: Briar Blackwell.
- Peters, B G (1999) *Institutional Theory in Political Science The 'New Institutionalism'*, London: Continuum
- Peterson, J (2001a) 'Shaping, Not Making: the US Congress and US-EU Relations' in E Phillipart and P Winand (eds.) *Policy-Making in the European Union. Manchester.*
- Peterson, J (2001b) 'Get Away from Me Closer, You're Near Me Too Far: Europe And America after the Uruguay Round'. In M Pollack and G Shaffer (eds.) *The New Transatlantic Dialogue: Intergovernmental, Transgovernmental and Transnational Approaches*. Oxford: Roman and Littlefield.
- Peterson, J (1996) *Europe and America, The Prospects for Partnership* (2nd edition). Routledge: London.

- Peterson, J (1995) 'Understanding decision-making in the European Union; Towards a framework or analysis', *Journal of Common Market Studies*, 2 (1) 9-93.
- Peterson, J (1994) 'Europe and America in the Clinton Era', *Journal of Common Market Studies*, 32 (3): 411-426.
- Peterson, J. and E Bomberg (1999) *Decision Making in the European Union*. London and New York: Macmillan and St. Martin's Press. 1999
- Peterson, J and H Ward (1995) 'Coalitional Instability and the new multidimensional politics of security: a rational choice argument for EU-US co-operation' in *European Journal of International Relations*, 1 (2): 131-156
- Peterson, J and H Sjursen, S. (eds) (1998) *A Common Foreign Policy for Europe? Competing Visions of the CFSP*. London: Routledge.
- Peterson, J and L O'Toole, Jr (2001) 'Federal Governance in the United States and the European Union: A Policy Network Perspective.' In Nicolaïdis K and R Howse (2001) *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, Oxford: Oxford University Press.
- Philippart, E and P Winand (2001) 'Ever Closer Partnership? Taking Stock of US-EU Relations'. In E Philippart and P Winand (eds) *Ever Closer Partnership, Policy Making in US EU Relations*. Brussels: Presses Interuniversitaires Europeennes.
- Piening, C (1997) *Global Europe: The European Union in World Affairs*, London: Lynne Rienner Publishers
- Pollack, M (2001) 'International Relations Theory and European Integration'. In *Journal of Common Market Studies*, June, 39 (2) 221-224.
- Pollack, M. and G. Shaffer (2001) 'Transatlantic Governance in a Global Economy: Introduction' In M. Pollack and G. Shaffer (eds.) *The New Transatlantic Dialogue: Intergovernmental, Transgovernmental and Transnational Approaches*. Oxford: Roman and Littlefield.
- Prakash, A and J Hart (1999) *Globalisation and Governance*, London, Routledge.
- Puchala, D and R Hopkins (1983) 'International Regimes: Lessons from Inductive Analysis in D Krasner' In D Puchala, R Hopkins (ed) *International Regimes*, Ithica NY: Cornell University Press.
- Putnam (1998) *Diplomacy and Domestic Politics: The Logic of Two Level Games*, *International Organization* 42: 427-60.
- Putnam, R. (1993) 'Two-Level Games: The Impact of Domestic Politics on Transatlantic Bargaining' in H. Haftendorn and C. Tischhoff (eds.) *America and Europe in an era of change*, Boulder CO: Westview Press.

- Reinicke, W (1996) *Deepening the Atlantic; towards a new transatlantic marketplace?* London: British Foreign Policy Resource Centre.
- Rhodes, RAW (1997) *Understanding Governance: policy networks, governance, reflexivity and accountability*, Buckingham: Open University Press.
- Risse, T (2000) 'Let's argue! Communicative Action World Politics' *International Organization*, 54 (1): 1-39, MIT.
- Risse, T (1995a) *Bringing Transnational Relations Back In: Non-state Actors, Domestic Structures and International Institutions*, Cambridge: Cambridge University Press.
- Risse, T (1995b) *Cooperation Among Democracies: The European Influence on U.S. Foreign Policy*, New Jersey: Princeton University Press.
- Rittberger, V (1996) Global Citizenship (Non-State Actors/INGOs) UN21 Research Project Report 16 May. Available: http://www.unu.edu/ona/PublicFora/UN21_16May1996/UN2116May96index.htm
- Ronit K, and V Schneider (1999) 'Global Governance through Private Organisations', *Governances: An International Journal of Policy and Administration*, Vol 12 (3): 243-266,
- Rosenau, J (1992) 'Governance, Order and Change in World Politics' In Rosenau and EO Czempiel *Governance with Government Order and Change in World Politics* New York Cambridge University Press: 1-29.
- Ruggiero, V (2000) 'Transnational Crime: Official and Alternative Fears International' *Journal of Sociology of Law*, Vol 28: 187-199
- Ruggerio, V (1997) 'Trafficking in Human Beings: Slaves in Contemporary Europe', *International Journal of Sociology of Law*, Vol 25, Academic Press: 231-244
- Ruggie, J (1998) *Constructing the World Polity: Essays on International Institutionalization*, London: Routledge.
- Sbragia, A (2000) 'Governance, the State, and the Market: What is Going on?', *Governance: An International Journal of Policy and Administration*, Vol 12, (3), Blackwell Publishers, Oxford: 243-250.
- Schloenhardt, A (1999) 'Organised crime and the business of migrant trafficking: An economic analysis'. *Crime Law and Social Change* Vol 32 No 3, Kluwer Academic Publishers: 203-233
- Skogstad, G (2001) 'The WTO, the European Union, and Food Safety Regulatory Policy Harmonization', forthcoming in the *Journal of Common Market Studies* vol 29 (3).

- Slaughter, AM (1997) 'The Real New World Order' in *Foreign Affairs* 76 (5): 183-197.
- Smith, M (2001) 'The United States, The European Union and the New Transatlantic Marketplace: Public Strategy and Private Interests'. In E. Philippart and P Winand *Ever Closer Partnership, Policy Making in US-EU Relations*, Presses Interuniversitaires Europeennes : Brussels: 267-282
- Smith, M (1998) 'Does the Flag Follow Trade? 'Politicisation' and the emergence of a European foreign policy'. In Peterson, J. and Sjursen, S. (eds) *A Common Foreign Policy for Europe? Competing Visions of the CFSP*. London: Routledge. 77-94.
- Smith, M (1997) 'Competitive Co-operation and EU/US Relations: Can the EU be a Strategic Partner for the US in the World Political Economy?' Paper presented at ECSA Conference.
- Smith, M (1990) 'The devil you know: The United States and a Changing European Community', *International Affairs*, 68 (1) : 103-120.
- Smith, M. (1984) *Western Europe and the United States: The Uncertain Alliance*, London: George Allen and Unwin Ltd.
- Smith, M. and Woolcock, S. (1993) *The United States and the European Community in a Transformed World*, London: Royal Institute of International Affairs.
- Smith, P (1993) *The Challenge of Integration Europe and the Americas*, London, Transaction Publishers
- Stehmann, O (2000) 'Foreign Sales Corporations under the WTO The Panel Ruling on US Export Subsidies'. *Journal of World Trade* 34 (3) Kluwer Law International: 127-156.
- Stevens, C (2000) Trade With Developing Countries, In H. Wallace and W. Wallace, *Policy Making in the European Union*, 4th edition, Oxford University Press, Oxford: 401-426.
- Stevens, C (1996) EU Policy for the Banana Market, In H. Wallace and W. Wallace, *Policy Making in the European Union*, 3rd edition, Oxford University Press, Oxford: 325-352.
- Stoecker, S (1999) ' Transnational Crime Institute Sex Trade: Trafficking of Women and Children in Europe and the United States', Hearing before the Commission on Security and Co-operation in Europe (the Helsinki Commission), June 28, 1999.
- Stoecker, S (1998) Crime and Corruption in the Digital Age, *Journal of International Affairs*, 51 (2): 605-620.

- Stokes, B (1999) Transatlantic Trade Frictions, *Internationale Politik*, September 1999, available at <http://www.cfr.org/p/pubs/StokesTradeOp-ed.html>
- Stone, D (2000) 'Non-Governmental Policy Transfers: The Strategies of Independent Policy Institutions, Governance', *An International Journal of Policy Administration*, Vol 13 (1): 45-62
- Strange, S (1996) *The Retreat of the State The Diffusion of Power in the World Economy*, Cambridge: Cambridge University Press.
- Strange, S (1982) The Money Tangle In F. Alting von Geusau (ed) *Allies in a Turbulent World*, Toronto: Lexington Books.
- Sutton, P (1997) 'The Banana regime of the European Union, the Caribbean, and Latin America,' *Journal of Interamerican Studies and World Affairs*, Summer 1997, 39, (2): 5-36
- Taylor, I and R Jamieson (1999) 'Sex trafficking and the mainstream market culture: challenges to organised crime analysis', *Crime, Law and Social Change*, 32: 3, Kluwer Academic Press: 257-278.
- Tsoukalis, L (1986) Euro-American Relations and Global Economic Interdependence, in L. Tsoukalis (ed) *Europe, America and the World Economy*, Oxford: Briar and Blackwell.
- Vadney, T (1999) *The World Since 1945*, New York: Puffin
- Vallern, C and B McGivern (2000) 'The right to retaliate under the WTO agreement – the 'sequencing' problem' *Journal of World Trade*, 34 (2) August: 63-84.
- Van den Broek (1993) *Transatlantic Relations in the 1990s : The Emergence of New Security Architectures*, Special Report : Institute for Foreign Policy Analysis.
- Vogel, D (1998) *Barriers of Benefits? Regulation in Transatlantic Trade*, London: Brookings, London.
- Wallace, H and Young (1996) 'The Single Market' in H. Wallace and W. Wallace *Policy Making in the European Union*, Oxford: Oxford University Press: 125-156.
- Waltz, K (1979) *Theory of International Politics*, Reading: Addison-Wesley.
- Waltz, K (1986) 'Response to my critics' in R.O. Keohane (ed.) *Neorealism and its Critics*, New York: Columbia University Press.
- Young, A (2001) 'Domestic Politics of Transatlantic Governance: Hormones, Genes, and Risk', *EUI Working Paper* 2001.
- Ziedaliski, B (2000) 'The World Trade Organisation and the Transatlantic Banana

Split', *New England International and Comparative Law Annual*. Available online at <http://www.nesl.edu/annual/vol5indx.htm>

Official Documents and Speeches

Atlanta Atkiengesellschaft (2000) Letter to European Community Banana Trade Association, 4 August.

Background Brief 4 (1998) Realised in correlation with May Summit 1998 in London. Available: <http://www.useu.be/SUMMIT/summit0598.html>

Baker, J (1991) Berlin Speeches, Addresses to Berlin Press Club, 12 December 1989 and the Aspen institute, 18 June 1991, London: Embassy of the United States of America.

Barshevsky, C (1997) USTR Press Release, 13 June: Washington D.C.

Berry, W (2001) 'Statement of European American Business Council to the Senate Banking Committee Hearing on Reauthorization of the Iran-Libya Sanctions Act' June 28.

Botti, A (1998) 'Trafficking in Women and Girls', Statement made to the ODCE Implementation Meeting on Human Dimension Issues.

Brittan, L (1998) 'Europe: the New Tiger? The Shape of Tomorrow Global Economy' Speech given at the Kennedy School- Harvard University 18 March, Boston.

Brittan, L (1995) 'The EU-US Relationship: Will its Last?', Speech given to the *American Club of Brussels*, 27 April, Brussels.

Brown, R (1994) Speech to American Chamber of Commerce, Brussels, 15 December.

Caribbean Banana Exporters Association (2000a) 'EU Banana Regime: Position of Del Monte and Dole Corporations': available at <http://cbea.org>.

Caribbean Banana Exporters Association (2000b) 'Reform of the Banana Regime: A Dire Threat to the Caribbean,' October. Available: <http://www.cbea.org>

Clinton (1997) New Briefing, 16 December, Washington D.C.

Clinton W, J Delors and K Kohl (1994) 'Statement to EU-US Summit', 11 January, Berlin.

Daley W (1997) The US Administration's Priorities and Prospects for Economic and

Business Relations with Europe. Speech given to the *European Institute*, 14 March Washington D.C.

Dehaent, William (2001) Press Release 16 April 2001.

Early Warning System Statement (1999) announced at EU-US Summit, Bonn, June.
Available: <http://www.useu.be/DOCS/Index.html#3>.

Eizenstat, S. (1997) Speech given to the European Committee of the American Chamber of Commerce, 11 September, Brussels.

Escaler N (1998) Statement on United States-European Union Transatlantic Seminar to Prevent Trafficking in Women, IOM Deputy Director General, L'viv 9-10 July.

European American Business Council (2001) Press Release, States Enjoy Trillion Dollar Benefit From EU-US Trade and Investment Relationship available <http://www.eabc>.

European Commission (2001) Reinforcing the Transatlantic Relationship: Focusing on Strategy and Delivering Results.COM(2001) 154 of March 20. Available: <http://www.eurunion.org/partner/backgrounddoc.htm>

European Commission (2000a) Commission gives new impetus to resolve banana dispute. Press Release Available: <http://www.europa.eu.int/comm/trade>. 4, 5 July 2000.

European Commission (2000b) Communication from the Commission to the Council on the First Come, First Served method for the banana regime and the implications of a 'tariff only' system. 4 October.

European Commission (2000c) Commission Proposes solution to end Banana Dispute, Press Release. Available: <http://www.europa.eu.int/comm/trade>. 4, 4 October.

European Commission (1999a) 'Commission Proposes to Modify the EU's Banana Regime, Press Release.' Press Release, available <http://www.europa.eu.int/comm/trade>, 10 November.

European Commission (1999b) 'The Commission Reports to the Council on consultation with a view to settlement of the banana dispute'. Press Release, available <http://www.europa.eu.int/comm/trade>, 26 May.

European Commission (1998a) *Communiqué to the Council on the New Transatlantic Marketplace Agreement*, March.

European Commission (1998b) 'US/EU Banana Dispute: Modifications to the EC Banana Regime', DG I, External Relations, 10 November 1998, www.europa.org.

- European Commission (1995) 'Europe and the US: The Way Forward' Commission Communication on EU-US relations 26 July: available at <http://www.europa.eu.int/comm/dg01/commind.htm>
- European Council of Ministers (1999) Council Regulation amending EEC No 404/93 on the common organisation of the market on bananas.
- European Parliament (2000) Agriculture and Rural Development Committee Draft Response to the EU Commission's proposals for an amended banana regime.
- EU-US Guidelines/Principles on Co-operation and Transparency in Establishing Technical Regulations (2000), released EU-US Washington Summit. Available at <http://www.eurunion.org>
- Friends of the Earth (1999) 'The New Transatlantic Agenda (NTA) as a Challenge for Sustainable Societies on a Global Scale' States from first meeting of TAED, May 1-2. Statements from first meeting of TAED. May 1-2. 1999. Internet. 13 September 1999. Available: http://www.foeurope.org/press/new_transatlantic.htm.
- Gramegna, M (1996) Statement made to EU Conference on Trafficking in Women for Sexual Exploitation, International Organization of Migration, representative, 10-11 Vienna 1996.
- Grossman, M (1998) 'The United States and the European Union: State of Relations as Austria Assumes Presidency', Speech given at Princeton University Conference on, 'The European Union, Austria and the Future of Central Europe', 1 May, New Jersey.
- Holston, S (1998) *Testimony to the House Committee on Commerce*, Subcommittee on Oversight and Investigations on EU Mutual Recognition Agreements. 2 October.
- International Organization for Migration (1998) Information Campaign Against Trafficking in Women in the Ukraine, *Project Report*, IOM: Geneva.
- Lamy, P (1999) Speech at TPN Meeting, 22 May, Brussels: available <http://tabd.org/resources/content/mylamy.html>
- Larson, A (1997) 'The Transatlantic Marketplace', Speech given at The European Institute forum, 11 March, Washington D.C..
- Loy, F (1999) Testimony to the Senate Foreign Relations Committee, available, <http://secretary.state.gov/www.picw/trafficking/loy.htm>
- Mutual Recognition Agreements (1997) Signed by USTR, European Commission and European Council Presidency 1 December 1998 available: <http://useu.be/DOCS/mra.98.pdf>

OSHA(2000) Federal Register Nationally Recognized Testing Laboratories Fees; Public Comment Period on Recognition Notices. - 65:46797-46819

OSCE (1999) Trafficking in Human Beings: Implications for the OSCE, Review Conference, September 1999, ODIHR Background Paper 1999/3

New Transatlantic Agenda (1995) signed by the European Commission, President of the European Council and President of the United State, 3 December in Madrid. available at <http://www.useu.be/ISSUES/nta1295.html>

New Transatlantic Agenda Joint Action Plan (1995) 12 December 1995, Washington DC. <http://www.useu.be/DOCS/nta2.html>

People to People Conference Report (1997) Building Bridges Across the Atlantic Conference, held May, Washington D.C..

Petriccione, M (2000) Mutual Recognition Agreements, Speech given to TACD Meeting 10-12 February, Washington. D.C.

Pickering (1998) Remarks made at Europe Magazine Forum, 22 May Washington D.C.

Senior Level Group Reports (2001-1998) Reports to the EU-US Summits, available at <http://www.useu.be/us-eusummits.html>

Sheil (1998) 'EU/US Free Trade Area' Internal Briefing Document: Institute of European Affairs.

Stern, P (1996) Transatlantic Business Dialogue: A New Paradigm for Standards and Regulatory Reform Sector-by Sector available <http://www.tabd.com/resources/content.stern.html>

Stern, P (1997) The Success of the MRAs, available at <http://www.tabd.comhttp://www.tabd.com/index1.html>

TABD (2000) Mid Year Report, Release in May in Brussels: available <http://www.tabd.com>

TABD (1999) Mid Year Report, May 10: Washington D.C: available <http://www.tabd.com>

TABD (1998) Mid Year Scorecard: available <http://www.tabd.com>

TACD (2000a) 'US & EU Consumer Groups Call For Swift Action To Balance Trade Dialogue', Press Release, 30 March.

TACD (2000b) Principles of Harmonisation, TACD Trade Document Trade -8-00.

Issued February: available <http://www.tacd.org>

TACD (1999) TACD Recommendations, Fair Trade, Document 4-99,
available:<http://www.tacd.org>

TACD-TAED (1999) 'EU-US Summit Rejects Environment and Consumer Groups
Participation, Invites Business Representatives. Joint Press Release. 18 June.

TACD-TAED (1998) Comments by the TACD on the TEP Action Plan'. December
1998. Internet. January. Available: www.tacd.org.

TAED (2000a) 'Transatlantic Environment Dialogue suspends its activities due to the
failure of US government to stick to its commitments', Press Release, 21
November.

TAED (2000b) Mutual Recognition Agreements Draft Policy Statement of the
Transatlantic Environmental Dialogue, Presented at the Third Meeting of the
TAED, 10-13.

TAED (1999) European and U.S. environmental organisations launch the
Transatlantic Environment Dialogue (TAED) Press Release, May 3 1999.

TAED (1998) Discussion Paper on the Opportunities for Environmental Advocacy in
Trade Policy Created by NGO Participation in the New Transatlantic Agenda.
September. available: <http://www.nwf.org/internationaltrade/taedrpt.html>

TALD (2001) Statement by AFL-CIO President John Sweeney on the ETUC Trade
Union to the US-European Union Summit, Decemeber.

Transatlantic Declaration (1990) Signed by President of US, President of Commission
and President of the European Presidency in Paris. 1990.

Transatlantic Economic Partnership(1998) signed by the EU and the US 18 May,
London. 1998: available <http://europa.eu.int/comm/dg01/decl.htm>

Transatlantic Economic Partnership Action Plan (1998) release EU-US Summit,
Washington, available at: <http://www.useu.be/DOCS/nta2.html>

Transatlantic Economic Partnership Steering Group (2000) Report to Meeting of
Trade and Economic Ministers at EU-US Summit, 31 May, Lisbon.

Transatlantic Economic Partnership Steering Group (1997) Report to Meeting of
Trade and Economic Ministers at EU-US Summit, 17 December, Washington
D.C.

Transatlantic Partnership on Political Co-operation (TPPC) (1998) signed in
conjunction with EU-US Summit, London. 1998

Transatlantic Policy Network (1998) Towards Transatlantic Partnership Co-operation
Project Report Brussels.

US Administration Press Release (2000) Carousel Revised Retaliation List in EU Disputes Delayed, 20 June.

US Administration Press Release (1998) 'US Officials Stress Interest in Resolving EU Banana Dispute' 12 September.

US Administration Press Release (1998) USTR Barshefsky Reacts to EC Banana Decision, November.

US Beef Cattlemen (2000) A Message to Congress, Advertising Campaign: available at <http://www.hill.beef.org>.

US Beef Cattlemen Association (1998) Europe's 'Solution' to the Beef and Banana Cases: An 'Endless Loop' Designed to Evade the Law. Press Release 30 November: available <http://www.hill.beef.org>.

US Congress (1999) House Resolution 1361. To bar the imposition of increased tariffs or other retaliatory measures against the products of the European Union in response to the banana regime of the European Union. Introduced by Representative Maxine Waters, March 25.

US Congress (1998) House Resolution 213, Calling for the Administration to Make the Beef and Banana Disputes a Top Priority, 30 November.

US Embassy Kyiv Ukraine (1999) Crime Digest, January at <http://www.usemb.kiev.ua/rso/CrimeDigest9901.html>

USIS (1999) Statement by Ambassador Peters Scher on EU Banana Regime, 3 March 1999.

USIS (1998) 'Barshefsky says no US-EU free trade agreement envisioned', 3 February: United States Information Agency.

USIS (1998) 'US Officials Stress Interest in Resolving EU Banana Dispute' 12 September.

US Mission (1998) Fact Sheet: The Transatlantic Economic Partnership, 18 May, Brussels.

US Mission (1997) 'EU-US Reach Agreement on Mutual Recognition of Product Testing and Approval Requirements', 13 June, Brussels. 1997.

US State Department (1999) Highlights from NGO Public Briefing Meeting, archive, STOP Trafficking. Bureau of Population, Migration and Refugees.

US State Department (1998) President's Policy Statement on Trafficking in Women, archive, STOP Trafficking. Bureau of Population, Migration and Refugees.

USTR Press Release (2000) US Legal Position on Dispute in WTO on Banana Regime, 12 January.

USTR Press Release (1999) Ambassador Barshevsky Expresses Dismay at European Union Blocking Tactics in WTO' USTR Press Release 25 January.

USTR Press Release (1997) WTO Banana Report Confirms US Win, 22 May.

Warnath, S (1998) 'Trafficking of Women and Children: The Future Direction of United States Policy', Remarks made by the Senior Advisor on President's Interagency Council on Women, Presented at the *U.S. - E.U. Transatlantic Seminar to Prevent Trafficking in Women* Lâviv, Ukraine July 10, 1998.

White House (1996a), Office of Press Secretary, Fact Sheet: Mutual Recognition Agreements December 16, Washington D.C.

White House (1996b) Good Manufacturing Practices, Press Briefing, 16 December, Washington D.C.

<i>News Sources</i>

AFX Europe (2000) EU Commission says will contest Banana War Damages Claims From 2 EU Companies, 30 August.

Agence Press (1999) Controversial US Legislation Does Not Violate WTO Rules, 22 December.

Alden E (2001) 'Mismatch on product safety puts accord on danger list, *Financial Times*, November 9.

Alden, E (2000) 'US and EU still split on beef and bananas' In *Financial Times*; Dec 19

Alden E and C Bowen (2001) 'US banana producers find different ways of living with EU restrictions: Chiquita has gone head on and is close to bankruptcy, Dole and Del Monte have learned to live with the curbs.' *Financial Times* 16 February.

Barlett D, and J Steel (2000) 'How to Become a Top Banana' in *Time Magazine*, Vol 155 No 5, 7 February

BBC News (2000) Ecuador turns on US in trade war, 6 October, news.bbc.co.uk

BBC News (2000) Firm to sue over banana war 'loss', 31 August. news.bbc.co.uk

BBC News Online (2000) EU and US avert trade war, 30 September, news.bbc.co.uk

BBC News Online (1999) New trade war looms, 25 April, news.bbc.co.uk

- BBC News Online (1999) Beefing up the trade war, 23 March, news.bbc.co.uk
- BBC News (1999) Clinton: It's about Rules not Bananas, 6 March, news.bbc.co.uk
- BBC News Online (1999) Banana war exposes old trade divisions, 5 March, news.bbc.co.uk
- BBC News Online (1999) US retaliates in banana war, 4 March, news.bbc.co.uk
- BBC News Online (1999) Banana trade war looms, 12 January, news.bbc.co.uk
- BBC News Online (1998) Banana Trade War, 17 December, news.bbc.co.uk
- BBC News Online (1997) No Trade War Blair, 5 December, news.bbc.co.uk
- Buckley, N. (1998) France blocks bid for EU-US 'Marketplace', *Financial Times Archives*, 28 April: available <http://www.ft.com>
- Buerkle T (1999) EU Warns US it Risks 'Major' Trade Battle in Banana Feud. *International Herald Tribune*, 5 March.
- CEO (1998a) TABD: Who's Keeping Score? In *Corporate European Observer*, October: available <http://www.xs4all.nl/~ceo/observer2/tabd.html>.
- CEO (1998b) 'The TEP of the Iceberg: How the New Transatlantic Marketplace Became the New Transatlantic Economic Partnership.' In *Corporate European Observer*, Issue 2, October: available <http://www.xs4all.nl-ceo/observer2/tep.htm>
- Cox, J (1999) Punitive Actions by US Felt World-wide' In *US Today*, March 11.
- Chisholm, W (2000) Cashmere Industry Threatens EC Over US Sanctions Fears, *The Scotsman*, 1 September.
- CNN (1998) US-EU Trade War Looms, 10 November.
- CNN (1998) 'EU agrees to let trade body referee dispute if US drops sanctions threat' 20 November
- Daily Telegraph (1999) American Warned of Drugs Danger over Banana War, 9 March.
- de Brie C (1999) 'Watch Out for MAI Mark II' in *Le Monde*, 21 May.
- de Jonquires, G. (1998) 'Regionalism' in the *Financial Times*, 18 May.
- Eaglesham, J (2000) Scots may seek recompense, *Financial Times*, 1 September.
- EU Business (2000) EU Foreign Minister Divided on Banana Policy, 11 July.

- Euracom (1995) 'Commission Strategy for Deeper EU-US Ties', May.
- European Union Magazine, An Interview with Charlene Barshefsky. Available at http://www.euruion.org/magazine/9905/interviews_barshefsky.htm
- Financial Times (2000) 'New tact but US-EU disputes remain', 1 June.
- Financial Times (2000) 'US Calls on Ecuador to Support Banana Deal', April 18.
- Financial Times (1999) 'US rejects Brussels' proposal on bananas', 11 November.
- Financial Times (1999) 'The Bad Blood Behind the Bananas', 5 March.
- Financial Times (1998) 'France Blocks Bid for EU-US 'Marketplace' 28 April.
- Financial Times (1997) 'Inspection pact 'will save millions'', June 19.
- Giles, W (2000) Carousel Deepens Row over Banana Trade, In *Financial Times*, 9 July.
- Greenwald, J, V Novak and A Zagorin (1996) 'Ever Wonder What Businessmen Get for Campaign Contributions? Take a Look at Carl Linder' In *Time Magazine*, Vol 146, No 4, 22 January.
- Guardian (2000) 'Bananas: the view from America', 9 March.
- Guardian (1999) 'EU Ready to Accept Banana War Defeat', 16 April.
- Guardian (1999) 'Why are we being force-fed? American's victory in the banana war shows free trade has lost US legal control over our food and health', 13 April.
- Il Sole 24 Ore (2000) 'Fiamm Asks EU for Damages', 31 August.
- The Independent (1999) Time to Admit Defeat in Banana War, 8 April.
- The Independent (1999) 'US Rejects Banana Trade Deal', 11 November.
- Irish Times (2001) 'Banana War must be brought to an end'. 6 April
- 'Jaw-Jaw' Financial Times Online. 23 June 1999. Available: <http://www.ft.com>
- Journal of Commerce (1998) 5 February 1998, quote available from TABD, 'What they have said about the TABD.' www.tabd.org
- Laurance, B (1999) 'The Big Banana' In *Sunday Guardian*. 7 March
- Mason, B (1999) 'Transatlantic Tensions Deepen', In *BBC News Online*, 5 March: available <http://news.bbc.co.uk>.

McSmith, A and D. Fraser (1999) 'Banana peace talks fail to heal split', 7 March.

Peter C (1998) 'Business is the Buzzword: Environmentalists Gear up for Transatlantic Talks', on Transatlantic Information Exchange Service; Environment Section available <http://www.ties.org>

Smith Michael (2000) EU slip up over import of bananas, *Financial Times*, 18 July.

Smith, Michael (2000) Banana deal stalled by EU Foreign Ministers, *Financial Times*, 11 July.

Smith, Michael (2000) EU slip up over import of bananas, *Financial Times*, 18 July.

Taylor, S (1999) Banana War to Drag on into autumn, *European Voice*, 22 July.

Transatlantic Information Exchange Web (TIES) (1999) Interview with Jake Caldwell on the TAED, April. available <http://www.tiesweb.org>.

'That Awkward Relationship' *Economist Archive*, 16 May. 1998. Available: <http://economist.com>

The Economist (1999) 'Fruitless but not harmless', 10 April.

Wall Street Journal (2000) European Firms Seek EU Damages for Banana War, 30 August.

Wall Street Journal (2000) The Clinton's Shrug at Sex Trafficking 10 January 2000.

Wilkinson, B (1999) Caricom Suspends Treaty with US Over Bananas, One World News, 9 March. Available at <http://www.oneworld.org>

Williams, F. and de Jonquieres, G. 'Europeans block biotech move' *Financial Times Online*. December 3 1999.

Wilson, J (2001) Columbia fears banana ruling, *Financial Times*, 2 January.

Winneker, C (2000) EU Banana Boost' *European Voice*, 12 December.

Websites

US Government

US Mission: <http://www.useu.be>

US State Department: <http://www.state.gov>

USTR : <http://www.ustr.gov>

Commerce: <http://www.commerce.gov>

FDA: <http://www.fda.gov>

European Union

DG Trade and External Relations: <http://www.europa.eu.int>

US Commission Delegation: <http://www.eurunion.org>

Dialogues

TABD: <http://www.tabd.org>

TAED: <http://www.taed.org>

TACD: <http://www.taed.org>

