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# TRANSATLANTIC TRADE POLICY: US MARKET OPENING STRATEGIES

Author: Youri Devuyst, Professor, Vrije Universiteit Brussel .
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## 1. THE EC-US TRADE RELATIONSHIP: BETWEEN AUTONOMY AND INTERDEPENDENCE

Since the 1950s, the European Community (EC)1 has been trying to build up a new independent legal and economic order. This exercise has been difficult and gradual. Indeed, each step forward in the build-up of the Community's legal and economic order requires a new compromise formula between the member states--for example, between the free traders and the economic interventionists; between the more service-oriented, the more industrial-oriented, and the more agricultural economies; and between the richer and the poorer regions. Obviously, the Community is not developing in a vacuum. Since the Community is a major player in international trade relations, its development has an effect, not only within the EC, but also on third countries. Naturally, since Community measures also affect third countries, those third countries, including the United States (US), have been trying to influence or even control the final shape of the EC's legal and economic order. As Jeffrey Garten, the US Under Secretary of Commerce for International Trade, has recently explained, the US is determined to try and shape its trading partners' economic system in view of the US market opening objective. According to Garten, Washington would use its power to try to pry open markets even if it meant challenging "the very industrial organization of countries" (cited in Friedman, 1995).

As a result, tension has developed between, on the one hand, the EC's sovereign right to set up its own legal order and, on the other, the outside world's interest in monitoring and influencing the EC's development. This paper examines this tension as it arises in the relationship between the Community and the United States. More specifically, the paper deals with the institutional strategies (multilateral, bilateral, and unilateral) used by the United States to monitor the EC's development and to keep the Common Market open for US exports. The main question is how far each of the institutional strategies was able to help resolve, or better, help prevent, "market opening" conflicts between the US and the EC. At the end of the paper, the current US market opening options toward the EC will be analyzed, including the recent suggestion to create a Transatlantic Free Trade Area (TAFTA) similar to the North American Free Trade Agreement (NAFTA).

## 2. THE US AND EUROPEAN ECONOMIC INTEGRATION: A HISTORICAL PERSPECTIVE ON MARKET OPENING

For the Clinton Administration, market opening abroad has been a main feature of US foreign policy. This is not surprising. Even during his election campaign, Bill Clinton emphasized this theme (Clinton and Gore, 1992). As US Trade Representative Mickey Kantor explained before Congress: "Past Administrations have often neglected US economic and trading interests because of foreign policy or defense concerns." However, he added, "The days when we could afford to do so are long past. In the post-Cold War order, our national security depends on our economic strength" (Kantor, 1993a). Moreover, the Clinton Administration has become convinced that it will only be able to sustain a growing US economy through an expansion of trade. Trade is regarded as the 'engine' that should 'drive economic recovery and job growth'. In Kantor's words: "for every billion dollars in exports, 15,000 jobs are created" (Kantor, 1993b).

Inspired by the current passion for market opening, some observers have accused past US policy-makers of having either overlooked the commercial dangers inherent in the creation of a European economic block or 'sacrificed' US commercial interests for Cold War purposes (see Gilpin, 1971; Laurent, 1989; Zupnick, 1989). This is inaccurate. The active US encouragement of European integration after the Second World War was, obviously, strongly influenced by the geo-political Cold War interests of the United States (Winand, 1993). US policy-makers also knew that European economic unification would affect US trade interests. During the formation of the Community, US economists warned that the establishment of a European customs union, implying the creation of a common customs tariff surrounding the union, would inevitably lead to some trade diversion.

Contrary to current allegations, the Eisenhower Administration did not see its support for European economic integration as an economic 'sacrifice' that was made for purely political Cold War reasons. Washington looked upon the EC as an economic 'investment' that was expected to boost Western Europe's economic growth and thereby stimulate demand for American products (for a more detailed treatment, see Devuyst, 1992a). As Clarence B. Randall, the Chairman of the President's Council on Foreign Economic Policy, reported in 1956, "most United States officials. . . believe the advantages to the United States of European integration through a customs union . . . far outweigh any possible disadvantages both on economic and political grounds." According to Randall, US policy-makers "recognized that economic integration would result in tariff discrimination against United States exports." Still, they also "argued that the United States would be far more likely to obtain a liberal trade policy (including a dismantling of dollar restrictions) from a strong, unified European economy than from the smaller, less efficient economies as they now exist." Furthermore, it was generally agreed "that if the purpose of economic integration was achieved--higher productivity and rising standards of living--Europe would become a better market for United States products" (Randall, 1956a, 24).

The Eisenhower Administration relied on the mechanisms of the General Agreement on Tariffs and Trade--the GATT--to foster the outward-looking orientation of the newly created Community. The US Under Secretary of State Douglas Dillon, for instance, specifically launched the so-called Dillon Round in the GATT "to keep the

Community's common tariff as low as possible" (Dillon, 1957, 914). Since the 1970s, the US has become much more skeptical about the consequences of European integration and much more sensitive about foreign trade barriers (for an analysis, see Peterson, 1971; Williams, 1971). In order to understand this shift, it is essential to examine the evolution of the international economic position of the United States itself. During the 1950s, when the Community was created, the US did not need to be very sensitive about foreign trade barriers. The Eisenhower Administration could, indeed, look at international trade from the perspective of a largely 'closed' economy. The impact of imports and exports on the US economy was very limited. Also, the trade account was showing a surplus. By the 1970s, however, the contribution of international trade to the US economy had increased markedly, from 7 percent of US GDP after the Second World War to almost 20 percent. Moreover, starting in the early 1970s, the US trade surplus of the 1950s and 1960s had turned into a widening trade deficit. These two factors increased the pressure on Congress and the Administration to push more aggressively for short-term market opening abroad (Destler, 1992). In addition, the Community's own evolution led to problems for the US. During the 1960s, the EC worked out its Common Agricultural Policy, based on the 'Community preference principle'.

The protectionist Common Agricultural Policy prevented the highly competitive US farm sector from flooding the European market with American agricultural products (although the agricultural trade balance between US and EC has always been positive for the US). Moreover, the EC started surrounding itself with preferential trade agreements that also seemed to hinder US exports, not only to the Common Market itself, but also to third markets. In institutional terms, the increasing market opening pressures gave rise to a multi-track US trade policy--one that no longer limited itself to reliance on multilateral GATT procedures, but also included bilateralism and even aggressive unilateralism based on Section 301 of the Trade Act of 1974 (Preeg, 1989; Baldwin, 1990; Pearson and Riedel, 1990). Washington's multi-track approach will now be illustrated by looking at some of the institutional trade strategies that the United States has developed to monitor the Community's development and to keep the Common Market open for US exports. The broad GATT negotiating rounds will not be examined here since they go well beyond the specific US monitoring of EC trade practices.

## 3. US MARKET OPENING STRATEGIES TOWARD THE EC: THE PRE-URUGUAY ROUND EXPERIENCE

### 3.1. The Multilateral Approach: GATT Customs Union Procedures

When the European Economic Community was founded in 1957, the Eisenhower Administration assumed that the US was in a strong bargaining position to eliminate all possible barriers to American exports. "As you know," wrote Clarence Randall to the Secretary of State, "we hold an indirect veto over [the creation of the EEC] because the consent of the GATT will be required" (Randall, 1956b, 469). Indeed, according to GATT article XXIV, the formation of customs unions and free trade areas is subject to multilateral scrutiny. Under Article XXIV, customs unions such as the

Community must meet two essential criteria. Internally, customs unions must lead to the abolition of barriers to "substantially all trade" between members of the Union. Externally, customs unions must maintain a single common customs tariff and substantially the same regulations of commerce toward third countries. The external tariff and regulations should "not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable" prior to the formation of the customs union in question.

To ensure that new or enlarged customs unions adhere to these criteria, Article XXIV includes specific monitoring procedures. First, new or enlarged customs unions must be examined by a Working Party, composed of delegates from the GATT contracting parties. The Working Party is to check whether the customs union conforms with the requirements of Article XXIV. Second, new or enlarged customs unions must enter into bilateral negotiations that provide for compensatory adjustment for third countries when bound tariffs3 have been raised in the formation or adaptation of the common customs tariff. Both procedures are currently being used in relation to the EC's enlargement to include Austria, Finland and Sweden. The US has naturally tried to make use of these procedures to keep the Common Market open for American products, both following the original creation of the EC and after each enlargement. Ideally, the GATT procedures under Article XXIV should work as an 'early warning system' that should enable the contracting parties to spot possible problems regarding regional trade arrangements in a timely manner and should enable the GATT to recommend changes.

Historically, however, the Article XXIV process has been plagued by several problems (see Devuyst, 1992b for a more detailed explanation of the legal and technical problems). Invariably, application of the procedure has resulted in ugly fights between the EC and the US. To start with, the bilateral compensatory adjustment negotiations between the EC and third countries were hindered by important methodological problems, whereby each party constantly tried to advance trade figures sustaining its point of view. On the occasion of the compensatory adjustment negotiations regarding the admission of Spain and Portugal, differences of view between the US and the EC on the agricultural consequences of the accession led to the brink of a trade war. The GATT Working Party examinations have never led to formal conclusions on the compatibility of the EC with the GATT due to persistent differences of view between the contracting parties. The consensus decision-making requirements of the GATT obstructed resolution of these differences and allowed the Community to prevent the adoption of formal GATT requests for changes to Community rules (which themselves formed an essential part of an internal deal between the EC's member states).

Further, the Article XXIV procedures have not functioned as effective 'early warning systems' for at least three reasons. First, the pre-Uruguay Rounds of GATT were limited to trade in goods. The Community's integration process, however, went well beyond the GATT's limited scope. For instance, 60 percent of the EC's GNP is the result of service transactions. While the EC tried to regulate the service sector, this was not covered by the old GATT. Secondly, only the creation and enlargement of the EC were examined under Article XXIV. The latter was silent on the sometimes more

important substantive issue of 'deepening' in European integration (for example, the creation of new European economic law). Finally, Article XXIV review only took place after the Community had finished its internal decision-making. Changing Community rules after the EC had achieved an internal consensus was bound to be difficult. Similar problems have plagued the examination of practically all other regional trade agreements under GATT Article XXIV. Indeed, only four minor regional trade agreements have been formally accepted by the contracting parties as being compatible with the GATT.

### 3.2 The Multilateral Approach: GATT Dispute Settlement

When the US wanted to change a Community policy in order to effect market opening, it frequently relied on the GATT dispute settlement process. This process is specifically designed to resolve trade disputes over issues included in the GATT's multilateral framework. Obviously, it could only be used in disputes where the US believed that benefits due to it under the GATT had been nullified or impaired by the EC's practices. With regard to the more complex cases, the dispute settlement mechanism was also characterized by problem points (see Devuyst, 1994 for details). Indeed, since GATT conflict resolution also worked by consensus, it provided the parties in a dispute with the opportunity to block or hinder the smooth functioning of the dispute settlement process. In the case of the EC's ban on hormones in meat, for instance, the EC simply stopped the creation of a dispute settlement panel, which would normally be composed of three or five trade policy experts. In other cases, such as the Mediterranean citrus preferences conflict, the EC refused to adopt the report issued by the panel, thus depriving the panel report of legally binding force. The EC made use of this opportunity to safeguard, as much as possible, the Community's existing internal equilibrium, especially in the 'difficult' cases where a panel ruling would have forced the Community to change a delicate internal compromise between the member states.

It must be noted that the US, too, has been blocking the dispute brought before the GATT by the US against the EC's export subsidies on wheat flour. The US refused to accept the panel report since it did not rule against Community practices. Because of the consensus practice, some GATT dispute settlement cases could never start. Several others never officially ended. In fact, a detailed analysis of all GATT dispute settlement cases started by the US against the EC shows that none of the 'difficult' conflicts (i.e., conflicts where the EC perceived that the withdrawal of the practices objected to by the US would seriously upset the Community's internal balance) were or could be resolved simply on the basis of a panel report. In each of these cases, the resolution of the dispute demanded lengthy political negotiations, including the creation of broad packages of mutually beneficial concessions between the US and the EC. Resolution also entailed the promise of internal economic compensation within the EC for the member state or economic sector that would be 'harmed' by the concessions made to the US.

### 3.3 The Bilateral Approach: The US and the Creation of the Internal Market

When the Community initiated its Internal Market project in the mid-1980s, it soon became clear that its development could not be effectively examined under the

GATT. First, as was said before, the qualitative 'deepening' or rule-making of the EC was not subject to any systematic and timely scrutiny under GATT's customs union procedures. Secondly, many of the internal market directives dealt with services transactions which were not covered by the pre-Uruguay Round GATT. In order to influence the internal market's creation, the US set up its own interagency 'early warning' and negotiation mechanism (Devuyst, 1989; Peterson, Green Cowles and Devuyst, 1995). For US purposes, this monitoring system offered several advantages, compared to the Article XXIV mechanism. The deepening process could be examined in all its aspects, including services. Also, the US could make its views heard in time--that is, during the EC's decision-making process, rather than after the fact. In its initial internal market projects, the Community largely neglected the external dimension (Eeckhout, 1991). After timely consultations with the US, however, the EC did make a number of changes to its initial drafts. The original mirror-image reciprocity test in the Commission's initial proposal for the second banking directive, for example, was changed to accommodate US demands. While not all disputes concerning the internal market were settled in a similar way--remember the yet unresolved audio visual services conflict--the bilateral mechanism nevertheless proved useful as a way to tackle effectively a number of potential conflicts before they could escalate. Of the 280 internal market measures adopted by the EC, only two led to the initiation of unilateral 'trade war' procedures by the US. But the bilateral nature of the consultations over the internal market sometimes proved problematic from the EC's point of view. While the EC was ready to enter into consultations, it was not ready to consider 'a 13th seat at the table' for the United States, as had been requested by US Secretary of Commerce Robert Mosbacher.

### 3.4 The Unilateral Approach: The Application of Sanction Threats Under Section 301

In addition to and during multilateral procedures and bilateral negotiations, the US has since the mid-1980s also actively resorted to unilateral retaliation against the EC, under Section 301 of the Trade Act of 1974, as amended. This procedure was often invoked after a dispute had been blocked in the GATT dispute settlement framework and was used to obtain short-term changes in EC trade practices (for a detailed analysis, see Devuyst, 1994; Bayard and Elliott, 1994). From a US perspective, unilateral retaliation did seem to offer a number of advantages. Most importantly, in contrast with the GATT procedures, the US could decide, without outside interference, when to impose sanctions. Such sanctions tended to weaken the negotiating position of the Community by increasing the complexity of the dispute. In view of the frequent differences of opinion between the EC's member states regarding trade policy, the Community often appeared relatively defenseless during dynamic trade conflicts demanding swift action and reaction. Also, by targeting the sanctions against a specific member state or a particular product, the US hoped to sharpen the interest of that member state or economic sector in a quick resolution of the dispute (see Brand, 1993, for the functions of Section 301 during a GATT dispute settlement case).

It is crucial to add, though, that even real sanctions under Section 301 were usually insufficient simply to settle a conflict with the Community to the advantage of the

United States. Getting the approval of the EC's Council of Ministers for a substantial change in a significant Community policy always required political negotiations, beyond sanctions and beyond GATT dispute settlement. Even in the presence of an effective sanction threat, a double bargain was necessary to settle complex disputes. Firstly, conflict resolution required the negotiation of balanced package deals between the EC and the US. Secondly, obtaining the Member States' approval for changes in important Community policies in turn required internal bargains within the EC. Member States whose economic sectors were expected to suffer as a result of the change in policy often had to be 'bribed' by way of specific financial or economic compensation within the Community. For example, in the conflict over Mediterranean citrus fruit preferences, the US decided to impose trade sanctions against EC pasta, and the Community retaliated. The dispute was settled only after the US recognized the political importance of the Community's Mediterranean policy and only after an exchange of trade concessions which included a cut in EC import levies and a reduction in US tariffs on products of interest to the EC. Moreover, the EC's Council of Ministers decided to approve the compromise only after the Commission had pledged to use its agricultural management powers to prevent the deal from causing "inequitable consequences for Community producers."

The concessions offered by the EC to settle the conflict over agriculture arising from the accession of Spain and Portugal (another case in which Section 301 sanctions were used) could only be made final as part of the Uruguay Round deal. Only in that broad framework could permanent concessions by the EC be accepted as having been balanced against US concessions in other areas. In addition, the final solution was only agreed to by the Council after a promise of additional internal financial assistance to the EC's farmers, if the consequences of the deal went beyond the reform of the Common Agricultural Policy decided in 1992 (see Devuyst, 1995, for more evidence). Unilateral sanctions thus seemed only one element in the complex negotiation games. Sanctions on their own would not, apparently, have led to a solution. Unilateral sanctions did not seem to contribute in other cases to a settlement at all. For instance, in the hormones dispute, the introduction after 1989 of unilateral Section 301 sanctions changed nothing in the substance of the conflict. For the EC, the ban on hormones in meat, presented as an essential health and consumer protection measure, could not be traded away, even in the face of sanctions. Also, in the telecom procurement dispute, US unilateral retaliation only seemed to make it psychologically more difficult for the Community to reach a compromise with the US. Indeed, Commission Vice President Leon Brittan said that "the unjustified US sanctions" would not make the Commission change its negotiating position "one iota" (Brittan, 1993).

## 4. THE US - EC TRADE RELATIONSHIP IN THE POST-URUGUAY ROUND WORLD

### 4.1. The New Multilateral Framework: The World Trade Organization

During the Uruguay Round, the negotiators tried to eliminate the institutional problem points which had characterized the GATT mechanisms reviewed in this paper.

In particular, the Uruguay Round produced an Understanding which was meant to clarify interpretation of Article XXIV. While it might have helped to resolve some of the methodological points of contention, the Understanding included few substantive innovations. Also, it certainly did not turn the Article XXIV process into an effective 'early warning' instrument with regard to regional trade arrangements. Nevertheless, the Uruguay Round may have helped multilateral supervision of the Community. First, it extended the scope of the multilateral trade system to such areas as trade in services (General Agreement on Trade in Services--GATS) and intellectual property protection (Agreement on Trade-Related Aspects of Intellectual Property Rights--TRIPs). Article V of GATS, entitled 'Economic Integration', includes a procedure that is rather similar to that of GATT Article XXIV. Secondly, the Round established a World Trade Organization (the WTO) as the common institutional framework governing GATT, GATS and TRIPs. The WTO will try to maintain the consensus decision-making which was to typical of the GATT. However, the agreement also stipulates that, where it is impossible to reach a consensus, majority decisions can be taken. In the past, the Community was able to avoid formal problems in the Article XXIV process precisely because of the consensus rule. Thirdly, the Uruguay Round Agreement confirmed the establishment of the Trade Policy Review Mechanism (TPRM) which had been set up on a provisional basis during the Round. The TRPM provides for the regular multilateral examination of the trade policies of the WTO members, including the EC. Finally, there is the streamlined multilateral dispute settlement system. Under the new Uruguay Round rules, the parties to a dispute will no longer be able to prevent the conflict resolution system from functioning properly. Parties which do not implement dispute settlement rulings will have to pay compensation or face sanctions. At the same time, WTO rules explicitly prohibit the unilateral suspension of concessions or other obligations under the relevant agreements in retaliation against the trade practices of other members.

These streamlined and sharpened procedures could, depending on their use in practice, have an important effect on the multilateral supervision of the EC. Nevertheless, the new procedures still do not function as effective 'early warning mechanisms', since they operate only after the Community has already taken its decisions. The new multilateral provisions do not, in fact, fundamentally alter the EC's internal political and economic difficulties whenever the Community needs to change existing rules or an established compromise among the member states. As pre-Uruguay Round experience showed, neither GATT panel reports, nor effective sanctions were enough to settle complex disputes. Whenever the US asks for a change to a Community policy that rests on a delicate internal balance between the interests of the member states, the pragmatic search for a compromise formula, including external linkages and internal compensatory measures, must remain an important part of US-EC conflict management. A more aggressive use of the streamlined dispute settlement system or of the majority voting possibility under the WTO, without regard for the internal balances within the Community, could well lead to crises both within the EC and between the EC and the WTO.

From the point of view of the Community, the WTO also implies a number of important institutional changes. First and formally, the Community has become a

founding member of the WTO. In the pre-Uruguay Round GATT, the Commission represented the EC's member states, but the EC as such had never become a formal contracting party. Secondly (and politically more important), the EC faces a serious threat of fragmentation in the WTO. In the 'old' GATT, there was never any doubt that the EC, under Article 113 of the EC Treaty, had exclusive competence to act with regard to trade in goods. As a result, the EC was forced to come up with a common position that was expressed by the Commission. The obligation to speak with one voice made the Community a significant player during international trade negotiations.

Discussions on the Community's representation within the WTO, however, indicate a hesitation on the part of several member states to move forward in the direction of unity in external representation. Since the European Court of Justice stated, in an Opinion delivered on 15 November 1994, that the member states and the Community are jointly competent to deal with the 'new' GATS and TRIPs issues, some member states have taken the position that, in the absence of a consensus, each of them should be able to take the floor during multilateral GATS and TRIPs discussions. In order to prevent the Community's unity of external representation from being undermined, a Code of Conduct on the EC's representation in the WTO is currently being negotiated between the member states and the Commission (see Bourgeois, 1994).

### 4.2. Continuing Reliance on Unilateral Market Opening Instruments

Despite the new dispute settlement system's explicit prohibition of unilateral sanctions against products covered by the WTO's multilateral agreements, the Clinton Administration seems determined to pursue its market opening strategy with the help of Section 301 wherever the latter is deemed to advance the US position. The unilateral sanction threat in the case of alleged Japanese discrimination against US autos and auto parts is a recent example. As Jeffrey Garten stated, "the United States [is] not prepared to wait for years for the World Trade Organization to open markets by acting to settle disputes" (Friedman, 1995). Two reasons might be advanced to explain the continuing insistence on short-term market opening. First, the fundamental economic reasons for a more aggressive trade policy have not undergone any spectacular change. The US still faces a trade deficit, while the impact of international trade on the domestic economy can no longer be neglected. Secondly, the end of the Cold War has brought about change in world politics. Michael Aho and Bruce Stokes describe this change as follows: "In the past, foreign economic objectives were often subordinated to security concerns in a desire not to alienate allies. But without the constraint of the Cold War, America will not be as reluctant to aggressively pursue its economic goals. At the same time, it will have less leverage because Europe and Japan are less reliant on US military protection. As a result, a more assertive America will confront a more assertive world; a prescription for confrontation" (Aho and Stokes, 1991, 160-161). The conclusion is similar to that in the previous section of this paper. Pre-Uruguay Round experience has shown that, in conflicts where the internal balance of the Community is at stake, unilateral sanctions are no panacea. Complex disputes with the EC can only be resolved on the basis of mutually beneficial compromise formulas and will often require internal compensatory adjustment within the EC to 'bribe' those member states who can expect to suffer from the deal.

## 4.3. Reinforced Bilateralism: Toward TAFTA?

Bilateral EU-US trade policy contacts remain useful for two important reasons. First, neither the new WTO framework nor the unilateral option provide for an effective 'early warning' mechanism with respect to potential trade conflicts. Since both parties have experienced the value of timely discussion on problem points (notably during the creation of the internal market), the EC and the US have decided after the conclusion of the Uruguay Round to set up a bilateral 'early warning system' at sub-cabinet level. Second, the new and expanded WTO framework does not yet cover the full range of international trade issues. The absence of a comprehensive set of binding multilateral rules on competition policy or anti-trust law, for instance, is an important gap. Bilateral accords, such as the EU-US Competition Agreement, can fill the gaps left by the multilateral system and provide a stepping stone for further WTO initiatives.

In addition to the negotiation of specific bilateral trade agreements, attempts have been made to develop a broader basis for bilateral EU-US consultation and cooperation. During 1989-1990, the Bush Administration initiated several proposals for a 'New Atlantism' (Baker, 1989). The Administration feared the development of an 'insular' or 'itinerant' Europe that would go its own way after the end of the Cold War (Zoellick, 1990). The purpose of the Bush administration's proposals was to link the US to the further evolution of European integration at a moment when the EC's internal market was being completed and the Intergovernmental Conferences of 1991 were about to create the legal basis for a European Union, including an Economic and Monetary Union and a Common Foreign and Security Policy. As a result of the Bush Administration's efforts and the German proposal to formulate a joint declaration encompassing all the political, economic, technological and other aspects of the transatlantic partnership, a Declaration on EC-US relations was adopted in November 1990 (Devuyst, 1990). It provides for a flexible system of institutional contacts between the EC and the US.

During the first half of 1995, several--mainly European--decision-makers such as Alain Jupp,, Malcolm Rifkind and Klaus Kinkel have been calling for a further strengthening of the bilateral EU-US relationship through the negotiation of a new Transatlantic Treaty or through the creation of a Transatlantic Free Trade Area (TAFTA). On 26 July 1995, the Commission adopted a strategy paper on EU-US relations that proposes the establishment of a Transatlantic Economic Space (Commission, 1995). Several reasons, that go beyond trade policy, have been advanced to support a reinvigoration of US-European ties. On the one hand, with the end of the Cold War, the common enemy has disappeared, thus leading some observers to fear a loss of 'joint purpose' on the part of the transatlantic partners. Most European politicians, however, are keen on maintaining the NATO defense guarantee and therefore want to reconfirm America's status as a 'European power'. A Transatlantic Treaty, it is hoped, would ensure cooperation and consultation even if inward-looking tendencies in the US Congress gain in strength. On the other hand, several European politicians seem worried about the shift in US attention toward the Americas and the Pacific. Their idea is that the North

American Free Trade Agreement, the Miami agreement to complete a free trade area in the Americas by 2005, and the agreement in the Asia Pacific Economic Cooperation framework to achieve free trade and investment by 2020, must be counterbalanced by the development of TAFTA.

While TAFTA would certainly solve most US-EC market access problems, the idea faces a number of serious problems. First, TAFTA would need to conform to the WTO rules and it could be counterproductive if it gave developing countries the impression of the formation of a 'rich men's club', leaving the rest of the world behind. In order to conform to WTO rules, free trade areas must cover 'substantially all trade'. It is unlikely, however, that US and EC negotiators will in the near future be able to go much further in the liberalization of agricultural trade or audiovisual services transactions than what was achieved in the Uruguay Round. Second, TAFTA, and certainly the creation of a Transatlantic Economic Space along the lines of the European Economic Area (EEA)4 would imply a high degree of economic integration. However, as Stephen Woolcock (1994) has demonstrated, the US and the European countries have developed different approaches to the role of the state in the economy and thus to the regulation of markets.

These approaches will not be easy to integrate. Also, as Ronald A. Brand (1995) has pointed out, to be effective, the free movement of goods, services, capital and persons must be accompanied by the free movement of judgments through which property interests and their value are recognized and enforced in each geographic unit of the free trade system. The Brussels Convention of 1968 on jurisdiction and enforcement of judgments in civil and commercial matters accomplishes this task among the EC members. The Lugano Convention of 1988 extends this system to the EFTA members. But there are substantial differences in US and European legal systems. For instance, the differences in damages awards or in the allocation of litigation expenses will make the negotiation of a Transatlantic judgments recognition and enforcement system difficult. Third, trade relations cannot be isolated from macroeconomic and monetary policy. It is unlikely that the US will soon be ready to return to a fixed exchange rate system of the Bretton Woods type. But it will be extremely difficult, from a European point of view, to maintain a free trade regime with the US while the value of the dollar does not seem to be under control. Fourth, giving structure to TAFTA or a Transatlantic Economic Space would also bring back sensitive institutional issues such as the US 'seat at the table' request. As early as the 1970s, Henry A. Kissinger had tried in vain to obtain a formula whereby "as an old ally, the United States should be given an opportunity to express its concerns before final decisions affecting its interests are taken [by the Community]" (Kissinger, 1973).

By way of analogy, it is interesting to refer to the creation of the EEA. Within the EEA, the participating EFTA members broadly have to follow the evolution of Community legislation, notable in internal market matters. Though the EFTA members consequently wanted a say in the EC's decision-making, the Community wanted to prevent its legislative process from becoming a hostage to third country approval. In the end, a formula was agreed to which distinguishes between decision shaping and decision-taking. While the EFTA countries are allowed to participate--via consultation and

information procedures--in the decision-shaping phase of the EC's legislative process, final decision-taking is still reserved for the EU Council, without EFTA participation. An institutional deal with the US in the framework of a Transatlantic Economic Space would, no doubt, be even more complicated since it would require a more 'equal and reciprocal' relationship between the US and the EC. Probably because of these problems, the Commission's strategy paper proposes a joint EU-US feasibility study in 1996 on the advantages and disadvantages of TAFTA, including the question of whether to make it open to third parties. Meanwhile, the Commission advocates a 'building block approach' to the creation of a Transatlantic Economic Space. This approach would include improving EU-US cooperation already under way in such areas as customs, science and technology, intellectual property, aviation, shipping, biotechnology, and competition policy. It would also include identifying other sectors to be covered, among them difficult issues of regulatory cooperation and mutual recognition of testing and certification procedures in telecoms, electrical safety, etc.

## 5. CONCLUSION

Interdependence is certainly an accurate description of transatlantic economic ties. In 1994, US merchandise exports to the EU-15 grew to $107.7 billion, and US imports from the EU-15 increased to a total of $119.4 billion. This makes the EU the major export market for the US, absorbing 20 percent of total US exports. Also, about 18 percent of EU exports go to the US, making it the EU's largest single trading partner. Moreover, the EU accounts for 53 percent of total foreign direct investment in the US, while the US accounts for 42 percent of foreign direct investment in the EU. It is also interesting to note that, over the years, the transatlantic trade balance has been more or less in balance, especially if compared with the persistently large trade deficits of both the EC and the US with Japan. These figures are an indication of a largely healthy trade relationship. They also put the relatively minor US-EC trade conflicts into their proper perspective.

Still, in view of Washington's insistence on market opening, trade skirmishes are likely to continue. On the basis of the analysis presented above, the following points can be emphasized. First, the US can be expected to continue a multi-track market opening policy that includes reliance on unilateral sanctions. But the European view is that no one can claim the 'right' to impose a 'universally applicable' economic system on other countries. Reliance on unilateral sanctions threatens to create a 'law of the jungle' mentality that is in total contradiction with the multilateral approach that led to the WTO and the streamlined WTO dispute settlement system. This view explains the strong European reaction against the US announcement of unilateral sanctions against Japan in May 1995 in the auto and auto-parts dispute. Secondly, even a more legalistic dispute settlement system (including perhaps sanctions against WTO members failing to make their trade practices conform with the multilateral rules) will not be sufficient to automatically resolve trade conflicts involving Community policies. Such policies usually reflect a delicate balance between the interests of the various member states. Managing disputes will therefore continue to demand complex political negotiations, not only between the US and the EC, but also internally within the Community. If the new

WTO dispute settlement system should lead to a less compromising stance by the US, it could well cause major crises both between the EC and the WTO and within the EC. Third, since the much improved multilateral system does not yet cover the full range of international trade issues and does not include an effective 'early warning' mechanism signaling possible trade disputes, timely bilateral consultations will remain essential to foster prosperous trade flows and to pre-empt potential conflicts. The experience of the relatively successful US monitoring of the internal market can prove useful in this regard. Also, the development of a Transatlantic Economic Space through a gradual building-block approach could put a new economic and political dynamism in EU-US relations. One of the major problems with the bilateral approach is the recurring 'US seat at the table' demand, which is unacceptable to the Europeans.

From a European point of view, the transatlantic trade relationship will also be affected significantly by the further development of the European Union itself. The EU is currently facing a series of major challenges that will determine its future, and therefore, also the degree to which it will be able to act as 'an equal partner' with the US in international trade issues and beyond. The start of the final phase of Economic and Monetary Union by a core group of member states by the year 1999 would mark an economic as well as political point of no return in the journey toward 'an ever closer union'. Also, a successful Intergovernmental Conference in 1996--one that would equip the Union with the necessary institutional framework to prevent the further enlargement of the EU from turning into a dilution exercise--is crucial for the Union's international standing If, on the contrary, enlargement should lead to a Union characterized by paralysis and loss of purpose, the EU would have little to offer to the US. In this perspective, it is also of major importance that the discussions on a Code of Conduct settling the EC's representation in the GATS and TRIPs issues do not undermine the unity of the Community in its external representation. Any other outcome would mark a bad start for the cohesion and international position of the Union in the post-Uruguay Round era.

1 It is the European Community, often described as the European Union's first pillar that is competent for external trade relations. Only the EC, not the EU, has legal personality and the power to conclude treaties with third countries. It is the EC that is a member of the World Trade Organization, not the EU. This paper will therefore not refer to the EU but to the EC.

2 From a theoretical point of view, the US shift toward a more aggressive and unilateral market opening policy is not surprising. Once a dominant power no longer seems immune from the influences of the outside world and is on the way to becoming 'an ordinary country' (Rosecrance, 1976), it tends "to exploit both power and comparative advantage on a sector-by-sector basis" (Cafruny, 1985, 82). In Stephen D. Krasner's words, the former hegemon has a strong tendency to try and realize short-term 'consumption' goals rather than to work toward long-term systemic objectives (Krasner, 1982, 33). Thus "power resources not tapped by the hegemon-as-leader may be brought to bear by the hegemon-in-decline . . . . Many regimes will therefore exhibit an inverse relationship between the decline of hegemony and the projection of power" (Cafruny, 1985, 83). The unilateral use of Section 301 trade sanctions is an example of this phenomenon.

3 Each contracting party has a schedule of concessions that lists, on an item-by-item basis, the tariff concessions agreed to during GATT tariff negotiations. Tariffs listed in the schedule are bound. In accordance with GATT Article II, contracting parties undertake to levy no more than the tariff listed in the schedule on any particular item.

4 The EEA that entered into force on 1 January 1994 basically extended the EC's internal market to the participating members of the European Free Trade Area (EFTA).

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