The Future of Transatlantic Economic Relations: Continuity Amid Discord

Gregory C Shaffer, Loyola University Chicago
Mark Pollack, Temple University

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Edited by Gregory Shaffer and Mark Pollack

**Part I: The Transatlantic Trade and Investment Environment: Continuity Amid Discord**

1. Introduction
The Future of Transatlantic Economic Relations: Continuity Amid Discord
Mark A. Pollack and Gregory C. Shaffer

2. Partners in Prosperity: The Changing Geography of the Transatlantic Economy
Daniel S. Hamilton and Joseph P. Quinlan

3. Trade Negotiations
Bruce Stokes

**Part II: Transatlantic Regulatory Cooperation**

William E. Kovacic

5. Transatlantic Economic Governance: The Domains and Dimensions of Competition Law
David Gerber

Maria Verónica Pérez Asinari and Yves Poullet

7. Managed Mutual Recognition in the Transatlantic Marketplace
Kalypso Nicolaïdis and Rebecca Steffenson
8. Reconciling (or Failing to Reconcile) Regulatory Differences: The Ongoing Transatlantic Dispute over the Regulation of Biotechnology

*Gregory C. Shaffer and Mark A. Pollack*


*Elliot Posner*

10. Calming the Waters: The Rebirth of the Transatlantic Business Dialogue

*Maria Green Cowles*

**Introduction:**

**The Future of Transatlantic Economic Relations:**

Continuity Amid Discord

*Mark A. Pollack and Gregory C. Shaffer*

From 2000 through 2004, transatlantic political disputes intensified over the establishment of an international criminal court, the status of the Kyoto Protocol on climate change, the US conduct of the war on terror, and the war in Iraq, among other matters. High-level officials in the United States (US) spoke of “punishing” France and “ignoring” Germany. Not only pundits, but business leaders feared that the acrimony over political and security matters could spread to the economic realm. Ad hoc boycotts were organized against French wines in the United States and US products in Europe. Disputes escalated over steel tariffs, agricultural subsidies, aircraft production subsidies, tax subsidies, consumer, food safety, and environmental laws and regulations. The various transatlantic dialogues among “civil society” groups, which had been established during the 1990s to spur public participation in the transatlantic sphere, lost momentum. Had the hopes of a “new world order” underpinned by the transatlantic alliance faded away? Would the economic side of the 1990’s “New Transatlantic Agenda” (“NTA”) wither from neglect?

These developments marked a stark contrast to the hopes triggered by the end of the Cold War and the initial enthusiasm raised by economic globalization during the early and mid-1990s. In February 1990, the United States (under the first Bush

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1 Names appear in alphabetical order. This introduction, like our previous work, represents an equal and ongoing intellectual partnership. Gregory Shaffer is Wing-Tat Lee Chair of International Law, Loyola University College of Law. At the time of the writing, he was Professor of Law at the University of Wisconsin Law School and Director, UW European Union Center of Excellence. Mark Pollack is Associate Professor, Temple University.
administration) signed a Transatlantic Declaration with the European Union (EU) which promised “regular and intensive consultation” on wide-ranging policy matters. In December 1995, the Clinton administration and the European Commission followed-up by signing the New Transatlantic Agenda, which provided a framework for economic and security cooperation at all levels of government. In the economic realm, the NTA called for an elaborate multi-tiered network of cooperation among US and EU officials designed to govern and facilitate the growing transatlantic marketplace. In order to foster a closer relationship at the grassroots level, the NTA also worked to “build bridges” across the Atlantic between “business people, scientists, educators and others.”

Alongside the traditional processes of trade negotiation and trade dispute resolution, the transatlantic partners forged new mechanisms for cooperation among economic regulators in areas ranging from competition policy to data privacy, the environment, and food safety. By the end of the 1990s, the US and the EU had concluded “mutual recognition agreements” (“MRAs”) in six regulatory sectors, including the fields of telecommunications, electrical safety, medical devices, and pharmaceuticals. They also signed agreements to enhance the compatibility of their regimes for cross-border mergers and acquisitions, privacy protection, and veterinary inspections, among other matters. They entered into a new framework agreement for regulatory cooperation and proposed an “early warning” system to avoid trade disputes. They advocated greater day-to-day cooperation in an array of regulatory areas.

Yet despite the initial hopes, by the end of the 1990s, both sides had become disappointed with the NTA’s results. In the view of many participants, the “low-hanging fruit” of economic cooperation had been picked. Governments on both sides now found it increasingly difficult to move beyond symbolic agreements and rearguard efforts at conflict resolution. Enhanced cooperation among regulators had not prevented new and bitter trade disputes from arising. The transatlantic political conflicts that arose at the twenty-first century’s start boded poorly for the economic relationship, raising the question whether the New Transatlantic Agenda had run aground after less than a decade.

This volume probes beneath transatlantic political conflicts to assess the health of the transatlantic economic relationship and of the networks of regulatory cooperation established during the 1990s. It focuses our attention on the largely underappreciated economic side of the transatlantic relationship, and covers an array of sectors. The contributors include leading academics and policy makers from both sides of the Atlantic.

We highlight three primary findings that emerge from the chapters. First, despite the concerns, transatlantic foreign policy rifts did not spill over into the
economic realm or trigger economic backlash of any significance. Rather, the bulk of the evidence presented in this volume points to the continuity in the transatlantic economic relationship and the resilience of the transatlantic economic marketplace in a period of political turmoil. As Joseph Quinlan and Daniel Hamilton show in chapter 2, transatlantic trade and foreign direct investment have actually flourished in recent years, notwithstanding the bitter conflict over Iraq. As they conclude, “No other commercial artery in the world is as integrated and fused together by foreign investment, a fact lost on many pundits, parliamentarians and policy makers on both sides of the Atlantic.”

Similarly, Bruce Stokes (in chapter 3) maintains that trade relations during the first term of the Bush administration did not substantially differ from the Clinton years. Trade disputes, from tax subsidies to the regulation of genetically modified foods, simply intensified, subsided, or replaced former ones. EU Trade Commissioner Pascal Lamy and US Trade Representative Robert Zoellick actually enjoyed a closer relationship than their predecessors. They defused a number of major trade disputes that they inherited. The United States and EU successfully resolved long-standing disputes over the EU’s banana licensing regime and US corporate tax subsidies. In the tax dispute, the World Trade Organization (WTO) had authorized the EU to retaliate against the United States in the amount of $4 billion per year in trade, an event that Zoellick characterized as a “nuclear” threat to the global trading system. As can be seen from Stokes’ chapter, the content and timing of these disputes is largely explained by conventional domestic politics, and not by any geopolitical or administrative shift. In sum, the transatlantic economic relationship remains extremely strong, punctuated by periodic disputes in various sectors which implicate a relatively small percentage of overall transatlantic trade.

Second, the chapters present dramatic differences in the degree of success (or failure) of transatlantic cooperation across regulatory areas. In some areas, such as competition policy, US and EU regulators continue to hold broadly similar mandates and regulatory philosophies (chapter 4). The record of transatlantic cooperation in this area continues to be largely complementary, based on the sharing of information and resources. Occasional disagreements, such as the Commission’s rejection of the GE/Honeywell merger, may be spotlighted in the media, but they are atypical (chapter 5). In other areas, however, such as the regulation of genetically modified organisms (GMOs), US and EU regulators operate with starkly different regulatory philosophies and styles in a highly politicized policy environment (chapter 8). The record of transatlantic regulatory cooperation in this sphere has been highly contentious, prompting the United States to file a legal complaint before the WTO. Regardless of the case’s outcome, the management of this dispute will continue to try both sides.
In between the extremes of daily cooperation and polarized litigation, we find cases such as the transatlantic mutual recognition and data privacy protection agreements, in which the US and EU have found, to a certain extent, a *modus vivendi* between their different regulatory systems (chapters 6 and 7). In both cases, however, implementation has raised ongoing challenges. A notable change has occurred in financial services regulation, where both EU and US regulators have made impressive efforts to accommodate each other’s regulatory systems by recognizing the adequacy of each other’s standards in specific areas, as explored in chapter 9. Maria Green Cowles likewise shows how the functioning of the NTA’s civil society dialogues has varied (chapter 10). While the transatlantic environment dialogue folded and the labor dialogue is inactive, the consumer and business dialogues continue. Nonetheless, even the flagship Transatlantic Business Dialogue struggled to attract the sustained attention of business leaders, reflecting the sporadic and uneven performance of the NTA in delivering business demands. Attempting to explain this sectoral variation in policy outcomes raises important questions for future research, for which our final point indicates one approach.

The volume’s third finding is that *changes in institutional and market power have shaped policy outcomes in distinct regulatory areas*. Assessments of power have been relatively absent from previous studies of transatlantic economic relations. Previous studies have tended to emphasize the impact of economic globalization on the demand and supply of regulatory collaboration, and depicted the EU/US relationship as one of economic equals. Yet across the range of issues, the success of transatlantic cooperation, and the pattern of concessions by each side, has reflected varying power resources. These resources are not military ones, nor do they simply reflect market size, a traditional measure of economic clout. Although market size generally explains the growing role of the EU as a global actor in economic and regulatory fields, US and EU bargaining power also is affected by each side’s *institutional* characteristics. In the case of financial services, for example, Posner maintains that it was not simply the size of the EU market, but also the establishment of the EU’s regulatory competence and its extraterritorial reach which mattered. Institutional developments in the EU affected powerful US firms who, in turn, motivated the US Securities and Exchange Commission to work with EU authorities to accommodate and recognize EU standards in a number of areas. This development occurred following an extended period of benign (or malign) US neglect of European approaches to financial services regulation.

In keeping with Robert Putnam’s (1988) discussion of two-level games, it appears that domestic institutions on both sides can influence bargaining outcomes by allocating “veto points” to domestic actors and thus allowing negotiators to
claim that their hands are tied. This phenomenon is most apparent in the case studies of transatlantic mutual recognition agreements and the regulation of genetically modified foods. In the former case, Nicolaides and Steffenson show that the European Union has complied with the terms of the existing MRAs, while the United States has largely reneged on three of these agreements after independent regulatory agencies (the FDA and OSHA) refused to recognize the equivalency of European certifiers. In contrast, the EU’s institutional structure has provided multiple veto points to opponents of GM foods and crops which have undermined transatlantic attempts to reconcile US and EU regulatory approaches, resulting in deadlock.

Previous studies of transatlantic economic relations have tended to emphasize the joint gains from transatlantic cooperation, and we agree that significant gains are at stake. Yet the studies in this volume also show how power factors influence not only the overall potential for transatlantic cooperation on a sector-by-sector basis; they also influence the patterns of concessions and compromises offered by each side, and thus the distributional outcome for a sector.

The structure of the volume is as follows: In chapter 2, Joseph Quinlan and Daniel Hamilton examine transatlantic international trade and investment flows, noting how they have flourished in seeming oblivion to the political discord to date. Bruce Stokes assesses transatlantic trade negotiations and disputes in chapter 3, finding that the relationship between US and EU trade administrations has actually improved. In chapters 4 and 5, William Kovacic (Federal Trade Commission) and David Gerber respectively assess competition policy from institutional, pragmatic, and cognitive perspectives.

Turning to other regulatory areas, in chapter 6, Yves Poullet and María Verónica Pérez Asinari examine the problems of implementing the US-EU data privacy “safe harbor” agreement. Kalypso Nicolaides and Rebecca Steffenson analyze the analogous challenges confronting the various transatlantic mutual recognition agreements, in chapter 7. In chapter 8, Gregory Shaffer and Mark Pollack assess regulatory policy making for genetically modified organisms in the United States and Europe, noting how the US and EU have competed to advance their approaches in distinct bilateral and multilateral fora. Elliot Posner addresses the rising clout of the European Union as an actor in the field of financial services in chapter 9. Finally, in chapter 10, Maria-Green Cowles provides an update of the status and prospects for the various civil society dialogues established in the 1990s.