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**Review of the  
Framework for Relations  
between  
the European Union and the  
United States**

**AN INDEPENDENT STUDY**

Commissioned by the  
European Commission, Directorate General External Relations,  
Unit C1 - Relations with the United States and Canada

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***FINAL REPORT***

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### • **EXECUTIVE SUMMARY AND RECOMMENDATIONS**

The relationship between the United States (US) and European Union (EU) is broadly healthy and, in some areas, thriving. The continued development of pragmatic US/EU dialogue helped to limit the political fall-out of the 2003 crisis over Iraq both within Europe and between the transatlantic partners.

However, the transatlantic relationship is sharply paradoxical:

- The EU/US economic policy agenda is stalled. But the economic relationship between Europe and America is thriving.
- The US administration is often accused of unilateralism. It has nonetheless engaged in significant policy coordination with the EU on sensitive domestic matters of Homeland Security and corporate regulation post-Enron.
- Bitter disputes have flared over Iraq, the International Criminal Court, and China arms embargo. Yet the US/EU relationship is delivering solid cooperation on many foreign policy issues.
- All EU member states consider their direct relationship with the US to be vitally important. Still the EU/US ‘channel’ continues to grow in importance.
- Both the EU and the US are under increasing competitive pressure from China and India. They have nevertheless cooperated closely on China’s WTO accession and on issues relating to India in the Doha Round.

The transatlantic relationship has provided a solid foundation for North American and European security and prosperity. For that foundation to endure, leaders on both sides need to raise the political profile of the US/EU dialogue, and make it more strategic and effective. We offer a plan for doing so.

However much of it is accepted, we are convinced that *doing nothing is not an option*. If weaknesses in the US/EU dialogue are not addressed, the most likely fate of the alliance is atrophy, to the detriment of both partners as well as to any vision of a more democratic, peaceful, prosperous international order.

The EU/US dialogue suffers from a lack of political engagement at the highest political and official levels. The European Union itself is poorly understood in Washington and (even more so) in the American heartland. Despite recent signs of reconciliation, there are numerous issues on the agenda – including China and Iran – that are decidedly US/EU issues and which could ‘blow up’ in the absence of careful management.

We have conducted an independent evaluation of the current framework for EU/US dialogue. We have been asked to offer recommendations both on the future operation of the framework and on future substantive priorities for the dialogue.

The record of US/EU cooperation in the decade since the 1995 New Transatlantic Agenda (NTA) was agreed has been, in many ways, impressive. Many of the NTA’s most important goals – particularly those relating to Central and Eastern Europe and the Balkans – have been largely achieved. Exchanges between the US and EU have been far more intensive, systematic, and productive because of the institutions created by the NTA. Through them, regular dialogue is now established between interlocutors between whom there was little exchange 10 years ago, and often none at all prior to the 1990 Transatlantic Declaration (the NTA’s precursor).

Dialogue now extends to issues that did not feature prominently on political radar screens in 1995 – particularly homeland security and counter-terrorism. The NTA has proven flexible enough to incorporate new issues, particularly ones subject to expanded EU competences, even if the NTA often seems overloaded with too many issues.

Any assessment of EU/US cooperation immediately runs into problems of scope. When asked to cite ‘success stories’, many interviewees cited issues that are difficult, or impossible, to consider ‘US/EU issues’. When asked where dialogue had failed, we were confronted with areas of conflict – Iraq, the Middle East peace process, the China arms embargo – which are mainly outside the ‘reach’ of the NTA *or* are issues on which there has been little or no US/EU dialogue to speak of.

There now exist a vast range of dialogues between the EU and US, many autonomous or only tenuously linked to the NTA’s formal structures. Foreign policy cooperation, particularly towards regions outside the transatlantic area, has been an area of strong growth. One effect is to raise questions about whether the NTA should be made a more inclusive, overarching framework.

We have found very few stakeholders on either side who favour abandoning the NTA. The vast majority believe that the EU/US link is likely to grow in importance, particularly when/if Europe's new Constitutional Treaty is ratified. Nearly all of our interviewees agreed with one US official who told us:

***'We need to make the process we have work, not create a new process'.***

Yet, we have also found widespread dissatisfaction with the NTA. Its main defects are:

- A lack of political commitment, which limits its capacity to contain issues and means that when major problems arise — such as Boeing/Airbus — there is no expectation that they will be addressed in the NTA dialogue.
- Its low public profile, particularly in the United States, and its image as a technocratic exercise.
- Its overabundance of process, which is disproportionate to actual output.
- Its tendency to become overloaded with too many issues and failure to prioritise key strategic questions.
- Its lack of transparency, leading to a low sense of 'ownership' on the part of the EU's Member States.
- Its failure to involve legislators and allow them input into its exchanges.

Put simply, the NTA has been broadly successful, but in a context of diminishing expectations and in the absence of any truly strategic dialogue.

After surveying 10 years of EU/US exchanges and consulting a diverse variety of stakeholders, we offer a series of recommendations for reform as the New Transatlantic Agenda nears its 10<sup>th</sup> anniversary (a full list appears in Table 1; we highlight main recommendations here). We have engaged in open-ended thinking about transatlantic relations, but seek to offer practical, politically imaginable ideas for enhancing the US/EU dialogue:

- ***The NTA should be revamped and relaunched (not discarded).***

We have found little appetite for the design of a more comprehensive set of structures (such as a formal Treaty or Partnership Agreement) *or* for purely pragmatic, informal dialogue structures that are not linked to one another. Most of the main NTA institutions are viewed as valuable enough to maintain more or less as presently constituted, but most need to have their role or purpose (sometimes both) readjusted.

Still, creating new dialogues or bringing existing ones within the NTA is often viewed as undesirable simply because the NTA is viewed – fairly or unfairly – as inflexible, untransparent and technocratic, and prone to imposing unnecessary restrictions on pragmatic dialogue. It also is not viewed as sufficiently inclusive: we have found a low sense of ownership of the NTA on the part of EU Member States.

Meanwhile, the Joint Action Plan agreed alongside the NTA in 1995 is now thoroughly out-of-date. It contributes to a syndrome by which the NTA produces ‘laundry lists’ of so-called deliverables (policy achievements, often very modest ones). It thus makes sense to agree a new, rolling agenda of more generalised and strategic objectives that can be revisited and updated periodically.

In short, the New Transatlantic Agenda dialogue – at least under that name – has run its course. But if it did not exist, something broadly like it would need to be invented.

**We thus recommend:**

- seeking neither a formal treaty nor purely informal exchanges, but building on and improving the current framework;
- negotiating a new Joint Action Plan and periodically updating it;
- focusing transatlantic summits on strategic priority setting;
- clarifying the division of labour among NTA institutions;
- holding more informal exchanges between the US and the EU of 25+.

□ *The US/EU dialogue needs a higher political profile to realise its potential.*

Above all, US/EU relations need an injection of political commitment from the highest political levels. A new and more strategic dialogue must command a higher political profile. Some argue for a comprehensive Treaty or ‘Transatlantic Free Trade Area’. Yet, there is danger in raising expectations beyond what is politically achievable. Both sides must calibrate carefully how much they are willing to invest in their dialogue as they ‘rebrand’ it.

One possible outcome might be a ‘Declaration of Interdependence’, which could command political, media, and public attention, and rally stakeholders on both sides. The political symbolism of making a commitment to the vision outlined by President Kennedy more than 40 years ago – when the European Economic Community was utterly unprepared to realise it – could reawaken political classes on both sides to the importance of the transatlantic link. An alternative label would be a ‘Transatlantic Strategic Dialogue’, which would clearly signal a move away from ‘laundry lists’ of relatively low profile cooperative agreements.

Whatever it is called, the EU/US dialogue should shift towards a dialogue that is more focused on major, strategic, global issues, including economic questions (such as the future of the multilateral trade system) but extending to matters of foreign policy such as the Middle East, China, counter-terrorism, global human development, and so on.

Raising the political profile of the US/EU dialogue would be in harmony with the emergence of the EU as an international actor, not least due to reform of its foreign policy institutions (regardless of its fate in the current referendum campaigns, we assume that the EU’s Constitutional Treaty – or at least much that is in it – will eventually be adopted). This emergence should be acknowledged on the US side through an upgrade – which is permanent and not dependent on the personal inclinations of senior officials – in its political representation in US/EU institutions.

Both sides also must invest in the political profile of the relationship from the ‘bottom up’. Specifically, the dialogue between US and EU civil societies needs to be refreshed, particularly through youth exchanges and a campaign to promote public awareness of the EU and what it does in the US.

The US and EU will maximise their capacity for joint leadership – including joint *economic* leadership – only if they move closer to a truly strategic partnership that commands a high political profile.

**We thus recommend:**

- renaming the NTA;
- giving the current dialogue a strong political injection and acknowledging EU/US interdependence;
- expanding ‘people-to-people’ dialogue, particularly through jointly funded youth exchange programmes;
- reflecting (jointly) on the implications of the Constitutional Treaty;
- launching an EU public awareness campaign in the US.

□ *The economic side of the relationship is strong but needs reinvigoration.*

The economic relationship between Europe and America is, by many measures, stronger and more robust than it ever has been. Still, the recent economic stakeholders’ consultations held by both sides demonstrated that there are significant non-tariff barriers that remain as impediments to transatlantic trade and investment.

The need to eliminate them makes it worthwhile to launch something like a ‘Regulatory Partnership Initiative’. Its precise name or legal form could be debated. But the goal must be an agreement that commits each side to specific, feasible, market-opening measures – including, if necessary, the amendment of primary legislation – without making it hostage to other ambitions.

In particular, both sides need to appoint high-profile ‘regulatory Cooperation Enforcers’, as personal representatives of top political leaders, to ensure that progress on the economic agenda does not fall victim to simple inertia. They also need to ensure that trade disputes do not poison their economic relationship by creating genuinely operational systems for early warning of potential future disputes.

The US/EU economic policy agenda needs to be relaunched to ensure the economic relationship retains its vibrancy. More generally, the economic relationship needs to be acknowledged as the ‘anchor’ of the bilateral relationship.

**We thus recommend:**

- relaunching the economic agenda via a regulatory cooperation initiative;
- appointing high-profile regulatory ‘Cooperation Enforcers’;
- establishing early warning systems at earlier stages in the regulatory (and legislative) processes, at the point of problem specification and solution identification;

- making a clear commitment to seek bilateral solutions to trade disputes, to using the WTO only as a last resort, and to exercising restraint in the imposition of sanctions;
- designating the economic relationship as the ‘anchor’ of US/EU relations.

□ *The transatlantic legislative dialogue needs to be re-engineered.*

Nearly all of the stakeholders we consulted considered the legislative dialogue to be the weakest link in the NTA framework. Virtually no one thinks that the existing Transatlantic Legislators Dialogue (TLD) is the best of all possible worlds, even if there is considerable disagreement about how to improve it. Fresh attempts need to be made to involve legislators more directly in US/EU exchanges.

The role of the US Congress in American government remains dimly understood in Europe. Neither is the growing role of the European Parliament widely appreciated in the US. The framework for US/EU dialogue simply does not reflect either of these political facts.

Re-engineering the legislative dialogue should be only one element in a wider effort to try and make the EU/US relationship a more ‘bottom up’ process through more exchanges between civil societies. But it is an absolutely critical element.

**We thus recommend:**

- synergising the legislative dialogue and NTA dialogue;
- launching new, jointly-funded programmes for exchange between legislative staffers;
- creating a small, nimble TLD secretariat;
- sponsoring an EU study group for members of the US Congress, to be hosted by the Commission’s delegation in Washington;
- holding legislative summits prior to traditional US/EU summits.

Taken together, these recommendations (and others that follow) offer a formula for the pragmatic improvement and political relaunch of the New Transatlantic Agenda. The time is right for both of these tasks. The recent visits to Brussels by the US Secretary of State and President showed that the current administration realises America’s self-interest in closer cooperation with the EU.

President Bush’s claim that ‘when Europe and the US are united, no problem and no enemy can stand against us’<sup>1</sup> is more than mere rhetoric. It finds support both in theory and, as we have found in our work, from a critical mass of stakeholders in the transatlantic dialogue.

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<sup>1</sup> [www.whitehouse.gov/news/releases/2003/05/20030531.html](http://www.whitehouse.gov/news/releases/2003/05/20030531.html).



**Table 1 - Summary of recommendations**

<i>Revamp the framework</i>	<i>Raise the political profile</i>	<i>Reinvigorate economic cooperation</i>	<i>Re-engineer legislative dialogue</i>
<ul style="list-style-type: none"> <li>• Seeking neither a formal treaty nor purely informal exchanges</li> <li>• Negotiating a new Joint Action Plan and periodically updating it</li> <li>• Focusing summits on strategic priority setting</li> <li>• Clarifying the division of labour among NTA institutions</li> <li>• Holding more informal exchanges between the US and EU member states</li> <li>• Creating G8 style <i>sherpas</i> to prepare summits</li> <li>• Designating one member of the SLG as responsible for coordination and oversight of transatlantic relations</li> <li>• Clarifying lines of reporting for extra-NTA dialogues such as the PDBTS or Troika dialogues</li> <li>• Distinguishing between meetings designed to manage the relationship and associated expert dialogues</li> <li>• Holding fewer but more focused meetings of the NTA Taskforce and more use of videoconferences</li> </ul>	<ul style="list-style-type: none"> <li>• Renaming the NTA</li> <li>• Giving the NTA process a strong political injection and acknowledging EU/US interdependence</li> <li>• Expanding ‘people-to-people’ dialogue, particularly through jointly funded youth exchange programmes</li> <li>• Reflecting jointly on the implications of the EU’s Constitutional Treaty</li> <li>• Launching an EU public awareness campaign in the US</li> </ul>	<ul style="list-style-type: none"> <li>• Designating the economic agenda as the ‘anchor’ of the US/EU relationship</li> <li>• Relaunching the economic agenda via a regulatory cooperation initiative</li> <li>• Appointing high-profile regulatory ‘Cooperation Enforcers’</li> <li>• Establishing early warning systems earlier in the regulatory <b>and</b> legislative processes at the point of problem specification and solution identification</li> <li>• Committing generally to the seeking of bilateral solutions to trade disputes, to using the WTO only as a last resort and to exercising restraint in the imposition of sanctions</li> <li>• Developing a comprehensive strategy for cooperation on emerging technologies</li> <li>• Providing dedicated funds and staff resources for international regulatory cooperation</li> </ul>	<ul style="list-style-type: none"> <li>• Synergising the legislative dialogue and NTA dialogue</li> <li>• Launching jointly-funded exchange programme for legislative staffers</li> <li>• Creating a small, nimble TLD secretariat</li> <li>• Sponsoring an EU study group within Congress, to be hosted by the Commission’s delegation in Washington</li> <li>• Holding legislative summits prior to traditional US/EU summits</li> </ul>

**NB:** In section 4 below (‘Recommendations’), we group together our ***institutional*** recommendations but present them here under our general recommendations

# 1) THE FRAMEWORK FOR EU/US RELATIONS

## BACKGROUND

The present framework for relations between the United States (US) and European Union (EU) is the product of two political statements:

- the 1990 Transatlantic Declaration
- the 1995 New Transatlantic Agenda (NTA, and associated Joint Action Plan)

Cooperation between the US and EU has exploded over the course of 15 years. There are now some 33 bilateral sectoral agreements and 49 separate dialogue structures at official and political levels.

The *Transatlantic Declaration* (TD) primarily sought to ensure that the transatlantic relationship kept pace with accelerating European integration, especially in the wake of dramatic political changes in Central and Eastern Europe. It focused more on identifying the beliefs and values that united the US and Europe than actual policy cooperation. But it also stressed the desirability of close consultation, especially in light of the (then) European Community's expanding policy remit, including in foreign policy under the (then) European Political Cooperation mechanism.<sup>2</sup>

The *New Transatlantic Agenda* (NTA) sought to move from information exchange to actual policy cooperation in four broad areas:

1. Promoting peace and stability, democracy and development;
2. Responding to global challenges (including terrorism, international crime, and environmental degradation);
3. Expanding world trade and promoting closer economic relations;
4. Building people-to-people bridges across the Atlantic.

A *Joint Action Plan* (JAP) was agreed simultaneously with the NTA. It identified some 150 joint actions in the four major areas identified in the NTA. They ranged from the general – promoting democratisation in Central and Eastern Europe and concluding the Uruguay Round – to the specific – such as banking reform in the Ukraine and the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks.

Together, these agreements amount to a framework for dialogue consisting of:

- Bilateral summits (initially twice per year but annually after 2000)
- Biannual dialogue at the level of EU Foreign Ministers/US Secretary of State<sup>3</sup>
- A Senior Level Group (SLG) at the level of US Undersecretary of State and EU Commission Director-General to oversee implementation of the NTA
- An NTA Task Force (TF) at Director level to facilitate exchange at the operational level.

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<sup>2</sup> The 1992 Treaty of European Union designated the EC as one 'pillar' in a new European Union and transformed the EPC mechanism into a 'Common Foreign and Security Policy' (CFSP).

<sup>3</sup> More specifically, biannual meetings of the Council Presidency/Commissioner/High Representative for the CFSP plus annual meetings of all EU Foreign Ministers and the US Secretary of State in the margins of the United Nations General Assembly.

The NTA also gave rise to a variety of other dialogue structures, most notably:

- the *Transatlantic Economic Partnership* (TEP, agreed in 1998) is a direct offspring of the NTA but has its own steering group, action plan and a variety of related sectoral dialogues designed to promote economic cooperation, particularly on regulatory standards.
- a series of *'people-to-people' dialogues*, the most durable of which have proven to be the Transatlantic Business Dialogue (TABD) and Transatlantic Consumer Dialogue (TACD).
- a *Transatlantic Legislators Dialogue* (TLD), which seeks to build on existing regular exchanges between the European Parliament and US House of Representatives.

The aftermath of the Iraq war brought a series of European Parliament resolutions on EU/US relations<sup>4</sup> calling for a relaunch of the relationship via some kind of new political agreement. Several prominent MEPs with longstanding interests in transatlantic issues have argued over the past year for negotiations towards a 'barrier-free transatlantic market' within the next 10 years, or a full-blown 'partnership agreement'.<sup>5</sup>

Such ambitions are partially, of course, rooted in concerns about the fragility of transatlantic relations post-Iraq. However, they also are in harmony with the EU's 2004 Constitutional Treaty, which embraces a number of innovations (explored below) that promise – regardless of whether the Treaty is formally ratified – to make the EU a more effective global actor.

## THE STATE OF THE RELATIONSHIP

A clear majority of our interviewees saw the relationship between Europe and the US as improved and improving. Several expressed doubts about whether the recent low over Iraq was much lower than previous lows. One memorable claim by a senior EU official was that even during the Iraq crisis, '98 per cent' of EU/US business proceeded unaffected.<sup>6</sup>

Neither Iraq nor high profile trade disputes were widely seen as having infected the economic relationship, which was generally viewed as strong. In fact, there is hard evidence (see case study 1) to suggest that, by many important measures, it has never

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<sup>4</sup> See for example, European Parliament, Motion for a Resolution (by Elmar Brok, Chairman, in the behalf of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy) on the state of the Transatlantic Partnership on the eve of the EU/US Summit in Dublin on 25/26 June 2004), B5-0000/2004.

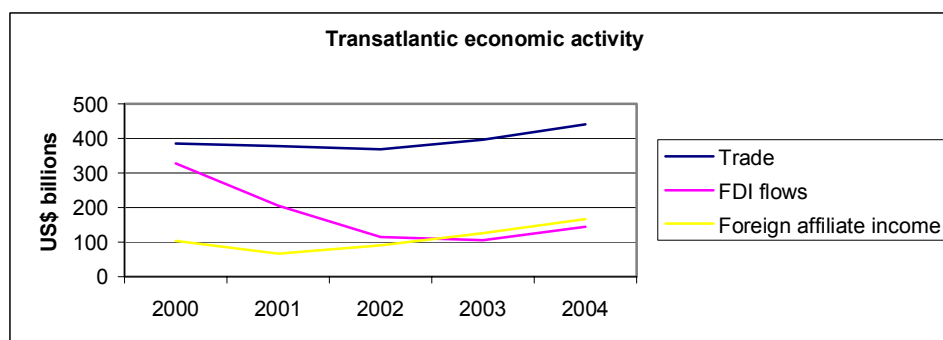
<sup>5</sup> See <http://erikamann.com/scripts/index.php?id=64&akpage=0>;  
<http://www.jameselles.com/site/article.cfm?MID=7&AID=14&PID=673&BACK=1>.

<sup>6</sup> We were told of a recent EU paper (jointly written by the Commission and Council) prepared for a meeting of Political Directors (in January 2005) which identified where the EU and US shared both goals and strategy, shared goals only (and disagreed on strategy), or had different goals altogether. It was pointed out that there were very few issues in the latter category and that even issues on which there were powerful tensions – such as Iran – there was a basic agreement on goals.

been stronger. Yet, the economic relationship was also seen by most of our interlocutors as suffering from political neglect.

**CASE STUDY 1 – THE ECONOMIC ‘ANCHOR’<sup>7</sup>**

Despite political tensions, especially over Iraq, the economic relationship between the US and Europe flourished and indeed grew stronger in 2003 and 2004. Transatlantic trade, foreign direct investment, portfolio flows, and affiliate profits all rebounded robustly from the cyclical economic downturn of 2001-02. For instance, total transatlantic trade in goods rose to a record \$482 billion in 2004, up 22% from the previous year. Notwithstanding the strength of the euro, US imports from the EU jumped to a record \$283 billion. In 2004, the US posted record imports from Germany (\$77.2 billion), France (\$31.8 billion), Italy (\$28.1 billion) and a host of other European nations.



Strong trade flows have been complemented by robust levels of foreign direct investment. Corporate America ploughed nearly \$100 billion into the European Union in 2003 and another \$92 billion in 2004. Even after adjusting for massive flows to the United Kingdom (UK),<sup>8</sup> US foreign investment in the rest of Europe approached \$70 billion in 2004, a near-record high. Interestingly, and despite the diplomatic ill will between Washington and Paris, US investment flows to France soared to a record \$6.8 billion in 2004, some 45% larger than US investment to China in the same year. US investment flows to Italy last year (\$4.2 billion) were four times higher than US flows to India (\$1 billion). Greece and the Czech Republic (as well as Russia) also received record annual inflows of US foreign direct investment last year.

Meanwhile, European firms invested nearly \$53 billion in the US in 2004, up from just \$6.6 billion the year before. French investment surged to nearly \$9 billion in 2004, up from \$5.1 billion the year before. German firms invested some \$6.8 billion in the United States last year, up sharply from flows of just \$407 million the previous year. As a key source of foreign capital for the United States, corporate Europe accounted for 75% of total US foreign direct investment inflows over the 2000-04 period. Over this period, the United Kingdom accounted for 19.8% of total global investment inflows to the US, followed by France (13.1% of the total), the Netherlands (10.8%) and Germany (9.2%).

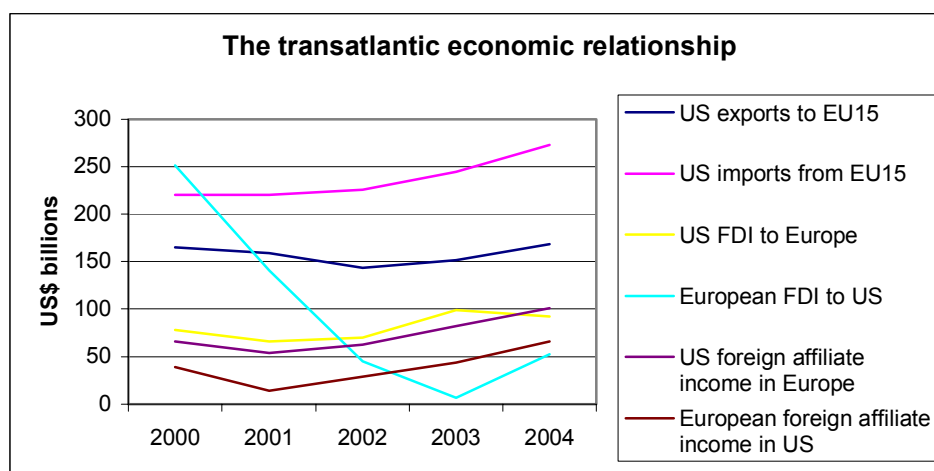
European investors have also remained important foreign investors in US dollar-denominated securities, with net purchases of US government agency bonds reaching a record \$84.4 billion in 2004. Net purchases of US corporate bonds by French and German investors hit all-time highs for both countries last year. Eurozone investors were net purchasers of \$55 billion in US securities last year, a capital infusion that helped the debt-stretched United States cover its massive savings shortfall. Over 2003-04, European investors sunk over \$100 billion in US securities (US Treasuries, government agency bonds, corporate bonds and US stocks). In the other direction, portfolio flows from the US to Europe were also robust in 2004, with US net purchases of European equities reaching nearly \$52 billion, an annual record.

<sup>7</sup> This case study, and those that follow in this report, are intended to provide ballast – by examining a single policy or policy sector in detail – for our institutional analysis and (particularly) our recommendations.

<sup>8</sup> As is customary, American investment flows to the United Kingdom dominated total EU investment last year, with US firms sinking over \$23 billion in the UK in 2004, roughly 25% of the EU total. All figures cited in this case study are from data collected by the US Census Bureau and/or Bureau of Economic Analysis.

The past few years have also been record years for transatlantic profits as measured by foreign affiliate income. Despite all the talk of transatlantic boycotts and consumer backlashes, business has never been better for US and European multinationals. For the past two years, US foreign affiliates in Europe have booked record profits courtesy of the steep decline of the US dollar against the euro. The weaker the dollar, the more inflated dollar-based earnings of US foreign affiliates have become. The result: US affiliates earned a record \$100 billion in Europe last year, which followed record earnings of \$82 billion the year before. In 2003, US affiliate earnings in twelve European markets reached record highs. Last year, US affiliates booked record profits in seventeen European markets, with record earnings reported in such traditional markets as Germany, France, and Italy, in addition to the newly opened markets of Poland, Hungary and the Czech Republic. The European profits surge helped boost total US pre-tax corporate profits to record levels in 2004.

Last year was also hugely profitable for European affiliates operating in the US. Despite the strength of the euro—a significant drag on European earnings—European affiliate earnings surged to a record \$65.7 billion last year, easily beating the previous high of \$44 billion in 2003. The earnings boost was driven by robust US final demand, which offset the negative effect of the appreciation of the euro and the British pound, as well as weak European growth again in 2004.



Europe and the United States remain each other's most important foreign commercial markets, a fact often lost on policy-makers. No other commercial artery in the world is as integrated and fused together by foreign investment, or accounts for the employment of more than 12 million workers. Workers, employers and shareholders in various countries benefit tremendously from this relationship. The economic relationship is clearly the anchor of the EU/US relationship.

Many of our interlocutors viewed recent policy cooperation on non-economic issues – including Turkey, Ukraine, and the Middle East – as examples of how pragmatic coordination of policy could produce desirable outcomes. There is widespread consensus that recent cooperation on Homeland Security issues has yielded impressive results, particularly in view of the EU's nascent internal structures for Justice and Home Affairs policy.

We found very little evidence of a fundamental change in the traditional US policy of broad political support for European integration. In fact, the EU appears to have a higher profile in Washington now (starting from a low base) than at almost any time in the recent past. The Union's higher profile is increasingly linked to political issues, not all of them matters of transatlantic accord.

The fact that much of our fieldwork took place just before, during, or after Secretary Rice and President Bush's trips to Europe in February 2005 inevitably coloured the perceptions of our interlocutors. To simplify slightly, we found a division between:

- those who saw the Bush administration's new willingness to reach out and listen as the key to a harmonious relationship, and
- those who cited a list of issues (Iran, Iraq, the Middle East peace process, the International Criminal Court, climate change, and the China arms embargo) where differences remain, and felt that more felicitous rhetoric was by no means guaranteed to produce policy convergence.

Basically, the closer a respondent was to the US administration, the more likely they were to be optimistic about the future of the relationship. We have found evidence of a particularly important change in the White House in terms of its thinking about Europe: the National Security Council (and not primarily the State Department) has consulted more widely with European governments and accepted the idea that relations with Europe need to be reinvigorated.

Many of our interviewees cited issues that could quickly derail recent progress: the China arms embargo was mentioned by nearly all of our US respondents (see case study 2 below), while many European interviewees said the same about Iran. One of the most frequent observations made on both sides concerned the lack of understanding of the EU on Capitol Hill and the need to do something (usually unspecified) about it.

Our general assessment is that the EU/US relationship is healthy, but also fragile. It may be a propitious time to embark on a relaunch of EU/US relations that extends to agreeing a revamped framework for dialogue.

#### ***CASE STUDY 2 – THE CHINA ARMS EMBARGO***

The EU and US both imposed arms embargoes on the People's Republic of China in 1989 in response to the repression of the demonstrations in Tiananmen Square. At the EU-China summit on 8 December 2004 the EU 'confirmed its political will to continue to work towards lifting the [arms] embargo'.<sup>9</sup> Despite persistent opposition from the European Parliament and the reservations of some member states,<sup>10</sup> the December 2004 European Council tasked the Council and the Commission during the Luxembourg Presidency to 'finalise the well-advanced work' on lifting the arms embargo.<sup>11</sup> The European Council also stressed that the lifting of the embargo should not result in a quantitative or qualitative increase in arms exports to China and that the EU's 1998 Code of Conduct on Arms Exports would apply.

Concerned that the (non-binding) Code of Conduct will not effectively restrict arms sales to China, the United States (and Japan and Australia) responded very negatively to the EU's plans. The US has focused especially on the potential provision of high technology dual use goods, including software, which could give China enhanced battlefield information capability. On 2 February 2005 the US House of Representatives, by a vote of 411 to 3, adopted a resolution 'deplor[ing]' the European Council's decision to work towards lifting the arms embargo.<sup>12</sup> On 17 March 2005 the US Senate unanimously adopted a resolution 'strongly urg[ing]' the EU to maintain its embargo.<sup>13</sup> The Bush administration, while expressing deep concerns about the lifting of the embargo, is waiting to see if the

<sup>9</sup> Joint Statement of the 7<sup>th</sup> EU-China Summit, 8 December 2004.

<sup>10</sup> Expressed most recently in the European Parliament's Resolution on the EU's Priorities and Recommendations for the 61<sup>st</sup> Session of the UN Commission on Human Rights in Geneva (14 March to 22 April 2005), B6-0086/2005, 24 February 2005.

<sup>11</sup> Brussels European Council 16/17 December 2004 Presidency Conclusions.

<sup>12</sup> US House of Representatives, H. Res. 57, 2 February 2005.

<sup>13</sup> US Senate, S. Res. 91, 17 March 2005.

EU comes up with means of addressing the US concerns.<sup>14</sup> Congress and the Administration have stressed that failure to address the US concerns may adversely affect transatlantic defence cooperation, including transfers of sensitive military and dual-use technology to the EU.

The crux of the dispute is different perceptions of China. Although the Commission and Council have a slightly more optimistic view of China's record on human rights than the US Congress and Administration, the real point of departure concerns security. The EU perceives China as a 'strategic partner' with whom a further improvement of relations is impeded by the arms embargo.<sup>15</sup> Moreover, maintaining the embargo puts China in the same category as Zimbabwe and Burma/Myanmar.

By contrast, the US, Japan and Australia are much more inclined to see China as an emerging power whose military build-up potentially threatens the security of the Asia-Pacific region.<sup>16</sup> These concerns were heightened following China's adoption in March 2005 of an anti-secession law that could authorise the use of force against Taiwan in the event that it ever formally declared its independence. Further, the US has concerns about Chinese 'entities' engaging in illicit transactions involving strategic technology (most recently in December 2004 with regards to Iran).

The China arms embargo illustrates a number of problems endemic to the US/EU relationship. First, unlike Iraq, the China arms embargo is a decidedly US/EU issue on a matter of international security. The conflict has been exacerbated by differences between EU member states. Although the EU had a common line on where it wanted to get to, different voices within the EU were articulating different justifications for and implications of the policy. In part as a consequence, the EU was slow to try and persuade the US that lifting the embargo would not hurt US interests; with the first real high-level efforts not coming until mid-March 2005. The issue thus illustrates clearly that failing to engage with the US before EU positions are finalised is a recipe for trouble. Second, the EU underestimated the depth of American feeling on the issue, especially in the US Congress, thus illustrating the need for greater EU intercourse with Capitol Hill. Finally, and perhaps ultimately, the China arms embargo reveals the EU's lack of capacity for strategic thinking, as well as its need for a dialogue with the US on strategic issues of international security.

## THE EU IN TRANSATLANTIC RELATIONS

On one hand, there is no question that among the various 'channels' for relations between the US and Europe – NATO, the OSCE, the G8, and so on – the US/EU channel has gained in importance. On the other, bilateral relationships between the US and European member states are unlikely to lessen in importance, and not *only* because of attitudes in Washington.<sup>17</sup> It was repeatedly impressed upon us that most EU national capitals continue to view their relationship with the US as their most important bilateral relationship.

Nevertheless, the European Union is viewed within the US administration as an increasingly important channel for European action. For that reason, the White House decided to pay homage to the EU as an institution in early 2005 in a way the US rarely has done before.

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<sup>14</sup> The depth of US opposition and recent China's anti-secession law (see below) appear to have shifted the argument within the EU, and it now seems unlikely that the arms embargo will be lifted during the first half of 2005, as originally envisaged. On 14 April 2005, the European Parliament voted (by 431 to 85 with 31 abstentions) to approve a report that recommended against lifting the embargo.

<sup>15</sup> Chris Patten, 'Lifting of the Arms Embargo on China: The Rueda Report on Arms Exports,' Speech/04/483, to the European Parliament, 16 November 2004; Joint Statement of the 7<sup>th</sup> EU-China Summit, 8 December 2004.

<sup>16</sup> White House, 'The National Security Strategy of the United States of America,' September 2002; US Senate, S. Res. 91, 17 March 2005.

<sup>17</sup> One of our most memorable quotes (offered in a national European capital) was that the balance sheet on the NTA was 'broadly positive but the *real* issues should be done bilaterally'.

It is also striking that 15 years ago, when the Transatlantic Declaration (TD) was agreed, relations with the European Community were still an afterthought in the eyes of Washington. Exchanges over subsequent years sometimes succeeded in identifying areas of shared interest and even (more rarely) specific actions (such as joint *démarches*). But it was generally agreed in US circles that the ‘quality of the consultations varie[d, often widely,] according to the EU Presidency’.<sup>18</sup>

The US seems to have come to grips with the limits of both EU institutions and the scope for joint policy action only over time. For example, the TD’s provisions for semi-annual meetings between the Commission and the US cabinet fell into disuse after 1991.

In 1995, one of the purposes of the NTA was to raise the EU’s profile within the US executive administration. Specifically, the prevailing view on the US side was that ‘compared to the Council, the Commission has broader perspectives on international affairs which are more likely to be compatible with US interests and has greater ability to strike compromises between the Member States and EU institutions’.<sup>19</sup>

One of the major developments in European integration over the lifespan of the NTA has been the gradual emergence of the Council General Secretariat as a more powerful, and (for some, at least) effective institutional actor, particularly on traditional, non-economic matters of foreign policy.<sup>20</sup> In large measure, the upgrade in the Council’s external role has been a consequence of the designation of its Secretary-General as ‘High Representative’ for the Common Foreign and Security Policy (CFSP). The Council Secretariat’s general growth in terms of number of officials – by about one-quarter since 1990<sup>21</sup> – and resources has been heavily concentrated in the area of external policy.

The Council Secretariat now plays an active role, primarily through its Director (for DG E4), in both the NTA Task Force and Senior Level Group. Occasionally, the US meets a bicephalous ‘EU of 2’.<sup>22</sup> Usually, however, discussions within the NTA framework involve representation of the EU by a Troika consisting of representatives of the Commission, Council Presidency and Council Secretariat. This format reflects, in part, the extension of US/EU dialogue beyond a narrow economic agenda to broader issues of foreign policy.

Nevertheless, when asked about the state of US/EU relations, many of our American respondents launched immediately into a discussion of trade policy. The most significant transatlantic economic problems are seen as outgrowths of different domestic political systems, especially different approaches to regulation and the

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<sup>18</sup> Anthony Laurence Gardner, *A New Era in US/EU Relations? The Clinton Administration and the New Transatlantic Agenda* (Ashgate, 1997), p.12.

<sup>19</sup> Gardner, *A New Era*, p.13.

<sup>20</sup> See Fiona-Hayes Renshaw and Helen Wallace, *The Council of Ministers* (Palgrave, 2005, 2<sup>nd</sup> edition).

<sup>21</sup> In 2004, the Council General Secretariat employed 2625 officials, up from 2183 in 1990.

<sup>22</sup> For example, meetings between the US and EU (of 2), with the latter represented by two (current and forthcoming) Council Presidencies, take place (after meetings with the EU-25) in the margins of the UN General Assembly.



adverse trade effects of domestic legislation. They are thus extremely difficult to resolve.

More generally, the EU/US relationship was widely viewed as suffering from a generic problem of a lack of political investment.

## 2. EVALUATING THE FRAMEWORK

In this section, we offer an evaluation of the current framework for US/EU relations.<sup>23</sup> It is presented in two parts: one based on our investigation of 10 years worth of official documents found in the archives of the Commission (DG Relex, Unit for relations with the US and Canada), and another based mainly on our interview fieldwork.

### REVIEWING THE ARCHIVES

We have conducted an extensive review of over 200 documents – agendas, briefings, and reports on meetings of NTA institutions – that have been archived since 1995 (our data is summarised in Annex 2). The objective of this exercise was threefold:

1. identifying what items were discussed in the various meetings of the SLG, NTA Task-Force, and at Ministerial and Summit meetings – this exercise also involved registering issues that are not included in the JAP but which have frequently been discussed in the NTA framework;
2. evaluating to what extent the goals set in the JAP have been achieved – this included assessing the character of the discussions (promising vs. conflictual) and the degree of progress (or the lack of it);
3. determining which side - the EU, the US or both – has been more proactive in raising (and maintaining) particular issues on the agenda.

We provide a short table (2 below) that summarises data collected from our review of the archives.

### OBJECTIVES AND ACHIEVEMENTS

#### *Findings*

Our analysis of the archive evidence leads us to the following conclusions:

- Many of the ambitions set out in the JAP have been achieved. Discussions within the NTA have *not* been limited to issues identified in the JAP. However, there is clear evidence to suggest that goals have been met on around 45% of all issues

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<sup>23</sup> Annex I provides an outline of our study's objectives and methodology. Annex 2 presents a comprehensive overview of our archive evidence.

discussed. There has been measurable progress – if not total success – on an additional 33% of all issues. There are relatively few examples of major failures, despite sometimes difficult discussions.

- Virtually all meetings discussed difficult issues, but also items on which some progress was made. We found language in minutes and reports on meetings that led us to conclude that discussions on more than one-third (35%) of all issues had to be characterised as ‘conflictual’.
- We noted a frequent lack of continuity in discussions of issues from one meeting to the next. Some items in the JAP have hardly been discussed over the course of 10 years.
- There has been a massive expansion of issues on the US/EU agenda. We estimate the total number of issues discussed within NTA institutions to be considerably larger – as much as 25% larger – than the number singled out in the JAP<sup>24</sup> (and, again, not all mentioned in the JAP have been discussed or discussed thoroughly).
- Each side is the ‘driving force’ in placing a new item on the agenda, or pushing for its resolution, roughly as often as the other. A clear majority of issues are truly matters of ‘joint concern’, on which it is difficult or impossible to identify a lead partner.
- More technical and specific issues have generally yielded the best results – the Galileo negotiations are an illustrative example.
- It is under the heading ‘working together for a stable and prosperous Europe’ where political cooperation has been most successful. Most of the goals set in this section of the JAP have been achieved, namely cooperation in the Balkans, EU enlargement to Central and East Europe, but also joint support for democratisation process in Ukraine.
- Outside the European continent, NTA structures have been more effective in dealing with global or transnational issues (such as communicable diseases) than state specific issues (such as Cuba). Issues such as the combating of terrorism and drug trafficking are illustrative examples of challenges that have been well handled under the NTA. It is also worth noting that most of the country specific goals of the JAP have either declined in importance over the years or become merged into broader discussions.
- Issues under the heading ‘responding to global challenges’ (for example, the ‘fight against organised crime, terrorism and drug trafficking’, ‘immigration and asylum’) have been subjects of very productive discussions. In the field of ‘legal and judicial cooperation’, which extends to highly sensitive issues for both partners, discussions have been difficult but determined, and usually (eventually) fruitful.

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<sup>24</sup> We estimate that a total of 185 separate issues were discussed over 10 years. Our summary table (annex 2) lists somewhat fewer issues because we have merged some cells to reflect the packaging together of issues in NTA discussions.

- Both partners have given considerable attention within the NTA to areas of joint global concern, such as humanitarian aid and health issues in developing countries (plus Russia), and especially communicable diseases, where achievements include the establishment of the Global Health Fund.
- The track record is more mixed in the trade area. EU/US discussions in the NTA framework have regularly struggled with issues such as steel quotas, bananas, wine, GMOs, beef, and so on.
- Extraterritorial issues such as Helms-Burton and the Iran-Libya Sanctions Act (ILSA) have featured prominently on the agenda over 10 years. Most remain unresolved, although there is evidence to suggest that the existence of the NTA has kept them from escalating.
- No progress has been made on climate change, especially with respect to the implementation of the Kyoto agreement.
- The TABD and the TEP do not appear to be unambiguous success stories, particularly in view of their encouraging starts and subsequent decline.

**TABLE 2 - SUMMARY OF ARCHIVE DATA**

<b>'Driving force' (by issue)</b>	<b>Nature of discussions</b>	<b>Achievement of objectives</b>
US 39	Promising 106	Achieved 76
EU 32	Conflictual 62	Partially achieved 61
Joint 99	Discontinued 9	Not achieved 33

### Interview Fieldwork

Our second main task was to interview a significant number of stakeholders – both in government and out – in Brussels, Washington, and EU national capitals. ‘Armed’ with views from this fieldwork, we were asked to:

- measure the satisfaction of each group of interlocutors (by category and region) with the current NTA framework.
- analyse the future priorities as perceived by each group of interlocutors (by category and region).

Below we offer some observations on the views that different categories of interviewees tended to share. However, beyond some rather predictable and banal generalisations,<sup>25</sup> to go any further would involve imposing a sort of false uniformity

<sup>25</sup> To illustrate this point, our Swedish interviewees spoke more often about climate change as a priority, officials in the State Department were more likely to see the NTA as important than were officials from other US agencies, and there is more support for a formal Treaty in the European Parliament than in any other institution.

on our findings. In other words, views on the current framework varied considerably even within the same category of interlocutor – such as members of the Council working group on transatlantic relations (COTRA), Commission officials, Washington think tankers, or trade officials.

At the same time, we found very few of our interlocutors who fundamentally disagreed with the view of one US official, who told us:

***‘We need to make the process we have work, not create a new process’.***

On both sides, the importance attached to the NTA, and the view of its effectiveness, usually depended directly on how closely our respondents were involved. Almost no one was entirely uncritical of it. But those officials most involved in its institutions tended to consider it more important and effective than other categories of interlocutor.

On the US side, officials in the State Department were most likely to see it as the ‘bedrock of the relationship’ and effective across a range of tasks. Those in the White House were likely to pay attention to the NTA only in the lead up to summits. However, we have found clear evidence to suggest that the recent ‘rediscovery of the EU’ by the current US administration has been led and driven by the White House, particularly the National Security Council (NSC). The level of knowledge about the NTA – and the EU more generally – across the Washington community is generally minimal.

There is a high level of awareness of the NTA across the Brussels policy community but very low levels in national EU capitals. When asked for their views on the current framework for EU/US relations, many interviewees in national capitals – including many with considerable knowledge or experience of transatlantic relations – asked us to explain precisely what the NTA was.

In general, most involved in the NTA view it as a positive, and necessary (if low profile) framework. However, we almost always found three important reservations:

1. expectations of the NTA have diminished (over time), and are quite low. Nearly all of those who have been privy to the NTA for an extended period of time admitted that it had not lived up to their initial expectations of 1995. Few ever anticipated that the NTA would become as involved as it has in political (as opposed to economic) issues, and several recalled that the NTA (despite the scope of the Joint Action Plan) was established to deal with what was then a largely economic relationship.
2. many officials bemoaned how bureaucratic the NTA process is, and how much process is required for modest output. It was felt by many that fewer meetings on a less rigid schedule might actually be more productive. Progress towards realizing one of the central goals of the NTA – moving from mere information sharing to actual problem solving – was viewed as limited at best.

3. it is clear that individuals matter in the NTA process. Building trust and confidence between them is a crucial measure of success in itself. In this context, major personnel changes are underway on the US side in the State Department: most officials now dealing with the NTA are new, having been in their posts only a matter of months. Many who deal most directly with the EU and the NTA question whether major changes now would be a good idea.

In short, most officials on the ‘front line’ are moderately pleased with the NTA and most consider that it is still functioning *semi*-well. But nearly all acknowledge that it has significant shortcomings.

When we asked where the NTA was most effective, some of the most common responses were:

- the NTA has fostered learning across policy issues. Afghan reconstruction was one example: when Iraqi reconstruction rose on the agenda, it was possible to pull many of the same people into the room to make sure the lessons learned earlier could be identified.
- the NTA is effective at building ‘people-to-people’ connections and fostering dialogue, at least between officials (and sometimes between other kinds of stakeholder, such as businesspeople and scientists; see case study 3).

### ***CASE STUDY 3 – THE HYDROGEN ECONOMY***

An EU/US Joint Statement on the Hydrogen Economy was agreed at the June 2003 summit after a period of considerable bilateral activity on energy research (much of which built on the existing US/EU Science and Technology Agreement). It is widely thought that hydrogen technology is many (at least 15) years away from commercial viability. As such, the most important objectives of the Joint Statement could be seen as laying ‘the technical, legal, and commercial basis needed to accelerate the commercial penetration and trade’ of hydrogen technology and strengthening the foundation of the International Partnership for the Hydrogen Economy, which now includes 15 states (including India and China plus the Commission<sup>26</sup>) that account for two-thirds of both global energy consumption and CO<sub>2</sub> emissions.

Hydrogen technology is highly promising but also highly uncertain. The current US administration hails it as ‘the ultimate clean energy carrier’, while the Commission has described an ‘energy revolution that offers the opportunity to replace our present fossil fuel-based system with an economy built on clean, plentiful, emission-free hydrogen.’<sup>27</sup> Yet, hydrogen is only one of a range of alternative fuels competing for support. One recent economic study concluded that a truly emission-free hydrogen economy is ‘out of reach’.<sup>28</sup> Hydrogen is not an energy source itself, but rather an energy carrier that has to be produced using (presently) energy-intensive processes involving other energy sources (the most common currently is methane gas).

The EU has had to scramble to keep pace with the American research effort into hydrogen technology. The US Freedom CAR initiative, launched in 2002, marked the first

<sup>26</sup> See <http://www.iphe.net/>.

<sup>27</sup> See the fact sheets on the hydrogen economy available from <http://www.whitehouse.gov/news/releases/2003/06/20030625-6.html> and [http://europa.eu.int/comm/external\\_relations/us/sum06\\_04/fact/hydrogen.pdf](http://europa.eu.int/comm/external_relations/us/sum06_04/fact/hydrogen.pdf). The fully exuberant case for this technology is made in Jeremy Rifkin, *The Hydrogen Economy* (Jeremy P Tarcher, 2003).

<sup>28</sup> See [www.nature.com/news/2004/041004/pf/041004-13\\_pf.html](http://www.nature.com/news/2004/041004/pf/041004-13_pf.html); <http://www.euractiv.com/Article?tcaturi=tcm:29-130838-16&type=News>

large public investment in the technology. The EU's European Hydrogen and Fuel Cell Technology Platform, bringing together major private and public stakeholders, was put on its feet only in January 2004. It is difficult to pinpoint the scale of European investment but the EU contribution appears to be around €100 million per year in shared cost hydrogen technology projects.

On one hand, transatlantic collaboration on the hydrogen economy is politically attractive because it draws a veil over US reluctance to engage the EU in reinvigorating wider energy cooperation. The Commission has argued consistently that there is far wider scope for enhanced cooperation in the energy sphere *and*, pointedly, that the hydrogen economy is a way for the EU to meet its Kyoto obligations, not avoid them.<sup>29</sup> Meanwhile, the investment of serious US public funding – a total of \$1.7 billion from 2003-8 – in hydrogen-fuelled infrastructure (and other advanced automotive technologies) allows the Bush administration to claim that it is taking steps to reverse US dependence on foreign oil and accelerating the commercialisation of clean technologies which produce no greenhouse gases, even as it eschews Kyoto.

On the other, the hydrogen economy could be viewed as an example of effective, 'bottom-up' cooperation in an area where there are clear incentives both for joint US/EU action as well as efforts to bring on board the wider international community. It is an area where the EU (via the Commission) effectively has engaged the US administration. The technology has a chance of realising its potential only if universally compatible codes, standards, and regulations are developed at early stages, and the logical co-leaders of this effort are the US and EU.

Very few of our interviewees specifically mentioned the hydrogen economy as a success story for EU/US relations. However, this result is hardly surprising given the technical nature of the subject area and vast uncertainties surrounding the technology's development. Leaving aside the question of whether the initiative offers political cover for transatlantic frictions over climate change more generally, the hydrogen economy initiative offers a bottom up model of EU/US cooperation that could sensibly be applied to other areas of promising technology, especially those that remain a considerable distance from maturity.

- The NTA is less effective at dispute resolution because it requires sustained political attention that is often lacking. However, it does create pressure to resolve disputes.
- The NTA was effective in identifying 'positive issues', such as opportunities to work together in addressing a common challenge, such as Afghan reconstruction.
- The NTA is also increasingly effective as a mechanism for identifying potential difficulties. The NTA offers good opportunities to ask questions, both as a follow up to agreements ('have you done what you promised?') and more broadly. On occasion, this has led to the discovery of a divergence in views or practice that threatened to create problems in future.
- The NTA was best at securing deliverables that did not make headlines. Galileo, the non-proliferation declaration, Passenger Name Records (PNR), and mutual legal assistance treaties (MLATs) on extradition were cited as

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<sup>29</sup> Margot Wallström, 'Hydrogen - bridge to sustainable energy', statement to High Level Group on Hydrogen and Fuel Cell Technologies Conference, Brussels, 17 June 2003 (see <http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/03/308&format=HTML&aged=0&language=EN&guiLanguage=en>).

deliverables that would otherwise not have been achieved. The 2004 declaration on terrorism was cited both as a good example of NTA dealing with a vital issue and as a bad example of how the NTA tended to produce a laundry list of achievements.

- Perhaps surprisingly, the NTA is often seen as more effective at handling political issues than economic disputes. The NTA was written in a way that has proved, by accident or design, rather prescient in imagining how the EU might develop. But the trading relationship, and especially bilateral disputes, has increasingly moved into a separate USTR-DG Trade dialogue, even though the Commissioner for Trade and USTR usually lack the political authority to resolve them.

## ASSESSMENT OF COOPERATION

We summarise our findings below but offer the following caveats:

- the US/EU dialogue is considerably wider than the NTA dialogue;
- many of our interviewees – including many with considerable knowledge of policy – showed little awareness of the NTA;
- attributing ‘success’ or ‘failure’ to dialogue structures themselves usually ranges from difficult to impossible;
- ‘success’ or ‘failure’ can mean many things, ranging from merely fostering US/EU dialogue to solving actual policy problems.

### *Policy successes*

#### *Homeland security*

PNR was frequently cited as the type of dispute that NTA handled well: it needed to be addressed quickly and the political will existed to find a solution. Cooperation on issues that span the public and private sector dimensions, particularly post-9/11 security measures, has been impressively fruitful with private sector actors often playing a crucial, positive, supportive role.<sup>30</sup> The structure of the dialogue in this area – with a policy-specialised dialogue (PDBTS; see below) getting the ‘right people in the room’ to discuss operational questions but feeding into the NTA itself – was widely seen as logical and productive.

#### *Extra-territoriality*

Perhaps ironically, Helms-Burton was often cited as an important policy accomplishment. It has never been definitively resolved and several of our interviewees noted that the situation (especially in 1998) had become so dire that the US and EU would have had to find a resolution even without the NTA. Still, on Helms-Burton as on other issues of extra-territoriality, it was felt that the regularity of NTA dialogues facilitated progress. On such issues, it was viewed as crucial that the EU tended to take unified positions.

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<sup>30</sup> See Alyson J.K. Bailes and Isabel Frommelt (eds) *Business and Security: Public Private Sector Relationships in a New Security Environment* (SIPRI and Oxford University Press, 2004).

### *Galileo*

Of all issues that have risen to the top of the US/EU agenda in recent years, Galileo comes closest to being the one on which a cooperative success could be attributed specifically to the NTA framework itself. Once the US accepted that the EU was serious about going ahead with Galileo, and particularly after China joined the project, discussions started in earnest. There were two central issues – compatibility and complementarity. Although these were essentially technical issues, they had significant international security implications. The discussions started with the technical issues and the smooth progress in these discussions paved the way for agreement on the more strategic concerns. The case of Galileo thus reinforces the finding (from our earlier analysis of the archives) that US/EU cooperation is easier on more technical and specific issues.

### *Competition policy*

Cooperation in this area was repeatedly cited as an area of resounding success, often on very difficult issues (see case study 4), albeit via a process that was never linked in any clear way to the NTA. We found very diverse views on the question of what could be learned from the experience of cooperation on competition policy and applied elsewhere. But here, as elsewhere where dialogue proceeds successfully and mostly informally, there was almost no suggestion that such cooperation needed to be incorporated into the formal structures of the NTA.

#### **CASE STUDY 4 – THE MICROSOFT CASE**

Cooperation between the European Commission and the US competition authorities (the Anti-Trust division of the US Department of Justice and the Federal Trade Commission<sup>31</sup>) is primarily based on the 1991 EC/US Competition Co-operation Agreement and the 1998 Positive Comity Agreement. The principal elements concern mutual information about enforcement activities (notifications of cases being handled), coordination of enforcement activities, and exchange of non-confidential information.

In the late 1990s and early 2000s, anti-trust policy was generally considered a highly successful area of transatlantic cooperation.<sup>32</sup> Cooperation became increasingly more intensive on merger cases, combating global cartels and more general competition matters. Cooperation took place on more than 600 cases.<sup>33</sup> The establishment of the US/EU working group in 1999 to enhance cooperation on merger control, the 2002 set of ‘best practices on EU/US cooperation in merger cases’ and a more general convergence of rules and practices are other examples of successful cooperation.

Yet, well-publicised disagreements in recent years (in particular on the General Electric/Honeywell merger and on Microsoft), show that divergent approaches to the application and enforcement of competition policy persist. In the EU Microsoft antitrust case, the Commission concluded its four-year investigation on 24 March 2004 by deciding that Microsoft held a dominant market position on two distinct product markets (work group server operating systems and media players). Microsoft was held to have abused this dominant position by deliberately restricting interoperability between Windows PCs and non-Microsoft work group servers, and by bundling Windows Media Player with the Windows operating system. The Commission required the company to

<sup>31</sup> Transatlantic cooperation on competition policy mainly concerns antitrust, and formal agreements provide for ‘traditional comity’ and ‘positive comity’ procedures. While the US authorities have no control and authorisation role over state aid similar to that of the European Commission, there are of course high-profile *trade* disputes over state subsidies to sectors such as steel, agriculture and aviation.

<sup>32</sup> Michéle Egan, *Creating a Transatlantic Marketplace: Government Policies and Business Strategies* (American Institute for Contemporary Studies 2001, Conference Report); Yuri Devuyt, ‘Transatlantic Competition Relations’ in Mark A. Pollack and Gregory Shaffer (eds) *Transatlantic Governance in the Global Economy* (Rowman and Littlefield, 2001).

<sup>33</sup> Arne Jon Isachsen *Banener, Stål of WTO: Transatlantiske Økonomiske Relasjoner* (Centre for Monetary Economics, Norwegian School of Management, Working Paper 4/2004)



offer an unbundled version of Windows without Windows Media Player, and to provide certain technical interface information. It also fined Microsoft €497 million. Microsoft launched an appeal against the decision and applied for a suspension, which was rejected by the Court of First Instance on 22 December 2004. A final decision from the Court of Justice about whether to annul the sanctions is still pending and may take years.

The Commission decision, and in particular the forced ‘un-bundling’ of Media Player from the Window operating system, triggered heavy criticism from the US competition authorities, US lawmakers and other American organisations. It was argued that the decision would deter innovation and that the US final judgement in the US Microsoft case (2001) already provided effective protection against anticompetitive conduct.

The EU Microsoft case highlighted US/EU differences over the criteria governing antitrust policy and the European Commission’s less favourable attitude towards the concept of monopoly leveraging,<sup>34</sup> which may well persist as a problem in EU/US competition relations. In addition, the EU Microsoft case seemed to erode mutual trust in the competition dialogue. The EU position was interpreted by members of the US Congress and other observers as being excessive and unfriendly to American industry.

However, this case is anomalous in a variety of ways. Although divergences persist, most EU competition doctrines are similar to established US doctrines,<sup>35</sup> and there is a general trend towards convergence between them. Both the US and the EU have a strong interest in greater convergence: they remain each other’s most important trading partners and there is little interest in damaging their economic relationship. Moreover, the importance of IT industries in the world’s economy makes regulation of competitive conduct and market structures in these sectors a priority for both sides.<sup>36</sup>

We have found no evidence to suggest that the Microsoft case was ever discussed as part of the NTA agenda. Both US and EU authorities during the spring and summer of 2004 frequently highlighted not only their continued support for transatlantic competition cooperation but also for the transatlantic convergence of competition rules and practices.<sup>37</sup> In short, competition policy remains an area of impressive US/EU cooperation, but not one that is problem-free or easily replicable in other areas of regulation.

### *The Western Balkans*

This area was cited frequently as a case of productive EU/US regional cooperation. The NTA framework was seen as facilitating a logical division of labour in terms of economic regeneration and the strengthening of civil society and democratic structures. However, exchanges at the Troika level with the EU’s Working Group on the Western Balkans were also seen as important and complimentary.

### *Afghanistan*

We heard much the same story on Afghanistan as on the Western Balkans. Significant programmatic cooperation has been achieved on a pragmatic basis and with useful input from exchanges within the Troika system. Valuable lessons were

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<sup>34</sup> The respective US and EU approaches differ, in particular regarding thresholds for findings of ‘abuse of a dominant position’. The EU approach focuses on whether a firm has a *dominant market position*, and abuse of a dominant position takes place when the conduct of a firm is such that it influences the structure of a relevant market or the degree of competition. The US has a more *laissez-faire* approach based on the idea that larger firms will have higher efficiency rates that in turn will benefit the consumer. Dominant or monopolistic positions are not prohibited, and need to be accompanied by a behavioural component leading to a strong reduction in competition in order to trigger investigation on ‘abuse of a dominant position’.

<sup>35</sup> Norman Hawker *A Background Briefing on the European Microsoft Case*, American Antitrust Institute, <http://www.antitrustinstitute.org/recent2/260.cfm>

<sup>36</sup> Reba Carruth, *Transatlantic Regulatory and Competition Policy Cooperation*, Presentation to the European Network on Industrial Policy (EUNIP) 2001 Conference, Vienna (available at [http://www.wifo.ac.at/~luger/carruth\\_reba.pdf](http://www.wifo.ac.at/~luger/carruth_reba.pdf)).

<sup>37</sup> See for example Commissioner Monti’s and US Assistant Attorney General R Hewit Pate’s interventions at the conference ‘Antitrust in a Transatlantic Context’, Brussels June 2004.

learned in Afghanistan that are now being applied (despite all the obvious difficulties, practical and political) in Iraq.

#### *Ukraine and Turkey*

Both were mentioned frequently as cases where the US and EU (sometimes acting via national capitals or embassies) closely coordinated their positions to good effect in the recent past. Again, US/EU exchanges on these issues have taken place mostly in forums, such as Troika dialogues, that are only marginally (or entirely de-) linked to the NTA itself.

#### ***Policy failures***

Upon reflection, we have chosen ***not*** to focus on cases of policy failure – including many cited by our interviewees – that cannot be considered to have occurred on explicitly US/EU issues. Instead we focus broadly (but almost exclusively) on the ***economic agenda***.

It may seem ironic to designate the area on which there are the most longstanding ties between the US and EU a ‘policy failure’. Yet, the overwhelming majority of our interlocutors saw the NTA as being ineffective in delivering on the economic agenda.

Trade disputes *per se* are handled largely outside the NTA. Regulatory cooperation is not, and it has been an area of major disappointment. Ten years of considerable effort in and around the NTA have only served to underline that regulatory differences are difficult to overcome. These differences primarily have their roots in divergent public concerns, approaches to regulation, constellations of interests and institutional frameworks. They also are rooted in very different policy cycles on either side of the Atlantic: long and consensual in the EU, relatively short and sharp (according to a political timeframe of 4 years maximum) in the US. Added together, the result is ‘*system friction*’: that is, conflicts arise from different domestic systems for regulating on either side of the Atlantic.<sup>38</sup>

Regulatory barriers are often rooted in legislation, either directly (as in the EU) or indirectly through the mandates of regulators (as in the US). Given the many competing domestic considerations and interests that must be reconciled on both sides, it is unreasonable to expect the legislative process to accommodate readily the trade effects of legislation. As one of our interviewees claimed, the NTA ‘was light years away from the minds’ of member state officials and members of the European Parliament when they were agreeing the EU’s rules for the approval of genetically modified (GM) crops (see case study 5 below).

#### ***CASE STUDY 5 -- GENETICALLY MODIFIED CROPS***

The transatlantic trade dispute over genetically modified (GM) crops began to simmer during 1997 when US companies began to complain about the EU’s slow and opaque approval process.<sup>39</sup> The banning of some EU-approved GM products by some EU member governments during 1997-98 also

<sup>38</sup> Miles Kahler, *Regional Futures and Transatlantic Economic Relations*, Council on Foreign Relations Press, 1995.

<sup>39</sup> USTR, *1998 National Trade Estimate Report on Foreign Trade Barriers* (Washington, DC: United States Trade Representative), 1998.

prompted concern. The dispute, however, exploded after the announcement of a *de facto* moratorium on approvals by five member governments in June 1999.<sup>40</sup> The US initiated a complaint against the EU's moratorium and the member state bans before the World Trade Organization in May 2003. A panel was established in August 2003. The proceedings are continuing despite the EU's approval of the importation of two varieties of GM maize in May and October 2004.<sup>41</sup>

The dispute has its roots in three fundamental differences between the EU and US approval systems. First, in the EU biotechnology products are considered inherently different from those produced via other means, while in the US they are (for now) considered 'substantially equivalent.' Second, the European approval process provides much greater scope for the consideration of non-scientific factors. Third, there are many more veto points in the EU's approval process. In addition, the EU has placed much greater weight on product labelling and traceability. These requirements are not yet the subject of a formal trade dispute, although there are persistent rumours that US agricultural biotechnology interests are considering asking the USTR to act.

The GM crop dispute is striking in how intensively it was integrated into the NTA framework. The most concrete cooperation has taken place within the TEP's Biotechnology Working Group, which was set up in February 1999. It worked on developing GM testing protocols and procedures for corn exports to the EU and initiated a pilot project on simultaneous filings for approval in the EU and US, which focused on harmonizing data requirements.<sup>42</sup> There was also more political discussion within the US/EU Senior Level Group starting in early 2000. An EU/US Biotechnology Consultative Forum of independent experts was set up by US President Clinton and Commission President Prodi in May 2000. Its report in December 2000 largely supported the EU's cautious approach to regulating biotechnology, but also stressed the potential of the technology, particularly for developing countries.<sup>43</sup> Further, the Transatlantic Business, Consumer and Environmental Dialogues all called for resolution of the dispute. This activity contributed to greater mutual understanding, but it did not resolve fundamental differences, although the US approach, for a variety of reasons, has edged slightly towards that of the EU.<sup>44</sup> Bilateral discussions largely stopped with the initiation of the WTO complaint. Significantly, even though the real crux of the American WTO complaint is how member states apply EU rules, efforts to resolve the dispute were focused almost exclusively at the EU level.

Significant regulator-to-regulator cooperation, however, is continuing within broader international forums, particularly the Codex Alimentarius Commission and the OECD. Although negotiations in both forums have been successful, they have focused on technical questions, such as harmonizing the information and methods used in risk/safety assessments.<sup>45</sup> These plurilateral efforts, therefore, seek to set limits on differentiation more than they promote regulatory approximation.

A number of lessons may be learned from the GM crop dispute. First, even an extensive and at times intensive framework for cooperation may not be sufficient to overcome barriers rooted in fundamentally different approaches to regulation. Second, the NTA framework, by focusing at the EU level, may not engage national actors who play crucial roles in regulatory issues. Third, the bilateral US/EU relationship is not the only, nor necessarily the most desirable, framework within which to address regulatory differences.

Perspective, however, is crucial:

1. The overwhelming majority of transatlantic economic exchange is unaffected by regulatory barriers. The total value of such exchange has grown

<sup>40</sup> '2194<sup>th</sup> Council Meeting – Environment – Luxembourg, 24/25 June 1999,' Press 203 – Nr 9406/99.

<sup>41</sup> *Bridges Trade BioRes*, 4/20, 5 Nov. 2004, <http://www.ictsd.org/biores/04-11-05/story3.htm>

<sup>42</sup> 'Report of the Transatlantic Economic Partnership Steering Group' (see [www.useu.be/SUMMIT/tep1200.html](http://www.useu.be/SUMMIT/tep1200.html), 18 December 2000).

<sup>43</sup> 'The EU/US Biotechnology Consultative Forum Final Report,' [www.useu.be/ISSUES/biotreport2000.htm](http://www.useu.be/ISSUES/biotreport2000.htm), 19 December 2000.

<sup>44</sup> Alasdair R. Young, 'Political Transfer and "Trading Up": Transatlantic Trade in Genetically Modified Food and US Politics,' *World Politics*, 55/4, 2003, 457-84; Remarks by Agriculture Secretary Ann M. Veneman to The Advisory Committee on Biotechnology Washington D.C. -- June 3, 2004 (see <http://www.useu.be/Article.asp?ID=5E2E08E9-4E0F-4977-A165-FEC4610DEF66>).

<sup>45</sup> OECD, 'Report of the Working Group on Harmonisation of Regulatory Oversight in Biotechnology,' C(2000)86/ADD2, 25 May 2000.

prodigiously despite the existence of such differences. Further, the EU and the US, for a variety of reasons, have actively sought to resolve differences and have not rushed to take regulatory differences to the WTO.<sup>46</sup>

2. Regulatory cooperation is highly contentious within both the EU and the US. Within the EU this is particularly true of food safety,<sup>47</sup> and in services, where the Commission's recent proposal to complete the single market has met with deep hostility from some European capitals. In addition, member state officials are responsible for implementing EU measures. Variation in implementation can cause problems (as illustrated by the non-regulatory example of customs procedures) and sometimes has a role in regulatory decisions (as with respect to GM crops). Meanwhile, many US professional services and some financial services, notably insurance, are regulated at the state level. There is no automatic expectation of mutual recognition even within the US. A framework that concentrates cooperation at the 'federal' level is ill equipped to deal with such regulatory barriers.

Even the most high profile agreements of the Transatlantic Economic Partnership (TEP) – a Veterinary Equivalence Agreement and various mutual recognition agreements – have not lived up to expectations (see Annex 3).<sup>48</sup> The TEP's Early Warning System also does not work in a formal sense of being able to head off trouble before it arises, although cooperation is sufficiently close that the two sides are rarely surprised by the other. Regulator-to-regulator dialogues, as in case of GM foods, cannot be expected always to overcome barriers to cooperation that are deeply-rooted in societies on either side of the Atlantic.

Views amongst our interviewees about recent efforts to jump-start the economic agenda were very mixed. The Commission's push to increase the openness of the EU regulatory process was seen as very positive, although it remains outside the formal NTA process. The 2002 Positive Economic Agenda was not seen as having produced much. The 2004 Regulatory Road Map, which is too recent to have delivered results, was apparently very difficult to agree and has very limited ambitions (we were, in fact, told that a joint statement on Iraq was easier to agree).

It is worth remembering that there is very significant cooperation between EU and US regulators that does not fall formally within the NTA. Even in problematic areas, such as aviation 'open skies' (see case study 6) and agricultural biotechnology, there has been effective technical level cooperation.<sup>49</sup>

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<sup>46</sup> Gregory Shaffer, *Defending Interests: Public-Private Partnerships in WTO Litigation*, Brookings Institution Press 2003.

<sup>47</sup> To put the issue in perspective, the Franco-British dispute over UK beef, in the words of one interviewee, put the US/EU GM crops dispute 'into the shade'.

<sup>48</sup> The Veterinary Equivalence Agreement is, at this writing, still not fully implemented. The MRAs cover only mutual recognition of certification, not standards as originally envisaged. See Pollack and Shaffer, *Transatlantic Governance in the Global Economy*.

<sup>49</sup> In the transatlantic aviation sector, this has occurred in the form of increased understanding of competition policy decisions concerning alliances. Legal requirements limit how far this cooperation can go. In biotechnology (and chemicals) there has been extensive cooperation at a technical level particularly within the context of the Organization for Economic Cooperation and Development (OECD).

### CASE STUDY 6 - TRANSATLANTIC AVIATION

The EU and the US are the world's largest 'domestic' aviation markets. The transatlantic market is the world's busiest intercontinental market. Rather than a single transatlantic aviation market, however, there are 25 markets between the US and each of the EU's member states. This situation reflects the international air transport regime (the Chicago Convention) established in the mid-1940s.

Transatlantic aviation became a political issue in the early to mid-1990s when the US government began aggressively to pursue more liberal, 'open skies' air service agreements (ASAs) with individual EU member states.<sup>50</sup> They permit any carrier from participating countries to fly any route between the countries. There are no limitations on capacity and fare setting is subject only to prohibitions on abusive behaviour. The agreements also incorporate extensive 'fifth freedom' rights, which enable airlines to carry passengers between two foreign countries either on their way out or way back. Over the course of the 1990s the US concluded 'open skies' agreements with 18 of the 28 countries in the single European aviation market.<sup>51</sup>

This initiative posed economic and legal challenges to the EU's fledgling single aviation market.<sup>52</sup> In particular, US carriers would be able to fly between any two member states with which the US had concluded 'open skies' agreements, while European carriers would be denied comparable access to the US domestic market. In addition, the agreements challenged the right of establishment by restricting participation to airlines 'substantially owned and effectively controlled by' nationals of the member state that was a party to the agreement.

Authority for external aviation policy has long been contested within the EU. The Commission first proposed a common external aviation policy in 1989, but the member governments serially rejected a common approach. In response to the US 'open skies' initiative the Commission initiated infringement proceedings against eight member states over their ASAs on the grounds that they violated EU competition law, the right of establishment, and infringed EU rules on computer reservation systems and ground handling. The Commission also, in April 1995, proposed wide-ranging negotiations with the US. The proposal envisaged considerable liberalisation of transatlantic aviation, and addressed a number of regulatory issues — including code sharing, slot allocation, state aids and Chapter 11,<sup>53</sup> and ground handling — as well as US ownership rules. The Transport Council,<sup>54</sup> however, approved only a two-stage mandate under which only regulatory issues would be discussed during the first phase, and the talks would progress to traffic rights in the second phase only with the Council's explicit approval. As the Commission and several member governments anticipated, the US was uninterested in conducting negotiations only on regulatory issues.

Still, US and EU officials met several times per year and cooperated extensively on competition issues. Both sides remained constrained by legal procedural requirements, but were able to share methodologies, educate each other about their procedures and keep each other informed of where cases stood procedurally. There were no substantive negotiations, however, until the Transport Council agreed a full mandate in June 2003. The Washington EU/US summit agreed to open negotiations, the first time this issue had been brought into contact with the NTA framework.

The catalyst for the Council's agreement was the European Court of Justice's November 2002 ruling. It stated that although the member states had competence for concluding ASAs, some aspects of their agreements with the US violated EU law. Although the ECJ's ruling meant that action was necessary, the Commission and the member states also saw an opportunity to go beyond the 'open skies' framework. As a consequence, the Commission was given an ambitious mandate, including eliminating foreign ownership restrictions and permitting EU carriers to carry passengers between US destinations (known as 'cabotage').

The US had much more limited ambitions, particularly extension of 'open skies' agreements to the remaining member states and greater access to Heathrow Airport outside London. In addition, there was little support for a transatlantic 'open skies' ASA in the US. Despite the US government's

<sup>50</sup> Department of Transportation, 'Statement of United States International Air Transportation Policy, *Federal Register*, 60/85, FR 21841, 3 May 1995.

<sup>51</sup> The 25 member states plus Iceland, Norway and Switzerland.

<sup>52</sup> The EU's single aviation market came fully into effect on 1 April 1997. See Alasdair Young, *Extending European Cooperation: the European Union and the 'New' International Trade Agenda* (Manchester University Press, 2002).

<sup>53</sup> Chapter 11 is a provision in US bankruptcy law that has been used to keep bankrupt airlines in business while attempts are made to restructure or sell them.

<sup>54</sup> Council of Ministers, 'Negotiation with the United States in the Field of Air Transport,' Press Release: 172 – Nr. 8079/96, 17 June 1996.

stated support for liberalisation, only some airlines tepidly supported it, while other carriers and the airline unions were strongly opposed. In addition, the EU's more ambitious objectives – abolishing ownership restrictions and permitting cabotage – would have required Congressional action.

Given its limited ambitions and domestic opposition, the US was willing to commit only to a limited first step with a timetable for further liberalisation.<sup>55</sup> In exchange the US gained increased access to EU airports, although how much was not settled. In June 2004 the Commission sought guidance from the Council on whether this was an appropriate basis for an agreement. The Council, however, did not endorse the approach. Although the June 2004 EU/US summit called for continued negotiations, they entered a hiatus during the US presidential elections and the change of Commission. At the end of March 2005 the two sides renewed their commitment to work towards a 'comprehensive aviation accord,' and tasked the negotiators with reviewing the possible elements of an EU/US ASA.

Several lessons may be drawn from this case. First, it highlights how liberalisation usually creates losers as well as winners and how likely losers will oppose it. Such opposition is particularly powerful when legislative changes are required to liberalise markets. Second, the aviation case reveals that the transatlantic relationship is competitive as well as cooperative: each side will seek to secure as much as it can for as little as possible. In this context negotiating power matters, and the side that needs the agreement least is in the stronger bargaining position. Third, particularly in areas of shared competence, intra-EU cooperation can be difficult and the Commission cannot always deliver the member states.

It is important to note – as the case of aviation shows – that there are always winners, as well as losers, from transatlantic economic policy cooperation. The challenge is to entrench political support for the opening of markets at the highest political levels, to the point where commitments to the diffuse and long-term gains of policy cooperation are strong enough to resist appeals for protection.

It was often suggested to us that the NTA has suffered from a lack of high-level attention under the current US administration (although it was also noted that the higher level of attention under Clinton did not necessarily produce better results). The TEP in particular has suffered. It is worth considering, in some detail, why it has failed to meet expectations.

In substantive terms, the TEP and its Action Plan (agreed in November 1998) focused more directly than the NTA on regulatory barriers to trade and on regulatory and standards cooperation. They committed both sides to negotiations in specific issue-areas including services, intellectual property, food safety and biotechnology.<sup>56</sup> A new set of institutions was created to manage the economic aspects of the relationship, including a Steering Group, charged with monitoring, implementing and reviewing TEP objectives, as well as expert-level working groups.<sup>57</sup> A new 'early warning system' designed to identify potential trade disputes before they happened was unveiled within TEP following the Bonn EU/US summit in June 1999.

The Commission undertook an initial assessment of the TEP in October 2000, concluding that its record of cooperation was uneven. On the positive side, US and EU trade negotiators had cooperated in their efforts to launch the current WTO trade round (in November 2001), and US and EU regulators had successfully established a dialogue and begun substantive cooperation in a number of issue-areas. Nevertheless,

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<sup>55</sup> The proposed first step agreement included accepting an EU designation of airlines and agreeing to seek to raise US ownership restrictions from 25% to 49% (the EU's current level).

<sup>56</sup> 'Transatlantic Economic Partnership: Action Plan', text available on-line at: <http://europa.eu.int/comm/trade/bilateral/usa/1109tep.htm>.

<sup>57</sup> The TEP Steering Group consists of the Assistant US Trade Representative for Europe and European Commission officials (including from the Directors level), and a Council Presidency representative.

the Commission report also found that regulatory cooperation had been slow to develop in a number of issue-areas. Implementation of the 1997 Mutual Recognition Agreements (MRAs) had been disappointing.<sup>58</sup>

Another study conducted two years later found similar lags in regulatory cooperation, arising not least from the independence of EU and especially US regulators, which resisted ‘compromising’ national regulatory mandates in order to facilitate international trade. Other problems included transparency and administrative law requirements for regulators, which differed between the US and the EU; the need to protect confidential information, which limited the ability of regulators to share information; the existence of mixed regulatory competences in both the EU and the US; and the insistence of both sides that all cooperation respect the regulatory sovereignty of each.<sup>59</sup>

The same study found that TEP’s record was mixed at best. Meanwhile, several new dialogues, including the Policy Dialogue on Border and Transport Security (PDBTS) and the Financial Markets Regulatory Dialogue, were repeatedly praised for having defused significant regulatory conflicts while averting others.<sup>60</sup> Participants also pointed to the conclusion, at the June 2004 EU/US Summit, of the ‘Roadmap for EU/US Regulatory Cooperation and Transparency’, which codified regulatory cooperation across a wide range of sectors and, notably, proposed a ‘model confidentiality agreement’ to facilitate confidential information-sharing between regulators.<sup>61</sup>

Still, the implementation of the TEP has been a major disappointment. Its Steering Group has fallen into disuse, not having met at all since the June 2004 summit, despite having been instructed in the summit conclusions to review the implementation and functioning of the Road Map. The TEP Biotech Working Group has not met since 2000, in a reflection of stark differences in regulatory procedure for biotechnology on either sides of the Atlantic.

Furthermore, the record of implementing a considerable number of transatlantic economic agreements has been poor:

- The 1997 Mutual Recognition Agreements, three of which (electrical safety, medical devices, and pharmaceuticals) have encountered significant delays primarily because of slowness by US regulators to recognise the equivalency of certification by EU regulators and private laboratories;
- The 1998 Veterinary Equivalence Agreement, has encountered similar difficulties; and

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<sup>58</sup> Commission of the European Communities, 2000. *The Transatlantic Economic Partnership Overview and Assessment*, Coordination: DG TRADE.E.3, October.

<sup>59</sup> BP Chair in Transatlantic Relations, *The Political Economy of the Transatlantic Partnership*, report prepared for Her Majesty’s Treasury, United Kingdom, and the Ministry of Finance, Government of the Netherlands, July 2002.

<sup>60</sup> We evaluate these dialogues in section 4 (‘Institutional Analysis’) below.

<sup>61</sup> Negotiation of this model agreement is scheduled to begin later in 2005, according to participants.

- The dialogue on agricultural biotechnology has broken down, culminating in the US filing of a WTO complaint against the EU's so-called moratorium on the approval of new GM varieties in May 2003 (see case study 5, above).

Put very simply, the transatlantic economic agenda has made almost no measurable progress over the past 5 years.

One bright spot is that the TEP's so-called Early Warning System seems to have worked reasonably well in identifying draft regulations or legislation on either side capable of impeding trade and investment. The system does not, however, prevent legislators or regulators from agreeing 'unilateral' regulations with significant impacts on trade. Indeed, several of the main 'successes' of the dialogues on financial services and trade and border security were in fact designed to minimize the negative trade and investment consequences of unilateral decisions on accounting standards, container security, and passenger name records.

Generally, recent experience of the US/EU economic agenda suggests that regulatory cooperation has to become more proactive (working together to study, adopt, and implement regulations) rather than reactive (negotiating solutions to trade-related regulatory crises). It must implicate key legislative and regulatory actors on both sides of the Atlantic.

In view of their weaknesses, it is surprising how few participants in the transatlantic economic dialogue propose a radical overhaul, much less abandonment, of the NTA or the TEP. Ultimately, the TEP has had a mixed record of compliance in the face of many formidable obstacles. Most participants propose improvements in the present framework, including *inter alia*:

- a continuing coordinating role for the TEP Steering Group and/or the NTA Task Force and the Senior Level Group (although some participants argued against excessive centralization of economic cooperation in the latter);
- more bottom-up coordination among US and EU regulators in areas such as pharmaceuticals, cosmetics, and consumer product safety in which regulators have proven willing to engage in exchanges of information; and
- greater top-down incentives for regulators to engage in sustained dialogue, including most notably the provision by each side of financial resources earmarked for international regulatory cooperation (hence not competing with the regulators' core mandates for budgetary and staff resources).

Stepping back from the nitty-gritty of such improvements, it must be acknowledged that what is touched by the TEP constitutes an important but narrow slice of the US/EU economic agenda. Relaunching the TEP agenda successfully would give the economic agenda a valuable injection of forward momentum. Broadly, it would help protect against worst case scenarios, including sharp downturns in both the European and American economies – alongside rapid growth in large Asian competitors including China and India – leading to a more insular, inward economic policy focus of a kind that could do irreparable damage to the US/EU economic relationship.



Nevertheless, it is sobering to consider how many crucial determinants of transatlantic economic relations – of far more fundamental importance than anything covered by the TEP – are, at present, entirely outside its scope (or, in some cases, US/EU dialogue altogether):

- Trade negotiations (such as on the Doha round) or dispute management;
- Exchange-rate management or monitoring;
- Most direct investment issues; and
- Most defence (including defence industry) issues.

Moreover, there are issues that are decidedly *within* the remit of the NTA – including ‘non-economic’ issues such as environmental protection (see case study 7 below) that have powerful economic impacts – that no amount of US/EU dialogue can solve in the absence of political determination.

#### **CASE STUDY 7 – THE KYOTO PROTOCOL**

On 16 February 2005 the Kyoto Protocol came into force eight years after its negotiation. The agreement calls for a reduction of greenhouse gas emissions among industrialized countries by 2012 to levels 5.2% lower than their 1990 levels. Ratification by at least 55 countries representing at least 55% of the world’s emissions gave the agreement binding force.<sup>62</sup> Failure to reach prescribed targets by 2012 will in theory result in penalties that impose still stricter limits in subsequent rounds.<sup>63</sup>

Significantly, the United States is not a party to the agreement. During the second Clinton administration, the US had supported the Kyoto Protocol at least to the extent that it was among the signatories to the document in November 1998, although the administration was never close to submitting it to Congress for ratification. President George W. Bush made it explicit that the US would not ratify the Protocol, arguing that Kyoto would not only be expensive for US companies to implement but was also structurally flawed. The basis for the latter claim was that many of the world’s emerging economies (and by extension likely future polluters) were excluded from having to adhere to any emissions targets whatsoever. Most importantly from the US perspective, China, India and Brazil, as developing countries, would all be free of emissions restrictions in at least the medium term. As an alternative, the United States has suggested a system of voluntary compliance with lower emissions targets and greater attention to improved energy technologies.

After the US withdrawal, there was some question as to whether the Kyoto Protocol would ever come into force. In this respect, Russian ratification in November 2004 was crucial, allowing the agreement to come into effect 90 days later. Russia had long equivocated on whether it would finally ratify Kyoto, and it was reported that Russia traded its ratification of Kyoto for greater European support of its bid to join the World Trade Organization. In addition, there is speculation that Russia will actually be a net beneficiary from being able to trade in emissions credits.

From a transatlantic perspective, the failure of the United States to support the Kyoto Protocol has been damaging on a number of levels. The US is the largest emitter of greenhouse gases, producing about one quarter of the world’s total.<sup>64</sup> While international bodies were immediately concerned that the US’s non-participation would make meeting the Kyoto targets impossible, European leaders used strong language to condemn the Bush administration’s move. The European Parliament called the US withdrawal ‘appalling and provocative’, and the French Prime Minister Lionel Jospin said it constituted a ‘serious unilateral act’. Italian Environment Minister Willer Bordon even threatened to launch a WTO action against the United States for ‘environmental dumping’.<sup>65</sup>

<sup>62</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change (see <http://unfccc.int/resource/docs/convkp/kpeng.html>).

<sup>63</sup> Some scholars argue that the penalties are insufficient to deter non-compliance. See Scott Barrett, ‘Political Economy of the Kyoto Protocol’, *Oxford Review of Economic Policy* 14:4 (Winter 1998).

<sup>64</sup> For some European reactions to the Bush administration’s see ‘Scharfe Kritik Prodis an US-Präsident wegen Abkehr von Kyoto’, *Agence France Presse*, 31 March 2001; ‘EU kämpft weiter für den Klimaschutz Absage der Amerikaner an Abkommen von Kyoto’, *Süddeutsche Zeitung*, 31 March 2005.

<sup>65</sup> For these references, see ‘Euro Parliament takes hard line on the US Kyoto pull-out’, *Agence France Presse*, 5 April 2001; Anne Penketh, ‘Prodi pledges EU support for Kyoto in effort to shame Bush’,

However, the enactment of the agreement has created incentive structures that facilitate US compliance with some terms of the Kyoto Protocol. Regional, state-led movements for reducing emissions have gained momentum on the west coast and in the northeast of the United States since 2001. In the US Senate level, even among Republicans who have traditionally opposed international accords such as Kyoto, there is increased motivation to take action on climate change. From a business perspective, multinational corporations that already operate under the Kyoto Protocol outside the United States favour greater US participation in international environmental agreements so that their government enjoys a greater voice. In addition, Kyoto has meant that commercial opportunities for cleaner and more efficient energy technologies have expanded—and many firms would like to see the US become part of that market. Finally, US firms might stand to gain from emissions trading, particularly if those firms have incentives to exploit new technologies. As a consequence, legislation that would limit carbon dioxide emissions is currently pending.<sup>66</sup>

In short, the NTA will never cover everything – including many crucial things – on the transatlantic economic agenda. Yet, however it is done, the need to overhaul the transatlantic economic dialogue is supported by compelling evidence:

- a recent prospective study of what the transatlantic economy will look like in 2020 (for which one of us acted as project director) concluded that ‘only under the most favourable economic conditions could one expect...joint global leadership provided by the transatlantic relationship...to survive in its current form’.<sup>67</sup>
- many studies (including that just mentioned) consider that US prosperity and European stagnation is the most likely future scenario, and that (for example) current fiscal trends suggest that French debt could be rated as ‘junk’ by the early 2020s. But so could American (and German and British) debt by 2035.<sup>68</sup>
- the President of the American Association for the Advancement of Science has recently argued that Europe and America have the basic economic and educational tools to compete globally, but are not enhancing them systematically. The result is what she calls a ‘quiet crisis’.<sup>69</sup>
- one popular historian has recently argued that the transatlantic alliance has ‘no more than twenty years left in which it will still be the main world-shaper’.<sup>70</sup> If the US and EU wish to take advantage of their ‘last chance to set the agenda of world politics’, and encourage the spread of the prosperity they share to the global economy, they logically could begin by kick-starting their own economic cooperation.

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*The Independent*, 5 April 2001, p. 4; ‘Italian minister threatens to take USA to WTO over environment accord’, *BBC Monitoring Europe*, 4 April 2001.

<sup>66</sup> Kathryn Westcott, ‘Pressure builds for US climate action’, *BBC News*, 14 February 2005.

<sup>67</sup> The Atlantic Council, *The Transatlantic Economy in 2020: a Partnership for the Future* (November 2004), p.x).

<sup>68</sup> According to a recent (March 2005) assessment by Standard & Poor’s (see [http://money.cnn.com/2005/03/21/news/international/sp\\_junk.reut/](http://money.cnn.com/2005/03/21/news/international/sp_junk.reut/)); *The Economist*, 26 March 2005, p.51. See also Bowman Cutter, Paula Stern and Peter Rashish, ‘Washington wants economic reform in Europe’, *Financial Times* (UK edition), 22 November 2004, p.17.

<sup>69</sup> Shirley Ann Jackson quoted in *New York Times Magazine*, 3 April 2005, p.37.

<sup>70</sup> Timothy Garton Ash, *Free World* (Penguin/Allen Lane, 2004), p.192. See also Bowman Cutter, Paula Stern and Peter Rashish, ‘Washington wants economic reform in Europe’, *Financial Times* (UK edition), 22 November 2004, p.17.

## 4) INSTITUTIONAL ANALYSIS

### *The value of formal dialogues*

It is worth recalling that the NTA framework goes considerably beyond other frameworks for bilateral cooperation – in terms of ambitions, formality, and institutional tackle – that either partner maintains with 3<sup>rd</sup> parties.

In considering the NTA's strengths or weaknesses, it is important to recall what it is not. The NTA is not a formal *treaty*: a legally binding international agreement, which commits both sides to specified objectives and requires domestic ratification.

It thus also differs from what has become one of the EU's most common association instruments – the *Partnership and Cooperation Agreement* (PCA). PCAs are 10-year bilateral treaties, signed and ratified by both sides, which create legal frameworks for cooperation. Designed primarily to encourage respect for democratic principles and human rights, PCAs comprehensively spell out a partner country's political, economic and trade relationship with the EU. Most of them have been agreed with states in Eastern Europe and Central Asia.<sup>71</sup> However, the EU also maintains different forms of 'partnership agreements' with third countries, including groups of them, as in the case of the Cotonou Partnership Agreement with the African, Caribbean and Pacific (ACP) states or the Euro-Mediterranean Partnership.

On one hand, it is sometimes pointed out in debates about the NTA – particularly by those who favour a more binding arrangement – that the EU has some kind of formal partnership agreement with virtually every region and nearly every country in the world. The United States is an exception.

On the other hand, several of the more experienced of our interviewees recalled that formal dialogues are something of a throwback to the Cold War. At that time, both sides (especially the then European Community) engaged in such exchanges – often reluctantly – because 3<sup>rd</sup> parties (especially eastern bloc or Soviet-aligned countries) insisted on formal structures as the price of having political dealings with them.

In the post-Cold War period, both sides – but particularly the EU – have employed the same technique of offering, negotiating, and holding formal dialogues with 3<sup>rd</sup> countries, including (other) regional cooperation organizations, both as a way to reward desirable behaviour and punish recalcitrants. These formal dialogues often have symbolic importance, especially when first launched. Examples include APEC, the Northern European Initiative (NEI)/Northern Dimension Initiative (NDI), or ASEM. But their symbolism inevitably tends to wane, especially after they stop producing agreements on issues on which it is relatively easy to (in the language of policy cooperation) 'harvest low-hanging fruit'.

In a sense, then, the NTA's diminishing returns over time is a tendency common to most formal dialogues. Several of our interviewees have concurred with the view of one who suggested to us that 'formal dialogues should be what one has with countries

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<sup>71</sup> At this writing, there are 10 in force with countries in these regions (see full list at [http://europa.eu.int/comm/external\\_relations/ceeca/pca/index.htm](http://europa.eu.int/comm/external_relations/ceeca/pca/index.htm)).

to which symbolism is important and with whom the relationship is so thin that a natural, unstructured, interest-driven dialogue is not taking place'.<sup>72</sup>

### *Strengths and weaknesses*

It is not immediately clear – and this was a point made by numerous interviewees – whether the NTA suffers more from problems of *substance* or *process*. That is, has it failed to meet expectations because:

- it fails to cover enough of the range of issues of importance to EU/US relations, or transatlantic relations more generally, or does not deal with them in a way that is sufficiently systematic?

*or*

- is it perhaps not structured in a way that allows for decisions and actions to be undertaken at the most appropriate levels?

Despite this ambiguity, we offer an assessment of the effectiveness of each of the main NTA institutions. We then identify the main strengths and weaknesses of the framework, and offer a set of recommendations for its reform.

As we have noted, the institutional framework for EU/US dialogue has evolved over time. Most notably, the number of summits per year was reduced from two to one after 2000. Biannual meetings between the US cabinet and EU Commission were abandoned almost as soon as they were initiated. The NTA Task Force (TF) was created in 1997 when the workload of the Senior Level Group (SLG) expanded to the point where it required a preparatory body.

With some variation, the NTA Task Force now meets four times per semester<sup>73</sup> and the SLG meets twice.

Although neither is genuinely a forum for problem solving, the SLG and Task Force were rarely characterised by our interviewees as working very well. On the US side, they were almost universally criticized for not living up to expectations.

We also heard frequent complaints – from both, but especially the European side – about meetings that quickly descend to the level of technical discussions between experts. The size of delegations in SLG and TF meetings is often viewed as being so large as to make them lose any sense of intimacy.

There is a basic difference of view on the US side about the use of experts. The practice of inviting experts to NTA meetings tend to be defended by the US side on the grounds that bringing others into the process performs the valuable and much-needed service of raising the profile of the EU in the American administration. Yet,

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<sup>72</sup> Former senior EU official.

<sup>73</sup> There has been a discussion (on the US side, at least) about making the Task Force meetings monthly and employing videoconferences more frequently, but we have been told that the idea has met with little enthusiasm.

most US officials now seem convinced of the value of smaller meetings amongst managers of the transatlantic dialogue.

It was frequently suggested to us by interlocutors on both sides that the institutional framework for EU/US relations matters far less than the degree of ‘political will’ that exists to make it productive.

### ***The NTA’s Institutions***

We examine each of the main institutions in turn below:

#### **□ US/EU summits**

What is perhaps clearest about the NTA framework is the problem of political disconnect. Specifically, the NTA has been more successful in promoting substantive dialogue at the SLG and TF levels than at the level of summits themselves.

Nearly all who have been involved in preparing and conducting summits on the US side spoke of the dislike of Presidents Clinton and George W. Bush for the sessions. Both apparently expressed surprise and frustration at the need to discuss specific trade issues, or other matters that usually were not handled at the presidential pay grade. Meanwhile, EU participants in summits are obviously not the equivalent of the US President in terms of negotiating mandate.

In fact, a basic problem with the EU/US dialogue, at all levels, is the European Union’s very narrow scope for actual negotiation, since its positions are usually laboriously worked out beforehand in Brussels. The rigidities of the US inter-agency process were also noted as problematic by our interviewees, but much less frequently.

Numerous respondents queried the need to have so many different people (sometimes 35-40 people) at or around the table at summits. Several suggested that it would be far more desirable, in terms of strategic discussion or actual problem solving, to have a more restricted ‘leaders plus one or a few’ format.

Perhaps ironically, the recent Irish summit at Dromoland Castle (June 2004) was viewed, on one hand, as almost a textbook summit in terms of good deliverables. However, it was also one of the shortest EU/US summits, with little or no discussion of broad, strategic issues.

From the US side, we heard familiar complaints about how the summits have suffered over the years from the mixed quality of the EU presidency and of the Commission president. At times, it was claimed (by more than one interlocutor), it has been a struggle to find things to do at the summit. The reduction to one summit per year seems universally accepted; almost no one spoke in favour of reintroducing a second annual summit.

The summits should significantly benefit from the (eventual) creation of an EU Council President and Minister of Foreign Affairs, although it was often noted that a

lot would depend on who held these offices. On the European side, it was suggested to us that the transatlantic summits could benefit from the evolution of the European Council, which was already moving (even before the creation of the new President) in a direction that allowed for more strategic and programmatic thinking by the EU. An interesting suggestion was that EU and EU/US summits could usefully be linked together.

Because of the timing of our fieldwork, the contrast was noted between the regular US/EU summit and the February 2005 meeting between President Bush and EU leaders. One objective of the NTA was to raise the public profile of US/EU relations and give them a 'public face'. Yet, the annual transatlantic summits struggle to catch the public eye, on both sides but particularly in the US, while the one in February probably did. Certainly, the June 2005 summit in Washington is unlikely to have the same impact.

One of the central challenges for US/EU relations is to make annual summits truly 'action-forcing events'. The most logical ways to do so are to:

- designate summits as places to discuss broad strategic issues – such as China or the Middle East – with a target of choosing 4-5 specific strategic themes to be discussed at this level.<sup>74</sup>
- conclude each summit with a declaration that updates a rolling agenda of US/EU cooperation (see section 4) on a regular basis in view of discussions on strategic themes at annual summits.
- appoint '*sherpas*', who would be personal representatives of the US President and (initially) European Commission President who would participate in the preparation of the summit with a view to ensuring that the meeting addresses issues of high political relevance.

Logically, US/EU summits should perform two tasks, and two tasks only: either launching new efforts or concluding successful ones.

#### □ **Ministerials**

Currently, the US Secretary of State and EU Troika meet at ministerial level at least once per EU presidency, and more often if the need arises. Over the years, the US/EU ministerials have fostered good personal relations between top officials, which have been useful in addressing key foreign policy issues.

Although the US/EU ministerials are technically not part of the NTA, they could be used more effectively to provide guidance to the SLG and TF. Specifically, they

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<sup>74</sup> We note that this course of action was recommended years ago in a communication from the EU Commission to the Council entitled 'Reinforcing the transatlantic relationship: focusing on strategy and delivering results', COM (2001) 154 final, 20.3.2001.

could task lower level officials with exploring ways of addressing issues or preparing specific summit agenda items.

#### □ **the Senior Level Group/Political Directors**

The Senior Level Group is formally charged with ‘progress-chasing’ on the NTA agenda between summits. The US and EU also meet at the level of political directors for general discussions of foreign policy issues several times a year.<sup>75</sup>

The EU representation in the SLG includes Commission, the Council Presidency, and the Council General Secretariat. Leaving aside usual US frustration with the rotating Council Presidency, we have heard a mix of views about whether the EU’s delegation has sufficient weight in terms of its composition on the political side (see below). In the political directors, the EU is variously represented by the High Representative and Council Presidency plus (in some meetings) national political directors.

In recent years, the US has been represented in the SLG by Alan Larson, the Under Secretary for Economics and Business. During recent years, the Assistant Secretary for Europe and Eurasia, Beth Jones, has (at least sometimes) represented the US in meetings of the political directors.

It was frequently pointed out to us that the Under Secretary for Political Affairs (‘P’) in the State Department has not participated, either in the SLG or in the political directors meetings, since the earliest days of the NTA. Many close to the NTA dialogue on both sides (including US officials) cited the non-participation of ‘P’ as a major problem. Although Larson is well respected, his remit as Under Secretary for Economics and Business does not extend to many issues on an increasingly political agenda. Many of our interviewees, on both sides, will enthusiastically welcome the recent announcement of the new ‘P’, Nicholas Burns, that he intends to participate in the SLG as co-chair.<sup>76</sup> However, it is not clear that participation in the SLG has been made a permanent part of the Under Secretary’s portfolio, as opposed to a task taken on by the current incumbent on the basis of his own personal inclinations.

More generally, there appear to be three main problems at this level:

- Meetings of the SLG and Political Directors sometimes appear to involve little more than a formal exchange of talking points or briefings.
- the SLG and NTA more generally tend to work on a ‘bottom up’ basis. The SLG is meant in principle to work as a sort of Board of Directors for the NTA: identifying issues that can be moved forward, tasking others to develop proposals, and then making decisions. However,

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<sup>75</sup> For example, a meeting is held with the US Assistant Secretary of State (with the EU represented by its ‘troika’; see below) once per semester when EU Political Directors meet informally.

<sup>76</sup> Speech by Ambassador R. Nicholas Burns, ‘A transatlantic agenda for the year ahead’, Chatham House, London, 6 April 2005 (available from <http://www.riia.org>).

issues tend to filter upwards in the NTA process, from the Task Force to the SLG, and from the SLG to summits.

- It was repeatedly suggested to us that the SLG should (ideally) set policy guidance and follow up on progress. However, the main agencies/individuals involved in the SLG do not have ‘pull’ within their own administrations: there are many issues touched upon by the NTA which require action by agencies over which neither the State Department nor DG Relex have jurisdiction, let alone control.<sup>77</sup>

The SLG appears to suffer from a more generic problem: a lack of political commitment and attention at the higher levels. The SLG *is* quite a ‘senior level group’, but it cannot by itself resolve problems if the US inter-agency process is stalled or an issue is caught between the Commission and the Council and/or European Parliament.

One tangible suggestion made to us by several respondents was to hold US/EU ministerials before meetings of the SLG to give the latter political guidance. Another was to create ‘*sherpas*’ to prepare the US/EU summit as is presently done for the Group of 8 (G-8) summits.<sup>78</sup> Logically, the US *sherpa* could act as a personal representative of the US Secretary of State. Their European counterpart could act (at least initially) as a personal representative of the European Commission President, perhaps eventually performing the same function for the EU Minister of Foreign Affairs.

Regardless of whether these (or other) ideas for institutional reforms are pursued, the US/EU dialogue is now sufficiently broad as to require one designated, senior official on both sides to be given clear responsibility for coordination and oversight of transatlantic relations. Logically, this official should ‘lead’ for their side in the SLG. The US Under Secretary for Political Affairs would be a strong candidate on the US side. Assigning them this duty would underline the permanence of an upgrade in political representation in the SLG on the US side.

Who would be the EU’s lead official is perhaps less obvious. However, all the usual EU concern about turf protection needs to be put aside so that one individual – and one only – is designated as responsible for overseeing the strategic development of relations with the US.

In any event, there is a clear need for SLG to resolve more issues, probably by focusing its agendas on *fewer* issues.

#### □ NTA Task Force

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<sup>77</sup> It was pointed out to us that when the NTA was founded, DG Trade and RELEX were joined in DG I of the Commission.

<sup>78</sup> See Nicholas Bayne, *Hanging in There: the G7 and G8 Summit in Maturity and Renewal* (Ashgate, 2000), pp.210-12.



The main problem with the NTA Task Force (TF) seems to be that its agendas are often too crowded to allow for in-depth discussions. We have seen some evidence to suggest that TF agendas (as well as SLG agendas) *have* become more focused in recent years. Still, numerous officials with close knowledge of the NTA told us that agendas at both levels needed to be shorter, less cluttered, and more action-oriented.

A basic problem for the TF is that no one seems to be taking charge of the NTA process at higher political levels. Too many issues thus are left unresolved at this level, thus putting the TF under pressure somehow to ‘keep dialogue going’ on issues that resist resolution for long periods of time.

Nearly all on the front line of the US/EU dialogue agree that the NTA – and particularly the TF -- requires too many meetings according to a schedule that is far too rigid. Its main participants need more time between meetings to be able to lobby within their own administrations for the implementation of what is agreed within the NTA.

When we asked officials with experience of the TF how it could work better, they tended to respond with ideas linked to two approaches that would be alternatives to the status quo (and which do not appear necessarily to be mutually exclusive):

- making the TF primarily responsible for *management* of the NTA dialogue, thus taking over this function from the Senior Level Group (which would then focus on a more strategic dialogue). Designating the TF as primarily responsible for management would mean that its meetings would involve representatives from all associated dialogues (periodically as needed).
- reducing the number of TF meetings and relying more on digital videoconferences. We were struck by how often our interviewees spoke of the virtues of videoconferencing: they cut down on travel, tend to keep meetings focused (since participants hesitate to table entirely new issues), and can be nearly as productive as face-to-face meetings *if* lead participants know each other well already.

### *Other US/EU dialogues*

In this section, we first discuss dialogues that are linked to the NTA but also semi-autonomous. We then examine channels for dialogue that are *not* linked to the NTA, before considering ‘people-to-people’ dialogues.

One of the central objectives of the NTA was to systematise bilateral exchanges. However, US/EU relations remain – mostly for pragmatic reasons – a highly *federated* structure, which incorporates a very diverse range of different exchanges. No third country incorporates all dimensions of its relations with either the US or EU under a single umbrella; in this regard, there is nothing unusual about the NTA.

All US/EU exchanges are linked, more or less directly, to the NTA framework insofar as the agendas of the Senior Level Group and NTA Task Force feature discussions of specialised exchanges on trade, homeland security, financial markets, and so on. Still, any comprehensive analysis of the EU/US relationship must investigate forums that operate with considerable autonomy and, ultimately, offer a judgement as to whether they should be incorporated more directly into the NTA.

### ***Political Dialogue – ‘the Troikas’***

There are approximately 20 EU Council working groups, organised on a geographic and thematic basis, with which the US has established regular dialogues known as ‘Troika working groups’.<sup>79</sup> More recently, informal exchanges have been held between the US and the EU’s Political and Security Committee (COPS).

These exchanges are widely viewed as useful in forging contacts and encouraging information sharing. Only rarely do they promote actual policy convergence; the most that could be hoped for from most of our interviewees was an elimination of conflict and duplication in aid and assistance programmes.

We heard a rich variety of views about whether Troika dialogues should be brought more formally into the NTA process, which broadly tended to culminate in one of three prescriptions:

- it would be desirable to have clearer lines of reporting from the Troikas (along with other non-NTA dialogues) to the SLG, which discusses many issues also touched upon in the Troikas. Making the NTA a more overarching umbrella for the EU/US dialogue would allow for more comprehensive treatment of cooperation, particularly on regional issues, and might allow trade-offs and package deals across a broader range of questions.
- we found interest on the US side (particularly amongst the new team at the State Department) in using the Troika working groups – perhaps together with other ad hoc arrangements – to bring together experts on both sides. In particular, it was suggested that new interagency forums could be created to organise input from the US side, as has recently been done on anti-terrorism.
- the Troikas should be left to operate as they are. It was repeatedly suggested to us that the quality of dialogue that takes place within them is often considerably superior to that which takes place formally within the NTA itself. Bringing the Troikas within the NTA would stifle their most important strength: their informality.

Given this diversity of views, it is difficult to offer recommendations on revamping current structures. What does seem sensible is to build on the success of political

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<sup>79</sup> The EU is represented in these dialogues by its ‘Troika’: that is, by representatives of the Commission, Council General Secretariat, and Council Presidency. We were told of 17 different EU working groups with which there was expected to be meetings (sometimes by videoconference) with the US during the Luxembourg Council Presidency.

dialogue mechanisms and avoid seeking to make them more formal. In the long term, more linkage of the Troika dialogues with the NTA (or whatever succeeds it) could be considered as part of a long-term reflection on the implications for US/EU dialogue of the EU's new Constitutional Treaty (if and when ratified).

In addition to the Troikas, there are a variety of EU/US dialogues that take place on broad foreign policy (especially regional) issues in multilateral forums. One example is the so-called Quartet on the Middle East (see case study 8). Along with the Contact Group on Bosnia or EU-3 on Iran, the Quartet was widely viewed by our respondents as representing the 'wave of the future', particularly in an EU of 25 plus: specifically, pragmatic mini-lateral forums that can get business done. Providing they are not overly institutionalised, the EU's smaller countries and non-participant institutions increasingly seem to accept such forums as useful, pragmatic ways for the Union to engage in international diplomacy. They tend to be supported almost instinctively by Washington.

#### **CASE STUDY 8 - THE MIDDLE EAST 'QUARTET'**

The Quartet – consisting of the US, EU, Russia and the United Nations – was created in April 2002, as a 'paroxysm of violence' gripped the Middle East.<sup>80</sup> The US was widely viewed as unengaged in the region.<sup>81</sup> An earlier series of individual efforts by national EU governments to reduce hostilities and renew dialogue had clearly failed. The Quartet was touted by Colin Powell as a sign of the Bush administration's willingness to embrace multilateralism where it could be put to good purpose.

In some respects, the Quartet has built on and extended previous US/EU cooperation (such as Javier Solana's participation in preparation of the 2001 Mitchell Report). Most importantly, it has produced the Road Map that now provides the framework for seeking (*inter alia*) an independent and viable Palestinian state by 2006. The Quartet has been convened at its most senior level (US and Russian Foreign Ministers, UN Secretary-General, EU High Representative) roughly 4 times per year, and at working level whenever needed (for example, 3 times in 10 days in March 2004).

Numerous interviewees who have observed the Quartet described it as a primarily US/EU framework, when it is not entirely dominated by the US.<sup>82</sup> The UN is viewed as representing the 'Arab world' in the Quartet. Russia's role has been characterised as 'minimal' and 'symbolic'.

It is clear from the text of the Road Map that the EU's role in its design was central.<sup>83</sup> However, President Bush's speech of 24 June 2002 on the Middle East, which was viewed as undermining a Quartet approach agreed only a few days earlier, illustrated for many how little weight the Quartet carried within the US administration. So did the delay in the publication of the Road Map until after the Iraq war.

The Quartet is only one channel amongst several for EU/US dialogue and the coordination of policies on the Middle East. The G8 has increasingly come to the fore in the wake of the 2004 Sea Island Plan of Support for the region. The creation of both Ministerial and Civil Society forums within the G8 – as well as the Quartet itself – have clearly reduced the scope for governments in the region to play the EU and US off against each other.

Meanwhile, the so-called Broader Middle East and Mediterranean (BMEM) strategy has been discussed with increasing frequency within the SLG, with the US requesting that the EU take or share the lead on specific actions (such as on education/literacy, business promotion, and micro finance/investment). There has often been a strong sense of both sides 'talking past one another' in the NTA dialogue on the BMEM. Yet, there is recent evidence of declining outright opposition to the positions taken by the other side and shared will to focus on practical issues such as exchanges at the programming phase between US missions and EU delegations in the region.

<sup>80</sup> Martin Ortega, 'A new EU policy on the Mediterranean?', *Partners and Neighbours: a CFSP for a wider Europe* (Institute for Security Studies, Chaillot paper no 64, September 2003), p.95

<sup>81</sup> See May Chartouny-Dubarry, 'L'après-Oslo: paix avortée ou guerre annoncée?', *Politique étrangère*, juillet-septembre 2002.

<sup>82</sup> Jackson Janes, *The Questionable Quartet* (American Institute for Contemporary German Studies, 2003 (see <http://www.aicgs.org/aicgs/at-issue/ai-qq.shtml>)).

<sup>83</sup> See Carl Bildt's contribution to *One Year On: Lessons from Iraq* (Institute for Security Studies, Chaillot paper no 68, March 2004), p.22

Most of our interviewees have described the Quartet as, at best, a moderately useful means to very difficult ends. It almost naturally falls into disuse whenever there is stalemate in the Middle East peace process. Many see it as a 'convenient fiction' for what is in effect a US/EU 'duet', and even as way to 'get other players on board without giving them influence on US policy'. Several commented on Israel's basic aversion to the Quartet. Others considered it a genuine achievement that the Road Map was endorsed by both the UN Security Council and General Assembly, and that it had allowed many states 'to say what they would not say on their own about terrorism', and compelled the US to 'say much that it would not have said on its own about Israel'.

We would suggest that three lessons could be drawn from the experience of the Quartet.

- First, the Middle East is perhaps where the EU has enhanced its visibility and impact most tangibly through its representation by either a single special envoy or the High Representative since 2000.

- Second, the Quartet may be viewed an 'adequate framework for cooperation'<sup>84</sup> in the same sense as the NTA is. That is, it works as long as there is political commitment to make it work and the US plays an active (even leading) role, but it also exposes the Union's inability to design or impose solutions in areas of conflict on its own.

- Third, there seems to have been rather minimal coordination of separate US/EU dialogues within the Quartet and those on the BMEM within the SLG/NTA Task Force.<sup>85</sup> The lack of direct linkage between the NTA and Quartet was generally viewed positively by many of our interviewees, on the grounds that progress on vital strategic issues in the Middle East was not held hostage to US/EU disputes (for example on trade).

It is now widely accepted across political and diplomatic classes on both sides of the Atlantic that 'the Middle East is the main neuralgic centre of gravity in the world where an explosive mix of socio-economic dysfunction and political oppression is concentrated and from which the most serious threats and risks, i.e. terrorism and WMD proliferation, emanate'.<sup>86</sup> It is equally clear to us (and many others) that 'there is an urgent need on both sides of the Atlantic to ensure that the different components of Middle East policy fit together into a coherent whole'.<sup>87</sup> It would be difficult to think of any single region in the world on which there is a more obvious need for strategic US/EU dialogue, at the highest political levels.

### ***The Financial Markets Regulatory Dialogue***

The Financial Markets Regulatory Dialogue involves exchanges between the Commission (DG Markt), the US Treasury and the Security and Exchange Commission (SEC). It was established in 2002 as part of the Positive Economic Agenda. It deals with a diverse array of issues including accounting standards, corporate governance, access to stock exchanges, and so on.

The policy terrain covered by this Dialogue received substantial media coverage, especially after the Enron (and other corporate scandals) in the US since 2001. The sweeping legislative and regulatory response in Washington caused difficulties for a many stakeholders and appeared to many Europeans to be heavy-handed. The need for a specialised Dialogue in this area became obvious to both sides since a number

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<sup>84</sup> Ortega, 'A new EU policy on the Mediterranean', p.99.

<sup>85</sup> A recent joint paper by the Commission and General Secretariat endorses the 'operationalisation' of the Quartet in pursuit of the broader objective of restarting the Middle East Peace Process on the basis of the Road Map.

<sup>86</sup> Jiri Sedivy, *One Year On: Lessons from Iraq*, p.106.

<sup>87</sup> Rita Hauser, J. Robinson West, Marc C. Ginsberg, Geoffrey Kemp, Craig Kennedy, Christopher J. Makins, and James Steinberg, *Elusive Partnership: US and European Politics in the Near East and Gulf* (Atlantic Council and German Marshall Fund Policy Paper, September 2002), p.30. See also Richard Youngs, *Transatlantic Cooperation on Middle East Reform* (Foreign Policy Centre, November 2004).

of disagreements – many touching on sensitivities involving independent regulators (such as the SEC) – had to be managed.

A key element in understanding this area of EU/US relations is to note that the SEC is perceived (along with other quasi-autonomous US regulatory agencies) as being mostly uninterested in overseas actors' views. The SEC's work has been supported by the newly created Public Company Accounting Oversight Board (PCAOB), established under the 2002 Sarbanes-Oxley Act to reinforce the quality of accounting and auditing of America's listed companies. Not surprisingly given its mandate, the PCAOB has acted energetically and presented a strong regulatory image with a 'zero tolerance' approach. This approach has appeared, particularly outside the US, to show little deference to the arguments of overseas practitioners and regulators.

The same is often said about the US Congress. Many European stakeholders were outraged at the absence of substantial consultation before the adoption of Sarbanes-Oxley, and its blanket insistence that European-based firms would in reality have to comply with two sets of regulation, European and American.<sup>88</sup>

Nevertheless, disagreements between US agencies and the EU have generally been resolved through low-key negotiations. The aggressive public approach of the US regulatory agencies logically has to be addressed by diplomacy and by experienced officials (as opposed to the public slanging matches that sometimes occur on the trade front), who build trust with their transatlantic counterparts and who focus on the need to solve problems facing what is a very interdependent sector.<sup>89</sup> A revealing consequence of the hard line taken by the US regulators in recent years is the decline in US stock market listings by European companies, and the phenomenon of delisting by those who are already there.

On substantive issues, conflicts of law exist which make it even more difficult for EU operators to comply with US requirements. The PCAOB, for instance, required European entities to provide documents to them which EU-based regulators do not have the right to obtain. Current areas of disagreement that are being positively addressed include:

- accounting standards, an area where the diverging approaches of the EU (favouring International Accounting Standards) and the US (still wedded to US GAAP<sup>90</sup>) could create extremely dysfunctional arrangements for international companies with operations in both jurisdictions – and continuing confusion for external observers obliged to interpret financial statements prepared according to one or the other set of standards. Linked to this is the

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<sup>88</sup>A recent study by Ernst & Young concluded that European companies listed in the US are having to devote more time to compliance with Sarbanes-Oxley, including via expensive and time-consuming record keeping, compared to their American counterparts (see [http://www.ey.com/global/content.nsf/US/Issues\\_Perspectives\\_-\\_Dynamic\\_-\\_Index\\_-\\_Sarbanes\\_Oxley](http://www.ey.com/global/content.nsf/US/Issues_Perspectives_-_Dynamic_-_Index_-_Sarbanes_Oxley)).

<sup>89</sup> For example, major US investment banks make 30-40% of their profits in Europe.

<sup>90</sup> The GAAP are the Generally Accepted Accounting Principles used by companies based in the US or listed at Wall Street. They combine authoritative standards (set by policy boards) and accepted (in the US) ways of doing accounting.

EU view that the US dominance of the standard-setting bodies is unreasonable;

- the Sarbanes-Oxley requirement that companies listed in the US must comply with its onerous internal control provisions, which give companies powerful incentives to delist.<sup>91</sup> The market will determine how this issue develops, but business has clearly stated that it wants the US and EU to facilitate their international dealings, not frustrate them through uncoordinated regulation.

Overall, the private sector believes strongly in the transatlantic dialogue and recognises that a harmonious regulatory relationship is crucial to business realising its own objectives. A European financial services seminar recently pointed to the necessity of *persuading* the SEC and PCAOB of the benefits of cooperation (and also of 'educating' Congress).<sup>92</sup>

The regulatory response to Enron from Congress, the SEC and the PCAOB has been unusually single-minded. Perhaps inevitably, European concerns were relegated from the top table in the process. Yet, careful diplomacy has led to agreement on the implementation of Sarbanes-Oxley, which has probably rebuilt sufficient bridges between regulators on both sides to foster a smoother dialogue in the immediate future.

Officials and stakeholders involved in the Financial Markets Regulatory Dialogue on both sides have suggested that challenges in this area can only be addressed by negotiators who work in a flexible, informal structure. We have been repeatedly told that over-formalising this dialogue by incorporating it more explicitly within the NTA would be counter-productive.

### ***The 'Justice' Dialogue and the Policy Dialogue on Borders and Transport Security***

The attacks of 11 September 2001 had a major impact on transatlantic relations generally, but also on specific mechanisms for managing US/EU relations. Both the 'Justice' Dialogue, which pre-dated September 2001, and the Policy Dialogue on Borders and Transport Security (PDBTS), have become central to US/EU cooperation on counter-terrorism.

The Justice Dialogue began in 1998 on the heels of the NTA, but has always had quasi-autonomous status. The dialogue brings together representatives of the US Department of Justice (DOJ) with EU colleagues in DG Justice and Home Affairs (now DG *Justice, Liberté, et Sécurité*, or JLS). The DOJ has long had relationships with the interior ministries and law enforcement agencies of EU member states, primarily as a result of extradition issues and cross-border prosecutions. As the EU began to extend its competence in JHA, the informal Justice dialogue was established as a means of ensuring that the US had information and access in this rapidly growing area of policy. The DOJ continues to maintain strong ties to national European law

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<sup>91</sup> Even if a company delists in the US, it is still subject to the controls if it has more than 300 US shareholders.

<sup>92</sup> The seminar is part of a continuing series (see <http://www.ettk.ce/et/koolitus/2005/04/item20879>).

enforcement bodies, especially since actual police operations are only carried out at the national level.

But it has found discussions at the European level to be of increasing importance, as the EU develops a more common set of judicial procedures and institutions (including Europol and Eurojust), and as the EU enlarges to include new members who — in the absence of strong national judiciaries and police forces — rely more on Brussels for guidance.

The Justice Dialogue has usually been convened twice per EU Council presidency, initially at the staff level. In 2002, the first US/EU ministerial-level meeting was held within the Justice Dialogue, when US Attorney General John Ashcroft met his EU colleagues in Copenhagen. These discussions have continued regularly, despite sometimes strong tensions in transatlantic relations; of particular note was a meeting in 2003 when Attorney General Ashcroft visited Paris for a G-8 ministerial at the height of difficulties over Iraq.

Despite the fact that meetings can be crowded, with US delegations generally numbering 20-30, the Dialogue as a whole is viewed as very productive. First, most of the individuals involved have deep experience in judicial or law enforcement matters. They are familiar with the technical questions and, particularly at the staff level, are able to relate to each other as law enforcement professionals. Second, (and in part because of the first), the use of talking points is relatively rare. This allows the discussion to be much more free form than is commonly experienced in strictly diplomatic discussions and to address specific problems in a practical way.

Since 2001, the Justice Dialogue has been a central forum for developing agreements on mutual legal assistance and extradition and on liaison with Europol and potentially Eurojust. A recent Justice Dialogue meeting had the following issues on its agenda:

- terrorist financing;
- the use of classified information in courts of law;
- trafficking in people, drugs, and other illicit substances; and
- strategies for fighting organized crime.

The issue of data protection and how it will be handled in criminal investigations has been a subject of discussion, and is expected to become even more important as the EU attempts to harmonize member state procedures in this area.

The Justice Dialogue has also succeeded (at least occasionally) in identifying potential areas of disagreement and finding ways to work toward a solution before a dispute arises. It has contributed to an enhanced level of interaction more generally between principal policy-makers. In the first George W. Bush administration, Attorney General John Ashcroft regularly saw European justice ministers when they came through Washington, either in meetings or in less formal social situations. Attorney General Alberto Gonzales seems likely to continue this practice, having met with the Luxembourg Justice Minister during his first day in office.

The other major transatlantic institutional development in this area is the Policy Dialogue on Borders and Transport Security (PDBTS), which was created as a quasi-

autonomous forum in 2004 after a series of transatlantic disputes threatened to overwhelm the NTA process. PDBTS brings together officials at a high-level to engage in consultation both before as well as after regulatory action. On the US side, it involves officials from the Departments of Homeland Security (DHS), Justice, and State (it is usually chaired by DHS) and on the European side, from the Commission, Council, and Presidency. Although the Dialogue is very new (having only held two meetings) the PDBTS has already garnered a reputation as a success, both among those who manage the NTA process as well as among officials directly responsible for the issues involved. Because this policy dialogue has been a prominent growth area in EU/US relations, we consider it here in some detail.

Following September 2001, but prior to the establishment of DHS, the agenda of the Justice dialogue became increasingly dominated by questions concerning the security of US borders.<sup>93</sup> This discussion began to intersect with an existing transatlantic attempt to establish customs cooperation, as represented by the signature in 1997 of a formal EU/US Customs Cooperation Agreement.<sup>94</sup> Beginning in early 2002, the US government undertook a series of measures designed to increase the security of US borders, including the Container Security Initiative (CSI), new requirements on Passenger Name Records (PNR), and a Congressionally mandated requirement that foreigners entering the United States hold biometric passports. With these and other initiatives, the DHS and the renamed Customs and Border Protection (CBP) Bureau sought to ‘extend our zone of security outward so that American borders are the last line of defence, not the first’.<sup>95</sup> In doing so, however, the US imposed on its EU and other partners a series of onerous requirements (see case study 9 below).

#### ***CASE STUDY 9 – THE HOMELAND SECURITY POLICY AGENDA***

The extra-territorial implications of US homeland security policies agreed in the aftermath of 9/11 both caused huge problems for the EU and seemed to have been subject to little reflection on the part of US legislators and regulators as they were formulated. We highlight three in particular here:

*Container Security Initiative (CSI)*— Announced in January 2002, the CSI sought to identify and examine maritime containers that posed a risk of terrorism while they were still in foreign ports before being shipped to the United States. The US began negotiating bilateral agreements with individual countries – including a number of European countries<sup>96</sup> – that would allow the stationing of US customs agents at those foreign ports. The European Commission immediately objected and began infringement proceedings (later suspended) against a number of EU member states, while seeking the authority to negotiate an EU-wide agreement with the US. That agreement, signed in April 2004, established standards for extending CSI to other EU ports; set minimum standards for port security; established the ‘24-hour rule’ (requiring the provision of 24-hours advance notice of the contents of any maritime container bound for US ports); revitalized the standing Joint Customs Cooperation Committee (JCCC) from the 1997 agreement; and created new working groups on security standards and trade facilitation.<sup>97</sup> Participants credit the agreement with having removed a significant

<sup>93</sup> At this time, the US Immigration and Naturalization Office was still part of the Justice Department, but then moved to the new Department of Homeland Security.

<sup>94</sup> Agreement between the European Community and the United States of America on customs cooperation and mutual assistance in customs matters, *Official Journal* L 222 of 12/08/1997, pp. 17-24.

<sup>95</sup> US Customs and Border Protection, ‘CSI in Brief’ (see [http://www.cbp.gov/xp/cgov/border\\_security/international\\_activities/csi/csi\\_in\\_brief.xml](http://www.cbp.gov/xp/cgov/border_security/international_activities/csi/csi_in_brief.xml)).

<sup>96</sup> Bilateral agreements with the US were signed by Belgium, The Netherlands, Germany, France, Spain, the United Kingdom, Sweden, and Italy.

<sup>97</sup> Agreement between the European Community and the United States of America on intensifying and broadening the Agreement between the European Community and the United States of America on



source of transatlantic tension. The JCCC and the two working groups subsequently elaborated detailed standards for the implementation of CSI throughout the EU.<sup>98</sup>

*Passenger Name Records* — In early 2003, CBP required airlines to provide, within 15 minutes of departure, electronic access to the Personal Name Records of all passengers on flights entering the United States. Failure to comply would result in substantial fines for the airlines and enhanced security screenings for passengers. This requirement created particular problems for European airlines, which faced possible prosecution under the terms of the EU's Data Privacy Directive. The Commission agreed to allow airlines to forward the information to the US on a temporary basis, while negotiating a bilateral agreement with the United States. This agreement, concluded in early 2004 after often difficult negotiations, saw the US agree to limit the number of data fields it would collect, the length of time it would hold them, and the uses of the data.<sup>99</sup> The Commission obtained a decision recognising the adequacy of US measures under the terms of the Data Protection Directive. The US and the EU also adopted a bilateral agreement authorizing the continuing transfer of PNR data by European airlines to the United States. The agreement was criticized by many consumer groups and the European Parliament for providing inadequate data protection, and the EP has challenged these arrangements before the European Court of Justice.<sup>100</sup>

*Biometric passports* — In 2002 the US Congress established new requirements for 'biometric passports' featuring digital photos and other biometric information such as fingerprints and iris scans. It further required that travellers without such passports would require a visa to enter the United States after October 2004, even if currently from a 'visa waiver' country (as are 15 EU member states). Alarmed by the prospect of all European travellers having to go through the cumbersome process of obtaining a US visa, EU officials objected, noting that while the Union had begun the process of introducing biometric passports, no EU member state — nor indeed the United States itself — would be in a position to meet the October 2004 deadline. The US government requested a two-year extension from Congress, but Congress agreed to postpone the deadline only for one year, until October 2005. According to participants, EU and US officials have been working closely on this issue, with US officials supporting another extension of the deadline as well as an effort within the International Civil Aviation Organization (ICAO) to establish global standards for biometric passports.

Throughout 2003, the new Department of Homeland Security (DHS) became increasingly involved in all three of these issues. When the Customs Service (renamed the Bureau of Customs and Border Protection) moved to DHS, it essentially inherited the CSI, PNR, and passports issues. Although the State Department and Customs had taken the lead roles in negotiating solutions to these conflicts with the EU, it was clear that the new DHS would find US/EU relations a challenging area.

Then, over the 2003 Christmas holidays, the US government cancelled several flights from Europe to the United States on security grounds with little notice to the European governments (or the passengers). For those managing the US/EU relationship in the State Department, this very public disruption of transatlantic travel was a 'disaster'. Moreover, they were aware that the number of issues that needed to be addressed, in what was now a very conflictual and tense atmosphere, was piling up. What had previously been a relatively prosaic (and primarily economic) process of bilateral customs cooperation had become heavily 'securitised' and politicised. It was clear that instead of simply engaging in *reactive* regulatory cooperation aimed at managing conflicts, there was a real need for

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customs cooperation and mutual assistance in customs matters to include cooperation on Container Security and Related Matters', 22 April 2004.

<sup>98</sup> The JCCC, praised by participants as a useful exercise, has met five times at this writing (most recently on 15 November 2004, with US Commissioner Robert Bonner and EU Director-General Robert Verrue), and is scheduled for another meeting in May 2005. For more on the work of the expert groups, see EC-US Customs Expert Group, *Customs cooperation on transatlantic supply chain security*.

<sup>99</sup> The US originally sought to collect 39 fields of data, but settled for 34 in negotiations. It also agreed to hold the data for 3.5 years, rather than an anticipated 7, and to limit the use of the data to serious crimes (although not, as the EU had sought, solely to terrorism).

<sup>100</sup> Cases C-317/04 and C-318/04. See 'EU/US: Air passenger data cases lodged with Court of Justice', *European Report*, 31 July 2004.

*proactive* cooperation aimed at avoiding conflicts and reaching common goals.<sup>101</sup> The institutional solution was the creation of a new, specialised forum for US-EU exchange, the Policy Dialogue on Borders and Transport Security (PDBTS), in early 2004.

The need for proactive cooperation led to the creation of a US/EU dialogue dedicated specifically to border and transportation issues. Labelled the PDBTS, it was launched in April 2004 at a meeting chaired by US Under-Secretary for Transport and Border Security Asa Hutchinson and EU Director-General for Justice and Home Affairs Jonathan Faull.<sup>102</sup> EU anti-terrorism coordinator Gijs de Vries also attended as did relevant officials from the Departments of State and Justice. A second meeting was held in November 2004.

Participants credit the PDBTS with getting ‘the right people in the room’ to deal with common border security issues, and with averting future crises through ongoing consultation. Throughout 2003, DHS had developed some contacts in Europe as it dealt with PNR and other issues, but the new Dialogue allowed for more regular, predictable interaction. Participants have noted that they are in frequent touch between dialogue sessions with their transatlantic counterparts by telephone and other methods, and have even been able to provide advance warning of delicate matters. The dialogue sessions have been described as ‘much less formal’ than SLG sessions by one participant. It is striking that none of the senior DHS officials had any exposure to the EU prior to their involvement in PDBTS (one described the Union as ‘incomprehensible’).

Success in the PDBTS has spilled over to even higher levels, with Secretary of Homeland Security Tom Ridge having increasingly frequent interaction with his EU counterparts. In a speech in November 2004, he noted that one of his few regrets as Secretary had been his late appreciation of the benefits of US/EU coordination:

What I have discovered is that when we sit down, make our case, discuss, negotiate finding a common solution of mutual benefit, we’ve made a lot of progress. Part of me wishes we’d started that a little bit earlier, but there were other things that it seemed at the time were higher priorities.<sup>103</sup>

The EU/US agenda in transport and border security is still a potential source of major conflict. Yet, participants in PDBTS pointed in particular to three factors that made the dialogue initially successful:

- It brought together experts in a somewhat informal setting. Both sides started with a conviction that solutions had to be found. Discussions focused on finding ways to satisfy security needs, rather than about whether they existed.
- The dialogue forced both sides to get their respective houses in order. Although DG Relex and the State Department played central coordinating

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<sup>101</sup> Mark A. Pollack, ‘The New Transatlantic Agenda at Ten: Reflections on an Experiment in International Governance’, paper presented at the European Union Studies Association, Austin, Texas, 31 March – 2 April 2005.

<sup>102</sup> One of the Deputy Directors General for External Relations (DGA-1) co-chairs the EU delegation. It is perhaps revealing that we were told very different things in Brussels and Washington about which side was primarily responsible for taking the initiative to create the PDBTS.

<sup>103</sup> Transcript of Secretary of Homeland Security Tom Ridge at Press Conference, 30 November 2004 (see <http://www.dhs.gov/dhspublic/display?content=4179>).

roles, many policy decisions had to be made in a complex mix of other departments and agencies. DHS in particular was a new department that had brought together many disparate agencies with competing cultures and agendas. Few officials had any significant international experience. The Dialogue required DHS to think about the international impact of a particular measure and pressured the various agencies and bureaus to develop one position. Similarly, in the EU, the Commission was a relatively new actor in this area, and although its (then) JHA Directorate was most often in the lead, many other DGs were implicated (CSI was a customs issue, for example). In addition, the new Coordinator for Counter-terrorism at the Council of Ministers also had to establish his role.

- Finally, both US and EU participants in the PDBTS were able to use the discussions to reinforce their position within their own bureaucracies. Taking a lead with the US reinforced the Commission's competence in this area, while DHS participation did the same for a relatively new Cabinet department.

After only a year, the PDBTS has reversed the fear that issues concerning borders and transportation would become a minefield for US/EU relations. Instead, these matters are now widely considered an area of US/EU success.

### *The Group of 8*

The G-8 is another important arena for EU/US dialogue with each other as well as other partners. Cooperation between the US/EU on issues such as the Broader Middle East within the G8 already informs discussions within other forums, including the Quartet and NTA.

Many of our interviewees favoured extensive coordination between the forthcoming US/EU and G8 summits, but most admitted that this was easier said than done and could only be done informally. It was also suggested to us that EU/US summits were easily overshadowed by G8 summits (especially in terms of media attention), and their close proximity in the calendar sometimes makes them especially competitive. Moreover, coordinating NTA actions with those of the G8 seems to depend heavily on the latter's Presidency being held by the US or one of its EU members. If the experience of the 2004 US G-8 presidency is any guide, US efforts to coordinate issues and positions between the G-8 and the US-EU summit were perceived by some in Europe as an attempt to predetermine the EU position via the duplication of agenda items between the two summits.

It is a fact of life that the US and EU will always interact with each other in a variety of different international forums, with different purposes, memberships, and capabilities. It may be possible to coordinate these interactions more systematically with those that take place within the NTA. Logically, however, such coordination will always consist largely of informal, pragmatic exchanges, particularly to avoid the appearance of a US/EU duopoly, or 'Group of Two', in multilateral diplomacy.

### *'People-to-people' dialogues*

What currently exists in this area of EU/US relations is not what was intended in 1995. We have learned from officials involved in the origins of the NTA that the 'people-to-people' section of the original agreement was not intended to establish formal sectoral dialogues. Rather, the NTA's focus on people-to-people activities was intended to engage a broad cross-section of US and EU civil societies, as had already been going on with US and German civil society (meetings of mayors, local officials, educators, and so on). It was hoped that the growing number of transatlantic exchanges focused on domestic and local issues could be brought together in a way that established a genuine dialogue between US and European civil societies that would reinforce government-to-government relations.

It appears that more formal sectoral dialogues of the kind that now exist (see below) arose because officials simply did not know how to deal with this part of the NTA. Even today, we have found a general lack of enthusiasm on the part of lead administrations in the NTA process to involve these dialogues in any meaningful way because it threatens to complicate management of the process.

It is worth noting that even the formal dialogues that exist today are rather *sedimentary*, in that they are all that is left after a number of other dialogues ended up being 'washed away'.

One example is the *Transatlantic Environmental Dialogue* (TAED), which was launched in 1999 but atrophied rather quickly and was disbanded in 2000. Interviewees have suggested to us that the TAED was always hampered by its disparate membership. US environmental groups, unlike their EU counterparts, do not have a history of cooperation with each other. Many see themselves as outsider groups, which makes them leery of close involvement with government. Most environmental organisations focus on international environmental issues and thus their focus is global rather than transatlantic. The disparate membership of the TAED meant that, unlike the TACD, it was not able to survive problems it experienced with its financial support.

Another example is the *Transatlantic Labour Dialogue*, which was launched in 1996 as a mechanism for trade union dialogue in the NTA process. It collapsed after only a few meetings because of the lack of a social agenda in the transatlantic relationship (at least according to some participants) and because, like environmental groups, the main areas of common concern for trades unions are global, rather than transatlantic.

However, there have been recent efforts to revive the labour dialogue, prompted in part by the Commission's 2004 Communication on 'The Social Dimension of Globalisation',<sup>104</sup> which alluded to cooperation with the US on issues related to

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<sup>104</sup> COM (2004) 383, 18 May 2004. See also Jody Knauss and David Trubek, 'The Transatlantic Labor Dialogue: minimal action in a weak structure' in Pollack and Shaffer, *Transatlantic Governance in the Global Economy*. The revival of the Labour Dialogue has had a very low profile. We conducted a web search (in April 2005) using the Google search engine that produced no 'hits' after 2001. A search on the ETUC website yielded two hits, one of which was the ETUC's statement on Bush's visit to Europe, and another that does not refer to the Labour Dialogue by name. Separate searches for 'labor dialogue' and 'transatlantic' yielded no hits on the AFL-CIO site.

employment and social affairs. In a joint statement to the 2004 EU-US summit, the European Trades Union Congress (ETUC) and the AFL-CIO called for promotion of and practical support for a transatlantic social agenda, extending to issues related to job dislocation and improving corporate governance. Other possible areas for dialogue include social protection, health care, education and training, occupational safety and health, pension systems and the relationship between development assistance and core labour standards.

We consider the state of exchanges between the three formal ‘people-to-people’ dialogues that continue to exist below.

#### *The Transatlantic Business Dialogue (TABD)*

The TABD is an industry forum whose stated goal is ‘to help establish a barrier free transatlantic market which will serve as a catalyst for global trade liberalisation and prosperity’.<sup>105</sup> It is co-chaired by two European and American business leaders and has an executive board consisting of 30 Chief Executive Officers (CEOs) of firms with significant transatlantic interests.

The TABD has gone through some difficult times since its creation in 1995, and was nearly disbanded in 2003-4. But our interviewees now see it as on an upswing and generally regard it as the most influential of the Dialogues.

Our interviewees offered a variety of explanations for the TABD’s decline and rebirth, but central to all of them was its relationship with government(s). As one interviewee pointed out, TABD could be seen as one of many business lobbies, but it was the one specifically chosen by the governments to play a role in this relationship. If TABD is to be effective, then it has to have access to the governments. It is government access that kept the CEOs engaged, and ultimately the CEOs had to be the drivers if TABD was to remain active.

Many of our interviewees cited problems of process in explaining why it became hard to sustain the TABD’s early momentum. The TABD was initially meant to work according to a very flexible process, with CEO conferences as the capstone and sectoral working groups addressing specific issues. Eventually, however, the annual CEO conference became overloaded with social events and scripted plenaries, with not enough time for real discussion.

Meanwhile, working groups failed to come up with specific recommendations. By the end of the Clinton administration, the ‘low-hanging fruit’ in terms of policy recommendations had been picked, and there was a general feeling of fatigue. TABD was not getting the high-level government access it required.

More generally, the TABD has faced a recurring challenge: when it is successful, more issues tend to be added to its agenda, overcrowding it and forcing discussions into a laundry list format that does not fit well with CEO participation.

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<sup>105</sup>See <http://www.tabd.com/about>.

Recently the TABD seems to have been rejuvenated. On the US side, it has found a new home for its secretariat at the Center for Strategic and International Studies in Washington. The CEO conference has been abandoned, although CEOs try to meet twice per year, once at Davos and once in conjunction with the US/EU summit.

The working groups have been disbanded in favour of policy committees (one on each side of the Atlantic) focused on a few specific issues. Nearly all of our interviewees made clear that the TABD worked best when it focused on a few issues that brought clear benefits to the transatlantic business community. Several thought that more strategic discussions about US/EU leadership in the global economy should take place in other forums such as, for example, the Transatlantic Policy Network.

There remain internal tensions within the TABD. Specifically, while the Brussels policy committee includes representatives of US member companies as well as European members, the Washington policy committee (thus far) includes only US firms. One effect is to make it difficult for US and EU firms in Washington to negotiate a unified position in the policy committee, and thus more difficult to lobby governments in a unified manner.

TABD representatives have always participated in the US/EU summit. The two TABD chairs usually meet with the Presidents for 15 minutes or so and then have substantive discussions with other high-level officials. This exchange is regarded as a very positive, perhaps essential element in ensuring that new CEO leadership continues to come forward. One interviewee noted that the summit participation highlights the importance of the White House to TABD. While generally Commerce, USTR, or State are the liaisons with TABD, it is the White House that has the clout to get things done, especially on tough issues.

The biggest stumbling block for TABD now is the lack of progress on regulatory issues. TABD has been very active in the current 'stakeholder process' and there is hope within it that it will provide fresh impetus on the economic agenda. However, few of our interviewees were confident that new ideas would actually emerge at the end.

The TABD is presently dominated by large multinational corporations. In light of EU enlargement, there may be a case for revisiting the composition of the TABD to ensure wider geographic representation. The TABD might also reflect on how it could realise its stated aim of allowing 'small business the chance to make their voices heard at the highest levels of government' through 'outreach to other companies...to ensure the TABD's recommendations represent the widest business consensus possible'.<sup>106</sup>

The TABD also could enhance its interaction with other active dialogues, especially the TLD. This might be done by holding a joint session of the TABD and the TLD immediately prior to US/EU government summits (see below).<sup>107</sup>

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<sup>106</sup> See <http://www.tabd.com>

<sup>107</sup> The TABD has traditionally held own meeting and met with summitteers at US/EU summits. Below, we proposed a TLD summit held in conjunction with the official summit.

*The Transatlantic Consumers Dialogue (TACD)*

The TACD has existed since 1998, when it was created primarily as a counterbalance to the TABD. The Consumers Dialogue now consists of about 65 consumer organizations in both Europe and the US. The TACD remains very active, but is somewhat disconnected from the rest of the NTA process. It is often on opposite sides of specific issues from the TABD.

The officials we interviewed overwhelmingly cited the TABD and Legislative Dialogue as important, and tended to say little about the TACD. Two sources of tension concerning the TACD seem to be that it has consistently (and unsuccessfully) insisted that it should have equal time as the TABD with the presidents at US/EU summits,<sup>108</sup> and that it has received considerably more support (including financial support) from the European side than the US side.

The TACD has a secretariat in London. Its Steering Committee manages agendas, raises funds, and represents the TACD toward governments and the Commission. Most actual policy development is done in working groups, in which the positions of the TACD are established through consensus, and each of which have a European and US chair.

The Consumers Dialogue has held an annual meeting most years, alternating between Washington and Brussels. Recently it has also begun holding meetings dealing with specific issues, such as privacy. It is not unusual for these meetings to be held in conjunction with other major international consumer meetings, sponsored by OECD, for example, or Consumers International. Overall, participants in the TACD tend to agree that has been a valuable venue for organisations to find each other and work together.

The disparity between the TACD and TABD in terms of access and weight within the NTA seems to be a product of several factors. The most obvious is a lack of resources. The TACD has raised some money for work on particular issues, but raising funds for operating support has been very difficult. A second disparity is structural: most consumer NGOs are very small, with limited staff and budgets, and focused on local or state issues. Third, the TACD's closest ties with government on the US side are with the Federal Trade Commission or the Food and Drug Administration (FDA) or Department of Agriculture, depending on the issue, not the State Department or in the White House. Finally, consumer organizations often find themselves on opposite sides of issues from governments and see their role as being watchdogs on any administration.<sup>109</sup>

Interestingly, participants in the TACD considered it a successful example of a genuinely transatlantic civil society network. Some officials (especially American ones), however, described TACD as an advocacy group, and not representative of

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<sup>108</sup> A representative of the TACD told us that the TABD was consulted early in the preparations for the 2004 Irish summit, while the TACD was given only a 'second-hand offer' of face-time with officials below the presidential level. The TACD said it could not condone this disparity of access, and so did not attend the US/EU summit.

<sup>109</sup> For example, the TACD has been critical of the deal on PNR reached between the Commission and the US government.

‘real civil society’. The academic verdict remains that ‘there is no transatlantic civil society’.<sup>110</sup>

### *The Transatlantic Legislator’s Dialogue (TLD)*

The TLD was created in 1999 to build on existing exchanges between the European Parliament and US House of Representatives. It now meets twice a year<sup>111</sup> for exchanges that are often impressively substantive. However, the TLD tends to attract legislators who are ‘believers’ in transatlantic cooperation, as opposed to those whose legislative work (especially as committee chairs or *rapporteurs*) has significant effects for the other transatlantic partner.

The TLD does not include the US Senate, which has considerably more power and influence over American foreign policy than the House.<sup>112</sup> Participants on the European side concede that they are still at a stage of evangelising to their US counterparts about the power and role of the EP.

It is almost impossible to overestimate how poorly understood the EU is on Capitol Hill. The lack of knowledge about the EU generally extends to almost no knowledge about the NTA process, with the exception of the US/EU summit. After spending considerable amounts of time seeking to interview members of Congress, our Washington-based team was forced essentially to give up trying after numerous staffers explained that their members had little awareness of or interest in either the NTA or EU.

One of our interviewees suggested that US participants in the TLD are House members who are interested in ‘European travel and food’. It was noted repeatedly that Congressman Michael Oxley had been a frequent participant in transatlantic meetings, including ones held by the Transatlantic Policy Network (although not the TLD). Despite his own interest in and familiarity with Europe, the Sarbanes-Oxley Act has been a major thorn in the transatlantic relationship.

Yet, we found some evidence that Congressional attitudes toward Europe are changing. Until very recently, ‘Europe’ meant NATO; if anyone on Capitol Hill thought about the EU it was usually only in an economic context. The President’s recent trip to Brussels, and its focus on the EU, has shifted perceptions amongst those who care about Europe. There was a strong sense amongst our interviewees that if the President were to make the NTA a priority, ‘Congress would come on board’.

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<sup>110</sup> Francesca Bignami and Steve Charnovitz, ‘Transatlantic civil society dialogues’ in Pollack and Shaffer, *Transatlantic Governance in the Global Economy*, p.283.

<sup>111</sup> The main tangible contribution of the TLD to pre-existing House-EP exchanges is that videoconferences now take place between actual meetings. The TLD is the only case of an EP delegation that meets with its foreign counterparts twice a year instead of once.

<sup>112</sup> Exchanges on European issues with US Senators do take place within the Transatlantic Policy Network (TPN; see <http://www.tponline.org/congress.html> for a -- rather short -- list of Senators who participate in their meetings), the annual Wehrkunde (transatlantic security conference) in Munich, and in the NATO Assembly. However, none of these exchanges, with the partial exception of those organized by the TPN, focus primarily on US/EU issues. We would note that Senators are very individualistic, often travel on their own, and do not participate in many group activities. There are very few cases of groups that involve House members and Senators on an equal footing (not even the NATO Parliamentary Assembly).



Moreover, there is evidence of increasing congressional interaction with the EU. More individual members are participating in the Transatlantic Policy Network. There is interest at the staff level in making contact with the EU in specific areas, and there have even been a couple of trips to Europe by staff from committees dealing with regulatory issues. The first ever hearings on the EU (other than on economic subjects) were held in 2004. There appears to be increasing demand for information about and contacts with the EU, but also a feeling that the established TLD channel is not proving an effective way to get them, thus leading individual members to develop ad hoc methods and connections.

When asked why the TLD did not function more effectively, most interviewees pointed to a mismatch between the issues central to the US/EU relationship and the members involved. The EP's Delegation on the US was not seen as comprising member who are necessarily influential on topics of concern to the US. In Congress, the TLD is based in the House International Relations Committee (HIRC), whose Europe subcommittee has undergone some considerable leadership transitions, and whose current chair is not viewed as particularly interested in Europe. Moreover, the HIRC has little legislative influence on matters of concern in the US/EU relationship.

Some interviewees on the US side (none on the European side) compared the TLD negatively to the NATO Parliamentary Assembly. They regarded the latter's US delegation as having developed into a small but growing and committed group who made real efforts to attend meetings, worked diligently (with their staffs) on reports, and had genuine colleagues in other NATO and Partner parliaments. The chairmanship of the NATO Parliamentary Assembly is assigned by the Speaker of the House.<sup>113</sup> The chair of the TLD, in contrast, is appointed by the Chair of the HIRC (making it much less prestigious), who also formally appoints its other members. The current chair, Jo Ann Davis, is well thought of, but is not a senior member.<sup>114</sup>

The format of TLD meetings was also a frequent talking point. Efforts have been made to narrow down the list of topics, but discussions still seem to cover a wide range of issues at a general level. We found no evidence of efforts to agree joint statements or even conclusions after meetings, with several interviewees suggesting that it is not the place of legislators to negotiate. The most productive discussions seemed to be exchanges on 'best practices'. For example, the US delegation recently described the process of Congressional oversight to their European counterparts, and how it might be used to ensure that the US (and EU) carried out the PNR agreement properly.

The idea of linking the TLD more closely with the US/EU summits tended to be received with more enthusiasm within the EP than on Capitol Hill.<sup>115</sup> We are aware

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<sup>113</sup> The chair and vice chair are supposed to be from the HIRC, but other members can come from anywhere in the House.

<sup>114</sup> It is notable that the current home page of Davis' Congressional web site mentions her support for local boy scouts and bus routes in her Virginia constituency, but not her work chairing the US delegation in the TLD (see <http://joannadavis.house.gov/HoR/VA01/>, accessed 28 March 2005).

<sup>115</sup> It was pointed out to us that members of Congress lack the authority to speak for the House, so could only speak for themselves as individuals at summits. Moreover, travelling to an overseas summit is viewed with some suspicion because of the possible impression that congressional members are just accompanying the President.

of exchanges with MEPs on the NTA agenda via luncheons held after Senior Level Group meetings, but were told that these were considered ‘second best options’ to full meetings of the TLD with the SLG (which have been held in the past but which US officials tended to pose as inevitable victims of ‘scheduling problems’).

When asked for ideas on improving the TLD itself, many of our interviewees ended up proposing alternatives to it, such as:

- involving members of Congress or the EP with responsibility for regulatory issues. For example, the chairs of the US House Homeland Security and/or Judiciary Committees or EP Justice and Home Affairs Committee (or senior staff members) might be involved in the Policy Dialogue on Borders and Transportation Security.
- encouraging chairs of all EP committees to consider the transatlantic dimension on all aspects of the Commission’s work programme to see if there are likely areas of overlap or conflict, and then teleconferencing with relevant members of Congress.
- establishing a congressional study group on the EU, with several US interviewees mentioning a study group on France that had recently been established as a possible model.<sup>116</sup>

If these (or other) ideas for enhancing the dialogue between legislators were to be pursued, the danger of undermining the TLD itself would need to be considered.

Even in the most abstract sense, it is expecting a great deal to imagine that either side would invite the other to become involved actively in their legislative process. Legislative processes on both sides are long and inevitably involve countless compromises between a diverse variety of different interests. Whatever provisions for ‘early warning’ might be attempted, there will always be limits on what such provisions could achieve.

There is widespread and deeply held consensus amongst our interlocutors that the TLD is now ‘dysfunctional’. At the same time, creating an effective dialogue between legislators was frequently identified as the most desirable potential improvement in the NTA.

### ***Emerging Institutional Issues***

We have been asked specifically to comment on the implications for the US/EU dialogue – especially institutional – of the European Union’s enlargement (recent and future) and its Constitutional Treaty.

#### The implications of an EU-25+

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<sup>116</sup> The French ambassador holds private briefings for study group members at his residence. It is worth mentioning in this context that John Bruton’s appointment as head of the Commission’s delegation in Washington was repeatedly cited as offering an opportunity to raise the EU’s profile within Congress.

Any discussion of the EU's recent enlargement, as well as those still to come, risks 'expanding to fill the available space': that is, becoming very broad and (at this writing) speculative. Obviously, enlargement both increases the importance of the EU – especially for the US – and complicates decision-making within it. Here, we restrict ourselves to a focused discussion of the impact of enlargement on the EU's current dialogue with the US.

The present arrangements for the EU's representation in its dialogue with the US might appear to have clear advantages, particularly in an EU of 25+ member states. Useful exchanges – for example, between the US and the EU's Political and Security Committee (COPS; on which all 25 EU member states are represented) – are widely viewed as having taken place recently on specific issues, although not ones formally part of the NTA. There is concern on the US side to continue to engage the EU's member states, especially its largest ones.

However, there is relatively little enthusiasm on the US side for more formal meetings with an EU of 25. Such meetings are viewed as occasionally useful in a symbolic sense (as in February 2005) but not conducive to any significant discussion. Meetings in this format tend to consist of the US presenting its position and then fielding questions about it from EU and national officials.

The Council is kept aware of NTA issues, agendas, and developments via a Council working group on transatlantic relations (COTRA), which is chaired by the holder of the Council's rotating Presidency. However, these arrangements have fostered a high degree of dissatisfaction amongst several EU member states, and a low sense of 'ownership' of the NTA by many national EU capitals.

It is widely acknowledged that COTRA is not a true 'working group' in the same sense as Council working groups on the Middle East or Western Balkans engage in actual exchanges of national view or even negotiations on policy substance. COTRA is more of a 'sounding board', in which draft agendas are discussed and delegates are updated on progress.

Few national representatives on COTRA are senior officials (many are alternates to the Article 133 Committee). Many have told us that they often find themselves unable to encourage their superiors in national capitals to 'work' via the NTA, as opposed to via bilateral channels in which national EU capitals directly engage with Washington. We have heard frequent complaints about the transparency of the NTA process from national officials.

At the same time, we also found that most national officials were able to think of cases when they had managed to get issues of national importance taken up with the US via the EU channel. The point extended to officials from post-accession states – Czech officials cited the visa-waiver issue and Poles the involvement of Javier Solana in dialogue with the US during the Ukrainian election crisis.

We found a diversity of views about how to make COTRA work better. Several national officials indicated that it should hold more working meetings on specific topics (as was done under the Dutch Council Presidency of 2004) and have more input into COREPER. Others wanted to focus more on upgrading the role of COPS in

US/EU dialogue. Our more general impression is that EU enlargement has contributed to a low sense of ownership of the NTA dialogue on the part of member states, and that there is a need for reflection on how the NTA process could be made more genuinely inclusive

### The EU's Constitutional Treaty

Whatever the formal outcome of the current referendum campaigns, it seems likely that the Constitutional Treaty – or at least much that is in it – will eventually be adopted. Most of our interviewees have suggested that the Constitutional Treaty is likely to make the EU a more effective partner to the US by creating more continuity and clout in its representation. Crucially, it may help to solve one of the EU's most glaring problems: its lack of capacity for strategic thinking, or the designation of long-term goals and the marrying to them of new or existing policy instruments.

The ability to set strategy and pursue it effectively in relations with the United States may go some distance, in itself, towards ameliorating the problem of 'low ownership' of the NTA by national capitals. However, the creation of a new EU Minister of Foreign Affairs, backed by a unified External Action Service, as well as a new European Council President could make the existing problem worse.

It is a basic political reality that the importance of the NTA – and the EU channel as one channel amongst many for transatlantic relations – is, and always will be, subject to strict limits unless ways can be found to convince member states that the NTA is 'their' dialogue, too.

The pragmatic, practical policy cooperation that the NTA currently facilitates is a laudable end in itself. But the EU/US relationship urgently needs to facilitate exchanges at the highest political levels on major strategic issues. Otherwise, the US/EU dialogue will fail to realise its potential as one channel (amongst many) for facilitating transatlantic cooperation in the pursuit of mutual gains.

## RECOMMENDATIONS

We have been asked to produce two (distinct) sets of recommendations on:

1. the institutional set up for the current US/EU dialogue
2. priorities for transatlantic relations.

Inevitably, it is difficult to draw a line between institutional reforms and priorities. Many of the institutional changes we propose are explicitly designed to *achieve* the goals we believe must become priorities for transatlantic relations. We hope that our proposals will be read as a single, integrated programme for reform.

However, out of respect for our mandate, we present here our institutional recommendations, before setting out our more general recommendations (below).

### *Institutional*

The current institutional framework acts to give ‘pulses’ to administrations on both sides that otherwise would work with considerable autonomy – and often at cross-purposes – on issues of mutual concern. The NTA framework provides these pulses regularly and systematically. It has both strengths and weaknesses but it has consistently kept the joint policy agenda moving forward and acted to eliminate mutual misunderstandings.

Still, the NTA framework needs reform. Our review of the NTA’s institutions leads us to suggest that improving the dialogue requires the following institutional changes:

- clarifying the division of labour among NTA institutions.
- abandoning the practice of producing ‘laundry lists’ of deliverables and instead focusing summits on *strategic discussion* of a small number of issues.
- the creation of *sherpas* (modelled on those who prepare G8 summits) who would prepare annual summits.
- designating one member of the SLG (one for each side) as responsible for overall coordination and oversight of transatlantic relations.
- clearer lines of reporting for extra-NTA dialogues such as the PDBTS or Troika dialogues.
- distinguishing between meetings designed to manage EU/US dialogue and meetings of experts (with protocols agreed on the presence of experts in NTA meetings).
- fewer meetings of the NTA Task Force with use of digital videoconferences between meetings.
- more synergy between the legislative dialogue and the NTA dialogue *per se*.

### *Priorities for Transatlantic Relations*

In addition to recommendations on institutional reform, we have been asked to offer recommendations on medium and long-term priority areas for transatlantic

relations.<sup>117</sup> More specifically, we have been asked to present them in the form of alternative scenarios, with an assessment of the advantages and disadvantages of each.

Our main, general recommendations may be summarized as follows:

1. *The NTA should be revamped and relaunched, not discarded.*
2. *The US/EU dialogue needs a higher political profile to realise its potential.*
3. *The economic side of the relationship is strong but needs reinvigoration.*
4. *The transatlantic legislative dialogue needs to be re-engineered.*

We identify below specific actions needed to realize these recommendations. We conclude this section with a brief consideration of ‘alternative scenarios’, although this exercise highlights – more than anything else – the analytical limits of evaluating the costs and benefits of alternatives to the current framework that are supported by very, very few stakeholders in EU/US relations.

### ***1. Revamping and relaunching the EU/US dialogue***

We have been struck by how often our respondents have made two basic points to us:

1. The NTA has been a disappointment.
2. The NTA should not be abandoned.

These two positions are not as incompatible as they may seem. The NTA was agreed in 1995 amidst high ambitions to strengthen and deepen the US/EU channel in the overall transatlantic relationship. It was widely believed on both sides – perhaps naively – that doing so could allow the two sides to move beyond information exchange to actual joint action and policy cooperation.

Clearly, the US/EU channel *is* now far stronger and deeper than it was in 1995. The bilateral dialogue has managed to keep pace with the expansion of EU activities, albeit through a great deal of improvisation and with somewhat messy results. These could be considered achievements in themselves, even if it has proven difficult – and probably far harder than the Founding Fathers of the NTA envisaged – to achieve actual policy cooperation after the harvesting of low-hanging fruit in the NTA’s first years.

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<sup>117</sup> In line with the terms of reference for this study, we intended to offer separate medium and long-term recommendations. We took ‘medium-term’ to mean actions to take place over 1-5 years, and ‘long-term’ to mean a timeframe of more than 5 years from now. Yet, we found it extremely difficult to recommend long-term priorities for the US/EU relationship since much (perhaps most) of the bilateral policy agenda is ‘chosen for’ the US and EU – think of counter-terrorism, Afghanistan or Ukraine – as opposed to selected by the two partners themselves. Moreover, we found that most of our recommendations for priority action in the medium term – especially those involving ‘people-to-people’ exchanges on both sides – also tacitly qualified as long term priorities, and indeed would have little impact if not sustained for long periods of time.

The challenge thus is how to continue a process of strengthening and deepening the relationship, while also giving fresh impetus to a process that, under its present guise, has become associated with considerable frustration and cynicism.

Thus:

- **we recommend neither seeking a formal Treaty nor opting for purely *ad hoc* and uncoordinated ‘bottom-up’ cooperation but rather seeking to build on and improve the current framework for dialogue.**

Above all, the dialogue between the US and EU needs to become reborn as a *strategic dialogue*, as opposed to one that produces laundry lists of deliverables that fail to fire political or popular imaginations.<sup>118</sup>

The best way to do so is to start afresh by abandoning the New Transatlantic Agenda label. At all levels – political, official, media, and public opinion – perceptions matter. The US/EU relationship thus needs to be ‘rebooted’ and relaunched under a new and more politically attractive label (see below).

However, a powerful argument against immediate and radical reform of the NTA is that nearly all of the lead officials on the US side are, at this writing (mid-2005) entirely new to the process. It thus makes sense to announce the reform of the NTA at the June 2005 summit, while allowing a period of reflection (logically, one year in length) on precisely how existing institutions might be made more effective.

Even if they are basically retained in their present forms, there is clearly room to make the present NTA institutions more effective (see our institutional recommendations). But starting from scratch would likely become (quickly) an exercise in reinventing the wheel.

Thus:

- **we recommend that the NTA label be abandoned (see below) but that its institutions and process – subject to reforms – be retained.**

Reforming the NTA logically involves agreeing a new Joint Action Plan. In some respects, the record of achieving the objectives set out in the original 1995 JAP has been impressive. Yet, the JAP is now little more than an historical artefact that has little actual policy relevance.

A new Joint Action Plan should be drafted with a view to:

- identifying a set of strategic objectives which are more specific than those contained in the NTA (‘To consolidate democracy’...) and more general than those in the 1995 JAP (‘Implementing the 1994 OECD Recommendations on Bribery in International Transactions’);

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<sup>118</sup> We are by no means alone in this assessment. See European Commission, ‘Reinforcing the Transatlantic Relationship: focusing on strategy and delivering results’, COM (2001) 154 final, 20.3.2001; Gerhard Schröder, speech to the 41<sup>st</sup> Munich Conference on Security Policy, 12 February 2005; Philip Gordon and Ronald Asmus, ‘Bush needs a strategic partnership with Europe’, *Financial Times*, 14 February 2005 (UK edition), p.19; Centre for European Reform and Brookings Institution, *A Compact Between the United States and Europe*, 17 February 2005.

- developing a rolling programme of objectives that is revisited periodically, perhaps each year at the annual summit;
- incorporating (as far as possible) benchmarks or milestones that can assist in the measurement of progress towards objectives;
- making plain that the focus of much US/EU cooperation is now on regions beyond the European continent itself, which was the main focus of the 1995 JAP and on which the transatlantic partners have an impressive record of success.
- agreeing a firm timetable for negotiations on a new JAP so they do not drag on indefinitely.

Thus:

- **we recommend that negotiations begin on a new Joint Action Plan immediately after the next US/EU summit with a view to finalising it at the 2006 US/EU summit .**<sup>119</sup>

Finally, the re-launch of the US/EU dialogue must look for ways to promote wider ‘ownership’ of the dialogue by the EU’s member states, particularly in a Union of 25 plus. We have noted the general lack of enthusiasm on the US side for more formal meetings with the EU of 25.

Thus, the answer may lie in the organization of more *informal* meetings between the two sides. Two practices on the EU side together may help guide decisions about how such informal exchange could be organized:

1. The annual *Gymnich* meetings of EU Foreign Ministers have become a valued forum for informal exchanges on major policy themes over the course of more than 30 years. They take place over a weekend and are conducted without supporting officials, formal decisions, or the keeping of any official record.<sup>120</sup> Effectively, they facilitate ‘fireside chats’ and an open exchange of ideas.
2. The *informal meetings* of versions of the EU Council of Ministers – such as Ecofin or the Competitiveness Council – that have recently begun to explore new innovations to cope with the EU’s increased numbers. For example, the informal Competitiveness Council held under the 2004 Dutch Council Presidency tasked small groups of six member states with work on specified themes, with findings or recommendations fed back in to a ‘plenary’ session at the end of the meeting.

Developing a formula for informal US/EU exchanges based on the Union’s own experience of attempts to cope with its increased numbers makes sense. In some

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<sup>119</sup> It might be worth noting that when we asked lead officials in the current dialogue whether the NTA and JAP needed to be rewritten, most of them said ‘yes’, while showing little enthusiasm for the exercise itself. Thus, it seems critical to give the exercise a clear timetable and to impose firm time limits on it.

<sup>120</sup> In fact, the first Gymnich meeting was convened to break a stalemate within the (then) European Community itself over relations with the US. The ‘Gymnich formula’ that was agreed subsequently facilitated US/EU policy cooperation on the Middle East and the Cyprus crisis. See Michael E. Smith, *Europe’s Foreign and Security Policy* (Cambridge University Press, 2004), pp.114-5.



cases, it may be practical to send multiple US officials to meet the EU of 25 so that it would be able to participate in small group work.

Thus:

- **we recommend that a formula be agreed for informal exchanges with representatives of EU member states, which would be organised on a pragmatic basis in terms of topics and timetables but with the overarching objective of creating forums in which all good ideas are considered equal.**

## ***2. Raising the political profile***

The EU/US relationship will never realize its potential unless its political profile is raised.

There are signs of fresh will on both sides to put the Iraq crisis behind and show that there is a genuine *alliance* between Europe and America. The present US administration has taken it upon itself to acknowledge the magnetism of the ‘new EU’. We have found determination in European capitals (particularly Brussels) to find ways to meet rising American expectations.

However, the reality is that the US/EU ‘channel’ continues to command a quite low political profile, which is one of the most formidable of all obstacles to productive transatlantic cooperation.

Thus:

- **we recommend that the NTA be renamed and superseded by a new strategic framework.**

Sometimes, the best new labels are very old ones. The political symbolism of a Declaration of Interdependence,<sup>121</sup> which would commit both sides to realising the vision set out by President Kennedy more than 40 years ago, could reawaken political classes and the media on both sides to the importance of the transatlantic link. It would highlight the enhanced and still-emerging maturity of the European Union. It also would allow the present US administration to associate itself with a bold set of ideas from ‘the other side of the aisle’ that were ahead of their time.

An alternative label would be a ‘Transatlantic Strategic Dialogue’, which would signal a move away from seeking ‘laundry lists’ of relatively low profile cooperative agreements. Instead, the EU/US dialogue would shift towards a dialogue that is more focused on major, strategic, global issues -- including major US/EU economic issues – but extending to foreign policy and areas such as the Middle East, China, counter-terrorism, global human development, and so on.

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<sup>121</sup> See Alfred Grosser, *The Western Alliance: European-American Relations since 1945* (Random House Vintage, 1982), pp.201-7. We find support for this new label from Ash, *Free World*, p.221 (see footnote 69).

Regardless of its new name, NTA II must create a more strategic dialogue, which features genuinely operational systems for early warning of issues rising on political agendas that have implications for the other. The US and EU will maximise their capacity for joint leadership – including joint *economic* leadership – only if they move closer to a truly strategic partnership that commands a high political profile.

Whatever label is chosen, it must be encompassing enough to be used to highlight the value of removing barriers to economic exchange across the Atlantic as well as to serve the purpose of justifying the extension of EU/US exchanges to new areas. It should symbolise the willingness of both sides to invest politically in their relationship and acknowledge their interdependence.

Thus:

- **we recommend giving the current dialogue a strong political injection and acknowledging (in a summit statement)**

A final priority for raising the political profile of the transatlantic dialogue must be renewing – quite literally – bonds between European and American peoples that are, in a sense, weakening by the day. This year's celebrations to mark the 50<sup>th</sup> anniversary of D-day reminds us that a generation of Americans who had personal experience of Europe through (*inter alia*) service in the military, or had direct relatives who did, is gradually being replaced.<sup>122</sup>

In particular, a younger generation of Americans is emerging that does not know Europe well, and moreover shows lower levels of interest with international affairs that the generation they are replacing. Meanwhile, the formative experience of transatlantic relations for today's young Europeans has been massive protests against American policy in Iraq.

It is worth recalling that one of the goals of the NTA was to ensure '*that future generations remain as committed as we are to developing a full and equal partnership*'.

Several worthy programmes – such as the postgraduate Transatlantic Masters degree and a network of EU Centres at selected US universities – germinated out of the NTA in the years after 1995.<sup>123</sup> However, there is literally no chance that 'future generations [will] remain as committed' to transatlantic partnership without substantial investment in youth and student programmes and exchanges.

Thus:

- **we recommend the design of new, jointly funded programmes – to which both sides make firm budgetary commitments -- to encourage young**

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<sup>122</sup> William Wallace, 'Europe: the necessary partner', *Foreign Affairs*, 2001, 80 (3): 16-34.

<sup>123</sup> The list of EU Centres is at [http://www.europa.eu.int/comm/external\\_relations/us/intro/ct.htm](http://www.europa.eu.int/comm/external_relations/us/intro/ct.htm). It should be noted that European Commission funding – up to €350,000 for 4-6 projects – was made available to promote US-EU people-to-people dialogue between civil society organisations in 2004. However, the call for proposals does not contain any special mention of youth programmes or young people (see [http://europa.eu.int/comm/external\\_relations/us/grants/index.htm#1](http://europa.eu.int/comm/external_relations/us/grants/index.htm#1)).

**Americans and Europeans to gain experience of each other, and their respective societies.<sup>124</sup>**

One important element in renewing transatlantic people-to-people bonds must be raising awareness of the ‘new’ European Union and how it has changed and is changing.

Regardless of its fate in the current referendum campaigns, the European Union’s Constitutional Treaty – or at least much that is in it – will eventually be adopted. The result is likely to be an EU that is better able to engage the US as a partner, particularly through the creation of new foreign policy institutions, and also one that is better able to draw on a full range of policy instruments in pursuit of its international agenda.

One of main implications for relations with the US arising from the creation of the EU Minister of Foreign Affairs (MFA) is that a personal representative of the MFA eventually should eventually act as a ‘*sherpa*’ – along with a personal representative of the US Secretary of State – to prepare annual summits. After all, the MFA will be both a Vice-President of the Commission as well as chair of the EU’s External Affairs Council (and also chair of the Board of Directors of the European Arms Agency). (S)he thus will offer more rounded representation of the EU in its dialogue with the US than any European official presently can do.

Eventually, it may become sensible to consolidate the Troika dialogues and bring them within the overall, post-NTA framework for EU/US relations. It may even be practical eventually to create a US/EU dialogue on security issues that are touched upon by the EU’s European Security and Defence Policy (ESDP).

Numerous interviewees have suggested that this kind of security dialogue is needed *now* because the ESDP has become operationally active and both sides would benefit from information exchange on modern peacekeeping, crisis management, and so on. A US/EU conversation on security issues could help avoid the sort of ‘talking past one another’ that seems to have made the China arms embargo such a point of tension.

However, it seems clear that the time is not now ripe for such a dialogue – and that one or more EU member states actually might veto an attempt to create one – due to American political sensibilities about the current and future role of NATO.<sup>125</sup> Several of our Washington interviewees suggested that the ESDP remains ‘radioactive’ on the US side. Even in interviews that focused on EU/US relations, the first concern of our interlocutors in Prague and Warsaw was, overwhelmingly, the future viability of NATO.

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<sup>124</sup> This effort could be the basis for a ‘transatlantic initiative for progress’ (modelled on the Alliance for Progress for Latin America) in which the US and EU could facilitate international training and exchanges of students, teachers, professors, and other opinion formers from (in particular) the Arab and Muslim worlds. See Guillaume Parmentier, ‘A transatlantic taskforce to fight for freedom’, *Financial Times* (UK edition), 10 March 2005, p.19.

<sup>125</sup> We note that the new Under Secretary of State for Political Affairs, Nicholas Burns, has very recently referred to NATO as ‘our most important Trans-Atlantic bridge’, while also signalling that the US is ‘also determined to do more with the European Union’. See speech by Ambassador R. Nicholas Burns (full reference in footnote 76).

Still, in a sense, the political profile of the EU/US relationship is likely to rise almost *automatically* in the years to come as the European Union ‘reconstitutes’ itself. Thus, it makes sense to begin now a process of thinking about adapting the US/EU dialogue to the Constitutional Treaty.

Thus:

- **we recommend that the US and EU undertake a joint process of reflection about precisely how the transatlantic dialogue should be modified in response to the EU’s Constitutional Treaty.**

One US official, who was rather optimistic about recent transatlantic reconciliation, also raised the issue of public opinion, urging ‘this is what we really need to watch’. The NTA sought to create more and stronger links between American and European peoples. Outside of a few (additional) private sector actors and consumer advocates, it has largely failed in this objective. Rather, it has mostly created stronger bonds between the US State Department and the European Commission.

One of the most dramatic, single facts about EU/US relations is that there has never (to our knowledge) been a single opinion poll taken in the United States that has shown that a majority of Americans has even *heard* of the European Union.

A tangible proposal thus would be for the EU to launch a public awareness campaign in the US, using the main media (particularly television), which seeks to make clear what the EU does in the world (such as tsunami relief, peacekeeping, environmental protection, development aid, promoting democracy, and bringing the states together from which the largest US émigré groups<sup>126</sup> are drawn), ending always with the phrase ‘We are the European Union’.

We are aware, of course, of the bureaucratic obstacles to such an initiative, which begin with the question of who would pay for (and design) such a campaign. But a fundamental fact of EU/US relations, and a primary barrier to bilateral cooperation, is that the European Union *per se* lacks – and always will – any American Diaspora of its own, as nearly all of its Member States have.

Moreover, members of the US Congress can only be expected to take interest in the EU if such interest comes from the ‘bottom up’; that is, from constituents who better understand what the EU does and its importance for the US in global affairs.

It should be noted that – in light of recent international events over the past 3.5 years – opinion polls suggest that Americans have rarely, perhaps never, been more curious about the world beyond their borders than they are now.<sup>127</sup> The US media continues

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<sup>126</sup> These include the UK, Italy, Germany, Ireland, Poland, Spain, Greece, and Sweden.

<sup>127</sup> The degree to which Americans are more interested in international affairs since 9/11 has been much researched and debated. What is clear is that after 9/11, interest in news about international affairs increased substantially. According the Chicago Council on Foreign Relations 2002 study, 42 percent of survey respondents indicated that they were ‘very interested’ in news about other countries, and 62 percent in news about US relations with other countries, the highest levels of interest found since the Council began its quadrennial surveys in 1974 (these totals fell somewhat in a survey

to devote more time and space to overseas news, despite the trend towards ‘outsourcing’ international coverage by many news outlets. Many more Americans than is commonly appreciated in Europe would find the political experiment of European integration to be interesting and even fascinating.

Thus:

- **we recommend that the EU undertake a campaign of raising public awareness in the US of what the Union does internationally and why it matters to the US.**

### ***3. The economic agenda: the ‘anchor’***

Both sides are presently looking for ways to reinvigorate the economic part of the NTA by soliciting the views of private sector and civil society organizations through the ‘stakeholder dialogue’. Formal submissions are being reviewed at present.<sup>128</sup> Broadly, the submissions (which are all public) as well as meetings with stakeholders tended *not* to produce ground-breaking new ideas, as opposed to pleas to focus attention on a particular sector, reiteration of the importance of regulatory convergence, and so on.

We found a diversity of views about the significance of this exercise, but four were widely shared and are worth emphasis here:

- There is considerable consensus both on the need to reinvigorate the NTA, **and** that there is enough of potential value in a range of market opening measures to package them together into a regulatory cooperation initiative that could command a high profile.
- The economic side of the relationship needs to remain the ‘anchor’ of the EU/US relationship, and presented in this way publicly.
- As a caveat, ‘the NTA should do no harm’: that is, in raising the political profile of the economic agenda, it must be made clear that the NTA works in the margins of the economic relationship, whose real engine is the private sector.
- It is worth exploring ways to break the current stalemate on regulatory issues by way of some device that is neither a treaty nor a non-binding declaration, possibly a Congressional executive agreement,<sup>129</sup> or a political declaration that

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conducted in 2004). There is also evidence to suggest that increased American interest in international affairs is confined mostly to a relatively small ‘core’ of Americans (who are better-educated, affluent and, crucially, older than average). See survey data available from (*inter alia*) <http://www.ccf.org/> and <http://www.pipa.org/>.

<sup>128</sup> This process seems slightly more advanced on the European than US side at this writing (April 2005), although we understand that an inter-agency review of submissions on the US side – chaired by the US National Security Council – was held very recently.

<sup>129</sup> A congressional-executive agreement is an international agreement between the US and a foreign entity that is approved by Congress. It differs from a treaty, in the US constitutional sense of that term, in that it cannot cover matters outside the competence of the Federal government and does not require a

specifies goals with an attached annex that binds each side to undertake ‘best endeavours’ to realize them, including (if necessary) by amending primary legislation.

One possible model (repeatedly mentioned in our interviews) is the EU-Canada Trade and Investment Enhancement Agreement, launched in 2004 and which aims to negotiate bilateral agreements on an ambitious range of economic issues.<sup>130</sup> It may be worth noting here that there is considerable enthusiasm on the Canadian side in ‘triangulating’ EU-Canada regulatory cooperation and extending it to the US, as well as widespread consensus that the EU-Canada side of the triangle is, by far, the easiest to agree most quickly.

In our fieldwork, we confronted widely divergent views within administrations on both sides about the relative merits of seeking a non-binding or binding agreement (and *how* binding one should be). But we found considerable enthusiasm for an agreement that would *require* US and European regulators to share upcoming regulations, conduct transatlantic impact assessments, create and use a ‘regulatory hotline’, and so on, with the precise legal instrument left open.

More generally, we think the precise form and modalities of a ‘Regulatory Partnership Initiative’ (using Commissioner Mandelson’s phrase<sup>131</sup>) are less important than a strong political commitment to moving the transatlantic economic agenda forward.

Thus:

- **we recommend making the economic agenda the ‘anchor’ of a more general relaunch of the EU/US relationship via a binding economic partnership agreement.**

Given significant regulatory differences within the EU and the US, it is unrealistic to expect great or immediate cooperative progress on this front. Consequently, efforts need to focus on ‘managing system friction,’ rather than seeking to eliminate it.<sup>132</sup> Doing so effectively has two components: increasing understanding of and increasing tolerance of differences.

To foster greater understanding, regulators should be mandated to and provided with adequate budgetary and staff resources for regulatory cooperation, so that they see international cooperation as facilitating – not drawing resources away from – their

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two-thirds vote of ratification by the Senate, but rather is enacted as an ordinary law (requiring majority votes by both the House and Senate and approval from the President). It also differs from a ‘sole executive agreement’ (of which there already exist more than 30 between the US and EU) that is ratified by the President alone. Congressional-executive agreements have been used to implement trade agreements such as NAFTA and US accession to the WTO.

<sup>130</sup> See [http://europa.eu.int/comm/external\\_relations/canada/intro/ip04\\_297.htm](http://europa.eu.int/comm/external_relations/canada/intro/ip04_297.htm).

<sup>131</sup> ‘Strengthening EU/US trade’. Extracts from a speech by Peter Mandelson to the Transatlantic Business Dialogue (TABD), Davos Switzerland, 27 January 2005 (see [http://europa.eu.int/comm/commission\\_barroso/mandelson/speeches\\_articles/temp\\_icentre.cfm?temp=ppm012\\_en](http://europa.eu.int/comm/commission_barroso/mandelson/speeches_articles/temp_icentre.cfm?temp=ppm012_en)).

<sup>132</sup> Mark A. Pollack, ‘Managing System Friction’ in Ernst-Ulrich Petersmann and Mark A. Pollack, (eds.) *Transatlantic Trade Disputes: The US, the EU, and the WTO* (Oxford University Press, 2003).

core regulatory mandates. Meetings between US and European regulators should be informal and allow both sides to discuss their concerns, principles and practices without fear of providing ammunition for a possible WTO complaint.<sup>133</sup>

Such exchanges may in time build the trust and mutual confidence necessary to take regulatory cooperation to the next level. Building on these channels, there should be a true early warning system in which consultations take place at the point of problem specification and possible solution identification. Although the different regulatory systems may not end up in the same place, they will at least start from some common ground.

Moreover, in recognition of the importance of legislators in the regulatory process, the early warning system should be extended to include both Congress and the European Parliament. The identification of legislation with external consequences might be performed by the (proposed; see below) secretariat of the TLD. When such draft legislation is identified the relevant committees in the two legislatures should consult via videoconferencing.<sup>134</sup> It should be stressed that the objective of such exchanges is not necessarily harmonization and the process does not impinge on sovereignty. The goal is better-informed legislation.

There is no 'silver bullet' method for doing away with regulatory differences.<sup>135</sup> The transatlantic economic relationship is thriving anyway. Thus, both sides must increase their tolerance of difference.

Both sides have showed a significant degree of deference in initiating WTO disputes concerning behind-the-border measures. They should continue to do so. Such disputes are always highly politically charged and put a strain on the legitimacy of the WTO system that benefits both the US and EU. They also poison the atmosphere within which the US/EU relationship must work. The imposition of sanctions in order to compel compliance with adverse WTO rulings further worsens the political atmosphere *and* creates new barriers to transatlantic trade.

Behind the border measures usually have their roots in legislation. Both the US and EU effectively have divided systems of government. Thus, complying with adverse WTO rulings is difficult even with the best will in the world.<sup>136</sup>

When use of the dispute settlement procedure cannot be avoided, and one side or the other is deemed not to be in compliance, fixing the problem usually takes time and solutions are likely to be imperfect. Both parties thus should more actively refrain from imposing sanctions in order to compel compliance. Instead, they should rely on the credible threat of sanctions: publishing a specific list with an automatic

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<sup>133</sup> Exchanges might be modelled on the networks of national regulators that the EU is fostering in a number of areas, including the environment and telecommunications.

<sup>134</sup> We note that there is already an initiative in the European Parliament to consult with Congressional committees on European proposals that might have external consequences.

<sup>135</sup> BP Chair in Transatlantic Relations, *The Political Economy of the Transatlantic Partnership*, report prepared for Her Majesty's Treasury, United Kingdom, and the Ministry of Finance, Government of the Netherlands, July 2002.

<sup>136</sup> Alasdair Young, 'The Incidental Fortress: The Single European Market and World Trade,' *Journal of Common Market Studies*, 42/2, pp. 393-414, 2004.

implementation date and provisions for a gradual escalation of the sanctions (as the EU did with regard to Foreign Sales Corporations).

Further, in recognition of best intentions, when rules are changed any sanctions should be suspended pending a WTO ruling on the compatibility of the new rule with WTO obligations (as the EU has done with regard to Foreign Sales Corporations, but the US (and Canada) has not with regard to hormone-treated beef).

Thus:

- **we recommend three specific measures for managing system friction:**
  - **provide dedicated funds and staff resources for international regulatory cooperation;**
  - **establish early warning systems earlier in the regulatory *and* legislative processes;**
  - **continuing to seek negotiated solutions to trade disputes and exercising restraint, particularly with regard to the imposition of sanctions, when this is not possible.**

One of the most basic problems arising from ‘system friction’ is the difficulty of getting regulatory agencies on both sides, which often guard their independence fiercely, to cooperate. We found considerable support for two ideas for tackling this problem:

1. making regulatory cooperation a permanent agenda item at each US/EU summit;
2. designating a high-profile regulatory ‘Cooperation Enforcer’ on each side whose job would be follow up with the relevant agencies, in particular requiring them to report on and what how they were doing in fostering US/EU regulatory cooperation.

To be effective, Cooperation Enforcers would need be individuals with institutional clout and personal credibility. On the US side, they might be drawn from the Office of Management and Budget – particularly its Office of Information and Regulatory Affairs – but ideally it should be an individual closer to the heart of the White House, probably from the National Economic Council. The key element is that regulatory agencies should be required to report to the White House on their efforts to cooperate with their EU counterparts.

On the EU side, a Cooperation Enforcer would act as the personal representative of the President of the Commission. (S)he would need to be someone with unquestioned credibility and experience in both the public and private sectors and in multiple national EU settings.

Thus:

- **we recommend the appointment by Presidents on both sides of high-profile regulatory Cooperation Enforcers, who would report on their work at each annual summit.**



At the same time, we must be realistic in acknowledging the limits of what such a system of ‘enforcing’ regulatory cooperation can accomplish. The case of GM crops illustrates that avoiding bitter clashes of regulatory culture requires early exchanges upstream in the development of new technologies.

Logically, such exchanges should take place between European and American scientists and technologists when tangible outputs, in the form of actual products, are still some distance from emerging out of research and technological development. Simply put, the benefits of collaboration on pre-competitive research – that is, generic research that is not specific to a particular product or process – is that it allows for common standards to develop that then fosters competition as technological development proceeds closer to producing marketable products or processes.<sup>137</sup>

The case of EU/US cooperation on the development of the Hydrogen Economy may offer a template for future cooperation on emerging technologies. There are already bilateral agreements in place to promote Scientific and Technological Cooperation (1997; renewed 2004) and exchanges in Higher Education and Vocational Education Training (renewed 2000). But neither contains clear targets or commitments (other than on intellectual property rights).<sup>138</sup> More generally, exchanges between scientists working on upstream development of emerging technologies seem to be one of the most potentially valuable of all ‘people-to-people’ links.

Thus:

- **we recommend the development of a comprehensive strategy for cooperation on emerging technologies, which includes both clear targets and financial commitments.**

#### ***4. An effective legislative dialogue***

Perhaps the clearest single finding that has come out of our fieldwork is that the Transatlantic Legislative Dialogue is moribund, and even dysfunctional. The profile of the EU/US dialogue is barely visible on Capitol Hill. There are no easy answers to these problems.

That said, we would offer four specific recommendations to try to make this link – clearly an important one – a less glaringly weak one in the transatlantic dialogue.

The first involves exchange of legislative staffers. Staffers tend to be younger, more internationalist in orientation, and in their posts longer than most legislators

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<sup>137</sup> John Peterson and Margaret Sharp, *Technology Policy in the European Union* (Macmillan/Palgrave, 1998).

<sup>138</sup> We were told that a 2005 call for proposals under the Higher Education and Higher Vocational Education agreement is currently suspended due to budget cuts on the US side. For details on this agreement see <http://eurunion.org/legislat/STE/EUUSEdAgree.htm> and <http://www.useu.be/Categories/Education/educ1200.html>. On the 2004 renewal of the Science and Technology agreement, see <http://www.useu.be/Categories/Telecommunications/Oct0804S&TAccordStatement.html>.

themselves. It would be logical to seek to attract, in particular, committee staffers (especially from the Senate) to new legislative exchange schemes.

Thus:

- **we recommend the creation of a new, jointly funded programme for the exchange of legislative staffers, who would spend specified periods of time working in each other's institution.**

Our second recommendation is to create a TLD secretariat, whose headquarters would be sited (perhaps for a period of 2 years) in Brussels and Washington on a rotating basis, and which would be headed by legislative staffers who are (or have been) participants in the aforementioned exchange scheme. The TLD secretariat would be small and rely extensively on digital videoconferencing. It would take primary responsibility for organising staff exchanges. It would also identify members of Congress and the EP -- especially committee chairs or *rapporteurs* -- at the forefront of legislative issues of mutual concern would be brought together for exchanges at 'early warning' stage.

Thus:

- **we recommend the creation of a small, jointly funded TLD secretariat.**

Our third recommendation concerns the creation of an EU study group, convened by the head of the Commission's delegation in Washington, to bring together US legislators.<sup>139</sup>

It has been repeatedly suggested to us – especially by senior officials – that a more effective legislative exchange must come from the 'bottom up'. In other words, bureaucrats cannot impose it. Legislators on both sides themselves have to want to improve the existing dialogue.

This caveat makes us wary of recent suggestions to create an 'EU caucus' in the US Congress. We believe that raising awareness of the EU in the Congress – which is very low at the moment – must be a gradual, long-term, bottom up process. The danger of seeking an 'institutional fix' via the creation of a Congressional EU caucus would be that interest (in attending yet another meeting) might quickly wane. It should be noted that Congressional participation in such groups is often driven by constituent interests (members will join the Greek caucus, for example, if they are of Greek ancestry or have Greek émigrés in their district). No member of Congress has EU émigrés or ancestors.

Yet, there is no question that significant will exists in the EP to improve the legislative dialogue. Moreover, we have found some evidence to suggest that there is rising demand amongst US legislators for information on the EU.

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<sup>139</sup> To try to ensure that it supplemented, and did not undermine, existing structures, the co-chairs of the TLD could be invited to help launch the study group and agree the first agendas of its meetings.

An EU study group – especially one led by a former Irish Prime Minister (Taoiseach) – is a logical way to meet that demand. A logical focus for any EU study group would need to be benefits – in terms of good jobs, funding for research, and so on – of inward European investment in congressional districts.<sup>140</sup>

Thus:

- **we recommend the creation of an EU-sponsored study group for members of the US Congress, to be hosted by the head of the Commission’s delegation in Washington.**

Fourth, avenues for exchange between legislators and summiteers at US/EU summits need to be explored. We are aware that there have been previous attempts to link the legislative dialogue to EU/US summits. None were successful.

Nevertheless, if the NTA is to be relaunched successfully, an attempt at least must be made to include the legislative dialogue in this effort. To do so might help make the US/EU dialogue less of a technocratic, insider’s exercise only accessible to the few who are able to decipher acronyms such as PDBTS and BMEM.

In particular, a ‘legislative summit’ could be proposed as a separate institution but that would be linked to the annual US/EU summit. Its purpose would be to facilitate an exchange of views, as opposed to actual negotiations, as well as to bring issues of concern amongst legislators on both sides to the attention of summiteers.

Legislative summits could bring together four (4) players: representatives of both the US Senate and House (each institution would be responsible for choosing their own representative) and the President of the EP along with the chair of its delegation to the US.

Agendas for legislative summits would be agreed (and then drafted by the TLD secretariat) after a briefing from the Senior Level Group on the current US/EU policy agenda. If necessary, due to predictable scheduling problems, this briefing could take place by video-link. Staffers involved in US/EU exchanges (see above) could be given a role in agreeing legislative summit agendas.

Annual US/EU summits would begin with an exchange of views between summiteers and legislators. The goal would be to promote mutual understanding of how recent (that is, already tabled) or forthcoming legislation might impact on US/EU relations.

Thus:

- **we recommend the creation of legislative summits to be held just prior to traditional US/EU summits, and for the two to be linked in an exchange of views at the start of annual summits.**

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<sup>140</sup> See Joseph P. Quinlan, *Drifting Apart or Growing Together? The Primacy of the Transatlantic Economy* (Center for Transatlantic Relations, 2003); Daniel S. Hamilton and Joseph P. Quinlan, *Partners in Prosperity: the Changing Geography of the Transatlantic Economy* (Center for Transatlantic Relations, 2004).

The legislative dimension can also be reinforced through more structured contacts with the TABD and TACD.

### *Alternative Scenarios*

We have been asked to offer alternative scenarios to that which we are advocating, and to assess the advantages and disadvantages of each.

Again, we have found almost no support – outside of the European Parliament<sup>141</sup> – for a comprehensive EU/US Treaty. Nor have we heard much support for abandoning the NTA process in favour of more informal, ‘bottom-up’ exchanges between the US and EU as the need for them arises.

Moreover, we have found no distinctive or distinguishable ‘American’ or ‘European’ views on how US/EU relations should be organised. Nor could we, in good conscience on the basis of our fieldwork, attribute any single view on this question to a specific category of interlocutor, such as ‘EU officials’, ‘legislative actors’, ‘US think tankers’, or ‘European journalists’.

Still, we offer a summary of possible advantages and disadvantages of three imaginable alternative scenarios compared to the scenario that we have recommended. We conclude with a short discussion of the relative merits of functionally driven dialogue as opposed to one that takes place within a comprehensive, overarching structure:

### *NTA Relunched*

#### *Advantages:*

- Would strike desirable mix of continuity and change.
- Could help sustain recent momentum towards political reconciliation.
- Allows for relaunch of economic agenda.
- Likely to have higher political profile than NTA.
- Allows US officials to become familiar with existing institutions and process.

#### *Disadvantages:*

- Could be difficult to negotiate (especially new JAP).
- Might be viewed as having little added value over NTA.
- Could worsen problem of weak legislative dialogue.
- Misses some of the benefits of package dealing that more overarching framework might offer.
- Means accepting diversity (even confusion) across policy dialogues.

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<sup>141</sup> The idea of a Treaty also found support amongst a (very) few former officials in Washington who are presently out of government

### ***Alternative No. 1. A Transatlantic Treaty***

#### ***Advantages:***

- Would commit both sides in law to bilateral objectives.
- Could be basis for Transatlantic Free Trade Area.
- If negotiated successfully, would raise the political profile of EU/US relations, particularly on Capitol Hill.
- Would give political recognition to the expansion of the EU's competences and its emerging legal personality.
- Could be negotiated as a comprehensive agreement that allows trade-offs across a wide range of different issue areas.

#### ***Disadvantages:***

- Minimal political support for idea on both sides.
- Very real danger of non-agreement provoking fresh tensions.
- Difficult to pinpoint added value over less legally ambitious agreement.
- Extremely difficult to ratify (requiring two-thirds vote in US Senate).
- Likely to be viewed by rest of world as creating a 'G2'.

### ***Alternative No. 2 Bottom-up Informal Cooperation***

#### ***Advantages:***

- Would eliminate cynicism about NTA's overabundant process.
- Summits would take place when needed, not when scheduled.
- Could allow for pragmatic cooperation that resembles what now takes place on competition policy.
- Might allow for more genuine 'deliverables'.
- Offers flexibility in terms of organisation of dialogue.

#### ***Disadvantages:***

- Likely to be perceived as a step backwards in post-Iraq reconciliation.
- Would lose the ability of the NTA to 'pulse' bureaucracies.
- Might invite mutually incompatible agreements in different sectors.
- Would lose capacity for 'package deals' involving compromises or trade-offs across multiple issues.
- Likely to lead to more basic misunderstandings.

### ***Alternative No. 3 NTA Unchanged***

#### ***Advantages***

- Both sides socialised to process.
- Would allow new US team to settle in.
- Could 'complete' (some of) Joint Action Plan.
- Possibly flexible enough to accommodate new issues (and Constitutional Treaty).
- Might only need minor changes (for instance, made more transparent).

### *Disadvantages*

- Political profile unlikely to get higher.
- Cynicism of non-insiders unlikely to diminish.
- Low chance of relaunching economic agenda.
- Likely to be undermined by system friction (especially between legislatures).
- Likely simply to atrophy over time.

### *On Institutional Choices*

As a general observation, we have been impressed during our investigation of the current framework for US/EU dialogue by the powerful virtues of *pragmatism*.

On many issues in transatlantic relations – such as Iran (at present) or northern Europe or anything to do with the Euro – it makes sense to admit that some EU member states have a stronger interest than others, or are better-placed to ‘lead’ for the Union as a whole. Cooperation between smaller (than an EU of all 25) and functionally driven groupings often has a certain logic and can be productive.

Even on issues that more obviously implicate the EU as a whole – such as financial services and homeland security – it will often make sense to have a variety of bilateral forums with either an issue-specific focus or the involvement of particular kinds of partners. Questions about how such forums are linked to and coordinated with the overall NTA process are ones that are usually best tackled on a case-by-case basis.

In this context, it is perhaps instructive to consider the experience of individual EU member states in managing their bilateral relations with the US and other 3<sup>rd</sup> countries. One finds a variety of mixes of broad frameworks and issue/sector-specific channels. In no case do we find a single, overarching framework that tries to manage the whole of the relationship. As such, it seems implausible to think that the NTA -- or whatever replaces it – could ever in practice cover every issue and sector that is germane to EU/US relations.

## 5) CONCLUSION

The framework for relations between the European Union and United States that was constructed 10 years ago was always likely to run up against its own limits, and to require renewal.

One of us, commenting on the original Transatlantic Declaration in 1990, wondered whether it might ‘turn out to be as meaningful as the declarations of undying friendship signed in former times between, say, East Germany and Algeria’.<sup>142</sup>

One of the self-proclaimed architects of the NTA admitted that it was agreed as a distantly second-best alternative to what leading political figures on both sides advocated in 1995: a Transatlantic Free Trade Area. A TAFTA was rejected because it was over ambitious and seen as unrealisable. In its place, the NTA seemed to be ‘just another piece of bureaucratic machinery and a pretext for yet more official meetings’.<sup>143</sup>

From such a modest start, the US and EU have accomplished much through an evolving framework for dialogue over the course of 15 years. The current framework, or something like it, would need to be invented if it did not already exist.

However, we have concluded that there are powerful, pragmatic reasons for reinventing the current framework, specifically with a view to:

- **Revamping, relaunching, and renaming the EU/US dialogue**
- **Raising the political profile of the dialogue**
- **Refocusing on the economic agenda as the ‘anchor’ of the relationship**
- **Creating an effective legislative dialogue**

A rich variety of obstacles to a true partnership exist, including the complexity of legislative processes, the independence of regulatory agencies, and basic differences of view about how to achieve security in a post 9/11 world. The low political profile of the EU/US dialogue in the United States particularly, and widespread ignorance of the European Union and its purpose, remain some of the most formidable obstacles to a true transatlantic partnership.

Yet, many of the most important obstacles remain ones related to the European Union’s thus far unrealised ambitions as a global political actor. Even as we highlight the need to focus EU/US exchanges more on key strategic challenges – counter-terrorism, the Middle East, China, and so on – we would acknowledge the EU’s almost complete lack of capacity for strategic thinking at present.

However, many of our interviewees have stressed the potential of the EU’s new Constitutional Treaty to enhance the Union’s capacity for strategic action, alone or together with the US. The EU’s new foreign policy-related institutions – its Minister

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<sup>142</sup> Helen Wallace, ‘What Europe for which Europeans?’, in Gregory Treverton (eds) *The Shape of the New Europe* (Council of Foreign Relations, 1992), p.21.

<sup>143</sup> (Sir) Leon Brittan, *A Diet of Brussels: the Changing Face of Europe* (Little Brown and Co, 2000), p.162.

of Foreign Affairs, European Council Presidency, and External Action Service – will all need time to become established and effective. Moreover, simply inventing these institutions will by no means solve all problems of EU/US relations: hard thought needs to be given about how to make them operational.

In any event, careful attention will need to be paid to keeping national capitals on board as stakeholders in the EU/US relationship. There is already a need (now) to think of new and profitable ways for the US to interact with an EU of 25 in forums where anyone, regardless of affiliation, can feed in a good idea. We have found a low sense of ‘ownership’ of the current EU/US dialogue amongst national capitals. This problem could be dismissed as both a natural and unavoidable consequence of enlargement to an EU of 25. But the EU/US channel will fail to realise its potential in transatlantic relations more generally unless this problem is fixed.

It will be enormously difficult to fix this problem, as well as others that currently plague EU/US relations. But it is well worth trying to fix them. And the time is right: none of us could have imagined even a few years ago that the conditions for a relaunch of EU/US relations would be as propitious as they presently are.

The US/EU partnership continues to suffer from frustrated ambitions. It is also much closer to a partnership of equals than it ever has been before.



## **ANNEX 1 – OBJECTIVES & METHODOLOGY**

We were contracted by the European Commission's Unit for Relations with North America in the Directorate-General for External Relations (DG Relex) to conduct a study on the state of EU/US relations over the period of 4 months, from December 2004 to April 2005. We were asked to evaluate the current framework for dialogue between the European Union and United States (including but not limited to the NTA), and to suggest recommendations for its reform. Although our focus was mostly on operational and institutional questions, we also were asked to recommend general priority areas for EU/US action, both in the medium and long terms.

There were three main elements to our work on this project:

### **1) a review of existing knowledge.**

We conducted a systematic review of existing academic and policy work on EU/US relations, building on the existing expertise of our project team.

### **2) an analysis of official documentation**

We were offered access to the Commission's (unit for relations with North America, DG Relex) own archives of agendas, briefings and reports of the meetings of the NTA Task Force, the Senior Level Group, and US/EU summits since 1995. Our team reviewed this documentation systematically and produced a quantitative analysis in the form of a scoreboard (see below and Annex 2, which offers a sort of 'aerial photograph' of our archive evidence). We tried to identify which side tabled or 'led' discussions on which issues and whether or not specific issues were resolved. More generally, this analysis has helped us to make judgements about which issues could (and which could not) be considered EU/US policy successes, as well as the effectiveness of the NTA in facilitating cooperation.

### **3) interview fieldwork**

We have conducted close to 200 interviews with key stakeholders in the EU/US dialogue in Washington, Brussels, and EU national capitals. A complete list of interviewees follows. We sought to include as many informed 'voices' in our study as possible, including a rich variety of officials, members of civil society, and experts based in Brussels, Washington, and a representative variety of national capitals.

Assessing the results of US/EU cooperation is an ambitious task and we were confronted with two major challenges:

1. The first was to identify 'deeds behind the words'.<sup>144</sup> The founding documents of the current framework contain a large amount of diplomatic language, much of which is not easily translated into tangible and operational objectives and actions. One of our tasks was to try and assess the extent to which the highly ambitious declarations dating back to 1995 have been translated into concrete results or, alternatively, represent false piety. The NTA is a general statement about the relationship and mutual commitment to it by both partners. Much the same remark could be made about the official reports of EU/US summits which, given

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<sup>144</sup> 'The ambition of the NTA/JAP exercise is to move from "policies of consultation" to "the policies of joint action" and to a more practical action-oriented approach based on deeds not words'. Jacques Santer, speech at the Transatlantic Policy Network (TPN)', Brussels, 30 November 1995.

their visibility, emphasise consensual positions and cooperative successes or ambitions, as opposed to difficulties or failures.

A further layer of difficulty lay in the fact that, beyond deeds and words, both sides (neither speaking with a single voice) pursue their own ‘domestic’ agendas, each evolving over time, if also with important lines of continuity. To elaborate further on these hidden agendas was beyond the scope of our study.

2. A second challenge was how to cope with a formidable quantity of information. We estimated that the Joint Action Plan (JAP) contained no fewer than 170 operational objectives (that is, declarations that begin with or contain the words ‘we will...’). Although of varying nature and scope, these objectives represent an impressive list that has been further enriched over time.

As a consequence of these rather large and movable boundaries of scope, we have had to come up with a methodology that is both systematic and realistic.

We proceeded by

1. assessing the contents of the NTA. This involved
  - identifying a set of objectives and criteria for evaluation
  - keeping them within manageable limits, and
  - ensuring they were comprehensible to non-insiders.
2. analysing the evolution of the items discussed within the NTA framework, based on a review of the archived documents of DG RELEX, Unit C1. This review provided us with a clear sense of the degree of success achieved on issues discussed in NTA meetings at various levels of responsibilities (NTA Task Force, Senior Level Groups, Ministerial Meetings and Summits). This exercise extended to identifying:
  - achievements or failures
  - areas in which discussions are ongoing but in which few or no tangible results were achieved
  - where possible, which side took the lead in placing individual issues on the agenda.
3. determining the extent to which the operational objectives of the NTA/JAP have been achieved.

From a legal perspective, the NTA and JAP belong to the category of non-binding instruments. That is, they do *not* contain binding rules or executive obligations. Our evaluation required the objectives of the NTA to be reassessed so that they were readily ‘evaluable’ despite their non-binding character. We developed to this end a three-level hierarchy of NTA/JAP objectives:

- general objectives
- specific objectives
- operational objectives.

The declared **general objectives** of the NTA are phrased in very broad and consensual terms, such as:

*'To consolidate democracy and free-market economies throughout the continent'.*

*'To ensure continuing peace in Europe into the next century'.*

*'To contribute significantly to the extension of security, stability and prosperity in the whole of Europe'.*

We see here on display the values central to transatlantic relations: security, economic prosperity, and democratic development. Although laudable, they cannot be considered as references for evaluation given their generic nature and non-timely character. Additionally, in a sign of what has changed since 1995, these general objectives focus on Europe itself, as opposed to a joint US/EU agenda in international politics more generally.

The declared intentions of the NTA could be summarized as follows (our re-formulation):<sup>145</sup>

*To further strengthen and adapt the transatlantic partnership to domestic and external challenges and according to values shared on both sides of the Atlantic.*

In our view, this single sentence encompasses faithfully the central ambition of the NTA as an **agenda** rather than a programme: that is, a global and adjustable framework for action. Such a framework can be regularly adjusted to immediate problems and does not constitute a rigid scaffold.

More **specific objectives** have been formulated in the four major chapters of the NTA which are reproduced here as *the* four specific objectives of the NTA:

***Promoting peace and stability, democracy and development around the world.***

*Together, we will work for an increasingly stable and prosperous Europe; foster democracy and economic reform in Central and Eastern Europe as well as in Russia, Ukraine and other new independent states; secure peace in the Middle East; advance human rights; promote non-proliferation and cooperate on development and humanitarian assistance.*

***Responding to global challenges.***

*Together, we will fight international crime, drug trafficking and terrorism; address the needs of refugees and displaced persons; protect the environment and combat disease.*

***Contributing to the expansion of world trade and closer economic relations.***

<sup>145</sup> An earlier study defined the declared intentions of the NTA as 'to deal better with the externalities of US policies for the EU, and vice versa, as well as to address the effects of third parties actions on US/EU interests'. See Éric Philippart and Pascaline Winand, 'Deeds not words? Evaluating and explaining the US/EU policy output' in Éric Philippart and Pascaline Winand (eds) *Ever Closer Partnership: Policy-Making in US/EU Relations* (PIE-Peter Lang, 2001).

*Together, we will strengthen the multilateral trading system and take concrete, practical steps to promote closer economic relations between us.*

***Building bridges across the Atlantic.***

*Together, we will work with our business people, scientists, educators and others to improve communication and to ensure that future generations remain as committed as we are to developing a full and equal partnership*

It was not possible to judge whether these objectives have been achieved without a clear definition of what constitutes a ‘success’. If we take the first objective, it is obvious that the situations in the Middle East or Caucasus have improved, if perhaps only slightly, since 1995. Could these be considered ‘successes’, although conflicts in both regions remain far from resolution?

Similarly, whether the ambitions of the NTA should be measured in terms of progress on the issues themselves (such as movement in the Middle East peace process) or enhancement of the capacity of the EU and US to act jointly remains an open question.

In our evaluation of the NTA’s achievements we also had to distinguish between another two dimensions. We reflected on whether or not whatever has been ‘achieved’ was (or was not) under the control of the two partners. We thus had to distinguish between:

- an assessment of the *impact* the EU and the US have – especially acting jointly – on particular questions but for which they cannot be considered ‘responsible’;
- an assessment of the intensity of *efforts* made by the partners – especially joint efforts – to improve the existing situation.

In our analysis we focused on the latter dimension on the grounds that an evaluation must rely on verifiable facts and establish a minimal set of causal links between actions and outputs.<sup>146</sup>

In other words, we focused on whether intentions have been acted upon and if they were successful in terms of outputs, *not* whether these outputs have been a major determinant of actual outcomes.

In short, we examined mainly what evaluators usually refer to as **operational objectives**. As indicated, these objectives are numerous and far-reaching. The JAP prioritises issues of transatlantic, international or global scope. Its common approach to these issues is to seek practical, tangible cooperation, starting with a clear statement of intentions: ‘we will...’.

We would note three additional points:

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<sup>146</sup> However, we do offer judgements on the former dimension whenever we have found credible evidence. See especially section 2, ‘Assessment of Cooperation’.

- this analysis relied on official documents that were drafted by (exclusively European) officials who have a direct stake in the assessment.
- the documents reviewed in the Commission DG Relex archives do not constitute a comprehensive and exhaustive set of all documentation that has been circulated within the NTA framework between 1995-2005.
- we know that extensive (informal) discussions between the partners on specific issues have not been documented. The documents to which we had access tell only part of the story, and some important features of the EU/US dialogue may not have been taken into account in our analysis as a consequence.

**ANNEX 2 – THE ARCHIVE EVIDENCE**

**EXCEL FILE ('Archive-final') ABOUT HERE**

## ANNEX 3

### Transatlantic Regulatory Cooperation Agreements

Agreement	Targeted Regulations	Year
Competition Policy Agreement	Competition regulations	1991
EC/US Agreement on Drug Precursors	Illicit drug regulations	1997
EC/US Customs and Cooperation Agreement	Customs certifications	1997
EU/US General Mutual Recognition Agreements	Conformity assessment testing in six sectors: telecommunications equipment, electromagnetic compatibility, electrical safety, recreational craft, medical devices, and pharmaceutical good manufacturing practices	1997
EU/US Positive Comity Agreement	Competition relations	1998
EU/US Agreement Concerning the Establishment of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts	Technical regulations	1999
EU/US Veterinary Equivalence Agreement	Animal export certifications	1999
EU/US Safe Harbour Agreement	Data protection regulations	2000
Joint Declaration on US/EU Cooperation in the Field of Metrology and Measurement Standards	Measurement equivalence in product certification	2000
EU/US Agreement on Mutual Recognition of Certificates of Conformity for Marine Equipment	Conformity assessment testing for marine equipment	2001
EU/US Guidelines on Regulatory Cooperation and Transparency	Non-binding guidelines for cooperation among EU and US regulators regarding technical barriers to trade	2002
Financial Markets Regulatory Dialogue established	Informal dialogue devoted primarily to avoiding disruption to trade in financial services resulting from distinct EU and US regulations	2002
Mutual Recognition Agreement on Marine Equipment	Mutual recognition of standards for marine equipment	2004
Roadmap for EU/US Regulatory Cooperation and Transparency	Sector-by-sector plan of action for EU/US regulatory cooperation	2004
EU/US Agreement extending customs cooperation to container security	Agreement implementing US Container Security Initiative throughout the EU	
EU/US Passenger Name Recognition Agreement	Agreement allowing US Customs and Border Protection to collect passenger data relating to flights from EU to US	
Policy Dialogue on Trade and Border Security	Semi-annual meetings among senior US/EU customs/border officials	

## ANNEX 4 – LIST OF INTERVIEWS

### Washington

Kristen Archik, EU analyst, Congressional Research Service  
Telmo Baltazar, Counsellor, Justice and Home Affairs, EU Delegation to the United States  
Charlene Barshefsky, Senior International Partner, Wilmer Cutler Pickering Hale and Dorr LLP  
(former US Trade Representative)  
Peter K.J. Berz, First Secretary, Trade, EU Delegation to the United States  
Lael Brainerd, Senior Fellow, Brookings Institution  
Esther Brimmer, Johns Hopkins (former NSC and Policy Planning, Department of State)  
Daniel E. Brinza, Deputy General Counsel and Assistant USTR for Monitoring and Enforcement,  
Office of the United States Trade Representative  
Thomas Burrows, Senior Council for Multilateral Matters, US Department of Justice  
Belen Martinez Carbonell, Political, Academic, Justice and Home Affairs Section, EU Delegation to  
the United States  
Peter Chase, Director, EU office, State Department  
Philippe Coessins, Political Counsellor, European Commission delegation  
Maria Green Cowles, The American University  
Jonathan Davidson, EU Delegation to the United States  
Glyn Davies, deputy assistant secretary of state for Europe and Eurasia, US Department of State  
Gerard Depayre, Deputy Chief of Mission, European Commission delegation  
Karen Donfried, Europe analyst, Policy Planning staff, State Department  
Stuart Eizenstat, Senior Partner, Covington & Burling (former US ambassador to the EU and senior  
State and Treasury official)  
Michael Feldman, Economic Officer, Office of European Union Affairs, US Department of State  
Jean Ann Fox, Consumer Federation of America and TACD  
Paul Gallis, Senior European Analyst, Congressional Research Service  
Heather G. Goethert, Trade Policy Advisor, Biotechnology and Textile Policy Division, Bureau of  
Economic and Business Affairs, US Department of State.  
Paul Gretch, Director, Office of International Aviation, Department of Transportation  
Michael Haltzel, senior staff member, Senate Foreign Relations Committee  
Daniel Hamilton, Director, Transatlantic Center, Johns Hopkins University  
Kathryn Hauser, US Executive Director, Transatlantic Business Dialogue  
Meg Hawley-Young, Economic Officer, Office of European Union Affairs, US Department of State  
Debra Juncker, Bilateral Trade Office, Bureau of Economic and Business Affairs, US Department of  
State  
Peter Kanflo, Political Counsellor, Swedish embassy  
Rhoda Karpatkin, Consumers Union and TACD  
Richard Kauzlerich, National Intelligence Officer for Europe, NIC  
Alison Kelly, Deputy Chief of Mission, Irish Embassy to the United States  
Philippe Lailot, Political Counsellor, French Embassy to the United States  
Carl Lankowski, Deputy Director of Area Studies and Coordinator for European Area Studies, Foreign  
Service Institute, US Department of State  
David Lustig, Government Affairs Representative, Unilever (TABD)  
Tracey McKibben, Director, European Economic Affairs and EU Relations, National Security Council  
Leo Michel, National Defense University (former NATO director at US Department of Defence)  
Elizabeth Milewski, Senior Advisor, Biotechnology, Office of Prevention, Pesticides and Toxic  
Substances, Environmental Protection Agency  
Breck Milroy, Senior Advisor, Office of Prevention, Pesticides and Toxic Substances, Environmental  
Protection Agency  
Vince Morelli, former Staff Director, Europe subcommittee, House IR Committee  
Mark J. Mowrey, Deputy Assistant USTR, Europe and the Mediterranean, Office of the United States  
Trade Representative  
Penelope Naas, Office for European Union and Regional Affairs, Market Access and Compliance,  
Department of Commerce  
Rolf Nickel, Political Counsellor, German Embassy to the United States  
Thomas P. O’Keefe III, Environment, Science, Technology and Health, Office of European Union  
Affairs, US Department of State  
Thomas Pickering, Vice President for International Policy, Boeing Corporation



Denis Pieton, Deputy Chief of Mission, French Embassy to the United States  
 Bobby Richey, Deputy Director, Biotechnology Group, International Trade Policy, Foreign Agricultural Service, US Department of Agriculture  
 Charles Ries, former Principal Deputy Assistant Secretary for Europe and Eurasia, Department of State  
 Paul Schmit, Deputy Chief of Mission, Luxembourg Embassy to the United States  
 Lisa Schroeter, former Executive Director of TABD  
 Peter Secor, Deputy Director, Office of European Union Affairs, US Department of State  
 Simon Serfaty, Senior Advisor, Europe Programme, Center for Strategic and International Security Studies  
 Paolo Serpi, Political Counsellor, Italian Embassy to the United States  
 Madelyn E. Spirnak, Senior Advisor for Agricultural Biotechnology, US Department of State  
 Jim Steinberg, Brookings Institution (former National Security Council and Policy Planning, Department of State)  
 Bruce Stokes, *National Journal*  
 Bruce Swartz, Deputy Assistant Attorney General, Criminal Division, Department of Justice  
 Matthew Taylor, Political Counsellor, UK Embassy to the United States  
 James Townsend, Principal Director, NATO and Europe Policy, Office of the US Secretary of Defence, Department of Defence  
 Tony Van der haegen, Minister-Counsellor, Agriculture, Fisheries, Food Safety and Consumer Affairs, EU Delegation in Washington, DC  
 Stewart Verdery, former Assistant Secretary for Borders and Transport Security, Department of Homeland Security  
 Anthony Wayne, Assistant Secretary of State for Economics and Business  
 Hillel Weinberg, Staff Member, House International Relations Committee  
 Karen Volker, Deputy Director, EU office, Department of State  
 David Young, Deputy Director, Western Europe Group, International Trade Policy, Foreign Agricultural Service, US Department of Agriculture

## **Brussels**

Eero Ailio, Galileo International Cooperation, DG Energy and Transport, European Commission  
 Matthew Baldwin, Head of Unit, Market Access, DG External Relations, European Commission  
 David Batchelor, Air Transport Policy, Economic Regulation and Multilateral Relations, DG Energy and Transport  
 Fraser Cameron, Director of Studies, European Policy Centre  
 Paolo Cesàro, International Relations and Development Cooperation, ANCI-IDEALI  
 Carlo Chicco, Directorate-General for Committees and Delegations (Delegation for Relations with US), European Parliament  
 Jim Cloos, Director for Transatlantic Relations, EU Council Secretariat  
 Robert Cooper, Director General for External and Politico-Military Affairs, Council of the European Union  
 Enrique Barón Crespo, EP Delegation for relations with the US, Member of the European Parliament and TPN Parliamentary Committee  
 Veronika Wand Danielsson, Political Officer and Member of COTRA, Permanent Representation to the EU of Sweden  
 Youri Devuyst, Vrije Universiteit Brussel and DG Education, European Commission  
 Daniel Dombey, *Financial Times*  
 James Elles, Member of the European Parliament and TPN Parliamentary Committee  
 Anders J. Ericson, Press and Public Affairs Officer, Permanent Representation to the EU of Sweden  
 Jonathan Evans, (Chairman, Delegation for relations with US), Member, European Parliament  
 Blanka Fajkusová, First Secretary & Head of Unit for External Relations, Permanent Representation to the EU of the Czech Republic  
 Jonathan Faull, Director-General, DG Justice and Home Affairs, European Commission  
 Ireneusz Fidos, External Relations, Permanent Representation to the EU of Poland  
 Eugene Forde, Political Officer and member of COTRA, Permanent Representation of Ireland to the EU  
 Simon Fraser, Head, Cabinet of Commissioner Mandelson  
 Elvira Gaeta, Dirigente, Permanent Representation to the EU of Italy  
 Dr. Rudolf Gridl, Political Officer and Member of COTRA, German Permanent Representation to the EU  
 Eckart Guth, Deputy Secretary General, European Commission

Laura Guy, Political Officer and Member of COTRA, UK Permanent Representation to the EU  
 Vivien Haig, Director General, Transatlantic Policy Network  
 Ms Florence Jeanblanc-Risler, Minister-Counsellor, Permanent Representation of France to the European Union, Brussels  
 Lotte Knudsen, Head of Unit, External and Enlargement, Directorate-General for Justice and Home Affairs, European Commission  
 Eneko Landaburu, Director-General, DG RELEX, European Commission  
 Erika Mann, EP Delegation for relations with the US (substitute), Member of the European Parliament & EU Steering Group (Chair), Transatlantic Policy Network  
 Michelangelo Margharita, Market Access, Coordinator for bilateral relations with the US, DG Trade  
 Petra Masínová, Spokesperson and Second Secretary, Permanent Representation to the EU of the Czech Republic  
 Harry O'Hara, Counsellor, United States Mission to the European Union  
 Jim Nicholson, former chair, EP Delegation for relations with the US, Member of the European Parliament  
 Diederik Paalman, External Relations, Directorate-General Justice and Home Affairs, European Commission  
 Vittorio Rocco di Torrepadula, Premier Conseiller, Permanent Representation to the EU of Italy  
 Michael Rueter, EU Coordinator, Transatlantic Policy Network  
 Michael Scannell, Head of Unit, DG SANCO, European Commission  
 Siebe Schuur, Minister Plenipotentiary, External Economic Relations, Permanent Representation to the EU of the Netherlands  
 Kyle Scott, Political Minister Counsellor, US Mission to the European Union  
 Michael Shackleton, Head of Division, Conciliation Secretariat, European Parliament  
 Alexander Stubb, EP Delegation for relations with the US (substitute), Member of the European Parliament  
 Fernando Valenzuela Marzo, Deputy Director-General, DG RELEX, European Commission  
 Laurens Westhoff, Conseiller, Chef de la Section Commerciale, Permanent Representation to the EU of the Netherlands  
 Gunnar Wiegand, Head of Unit for Relations with North America, DG External Relations, European Commission  
 David Wright, Director, Directorate G (Financial Markets), DG Markt, European Commission  
 Richard Wright, Director, DG External Relations, European Commission  
 Christian Zinglensen, Counsellor, External Relations, Permanent Representation of Denmark

### **Stockholm**

Bengt Albons, Diplomatic Correspondant, *Dagens Nyheter*  
 Dr Jan Joel Andersson, Research Fellow, Swedish Institute of International Affairs  
 Dr Alyson J K Bailes, Director, Stockholm International Peace Research Institute  
 Lars Ekeman, *Folk och Forsvar* (People and Defence, civil organisation)  
 Dr Magnus Ekengren, Swedish National Defence College  
 Prof Jan Hallenberg, Director of Studies, Swedish National Defence College  
 Prof Bo Huldt, Professor of Strategic Studies, Swedish National Defence College  
 Olof Huldtgren, Senior Advisor, Americas Department, Ministry of Foreign Affairs  
 Mikaela Kumlin-Granit, Political Affairs Advisor, Americas Department, Ministry of Foreign Affairs  
 Hans Magnusson, Deputy Director General, Head of Department for Eastern Europe and Central Asia, Ministry of Foreign Affairs  
 Hakan Malmqvist, Deputy Director General, Head of Americas Department, Ministry of Foreign Affairs  
 Col Jan F T Mörtberg, Head of Section for Strategy, Swedish National Defence College  
 Prof Bengt Sundelius, Head of Research, Swedish Emergency Management Agency  
 Dr Mike Winnerstig, Senior Researcher, Swedish Defence Research Agency

### **Prague**

Helena Bambasová, Director General, Territorial section II, External Relations with non-EU states, Ministry of Foreign Affairs  
 Ivan Bušniak, Foreign Policy Advisor to the Prime Minister, Office of the Government  
 Adam Černý, Senior Editor, *Economia*

Dita Charanzová, Head of Unit, Department of Trade Policy and Agriculture, Ministry of Foreign Affairs  
Richard Hlavatý, General Director, Trade Policy and European Integration Section, Ministry of Industry and Trade  
Jan Hřích, Director of Studies, Institute of International Relations  
Bohumil Jirkal, Deputy Director, Common Foreign and Security Policy Department, Ministry of Foreign Affairs  
Petr Kaván, Department of the Americas, Ministry of Foreign Affairs  
David Konecký, Security Policy Department, Ministry of Foreign Affairs  
Václav Malý, Director, Non-European Countries (Americas and Caribbean Department), Ministry of Industry and Trade  
Kareřina Moravcová, Deputy Director, Department of External Relations (Middle East), Ministry of Foreign Affairs  
Jiří Schneider, Coordination and Member of the Board, Program of Atlantic Security Studies, Prague Security Studies Institute  
Michal Strouhal, Director, Common Foreign and Security Policy Department  
Pavel Tomášek, journalist, *Economia*

### **Paris**

Mr François-Aïssa Touazi, PESC service, Ministry of Foreign Affairs  
Mr Pascal Le Deunff, Deputy head of PESC service, Ministry of Foreign Affairs  
Prof Pierre Hassner, Centre d'Études et de Recherches Internationales (CERI)  
Mr Philippe Voiry, Trade Policy & WTO, Economic and Trade Department, Ministry of Economic Affairs, Finance and Industry

### **London**

Edward Bannerman, HM Treasury and Centre for European Reform  
Lord Leon Brittan of Spennithorne, House of Lords  
Colin Church, Deputy Director, Climate Change, Energy and Environmental Risk, Department for Environment, Food and Rural Affairs  
Glen Cronin, Head, Air Transport European Issues, Department of Transportation  
Sir Brian Crowe, Royal Institute of International Affairs  
Phil Dykins, Head, Bilateral Aviation Relations, Department for Transport  
Anna Fielder, Director, Office for Developed and Transition Economies, Consumers International  
Stuart Gill, Head, EU-Americas and Asian Section, European Union Directorate (External), Foreign and Commonwealth Office  
Peter Gooderham, Director Middle East & North Africa, Foreign and Commonwealth Office  
Hermione Gough, EU Coordination and Strategy Team, H M Treasury  
Stewart James, Head of EU Coordination and Strategy, H M Treasury  
Lord John Kerr of Kinlochard, House of Lords and Imperial College London  
Michael Mann, Department for Transport  
Ben Wallis, Co-ordinator, Transatlantic Consumer Dialogue  
Katrina Williams, European Secretariat, Cabinet Office  
Lord David Williamson of Horton, House of Lords

### **Warsaw**

Sebastian K. Barkowski, Office of the Committee for European Integration, Integration Policy Department  
Krzysztof Bobinski, journalist, formerly of the *Financial Times* and *Unia & Polska*  
Lena Kolarska-Bobinska, Director, Institute of Public Affairs  
Roman Kuzniar, Director of the Diplomatic Academy, Ministry of Foreign Affairs  
Zbigniew Lewicki, professor, Warsaw University  
Karolina Nowak, Expert, EU Department, Ministry of Foreign Affairs  
Marek Ostrowski, journalist, *Polytika*  
Janusz Reiter, Director, Warsaw Centre for International Relations  
Jadwiga Stachura, Department of Strategy and Planning in Foreign Policy, Ministry of Foreign Affairs  
Piotr Antoni Świtalski, Undersecretary of State, Ministry of Foreign Affairs  
Henryk Szlajfer, Director of the Department of the Americas, Ministry of Foreign Affairs

Bartosz Węglarczyk, journalist, *Gazeta Wyborcza*  
Marcin Zaborowski, Warsaw Centre for International Relations

**Other**

Eric Hayes, Delegation of the European Commission to Canada  
Percy Westerlund, Head of European Commission Delegation, Oslo