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# Article

## The New Transatlantic Marketplace: A Contemporary Analysis of United States – European Union Trade Relations and Possibilities for the Future

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1. The following sources have been checked for correct bluebook format only. The author alone represents that the content in these sources supports the author's proposition. STEPHEN WEATHERILL & PAUL BEAUMONT, *EU LAW* (3d ed. 1999); Sir Leon Brittain, *Transatlantic Economic Partnership: Breaking Down the Hidden Barriers*, in *TRANSATLANTIC REGULATORY COOPERATION: LEGAL PROBLEMS AND POLITICAL PROSPECTS* (George A. Bermann et al. eds., 2000); GEORGE A. BERMAN ET AL., *CASES AND MATERIALS ON EUROPEAN UNION LAW* (2d ed. 2002).

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*In a free trade an effectual combination cannot be established but by the unanimous consent of every single member of it, and it cannot last longer than every single member of it continues of the same mind.*<sup>2</sup>

—Adam Smith

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2. ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 129 (Katherine Sutherland ed., Oxford Univ. Press 1993) (1776).

## INTRODUCTION

The paradigm of time prompts innumerable questions and uncertainties. The what's, the where's, the how's, the why's, all defining the happenings and occurrences of the past, all equivocal and capricious of the things to come. Indeed, though history perpetuates as a fixed, immutable memory, the future remains unwritten, and open to all possibilities, full of the potential for progress and growth and the unavoidable hazard of reflux and regression.

No person, no entity, no relationship remains exempt from time's paradigm, and nowhere could this model be more applicable on a global scale than in the relations of the United States and Europe. The Allied victory in World War II and the end of a near half-century of continent-wide war in Europe led to the initiation of arrangements aimed at averting the reoccurrence of the past through commonality and economic integration, erecting supportive pillars that would form the foundation of what would later become known as the European Union (EU).<sup>3</sup> The conquering of fascism spurred the rise of an equally threatening ideology on Europe's eastern borders, a communist agenda standing in stark contrast to the democratic, capitalistic ideals of post-war Europe and its friend and ally, the United States.<sup>4</sup> Throughout the latter half of the twentieth century, in recognition of its common ideological commitment and shared foe, the United States provided incentives and encouragement to the nation-states of Europe to integrate their economies and foreign policies, binding themselves so tightly that war between the European nation-states would be all but impossible. At the same time, this integration provided the United States with an economic and political partner in the Cold War.<sup>5</sup>

As the past defined itself, the future soon arrived. The U.S.-European relationship blossomed and triumphed as Europe became a union and communism became a memory. However, as the law of unintended consequences played itself out, communism lost and Europe became not only a union, but a supranational entity with the capacity and potential to rival that of its fostering and guiding cohort. The red flags of communism no longer fly on Europe's eastern borders, serving as a common enemy for the United States and EU to rally against, thereby de-

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3. See STEPHEN WEATHERILL & PAUL BEAUMONT, *EU LAW* 1-44 (3d ed. 1999).

4. See *id.*

5. See *id.*

stroying the same level of political and economic unity that once existed. Rallying upon its unification, its growing economic power, and its rivaling leadership in the international community, the EU now finds itself capable and willing to squabble with, and contest, the world's sole remaining superpower, its friend and ally the United States.<sup>6</sup>

As the paradigm of time unfolds and writes itself, the United States and the EU find themselves and their relationship at a crossroads. Following a direction defined in 1990 by the U.S.-EU Transatlantic Declaration,<sup>7</sup> the how's and the where's must soon be answered. The U.S.-EU economic alliance comprises the world's most important trade relationship, together accounting annually for \$500 billion in trade in goods and services.<sup>8</sup> However, economic disputes before the World Trade Organization (WTO) and rising apprehensions over competing trade policies continue to emerge, burdening and threatening this valued relationship.<sup>9</sup> In response to these growing rifts in transatlantic relations, the Transatlantic Declaration and the New Transatlantic Agenda (NTA) of 1995<sup>10</sup> provide a framework of measures and informal institutions to facilitate U.S.-EU economic cooperation. With a view towards addressing rising disputes and disparities in transatlantic relations, the NTA also establishes a visionary dream for the future of U.S.-EU trade, specifically through the creation of a transatlantic free trade area, the New Transatlantic Marketplace (NTM).

In an effort to analyze the present and future of U.S.-EU trade relations, Part I of this article discusses the background and development of the post-Cold War relationship in the context of the Transatlantic Declaration and the NTA, while considering the dangers and shortcomings of this current framework. Part II analyzes the legal barriers to free trade in the United States and EU that provoke economic conflicts and disputes amidst the relationship. Part III sets forth the innovative proposal for the New Transatlantic Marketplace, specifically examining certain components such as the removal of technical

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6. See Irwin M. Stelzer, *Is Europe a Threat?*, COMMENTARY, Oct. 1, 2001, available at 2001 WL 25550690.

7. Transatlantic Declaration on EC-U.S. Relations, Nov. 22, 1990, U.S.-EU, available at [http://europa.eu.int/comm/external\\_relations/us/economic\\_partnership/declaration\\_1990.htm](http://europa.eu.int/comm/external_relations/us/economic_partnership/declaration_1990.htm) [hereinafter Transatlantic Declaration].

8. *Id.*

9. See *infra* Part II.

10. *The New Transatlantic Agenda*, 6 DISPATCH 894-97 (1995) [hereinafter NTA].

barriers, tariff elimination, freedom of services, government procurement, and other possible aspects of the proposal. Part IV concludes with an analysis of the political and economic viability of the NTM and its potential implications on world trade.

## I. BACKGROUND OF CONTEMPORARY U.S.-EU ECONOMIC RELATIONS

### A. U.S.-EU TRADE

To characterize the U.S.-EU trade relationship as anything less than the most important bilateral alliance in international trade would be a gross understatement. "The flow of transatlantic trade and investments" amounts to upwards of one billion dollars (U.S.) every day.<sup>11</sup> In 2000, EU imports and exports constituted 19.3% (approximately 197,992,000 euros) and 24.79% (approximately 232,037,000 euros), respectively, of U.S. trade.<sup>12</sup> Trade in services made up 40.7% (approximately 116,474,000 euros) and 40.3% (approximately 117,403,000 euros) of EU imports and exports, respectively; while foreign direct investments amongst the two trading partners calculated to 68% (approximately 121,271,000 euros) of EU inflows, 62.4% (approximately 561,199,000 euros) of inward stocks, 47.5% (approximately 172,027,000 euros) of total EU outflows, and 51.3% (approximately 794,523,000 euros) of outward stocks.<sup>13</sup> In essence, the EU and United States are "each other's two main trading partners" and account for "the largest bilateral trade relationship in the world."<sup>14</sup> With investment amounts between the two amounting to over 1.1 trillion euros,<sup>15</sup> over fourteen million people in the United States and EU owe their livelihoods to this transatlantic trade relationship.<sup>16</sup>

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11. *Transatlantic Relations - The U.S - EU Partnership: U.S. Relations with the European Union*, at <http://www.useu.be/TransAtlantic/Index.html> (last visited Apr. 4, 2002).

12. EUR. UNION, DG TRADE, *EU Trade with Main Partners 2000* (Mio euro), A2/CG/SG/WB, available at [http://europa.eu.int/comm/external\\_relations/peru/intro/andean.pdf](http://europa.eu.int/comm/external_relations/peru/intro/andean.pdf) (last visited Mar. 13, 2003).

13. *Id.*

14. *Bilateral Trade Relations: USA*, at <http://europa.eu.int/comm/trade/bilateral/usa/usa.htm> (Oct. 2001).

15. *Id.*

16. Thomas R. Pickering, *America's Stake in Europe's Future*, Address Before the French American Chamber of Commerce, at <http://www.useu.be/ISSUES/pick1103.html> (Nov. 3, 2000).

The success and viability of the U.S.-EU trade relationship arises primarily out of similar interests and a common perception of external challenges. A shared commitment to economic liberalization and a common interest in a particular version of liberalization and government regulation, uncommon among other great powers, explains in large part the existence and success of transatlantic trade relations.<sup>17</sup> Though not identical, the capitalistic styles present in Europe and the United States remain relatively similar in comparison to other types of capitalism found in Asia, "the transitional economies of Eastern Europe, and the former Soviet Union," as well as the developing states of Africa and Latin America.<sup>18</sup> The overall size of the transatlantic trade relationship, coupled with the common capitalistic view for the future of world trade, supports the assertion that the economies and societies of the United States and EU are so intertwined and interdependent that the maintenance and advancement of the trade relationship must be of the highest economic priority between the two partners.<sup>19</sup>

## B. THE NEW TRANSATLANTIC AGENDA

As the apparent significance of the U.S.-EU trade relationship grows increasingly important, the New Transatlantic Agenda (NTA) of 1995 provides the framework for managing and expanding general U.S.-EU cooperation.<sup>20</sup> Expanding upon the formalization of U.S.-European Community relations adopted in the 1990 Transatlantic Declaration, the NTA establishes an ambitious agenda in four areas, namely Expanding Cooperation on Promoting Peace, Stability, Democracy, and Development Around the World; Responding to Global Challenges; Building Bridges Across the Atlantic; and, pertinent to this discussion, Contributing to the Expansion of World Trade and Closer Economic Relations.<sup>21</sup>

The U.S.-EU economic-related commitments under the NTA

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17. Richard H. Steinberg, *Great Power Management of the World Trading System: A Transatlantic Strategy for Liberal Multilateralism*, 29 LAW & POLY INT'L BUS. 205, 219 (1998).

18. *Id.* at 220.

19. Pickering, *supra* note 16; see also Pascal Lamy, U.S. - EU: The Biggest Trading Elephants in the Jungle - But Will They Behave?, Address Before the Economic Strategy Institute, at <http://www.eurunion.org/news/speeches/2001/010607pl.htm> (June 7, 2001).

20. Press Release, U.S. Department of State, The New Transatlantic Agenda, at [http://www.state.gov/www/region/eur/eu/fs\\_980526\\_nta.html](http://www.state.gov/www/region/eur/eu/fs_980526_nta.html) (May 26, 1998).

21. NTA, *supra* note 10, at art. II.

highlight several important areas that have shaped and will continue to foster the relationship in the future. Specifically, the NTA recognizes a responsibility between the United States and EU to lead the world in opening markets to trade and investment and to strengthen and support the multilateral trading system and the WTO.<sup>22</sup> The two parties also pledge themselves to the full implementation of the General Agreement on Tariffs and Trade<sup>23</sup> (GATT) Uruguay Round commitments<sup>24</sup> and to explore the possibility of tariff reductions on industrial products.<sup>25</sup> More specific aspects of the NTA include: a promise to strengthen regulatory cooperation to address trade barriers resulting from divergent regulatory processes through a mutual recognition agreement; to work towards the successful completion of an Organization of Economic Cooperation and Development (OECD) Multilateral Agreement on Investment; and, to conclude a U.S.-European Community customs cooperation and mutual assistance agreement.<sup>26</sup> In order to effectuate these pledges, and other non-economic pacts contained within the agreement, the NTA establishes a Senior Level Group to oversee work on the agenda, as well as regular summits between the U.S. President and governing leaders of the EU.<sup>27</sup>

Arising out of the implementation of the NTA, the Joint U.S.-EU Action Plan<sup>28</sup> commits the United States and the EU to numerous measures.<sup>29</sup> Recognizing the importance of the U.S.-EU trade relationship, the Action Plan specifically amplifies the Expansion of World Trade and Closer Economic Relations section to address precise issues affecting U.S.-EU trade, as well as global trade as a whole.<sup>30</sup> Of noteworthy importance remain commitments to strengthen the WTO and the worldwide trading system through cooperative efforts to promote effective management and operation in the WTO; to promote financial service liberalization worldwide; to ensure the implementation of the

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22. *Id.* at art. III.

23. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT].

24. Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, LEGAL INSTRUMENTS-RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 1125 (1994).

25. NTA, *supra* note 10, at art. III.

26. *Id.* at art. III.

27. *Id.*

28. *Joint EU - U.S. Action Plan*, at <http://www.eurunion.org/partner/actplan.htm> (last visited Apr. 20, 2002).

29. *See generally id.*

30. NTA, *supra* note 10, at art. III.



WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS); to the development of a comprehensive model for customs procedures in cooperation with the International Chamber of Commerce; and, to the implementation of the 1994 OECD Recommendation on Bribery in International Transactions.<sup>31</sup>

Within the framework of the U.S.-EU Action Plan, the Transatlantic Economic Partnership<sup>32</sup> (TEP) initiative, launched in 1998, establishes another Action Plan to "intensify and extend multilateral and bilateral cooperation and common action" in the area of trade and investment.<sup>33</sup> Demonstrating a more defined resolution to the furtherance of the trade relationship, the TEP exhibits an evolution and expansion of the NTA and Action Plans by replacing broad, general propositions with a specific identification of common actions accompanied by a timetable for achieving definite results.<sup>34</sup> The TEP also establishes a regular dialogue to ensure closer cooperation in the 1999 WTO Ministerial meeting, identifying certain issues for discussion such as, modalities and principles for negotiation; WTO dispute settlement; transparency; implementation of WTO agreements; trade facilitation; a broad work program for the reduction of industrial tariffs; and, cooperation on various WTO issues to secure reports on competition and procurement.<sup>35</sup>

On the bilateral front, the TEP provides the means for joint U.S.-EU intensive efforts aimed to reduce or eliminate trade and investment barriers. For example, the TEP establishes deadlines for particular actions within the areas of regulatory cooperation, mutual recognition, consumer product safety, services, procurement, biotechnology, the environment, labor, consumers, competition law, and e-commerce.<sup>36</sup> Specific examples of the concrete steps initiated under TEP include: the implementation of a jointly defined set of principles and guidelines for regulatory cooperation by the end of 1999; the identification of conditions allowing for the removal of trade sanctions initiated by both parties by the end of 1999; and, the establishment of a TEP Environment Group to focus on the interface of trade and

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31. *See id.*

32. The Transatlantic Economic Partnership: Action Plan, Nov. 9, 1998, at <http://www.europa.eu.int/comm/trade/bilateral/usa/1109tep.htm> [hereinafter TEP].

33. *Id.* § 1.

34. *See generally id.*

35. *Id.* §§ 2.1-2.2.

36. *See id.* § 3.

the environment by January 1999.<sup>37</sup>

In order to execute the pledges taken, the TEP seeks to create an organizational framework enabling the United States and EU to effectively implement the TEP Action Plan. Cabinet-level meetings designed to maintain political momentum and resolve problems requiring deliberation at the political level supplement the U.S.-EU biannual summits.<sup>38</sup> A TEP Steering Group, comprised of specialized working groups, monitors the realization of TEP objectives and agreements, provides a forum for business, environmental, consumer, and labor dialogues, establishes a framework for consultation and early warning on matters of trade and investment relevance and submits regular reports to the U.S. President and Presidents of the European Commission and European Council.<sup>39</sup>

Perhaps the most productive results of the NTA framework, the subsequent Joint Action Plan, and the TEP Action Plan may be the establishment of various forums and dialogues designed to identify and address various trade and investment related barriers and issues. Specialized working groups, such as the TEP Working Group on Technical Barriers to Trade<sup>40</sup> and the TEP Working Group on Biotechnology,<sup>41</sup> provide the TEP Steering Group with information and recommendations pertinent to their respective areas. In addition, various dialogues, such as the Transatlantic Business Dialogue (TABD),<sup>42</sup> the Transatlantic Environment Dialogue (TAED), the Transatlantic Consumers Dialogue (TCD), the Transatlantic Labour Dialogue (TALD), and the Transatlantic Legislators' Dialogue (TLD), comprised of various businesses, associations, community leaders, and organizations, provide an informal process whereby European and U.S. actors develop joint U.S.-EU recommendations while working with various EU institutions and U.S. administrative offices.<sup>43</sup>

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37. *Id.*

38. TEP, *supra* note 32, § 4.

39. *Id.*

40. *See id.*

41. *See id.*

42. The TABD has perhaps been the most effective measure established through recent U.S.-EU economic cooperation, providing a forum for important business leaders from both sides of the Atlantic to boost trade and investment opportunities and to propose legislation to U.S. and EU governing authorities. The enactment of legislative proposals from the TABD, though varying from year to year, has been quite successful. *See generally Transatlantic Business Dialogue, at* <http://www.tabd.org/> (last visited Nov. 25, 2002).

43. For example, the Transatlantic Legislators' Dialogue facilitates biannual

The Early Warning Mechanism<sup>44</sup> (EWM) represents another important result of the TEP implementation. Through a statement from the 1999 Bonn Summit, the EU and United States set forth numerous principles to recognize and prevent potential trade disputes at an early stage before the issues escalate politically and legally.<sup>45</sup> Taking into account the other side's interest when formulating policy, legislation, and regulations, the EWM relies on transparency through mutual information exchange and consultation for issues raised that may impact U.S.-EU relations.<sup>46</sup> Essentially, this device is designed to prevent and avert trade and investment disputes by dealing with potential problems early in the process and conciliating on such matters before they become trade barriers. The EWM invites input from the TLD, TABD, TACD, and TALD to identify problems and offer proposals for resolution, while proposing that identified problems under the EWM be discussed at the biannual U.S.-EU summits.<sup>47</sup>

Evaluations regarding the success of the NTA and subsequent initiatives remain divergent and mixed. Perhaps one of the most important agreements to arise out of the transatlantic partnership may be the U.S.-EU Mutual Recognition Agreement<sup>48</sup> (MRA), which went into effect in 1998.<sup>49</sup> Providing for mutual recognition of conformity assessments of industrial products conducted by Conformity Assessment Bodies,<sup>50</sup> the MRA seeks to avoid duplication of controls and increase transparency of procedures, while bringing products into the market faster and more efficiently in six industrial sectors.<sup>51</sup> As de-

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meetings between U.S. Congress and EU Parliament delegations and a series of teleconferences based on specific topics. See *TLD - Transatlantic Legislators' Dialogue*, at [http://www.europarl.eu.int/intcoop/tld/welcome\\_en.htm](http://www.europarl.eu.int/intcoop/tld/welcome_en.htm) (last visited Apr. 13, 2002); see, e.g., *Transatlantic Business Dialogue*, *supra* note 42.

44. TEP, *supra* note 32, § 4; *Joint U.S.-EU Statement on "Early Warning" Mechanism*, at [http://www.europa.eu.int/comm/trade/pdf/early\\_warning.pdf](http://www.europa.eu.int/comm/trade/pdf/early_warning.pdf) (June 21, 1999).

45. *Joint U.S.-EU Statement on "Early Warning" Mechanism*, *supra* note 44.

46. *Id.*

47. *Id.*

48. Agreement on Mutual Recognition Between the United States of America and the European Community, 1999 O.J. (L 31) 3 [hereinafter MRA].

49. *Agreements in Force - EU and the U.S. Mutual Recognition Agreement*, at <http://europa.eu.int/comm/trade/goods/barriers/mrausa.htm> (last visited Apr. 4, 2002) [hereinafter *Agreements in Force*].

50. See generally MRA, *supra* note 48.

51. See *id.* These sectors include telecommunication equipment, electromagnetic compatibility, electrical safety, recreational craft, pharmaceuticals, and medical devices.

signed, the MRA should save consumers and manufacturers upwards of 200 million euros per year.<sup>52</sup> Perhaps more importantly, the MRA represents a key step towards integrating the U.S. and EU regulatory regimes and is significant in demonstrating that such advancements are possible and may be replicated and expanded upon in the future.

In addition to the implementation of the MRA, other successes in U.S.-EU trade relations owe their inception to the NTA. Generally, the broadening of U.S.-EU dialogue and cooperation remain the essential achievement of the NTA.<sup>53</sup> Specifically, by aligning U.S. and EU goals and support, the NTA aided the development of important multilateral arrangements such as the Information Technology Agreement,<sup>54</sup> the Basic Telecommunication Services Agreement,<sup>55</sup> and the Financial Services Agreement,<sup>56</sup> which serve to liberalize about 1 trillion euros in the world goods and services trade.<sup>57</sup> These achievements, in addition to those discussed previously, prove the relative success of the NTA; however, much room for development and improvement exists.

As assessed by various EU institutions, the success of the NTA remains evident, but limited.<sup>58</sup> The NTA undoubtedly nourishes a broader and more structured relationship between the United States and EU; however, as noted by the European Commission, neither the NTA, nor its subsequent arrangements, can effectively solve certain underlying difficulties present in the U.S.-EU trade relationship.<sup>59</sup> Indeed, though the present framework remains capable of bearing a limited load in the ever evolving and growing complexities of the world's largest economic relationship, perhaps a developing NTA dream will

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52. *Agreements in Force*, *supra* note 49.

53. See Reinforcing the Transatlantic Relationship: Focusing on Strategy and Delivering Results: Communication from the Commission to the Council, COM(01)154 final at 9 [hereinafter Commission Communication].

54. WTO Ministerial Conference, *Ministerial Declaration on Trade in Information Technology Products*, WT/MIN(96)/16 (Dec. 13, 1996).

55. Agreement on Telecommunications Services, Fourth Protocol to General Agreement on Trade in Services, Feb. 15, 1997, 36 I.L.M. 354 (1997).

56. Financial Services Agreement, available at [www.wto.org](http://www.wto.org) (last visited Apr. 20, 2002).

57. *Economic Relations*, at [http://europa.eu.int/comm/external\\_relations/us/action\\_plan/3\\_trade\\_economy\\_release.htm](http://europa.eu.int/comm/external_relations/us/action_plan/3_trade_economy_release.htm) (last visited Apr. 4, 2002).

58. See Commission Communication, *supra* note 53, at 9; Opinion of the Economic and Social Committee on 'Re-invigorating the Transatlantic Partnership and Dialogue,' 2001 O.J. (C 221) 113.

59. See Commission Communication, *supra* note 53, at 2.

provide additional answers and certainty, namely through the New Transatlantic Marketplace (NTM).<sup>60</sup>

Constituting one of the most visionary and progressive ideas of the NTA, the NTM remains a real possibility for advocates in both the United States and EU. Essentially described as a U.S.-EU "economic space," the NTM will aim to gradually reduce and eliminate tariffs and trade barriers while working to harmonize sophisticated trade and regulatory policies such as subsidies, intellectual property protection, government procurement, investment measures, and the establishment and movement of good and services.<sup>61</sup> This matter is discussed in greater detail in Section III of this work, as it remains necessary to discuss the barriers and obstacles the U.S. and EU must overcome before the realization of the NTM.

### C. POLITICAL AND INSTITUTIONAL DIFFICULTIES IN THE U.S.-EU TRADE RELATIONSHIP

While the framework of the NTA provides a forum facilitating many great strides and advancements in the U.S.-EU trade relationship, rancor and difficulties still pervade many aspects of transatlantic trade. While the EWM, various legislative and business dialogues, and biannual summits serve to prevent and reconcile some trade related disputes, in many cases high-profile adjudication before the WTO's dispute settlement bodies remains the only answer.<sup>62</sup> This section briefly discusses the use of the WTO by the United States and EU in trade dispute settlement, as well as other practical matters that serve to impede the progress of the realization of a U.S.-EU "economic space."

Since the WTO and the dispute settlement process entered into force in 1995, nearly half of the disputes brought before an arbitration panel involved the United States and EU as complainants, respondents, or third-party interveners.<sup>63</sup> Various U.S. complaints regarding EU policies include: EU-Hormone Ban<sup>64</sup> (commonly known as the Beef Hormones dispute); EU-

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60. See NTA, *supra* note 10, at art. III.

61. See *id.*

62. See, e.g., *infra* notes 63-74 and accompanying text.

63. See generally *Update of all WTO Dispute Settlement Cases*, at [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm) (last visited Apr. 14, 2002).

64. See WTO Appellate Body Report, *EC - Measures Concerning Meat and Meat Products (Hormones)*, WT/DS26/AB/R (Jan. 16, 1998), 37 I.L.M. 1246, available at [www.wto.org](http://www.wto.org).

Regime for the Importation, Sale, and Distribution of Bananas,<sup>65</sup> and the EU-Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs.<sup>66</sup> The EU has launched significantly more challenges to U.S. trade policies, including ones aimed at the U.S.-Foreign Sales Corporation Tax Provisions;<sup>67</sup> U.S.-Harbor Maintenance Fee;<sup>68</sup> U.S.-Measures Affecting Textiles and Apparel;<sup>69</sup> U.S.-Section 211 Omnibus Appropriations Act;<sup>70</sup> and Section 306 of the Trade Act of 1974 and Amendments Thereto.<sup>71</sup> In addition to many of these highly publicized disputes, numerous issues currently stand on the verge of likely adjudication, including biotechnology and genetically modified organisms,<sup>72</sup> steel safeguard measures,<sup>73</sup> and

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65. WTO Appellate Body Report, *European Communities — Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R (Sept. 9, 1997), 37 I.L.M. 243 (1998), available at [www.wto.org](http://www.wto.org) and 1997 WL 577784.

66. See WTO Dispute Panel Report, *EU - Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*, WT/DS174 (Feb. 14, 2003), available at [www.wto.org](http://www.wto.org) (indicating that the complaint by the United States contending EC Regulation 2081/92 does not provide national treatment with respect to geographical indications or sufficient protection to pre-existing trademarks that are similar or identical to geographical indication).

67. See WTO Appellate Body Report, *United States — Tax Treatment for “Foreign Sales Corporations” Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS108/AB/RW (Jan. 14, 2002), 41 I.L.M. 447 (2002), available at [www.wto.org](http://www.wto.org) and 2002 WL 44907 (last visited Mar. 5, 2003).

68. See WTO Dispute Panel Report, *Request for Consultations by the European Communities, United States — Harbour Maintenance Tax*, WT/DS118/1 (Feb. 16, 1998), available at [www.wto.org](http://www.wto.org) and 1998 WL 61306.

69. See WTO Dispute Panel Report, *U.S. - Measures Affecting Textiles and Apparel Products*, WT/DS151, available at [www.wto.org](http://www.wto.org) (representing one of several WTO decisions concerning this issue).

70. See WTO Appellate Body Report, *United States — Section 211 Omnibus Appropriations Act of 1998*, WT/DS176/AB/R (Jan. 2, 2002), 41 I.L.M. 654 (2002), available at [www.wto.org](http://www.wto.org) and 2002 WL 5173.

71. See WTO Dispute Panel Report, *Request for Consultations by the European Communities, United States - Section 306 of the Trade Act of 1974 and Amendments Thereto*, WT/DS200/1 (Jun. 13, 2000), available at [www.wto.org](http://www.wto.org) and 2000 WL 761618; see WTO Panel Report, *United States — Section 301-310 of the Trade Act of 1974*, WT/DS152/R (Dec. 22, 1999), 39 I.L.M. 452 (2000), available at [www.wto.org](http://www.wto.org) and 1999 WL 1267266.

72. See generally Charles W. Smitherman, *World Trade Organization Adjudication of the European Union-United States Dispute Over the Moratorium on the Introduction of New Genetically Modified Foods to the European Common Market: A Hypothetical Opinion of the Dispute Panel*, 30 GA. J. INT'L & COMP. L. 475 (2002) (setting forth the likely position of the WTO Dispute Panel finding the EU de facto moratorium an arbitrary, unjustifiable, and disguised restriction on trade under Article XX of the GATT, in the event this matter is adjudicated).

73. See Press Release, European Union, EU Forcefully Condemns U.S. International Trade Commission's Recommendation to Hike Tariffs on Steel Products (Dec. 10, 2001), at <http://www.europa.eu.int/comm/trade/bilateral/usa/pr20011211.htm>

competition law and merger related issues.<sup>74</sup>

The avoidance of these disputes and other potentially harmful matters affecting U.S.-EU trade relations constitutes an unfulfilled priority of the NTA. Under the NTA, the United States and EU committed themselves to full implementation of WTO Uruguay Round commitments,<sup>75</sup> a repudiated promise evidenced by the number of disputes currently within, and likely moving towards, the control of the dispute settlement mechanism. The biannual summits among U.S. and EU political leaders produce mixed results, often leading to no resolution, given the seemingly conclusive lesson that summitry works best when conflicts reach a point where only high-level political involvement is necessary to avert a complete breakdown.<sup>76</sup> Further, the successes and failures of the summits, as well as high-level senior official meetings, remain difficult to assess given the problems members of these engagements have in assessing the actual number of diffused conflicts.<sup>77</sup> In many respects, the efforts undertaken since the inception of the NTA have primarily focused on fighting “fires,” so to speak, rather than preventing them. These “fires” essentially resulted from the existence of many contentious issues, such as beef hormones and banana policies, originating before the inception of NTA machinery such as the EWM.<sup>78</sup> According to the TABD, the reason for continued U.S.-EU trade discord hardly seems to be resulting from a shortage of NTA institutions.<sup>79</sup>

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(noting cases where the U.S. has been subject to adverse WTO rulings for protectionist trade practices); Press Release, European Union, EU Adopts Temporary Measures to Guard Against Flood of Steel Imports Resulting from U.S. Protectionism (Mar. 27, 2002), at [http://www.europa.eu.int/comm/trade/goods/steel/pr\\_270302.htm](http://www.europa.eu.int/comm/trade/goods/steel/pr_270302.htm).

74. See *Occasional Squalls: A Ruling Against America Aggravates Trade Tensions*, THE ECONOMIST, Jun. 30, 2001, at 83.

75. See NTA, *supra* note 10, at art. III (stating countries agree to “contribute to the expansion of world trade by fully implementing our Uruguay Round commitments”).

76. Guy de Jonquieres, *How Can Transatlantic Trade Disputes be Avoided?*, FIN. TIMES, May 7, 2001, available at [www.tabd.org/media/2001/050701ft.html](http://www.tabd.org/media/2001/050701ft.html) (“The lesson seems to be that summitry works best when conflicts are either ripe for settlement or have reached the point where only high-level political involvement can avert complete breakdown.”).

77. See *id.* (listing problems that high-level political officials and countries have in finding agreement on how to solve trade conflicts).

78. *Id.*

79. See *id.* According to the TABD, the creation of new institutions will not likely resolve these problems, nor will proposals like the Transatlantic Free Trade Area or NTM serve as adequate solutions. In fact, the TABD argues the creation of the NTM may worsen the situation, especially in the context of multilateral trade

In many respects, U.S.-EU trade problems may be adequately attributed to the existing internal institutions of the two sides. Foremost, divergent national regulations pose barriers to U.S. and EU trade, externally and within.<sup>80</sup> Various legitimate reasons exist for these differences, namely the different problems facing the states, cultural variances in attitudes towards risk, diverging political agendas, and the political difficulties involved in solving trade-related matters domestically.<sup>81</sup> Consequently, in the case of the EU, the merging of fifteen different countries into one supra-national organization with a complex and bifurcated trade law- and policy-making authority unavoidably yields conflict that spills over into the bilateral relations with the United States.<sup>82</sup> Given the internal intricacies of the interplay among EU legal institutions, such as the European Council, the European Commission, the European Parliament, and the European Court of Justice, coupled with the diverging opinions and constituencies of the member states and their representatives, the actual construction of trade law and policy constitutes an arduous and Herculean task.<sup>83</sup> Furthermore, the lawmaking task at the EU institutional level constitutes only

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relations and the WTO. *See id.*

80. *See* Sir Leon Brittain, *Transatlantic Economic Partnership: Breaking Down the Hidden Barriers*, in *TRANSATLANTIC REGULATORY COOPERATION: LEGAL PROBLEMS AND POLITICAL PROSPECTS* 17 (George A. Bermann et al. eds., 2000) (claiming that common regulatory standards or, alternatively, the acceptance of existing differences in standards and finding ways of reducing their trade effects, represent important options to solving problems in U.S.-EU economic relations).

81. *See* PETER HOLMES & ALASDAIR YOUNG, *EMERGING CHALLENGES TO THE EU'S EXTERNAL ECONOMIC RELATIONS* 4-6 (Sussex European Institute, Working Paper No. 42, 2001).

82. From a general standpoint, the EU is composed of five different governing bodies with overlapping functions and an intricate system of checks and balances. For purposes of this article, the following descriptions will suffice: the European Council fulfills the political and law-making role; the Commission serves an executive and civil service function and proposes legislation to the Council, though delegated the authority to pass legislation itself in certain areas; the Parliament acts as an advisor and supervisor for the other institutions; the Court of Justice serves as the supreme judicial authority on Community law issues; and the Court of Auditors acts as the financial watchdog over all of the EU institutions. Internal and external trade policies follow a complex path from the EU level through these institutions to the individual state level where member states are expected to harmonize domestic laws to conform to EU directives and initiatives. For a more thorough and sufficient explanation of the EU legislative process, see WEATHERILL, *supra* note 3; GEORGE A. BERMAN ET AL., *CASES AND MATERIALS ON EUROPEAN UNION LAW* (2d ed. 2002).

83. *See generally infra* note 85 and accompanying text. The general law-making process and the interplay of the institutions of the EU lies beyond the scope of this paper. For an excellent introduction to the law and institutions of the EU see TOM KENNEDY, *LEARNING EUROPEAN LAW* (1998).



half of the struggle, as such legislation must then be incorporated into the laws of each member state.<sup>84</sup> Harmonization problems, as well as the ability of member states to introduce more stringent standards under certain circumstances, contribute to trade-related problems within the European community as well as in external relations with the United States.<sup>85</sup> As these matters further complicate the nature of U.S.-EU trade relations, the issue promises to grow increasingly more complicated with the reconstruction of the EU institutions under the Treaty of Nice<sup>86</sup> and with the forthcoming enlargement of the EU that hopes to add an additional ten member states, mainly from Eastern Europe, by 2004.<sup>87</sup>

Though the composition and structure of the EU plays a complicating role in the problems related to transatlantic trade, political and institutional complexities within the United States contribute equally. Article I, section 8, clauses 1 and 3 of the U.S. Constitution charge Congress with the responsibility to "lay and collect taxes, duties, imposts and excises" and "to regulate commerce with foreign nations and among the several states."<sup>88</sup> In most cases, Congress has delegated the power to negotiate with foreign governments to the U.S. President and Executive Branch.<sup>89</sup> Constitutional checks and balances insure congressional involvement, by requiring the U.S. Senate to "consent" to treaties and international agreements by a two-thirds majority vote.<sup>90</sup> While other means of implementing legislation remain immune from congressional interference, such as the executive agreement that allows the President to make certain agreements without ratification from the Senate,<sup>91</sup> the President has other means of implementing legislation that are not en-

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84. See generally WEATHERILL, *supra* note 3; see *supra* note 82 and accompanying text.

85. TREATY ESTABLISHING THE EUROPEAN COMMUNITY, arts. 95, 224, Feb. 7, 1992, O.J. (C 224) 1 (1992).

86. TREATY OF NICE, PROTOCOL ON THE ENLARGEMENT OF THE EUROPEAN UNION, Feb. 26, 2001, O.J. (C 80) (2001) 1. See generally, e.g., Charles W. Smitherman III, *Growing Pains: The Enlargement of the European Union and the European Commission Under the Treaty of Nice*, 15 FLA. J. INT'L L. 179 (2002).

87. See TREATY OF NICE, PROTOCOL ON THE ENLARGEMENT OF THE EUROPEAN UNION, *supra* note 86; see also Press Release, The Laeken Declaration: The Future of the European Union, Dec. 15, 2001, SN/273/01 ("The Union is about to expand to bring in more than ten new Member States, predominantly Central and Eastern European. . .").

88. U.S. CONST. art. I, § 8, cls. 1, 3.

89. See, e.g., *infra* notes 94-99 and accompanying text.

90. U.S. CONST. art. III, § 2, cl. 2.

91. MICHAEL K. YOUNG, UNITED STATES TRADE LAW AND POLICY 33-35 (2001).

tirely immune from congressional interference. For example, the President can make executive agreements without the Senate's ratification. However, since executive agreements usually require the enactment of subsequent legislation congressional involvement cannot be avoided.<sup>92</sup> The path from opening trade negotiations to domestic effectuation of international law is blocked with many political obstacles.<sup>93</sup> The diverse political input and congressional involvement in U.S. trade policies result in an underlying protectionist attitude. Consequently, trade arrangements only complicate trade relations, especially with the EU.

Perhaps the most effective means of dealing with the complexities of the U.S. institutional system can be found in the presidential trade promotion authority, commonly known as Fast Track.<sup>94</sup> Such authority essentially allows the President to negotiate trade deals without congressional amendment, derived from congressional pre-authorization.<sup>95</sup> Fast Track creates an environment where U.S. negotiating partners remain assured that the United States will not seek re-negotiation of agreements; while increasing the interplay between the President and Congress throughout the negotiating process, allowing for significant day-to-day input from Congress into the negotiations.<sup>96</sup> The end result produces a substantial certainty that Congress will approve and implement these international trade agreements.<sup>97</sup> Accordingly, virtually every Fast Track negotiated treaty receives congressional approval.<sup>98</sup> The Bush Administration resurrected this important measure, which had expired in 1994, through the Trade Act of 2002.<sup>99</sup>

Institutional and political restraints on the legislative processes, in both the United States and the EU, hamper the ad-

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92. *Id.*; U.S. CONST. art. II, § 2, cl. 2.

93. See YOUNG, *supra* note 91, at 34-35 (noting some political compromises that have developed between the U.S. Congress and the President with respect to treaty creation and enactment).

94. Trade Act of 2002 §§ 2101-2113, 19 U.S.C. §§ 3801-3813 (2002).

95. *Id.*

96. YOUNG, *supra* note 91, at 32-33 (finding that Fast Track authority creates an environment in which the President can assure U.S. negotiating partners that the United States will not seek renegotiation, while increasing consultations between Congress and the President).

97. *Id.* at 33.

98. *Id.* (“[V]irtually every trade agreement negotiated under Fast Track has been approved, while many negotiated without such prior authorization and consultation have not.”).

99. 19 U.S.C. §§ 3801-3813.

vancements made under the NTA. Trade disputes often find their way to the WTO dispute settlement system, increasing the growing tensions among U.S. and EU political leaders. The realization of the NTM, as envisioned in the NTA, may be the answer to these disputes. Nevertheless, in addition to these political and institutional impediments, numerous legal barriers remain in place and at issue, maintaining hostility and conflict within the U.S.-EU trade relationship.

## II. LEGAL BARRIERS TO THE REALIZATION OF THE NEW TRANSATLANTIC MARKETPLACE

The NTA's fulfillment of its visionary NTM faces substantial legal barriers as a result of the domestic laws of the EU and United States. As evidenced by the various matters regarding GATT/WTO commitments adjudicated by the United States and EU before the WTO dispute settlement system,<sup>100</sup> numerous areas of conflicting trade law and regulation exist, which must be dealt with before the NTM can take effect. Commonly referred to as trade barriers, these objectionable practices broadly include laws, regulations, policies, and practices that either discriminately protect domestic companies and products from foreign competition or artificially stimulate the exportation of certain domestic goods.<sup>101</sup> Undeniably, the United States and EU maintain trade barriers as part of their respective domestic legal regimes. Representative of the legal challenges posed to the NTM, the following section generally analyzes the trade barriers sustained by the EU and the United States.

### A. EU BARRIERS TO TRADE AND INVESTMENT

Trade barriers pose both political and economic problems to states affected by their subsistence. Charged by section 181 of the Trade Act of 1974,<sup>102</sup> the Office of the U.S. Trade Represen-

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100. See *supra* notes 63-74 and accompanying text.

101. See generally 2002 USTR NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS, available at <http://www.ustr.gov/reports/nte/2002> (listing foreign barriers to trade) [hereinafter NTE]; ROBERT M. MACLEAN & BETTINA VOLPI, EU TRADE BARRIER REGULATION: TACKLING UNFAIR FOREIGN TRADE PRACTICES (2000); IVO VAN BAELE & JEAN-FRANCOIS BELLIS, INTERNATIONAL TRADE LAW AND PRACTICE OF THE EUROPEAN COMMUNITY: EEC ANTI-DUMPING AND OTHER TRADE PROTECTION LAWS (1985).

102. Trade Act of 1974, Pub. L. No. 93-168, § 181, 88 Stat. 1976, 2041 (1971) (codified as amended at 19 U.S.C. § 2242 (2002)).

tative conducts an annual review of trade barriers and publishes its conclusions in the National Trade Estimate Report on Foreign Trade Barriers (NTE Report).<sup>103</sup> As one of several nations discussed in the report, a special section is devoted to trade barriers maintained by the EU.<sup>104</sup> This section will examine the eight areas specified in the NTE Report, specifically EU Import Policies; Standards, Testing, Labeling and Certification; Government Procurement; Export Subsidies; Intellectual Property Rights Protection; Services Barriers; and, Trade Restrictions Affecting E-Commerce.

### 1. EU Import Policies

The NTE Report finds various import policies maintained by the EU to be acts constituting barriers to trade and therefore objectionable. First, the EU retains restrictions that adversely affect U.S. wine exports through regulations authorizing wines only produced through specific wine-making procedures.<sup>105</sup> While U.S. wines are exempt from these restrictions through the end of 2003,<sup>106</sup> as one of the largest wine producing countries in the world, the United States stands to suffer significant financial loss if derogations are not extended.<sup>107</sup> In addition to these concerns, the United States raises objections to wine import certification practices instituted by the EU, as well as labeling requirements specifically relating to an EU attempt to phase out the usage of semi-generic names (i.e. burgundy, champagne, chablis) on non-EU wines and other "traditional expressions" (primarily geographical indications) used to describe wine.<sup>108</sup>

A second example of an import policy barrier to trade maintained by the EU relates to market access restrictions on U.S. pharmaceutical products.<sup>109</sup> Price, volume, and access controls maintained by individual states in the EU allegedly undermine the EU's free movement of goods concept, impairing the ability

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103. See NTE, *supra* note 101 (reviewing, country by country, foreign barriers to trade around the world).

104. *Id.* at 106.

105. *Id.*

106. *Id.*

107. 19 U.S.C. § 2801 (2002) (stating congressional findings on the imbalance in international wine trade resulting from tariff and non-tariff barriers posed against U.S. exporters); see also Gideon Rachman, *The Globe in a Glass: European Wine-makers Believe in Tradition and Regulation*, THE ECONOMIST, Dec. 18, 1999, at 91-92.

108. NTE, *supra* note 101, at 106.

109. *Id.* at 107.

of U.S. pharmaceutical companies to set prices for their products, as well as recoup research and development costs.<sup>110</sup> The United States contends that the state practices of Austria, Belgium, France, Italy, and the Netherlands serve anti-competitive purposes and discriminate against U.S. pharmaceuticals.<sup>111</sup>

## 2. EU Standards, Testing, Labeling, and Certification

As discussed previously, the diverse and bifurcated make-up of the EU with its fifteen member states presents a persistent problem for nations attempting to trade with the EU.<sup>112</sup> Fifteen member states means fifteen different legal and regulatory regimes within the EU itself. Each member state serves the function of harmonizing diverging laws with directives and initiatives passed at the EU institutional level for consistency and common policy, especially in the area of trade and commerce.<sup>113</sup> Identified as perhaps one of the most menacing barriers to trade by the United States, the differing standards, testing, and certification procedures maintained by EU member states present problems in various industrial sectors.<sup>114</sup> The United States feels this is an area of growing concern, citing issues such as the lack of transparency in regulatory procedures and a deficiency in the opportunity for U.S. stakeholders to participate in critical parts of the process.<sup>115</sup>

The United States points to several examples relating to the trade barriers posed in the general area of standards, testing, labeling and certification.<sup>116</sup> First, the process of developing EU standards, inconsistent application and interpretation by the member states of such standards, and the EU's reliance on performance based standards, as opposed to design-based stan-

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110. *Id.* at 106.

111. *Id.* at 108-09.

112. *See supra* notes 82-85 and accompanying text.

113. *See generally* WEATHERILL, *supra* note 3, at 150-73, 433-54.

114. *See* NTE, *supra* note 101, at 110 ("EU Member States still maintain widely differing standards, testing, and certification procedures for some products. These differences may serve as barriers to free movement of products within the EU, and can cause lengthy delays in sales by U.S. exporters due to the need to have products tested and certified to meet differing national requirements."). For specifics on these varying standards see *id.* at 110-20.

115. *Id.* at 110 ("The United States has concerns that the European standardization and regulatory development processes lack adequate transparency and remain generally closed to U.S. stakeholders' direct participation at critical points in the regulatory development process.").

116. *Id.*

dards, can serve to impede U.S. exports.<sup>117</sup> Second, problems with mutual recognition agreements and procedures for the granting of final approval for products causes difficulties for U.S. companies, adding costs and limiting transparency in the procedure.<sup>118</sup> In addition, issues related to biotechnology and the EU's failure to approve any new genetically modified product since 1998, represent a significant problem for the U.S. agricultural sector, amounting to over \$600 million in lost exports of corn alone since the de facto ban began.<sup>119</sup> Regulations and bans related to beef from cattle treated with growth hormones, poultry, transmissible spongiform encephalopathies, and animal by-products, likewise, remain problem areas cited in the NTE Report.<sup>120</sup> Further, the United States points to several other issues in this general topic as causes for concern, including cosmetics and animal testing; chemicals; waste management; electrical and electronic equipment; acceleration of the phase-out of ozone-depleting substances and greenhouse gases; triple superphosphate fertilizer; hushkitted or new engine modified and recertified aircraft; new aircraft certification; gas connector hose standards; roofing shingles; and, anchor bolts.<sup>121</sup>

Additionally, specific member state practices relating to standards, testing, labeling, and certification remain a concern to the United States. Specifically, French restrictions on the importation of several U.S. products, including vitamin enriched flour, bovine semen and embryos, and exotic meats, represent a barrier to U.S. trade.<sup>122</sup> In addition, Italy's interpretation of EU sanitary and phytosanitary requirements pose problems for numerous U.S. agricultural exports, while seemingly protecting the Italian domestic market from U.S. competition.<sup>123</sup>

### 3. EU Government Procurement

Government procurement constitutes an additional sector where the United States accuses the EU of maintaining unfair trade practices. The issue of discrimination in the utilities sector for private-firm bidding on government contracts appears troubling, especially given the uncertainty following the exclu-

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117. *Id.*

118. *Id.*

119. *Id.* at 111. See also Smitherman, *supra* note 72.

120. NTE, *supra* note 101, at 112-14.

121. *Id.* at 115-19.

122. *Id.* at 120.

123. *Id.*

sion of twelve EU member states from the telecommunication provisions of the 1990 Utilities Directive,<sup>124</sup> which effectively required open, objective bidding procedures.<sup>125</sup> The NTE Report also cites certain practices by member states with their own national government procurement procedures, including purported biases in defense contracts for EU firms in Austria and Greece; French and German biases against firms with relations to Scientology; and general problems with transparency and fragmentation in Italian procurement procedures.<sup>126</sup>

#### 4. EU Export Subsidies

Export subsidies represent another contentious issue between the United States and EU. The United States raises concerns over the legality of such subsidies under international trade agreements.<sup>127</sup> Such concerns focus particularly on the Airbus Integrated Company, a partnership of the French-German-Spanish European Aeronautic, Defense, and Space Company and the United Kingdom's BAE Systems,<sup>128</sup> and the continuation of EU government subsidies that seemingly facilitate Airbus' position in the worldwide market.<sup>129</sup> The United States alleges that these ongoing subsidies may violate the WTO Agreement on Subsidies and Countervailing Measures,<sup>130</sup> and, accordingly, the United States requested the EU to verify that WTO rules are being followed.<sup>131</sup> Other issues of contention within the scope of export subsidies include Belgian and Swedish support for certain Airbus suppliers<sup>132</sup> and UK subsidization of Rolls-Royce development of aircraft engines.<sup>133</sup>

124. Council Directive 90/531/EEC, 1990 O.J. (L 297).

125. NTE, *supra* note 101, at 120-21.

126. *Id.* at 121-22.

127. *Id.*

128. See generally Case COMP/M.2061 – AIRBUS (Oct. 18, 2000), available at <http://europa.eu.int> (declaring a concentration to be compatible with the common market and providing background information on the merger leading to the creation of Airbus).

129. See Richard O. Cunningham, *Subsidies to Large Civil Aircraft Production: New WTO Subsidy Rules and Dispute Settlement Mechanism Alter Dynamics of U.S.-E.U. Dispute*, 14 AIR & SPACE L. 4 (1999).

130. Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, LEGAL INSTRUMENTS – RESULTS OF THE URUGUAY ROUND, available at [www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm).

131. NTE, *supra* note 101, at 122-24.

132. *Id.* at 122-23.

133. *Id.* at 123-24.

### 5. Intellectual Property Rights Protection

Although the EU and United States represent perhaps the world's leading advocates for the protection of intellectual property rights, differences remain between the two concerning the enforcement and implementation of international agreements.<sup>134</sup> The NTE Report raises concerns over member state implementation of EU Council directives and regulations relating to copyrights, designs, patents, and biotechnological inventions, some of which do not adhere to TRIPS.<sup>135</sup> Specific issues raised include EU protection of geographical indication for wines, spirits, and other agricultural products not available to the United States or other WTO members on a national treatment basis, varying forms of intellectual property piracy in Belgium, France, Germany, and Italy that result in significant losses to the U.S. motion picture industry, and a provision in Swedish copyright law that denies the right of compensation to authors and producers for private reproductions of their audiovisual works.<sup>136</sup> Essentially, enforcement and consistency with international agreements remain the fundamental issues for the United States when dealing with EU intellectual property rights protection.

### 6. EU Services Barriers

EU barriers to trade in services remain an additional area of concern for the United States. Specifically, U.S. anxiety spurs from issues over the 1989 EU Broadcast Directive<sup>137</sup> that requires a majority of television airtime to be reserved for programs of European origin.<sup>138</sup> For example, certain member states, such as France and Italy, exceed the requirements of the Broadcast Directive regarding television and radio programming, effectively limiting the broadcast share of U.S. programs and music.<sup>139</sup> Also, the indexing of films found unsuitable to minors in Germany serves to harm the U.S. motion picture industry, adding additional costs and uncertainty to the distribution

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134. *See id.* at 124.

135. *Id.* at 124-27.

136. *Id.* at 125-27.

137. Council Directive 89/552/EEC, 1989 O.J. (L 298) 23-30, as amended by Directive Pursuit 97/36/EEC, 1997 O.J. (L 202) 60-71. The Directive was scheduled for revision in 2002.

138. *Id.*

139. *See NTE, supra* note 101, at 127-28.



process.<sup>140</sup>

Furthermore, the United States accuses the EU of anticompetitive measures in numerous service sectors that impede the access of U.S. companies and professionals to the European market. One example is the prevalence of postal monopolies in several EU states, which serves to restrict market access by U.S. express and packaging services, subjecting them to unequal conditions of competition.<sup>141</sup> According to the NTE Report, variations in EU member state requirements for professional services, such as legal and accounting, also serve to complicate market access, whereby licensing in one member state does not necessarily entail the right to practice in another.<sup>142</sup> Furthermore, problems remain in the area of market access for telecommunications, involving the provisioning and pricing of unbundled local loops, line sharing, co-location, and the provisioning of leased lines.<sup>143</sup> Finally, lengthy and cumbersome procedures in several states, including France, Italy, Austria, and Portugal, hamper the enforcement of national legislation involving competition in broadband services.<sup>144</sup>

### 7. EU Investment Barriers

Under the 1993 Maastricht Treaty,<sup>145</sup> the EU is responsible for the free movement of capital among the member states.<sup>146</sup> However, many member state practices continue to serve as barriers to foreign investment.<sup>147</sup> For example, Greek regulations serve to disadvantage U.S. investors in several sectors due to the discrepant treatment given to EU firms and the excessive red tape and contract delays that affect foreign investment.<sup>148</sup> Also, grandfather clause legislation in the United Kingdom subjects foreign banks to substantial registration requirements, while allowing domestic firms to continue business without reapplying for permission or approval.<sup>149</sup> In essence, the primary

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140. *Id.*

141. *Id.* at 128-29.

142. *Id.* at 129-30.

143. *Id.* at 130-31.

144. *Id.* at 132-35.

145. See generally TREATY ON EUROPEAN UNION (MAASTRICHT TREATY), Feb. 7, 1992, 31 I.L.M. 247 (1992), available at [www.hri.org/docs/Maastricht92](http://www.hri.org/docs/Maastricht92).

146. See *id.*

147. NTE, *supra* note 101, at 135.

148. *Id.* at 136-37.

149. *Id.* at 137.

contention is that practices of different states fail to treat an outside firm uniformly, even through the firm has been recognized by one member state.

### 8. *EU Trade Restrictions Affecting Electronic Commerce*

Electronic commerce represents an additional area specified as a matter of concern under the NTE Report. Although the use of e-commerce is not as widespread in Europe as in the United States, considerable growth is expected over the next few years.<sup>150</sup> Initiatives, such as the 1995 Data Protection Directive<sup>151</sup> and an updated draft on data privacy, provide reason for concern, especially as to the expanded coverage of the draft, which institutes more stringent restrictions on unsolicited commercial mail, phone calls, and customer inclusion in directories.<sup>152</sup> In addition, a proposed EU directive that would apply the Value Added Tax (VAT) to e-commerce goods, regardless of whether the services supplied originate inside or outside the EU, poses potentially discriminatory effects on U.S.-based businesses.<sup>153</sup> In effect, U.S. businesses would be forced to remit the VAT at fifteen different rates, depending on the customer's residence, while EU businesses would only be obligated to remit the VAT at the rate of its registered member state.<sup>154</sup> Additional concerns over this proposed directive stem from the enforcement of more stringent administrative burdens on U.S. companies, including strict verification and data storage requirements.<sup>155</sup>

### 9. *Other Barriers*

In addition to the aforementioned legal trade barriers maintained by the EU, the NTE Report also discusses the long-standing EU support program for the canned peach industry.<sup>156</sup> Subsidization in Greece of the industry resulted in significant U.S. domestic losses.<sup>157</sup> Following a successful GATT panel decision for the United States,<sup>158</sup> the EU and United States reached

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150. *Id.* at 137-39.

151. Directive 95/46/EC, 1995 O.J. (L 281) 31.

152. NTE, *supra* note 101, at 138-39.

153. *See* Council Directive 2001/115/EC, 2002 O.J. (L 15) 24.

154. NTE, *supra* note 101, at 139.

155. *Id.*

156. *Id.*

157. *Id.*

158. European Economic Community - Production Aids Granted on Canned

an agreement on processing subsidies.<sup>159</sup> However, recent EU legislation instituting a new regime prompted U.S. concern over the changed procedures for establishing aid levels for canned fruit.<sup>160</sup> Consultations on this matter remain ongoing.<sup>161</sup>

## B. U.S. BARRIERS TO TRADE AND INVESTMENT

Similar to the U.S. Trade Representative's report on trade barriers maintained by the EU, the European Commission publishes a yearly report outlining contentious trade practices sustained under U.S. law.<sup>162</sup> Compiled by the Market Access Unit of the Directive General for Trade and the Delegation of the European Commission in Washington, D.C., the Commission Report claims that "a considerable number of impediments" remain in effect in the United States that "need to be tackled."<sup>163</sup> Though structurally different than the NTE Report, the Commission Report reviews U.S. trade barriers in six different categories, namely: Extraterritoriality and Unilateralism; Tariff Barriers; Non-Tariff Barriers; Investment Related Measures; Intellectual Property Rights; and, Services. The following sections generally analyze these areas to further provide a backdrop for the problems facing the realization of the NTM.

### 1. U.S. Extraterritoriality and Unilateralism

The EU expresses particular concern, as a matter of law and principle, with U.S. extraterritorial legislation that attempts to regulate EU trade with third countries.<sup>164</sup> Foreign persons and companies, particularly business organizations operating out of the EU, are forced to comply with U.S. laws outside of the United States, most of which only serve U.S. trade and political interests.<sup>165</sup> An example of such legislation is the

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Peaches, Canned Pears, Canned Fruit Cocktail and Dried Grapes, L/5778, available at 1985 GATTPD LEXIS 2 (Feb. 20, 1985) (unadopted).

159. *See id.*

160. *See* NTE Report, *supra* note 101, at 139.

161. *Id.* at 140.

162. Commission Report on United States Barriers to Trade and Investment 2001, available at <http://europa.eu.int/comm/trade/pdf/usrbt2001.pdf> [hereinafter Commission Report].

163. *Id.* at 3.

164. *Id.* at 7.

165. *Id.*

Cuban Liberty and Democratic Solidarity Act of 1996<sup>166</sup> (LIBERTAD). LIBERTAD enables U.S. citizens to file suit against foreign companies investing in Cuba,<sup>167</sup> while requiring the United States to deny executives and shareholders of these companies entry into the country.<sup>168</sup> Under LIBERTAD, an EU company found to be conducting trade with Cuba would, in theory, be subject to legal action in the United States.<sup>169</sup> Although Presidents Bill Clinton and George W. Bush waived and continue to waive Title IV application, the EU maintains that LIBERTAD remains contrary to WTO agreements under GATT and General Agreement on Trade and Services.<sup>170</sup> Additional examples of U.S. extraterritorial legislation include the Iran and Libya Sanctions Act of 1996,<sup>171</sup> which provides for mandatory sanctions on foreign companies that invest over \$40 million that directly contributes or significantly aids in the development of petroleum or natural gas in Iran or Libya<sup>172</sup> and the Iran Non-Proliferation Act of 2000,<sup>173</sup> which provides for discretionary sanctions against foreign companies exporting goods, services, and technology to Iran prohibited under U.S. export control regulations and international export regimes that may potentially contribute to the development of weapons of mass destruction.<sup>174</sup> In essence, these extraterritorial U.S. laws attempt to dictate the laws and policies of other countries, including the EU, by applying sanctions to matters under the authority of EU export controls. Such legislation remains objectionable to the EU.<sup>175</sup>

In addition to extraterritorial legislation, the EU objects to United States use of unilateral trade sanctions and/or retaliatory measures against "offending" states or companies.<sup>176</sup> Examples of such legislation include the use of Sections 301 of the

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166. Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub. L. No. 104-114, 110 Stat. 785 (1996) [hereinafter LIBERTAD].

167. *Id.* tit. III.

168. *Id.* tit. IV.

169. *See id.*

170. General Agreement on Trade in Services, Apr. 15, 1994, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Annex 1B, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 1125, 1177 (1994).

171. Iran and Libya Sanctions Act of 1996, 50 U.S.C. § 1701 note (2000).

172. *Id.* § 5.

173. Iran Non-proliferation Act of 2000, 50 U.S.C. § 1701 note (2000).

174. *Id.* §§ 2-3(b).

175. *See* Commission Report, *supra* note 162, at 8-9.

176. *See id.* at 9.

Trade Act of 1974<sup>177</sup> and the Omnibus Trade and Competitiveness Act of 1988<sup>178</sup> (Omnibus Act), under which the U.S. government is authorized to enforce rights afforded to the United States through international trade agreements.<sup>179</sup> Furthermore, this legislation allows the United States to retaliate against foreign governments that maintain practices the United States deems as discriminatory or unjustifiable restrictions on trade.<sup>180</sup> Standing on the receiving end of several U.S. actions under Section 301, the EU remains particularly sensitive to this matter.<sup>181</sup> Additionally, the "Super 301" provision of the Omnibus Act mandates the establishment of a watch-list of "priority" unfair trade practices from "priority" countries and, through the Executive Order on Identification of Trade Expansion Priorities, orders the U.S. Trade Representative to self-initiate Section 301 actions against such countries.<sup>182</sup> Given the power possessed under these statutes and the pending negative effects on trade, the EU strongly opposes such U.S. unilateral and extraterritorial policies, claiming that through these acts, "trading partners are given no choice but to negotiate on the basis of an agenda set by the U.S., on the basis of judgments [sic], perceptions, timetables, and indeed, U.S. legislation."<sup>183</sup>

## 2. U.S. Tariff Barriers

While the GATT/WTO Uruguay Round propelled tariff reduction and elimination, the EU points to several "peaks" maintained by the United States in certain sectors that serve as barriers to free trade.<sup>184</sup> Such applied tariff barriers include the U.S. refusal to expand the scope of the Information Technology Agreement,<sup>185</sup> which serves to eliminate all tariffs on semiconductors, computers, and various other electronic components, to cover other products such as optical fibers.<sup>186</sup> Likewise, the

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177. Trade Act of 1974 § 301, 19 U.S.C. § 2411 (2000).

178. Omnibus Trade and Competitiveness Act of 1988 § 1301, Pub. L. No. 100-418, 102 Stat. 1107 (1998).

179. See Trade Act of 1974 § 301.

180. *Id.*

181. See Omnibus Trade and Competitiveness Act of 1988 § 1301; Exec. Order No. 12,661, 54 Fed. Reg. 779, reprinted as amended in 19 U.S.C. § 2901 note (2000).

182. Commission Report, *supra* note 162, at 9.

183. *Id.* at 11.

184. *Id.*

185. Ministerial Declaration on Trade in Information Technology Products, *supra* note 54.

186. Commission Report, *supra* note 162, at 11.

United States rejected an EU offer to abolish tariffs in the ceramics and glass sectors where tariffs remain high in the United States, and the United States remains averse to lowering tariff levels on products such as textiles, leather, jewelry, and automobiles.<sup>187</sup> In addition to applied tariff barriers, the EU cites U.S. maintenance of tariff quotas as an added barrier to trade, specifically seen in built-in rigidities, and fragmentation in the import licensing system for dairy products, which is adversely affecting European cheeses.<sup>188</sup>

### 3. U.S. Non-Tariff Barriers

Broadly encompassing several important issues constituting barriers to trade sustained by the United States, non-tariff barriers represent perhaps the most contentious issue in U.S.-EU trade relations. Included under the umbrella of non-tariff barriers is the subject of registration, documentation, and customs procedures. Within this area, the EU asserts that U.S. invoice requirements on certain EU imports remain excessive and surpass normal customs declaration and tariff procedures.<sup>189</sup> Additionally, the United States does not recognize the European Community as a country of origin, thus European Community certificates of origin are unacceptable and EU companies must furnish additional documentation and undergo further procedures for certification, costing additional time and money.<sup>190</sup> Moreover, U.S. law prohibits EU fishermen from fishing in U.S. waters based on a provision that forbids foreign-built U.S. flag vessels from being documented with a fishery endorsement,<sup>191</sup> and under vessel ownership requirements that mandate U.S. citizen ownership of such vessels to be seventy-five percent, in order to receive fishery endorsement.<sup>192</sup> Further, U.S. environmental efforts to protect sea-faring mammals and fish seemingly place restrictive burdens on foreign companies engaged in the fishing business.<sup>193</sup> Such impediments arise through requirements on the types of nets that may be used in U.S. waters, which the EU opposes because of the manner in which the

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187. *Id.* at 12.

188. *Id.*

189. *Id.* at 13.

190. *Id.*

191. 46 U.S.C. § 12108 (2001); Commission Report, *supra* note 162, at 14.

192. The American Fisheries Act of 1998, Pub. L. No. 105-277, div. C, tit. II, Oct. 21, 1998, 112 Stat. 2681-616; Commission Report, *supra* note 162, at 14.

193. Commission Report, *supra* note 162, at 14-15.

restrictions were imposed.<sup>194</sup>

Additional non-tariff barriers that the EU finds objectionable relate to U.S. state-level impediments to trade. These problems are inherent in the U.S. federal system of governance that distributes certain powers to state and local governments. For example, the maintenance of so-called "blue" laws by states support protectionist and monopolistic systems at the state level by limiting the circulation of alcohol products, including wine, beer,<sup>195</sup> and liquor through arbitrary standards such as alcohol content limits.<sup>196</sup> In addition, U.S. states maintain a series of user fees, where fees are imposed on the arrival of merchandise, vessels, trucks, trains, private boats and planes, and passengers.<sup>197</sup> These fees also apply to customs, harbor, and other arrival facilities, mainly run by importers, which put foreign products at a disadvantage compared with U.S. products, which are not subject to such fees.<sup>198</sup> Harbor maintenance taxes and service fees also place unfair burdens on EU companies.<sup>199</sup>

The EU also contends various standards and technical requirements serve as barriers to trade with the United States.<sup>200</sup> Issues ranging from the over-complexities of the U.S. regulatory regime to the non-use of international standards for certain products present what the EU calls technical barriers to trade impeding market access.<sup>201</sup> Examples include an excessive reliance by the United States on mandatory certification, varying regulatory differences at the federal and state level, and issues surrounding non-destructive testing.<sup>202</sup> Additional technical barriers to trade with regard to electrical and electronic equipment permeate where no single market exists, due to diverging regulatory schemes from the federal level all the way down to

194. See WTO Dispute Panel Report, *United States-Import Prohibition of Certain Shrimp and Shrimp Products, Recourse to Article 21.5 by Malaysia*, WT/DS58/RW (Jun. 15, 2001), 41 I.L.M. 149 (2002), available at [www.wto.org](http://www.wto.org); Commission Report, *supra* note 162, at 17-18.

195. See, e.g., GA. CODE ANN. § 3-1-2(13) (2001) (defining legal malt beverages/beer as those with alcohol contents of less than six percent).

196. See, e.g., Charles W. Smitherman, *Drunken Ignorance: The Georgia General Assembly's Refusal to Redefine Beer Alcohol Content Legislation From an Economic Perspective*, 8 GA. LEAGUE REP. 23 (2002).

197. Commission Report, *supra* note 162, at 14-15.

198. *Id.*

199. *Request for Consultations by the European Communities, United States — Harbour Maintenance Tax*, *supra* note 68.

200. Commission Report, *supra* note 162, at 18-26.

201. *Id.*

202. *Id.* at 19-20.

city and county regulations, as well as issues in the areas of telecommunication equipment, automobiles, pharmaceuticals and cosmetics, textiles and leather, and agriculture and fishing.<sup>203</sup>

Government procurement presents another non-tariff barrier subject to EU objections. Specifically, federal "Buy American" legislation under the 1933 Buy American Act<sup>204</sup> adversely affects foreign trade by prohibiting public sector bodies from purchasing certain goods and services from foreign sources, by establishing local content requirements, and through the extension of preferential price terms to certain domestic suppliers.<sup>205</sup> In addition, procurements under the "national security" exception broadly apply across the board to prevent foreign involvement in defense contracts and the management and operation of certain government supported facilities, such as NASA and the National Science Foundation.<sup>206</sup> Further, the EU contends sub-federal procurements adversely affect trade through sub-federal selective purchasing laws, state "Buy American" legislation and restrictions, and "set-aside for small businesses" programs.<sup>207</sup>

In addition to government procurement issues, the EU raises concerns over U.S. trade defense instruments. For example, the 1916 Anti-Dumping Act,<sup>208</sup> which prohibited the import and sale of products "at a price substantially less than the actual market value in the principal markets of the country of their production," received a negative ruling by a WTO Dispute Panel in 2000,<sup>209</sup> and still remains a subject of controversy. In addition, the United States maintains certain safeguard measures for products, such as steel wire rod and welded line pipe, through tariff quotas and import duties, adversely affecting trade and EU companies in these sectors.<sup>210</sup> Further complications in this area arise from U.S. policies, such as the Byrd

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203. *Id.* at 21-26.

204. Buy American Act of 1933, ch. 212, tit. III, § 2, 41 U.S.C. § 10a (2002). See generally Ronald A. Brand, *Direct Effect of International Economic Law in the United States and European Union*, 17 *Nw. J. INT'L & BUS.* 556 (1996-97).

205. See generally Brand, *supra* note 204; Commission Report, *supra* note 162, at 26-27.

206. Commission Report, *supra* note 162, at 27.

207. *Id.* at 28-30.

208. Anti-Dumping Act of 1916, 15 U.S.C. §72 (1976).

209. WTO Dispute Panel Report, *U.S.-Anti-Dumping Act of 1916*, WT/DS162/R (May 29, 2000), 39 *I.L.M.* 1402 (2000), available at [www.wto.org](http://www.wto.org) and 2000 WTO DS LEXIS 17.

210. Commission Report, *supra* note 162, at 33-34.



Amendment,<sup>211</sup> that provide remedies inconsistent with WTO/GATT policies to certain domestic industries by: (1) obligating U.S. Customs to give the anti-dumping duty collected on imports to the complaining industry; (2) establishing sunset reviews on countervailing duties; (3) setting countervailing duties on pasta from Italy; and, (4) subsidizing domestic iron, steel, and non-ferrous metal sectors.<sup>212</sup>

Furthermore, non-tariff barriers proliferate the area of U.S. export restrictions. The EU cites requirements on EU companies to comply with U.S. re-export controls, including compliance with U.S. prohibitions on re-exports for national security and foreign policy reasons, as an example of such non-trade friendly practices maintained by the United States.<sup>213</sup> Other examples include export controls on satellites and encryption products, which limit cross-border movement of such products, adversely affect trade, and may potentially be detrimental to developing sectors such as e-commerce.<sup>214</sup>

The final issue addressed as a non-tariff barrier encompasses the use of the U.S. government subsidies for certain industrial sectors. Such sectors include aircraft, where the United States provides support through government financing, as well as via high-level political leverage, referred to by the EU as "inducement."<sup>215</sup> Shipbuilding constitutes another area where U.S. government subsidies remain at work, encompassing various schemes by which governmental assistance is provided for the industry through loan programs and protectionist requirements that benefit U.S. manufacturing of ships in coastwise traffic.<sup>216</sup> Also, U.S. agricultural and fishery subsidies remain a disconcerting issue for the EU, whereby the U.S. government provides cash subsidies to enhance U.S. competitiveness with exports from other countries.<sup>217</sup> In these areas the government provides guaranteed loans, which afford certain advantages to participants, especially in terms of default, and may be viewed as providing unfair advantages to U.S. producers.<sup>218</sup>

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211. Byrd Amendments, Pub. L. No. 101-201, 103 Stat. 701 (amended 1989).

212. Commission Report, *supra* note 162, at 34-35.

213. *Id.* at 35.

214. *Id.* at 35-37; see YOUNG, *supra* note 91, at 123.

215. Commission Report, *supra* note 162, at 37-38.

216. *Id.* at 38-39. See Jones Act, 46 U.S.C. § 688 (2002); Merchant Marine Act, tit. IX, 46 U.S.C.A. § 1185 (2002).

217. Commission Report, *supra* note 162, at 39.

218. *Id.* at 39.

#### 4. U.S. Investment Related Measures

The EU's complaints over U.S. investment related measures will serve as a significant obstacle in the realization of the NTM, especially since investment-related measures are a financially significant section of the U.S.-EU trade relationship. One area of EU criticism arises out of U.S. limitations on foreign direct investment.<sup>219</sup> Under the Exxon-Florio amendment to the 1988 Trade Act,<sup>220</sup> the U.S. President is authorized to review the effects on U.S. national security arising from any merger, acquisition, or take-over that could result in foreign control and suspend or prohibit such transactions that threaten national security.<sup>221</sup> The EU contends such measures inhibit the free flow of investment and may conflict with the OECD Code of Liberalization of Capital Movements<sup>222</sup> and the National Treatment Instrument.<sup>223</sup> Further issues of contention arise over U.S. restrictions on foreign ownership, based on national security,<sup>224</sup> such as limitations in the areas of fishery endorsement<sup>225</sup> and the operation or maintenance of facilities used in relation to utilities.<sup>226</sup> The practice of Conditional National Treatment exists in the United States, which affords foreign firms less favorable treatment than domestic firms. The domestic firms gain their advantage through reciprocity requirements mandating that U.S. firms be allowed to conduct activities in other states in order for companies from those states to conduct similar activities in the United States, through performance requirements, and through public subsidies.<sup>227</sup>

In addition, the EU cites tax discrimination as a barrier to

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219. *Id.*

220. *See id.*

221. *Id.* at 213.

222. *OECD Code of Liberalization of Capital Movements and of Current Invisible Operations*, at <http://www.oecd.org/pdf/M00007000/M00007320.pdf> (last visited Feb. 13, 2003).

223. *ORG. FOR ECON. COOPERATION AND DEV., THE OECD DECLARATION ON INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISE: BASIC TEXT, DAFFE/IME (2000) 20*, at [http://www.ois.oecd.org/olis/2000doc.nsf/c5ce8ffa41835d64c125685d005300b0/c125692700623b74c1256991003b5147/\\$FILE/00085743.PDF](http://www.ois.oecd.org/olis/2000doc.nsf/c5ce8ffa41835d64c125685d005300b0/c125692700623b74c1256991003b5147/$FILE/00085743.PDF) (last visited Jan. 8, 2003) [hereinafter NATIONAL TREATMENT INSTRUMENT]. For general information on the National Treatment Instrument, see *The National Treatment Instruments*, at <http://www.oecd.org/EN/document/0,Eno-nodirectorate-no-6> (last visited Jan. 8, 2003).

224. *See* Commission Report, *supra* note 162, at 39.

225. *See* 46 U.S.C. § 688.

226. Commission Report, *supra* note 162, at 40-41.

227. *Id.* at 41.

investment maintained under U.S. law. In support of its argument, the EU cites issues such as additional reporting requirements imposed on foreign firms, “earnings stripping” provisions that limit tax deductions on payments made to parties not subject to U.S. taxes, and issues surrounding state and world-wide unitary taxation as examples of discriminating U.S. policies that adversely affect European businesses.<sup>228</sup> The Foreign Sales Corporation tax issue<sup>229</sup> represents another problematic area. The WTO recently ruled against this legislation and whether the United States will fully comply still remains uncertain.<sup>230</sup>

### 5. Intellectual Property Rights

Even through no mention of trade barriers to Intellectual Property (IP) is mentioned in the Commission Report, the EU accuses the U.S. of maintaining barriers to trade in the area of IP rights. EU complaints include issues with the “home-style exemption” under the 1976 U.S. Copyright Act,<sup>231</sup> whereby radios and televisions may be played in public places without the payment of a royalty fee to the copyright owner, a matter the EU alleges causes “serious deprivation of income to EU rights-holders.”<sup>232</sup> Conflicting U.S.-EU positions over the origin and geographical labeling of wines and spirits, coupled with conflicts over grape names, present an additional area of concern.<sup>233</sup> Further, the EU disputes U.S. regulations related to patents and trademarks.<sup>234</sup> Specifically, the EU disputes measures that allow for the instant removal or exclusion of imported goods that infringe on U.S. intellectual property rights.<sup>235</sup> Additionally, the EU disapproves of U.S. laws that allow for the government to infringe on patent rights without repercussion.<sup>236</sup> The EU also

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228. *Id.* at 42.

229. *Id.* at 43 (stating that the U.S. purports to provide tax exemptions for income earned by foreign subsidiaries of U.S. corporations).

230. WTO Appellate Body Report, *United States-Tax Treatment for “Foreign Sales Corporations,”* WT/DS108/AB/R (Feb. 24, 2000), 39 I.L.M. 717 (2000), (asserting that U.S. foreign sales corporation tax rules constitute a prohibited export subsidy).

231. Commission Report, *supra* note 162, at 43 (referring to Copyright Act of 1976, 17 U.S.C. § 101 (2002)).

232. *Id.* at 44.

233. *Id.* at 45-46.

234. *Id.* at 46.

235. *Id.*

236. *Id.* (referring to 28 U.S.C.A. § 1498, which designates the proper jurisdiction and venue for patent and copyright cases).

notes problems with the exclusive U.S. patent "first to file" system that, as the name denotes, grants patents to the party that files first; extraterritorial issues prohibiting the registration or renewal of trademarks identical or similar to trademarks previously owned by a confiscated Cuban entity;<sup>237</sup> and, the patentability of software and business methods allowed for in the United States.<sup>238</sup>

## 6. U.S. Barriers to Services

The final area of U.S. trade barriers addressed in the Commission Report, are those dealing with services, which is another financially important sector in the U.S.-EU trade relationship. The EU claims the regulation and licensing of certain professions at the state level, and lack of transparency in the regulation of foreign business services, remain unacceptable.<sup>239</sup> In addition, EU firms in the communications service sector face certain barriers, especially for mobile and satellite services, where investment restrictions, lack of access to certain frequencies, and de facto reciprocity-based procedures inhibit EU firms from adequately competing in the U.S.<sup>240</sup> Furthermore, foreign companies face barriers with respect to the attainment of telecommunications licenses, including limits on the ability of government-owned companies to invest in telecommunications companies.<sup>241</sup>

As for financial services, the EU cites problems in the U.S. insurance sector, alleging challenges are posed by fragmentation of different federal and state regulatory regimes and deficiencies in the U.S. regulatory/supervisory structure, both of which burden EU companies with heavy compliance costs.<sup>242</sup> Also, complexities in U.S. securities laws make registration difficult for foreign companies, while U.S. limitations on access to the trading screens of EU exchanges poses a growing problem.<sup>243</sup> Finally, in the transport services sector, the EU asserts complaints ranging from U.S. limitations on foreign ownership of U.S. air carriers to restrictions on the use of foreign-built vessels

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237. Commission Report, *supra* note 162, at 47 (referring to Omnibus Appropriations Act of 1998 § 211, Pub. L. No. 105-277, 112 Stat. 2681 (2002)).

238. *Id.*

239. *Id.* at 48.

240. *Id.*

241. *Id.* at 48-51.

242. *Id.* at 54.

243. Commission Report, *supra* note 162, at 55.

in U.S. coastwise trade.<sup>244</sup> In essence, the EU's complaints over U.S. barriers to services emanate from problems inherent in dealing with the multi-tiered regulatory schemes on the federal, state, and sometimes municipal-level, as well as U.S. policies aimed at protecting strategically important industries, such as transportation and telecommunications.

### III. THE REALIZATION OF THE NEW TRANSATLANTIC MARKETPLACE

#### A. RATIONALE

Since 1990 and the institution of the Transatlantic Agenda,<sup>245</sup> the organization of U.S.-EU trade relations and cooperation have evolved through various conciliation mechanisms, including summits, miscellaneous cabinet-meetings, ordinary diplomatic channels, and transatlantic dialogues. The growing importance of the relationship and deepening of economic ties brought forth conflicting calls for passive and aggressive economic integration,<sup>246</sup> seemingly resulting in a compromise position between the EU and United States. This willingness to compromise has progressively eliminated transatlantic trade barriers discussed in the previous section, and has given to the institutional framework of the NTM.<sup>247</sup> Evident from the NTA's obscure description of the NTM<sup>248</sup> and the vague promise that the EU and United States will work towards such a framework, the NTM remains a developing concept with little legal development since the NTM's formal inception in 1995.<sup>249</sup>

The NTA made undeniable progress, through the lowering of tariff and non-tariff barriers, since taking effect.<sup>250</sup> However, the NTE Report on Foreign Trade Barriers in the EU, coupled with the Commission's Report, demonstrate that significant obstacles remain in the U.S.-EU trade relationship, hurdles that may, in fact, be overcome through deeper transatlantic economic

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244. *Id.* at 55-57.

245. Transatlantic Declaration on EC-U.S. Relations, *supra* note 7.

246. *See generally* NTA, *supra* note 10; *see also* notes 11-19 and accompanying text.

247. *See generally* NTA, *supra* note 10, at art. II; *see also* notes 100-241 and accompanying text.

248. *See generally* NTA, *supra* note 10.

249. *Id.*

250. *See generally* Commission Communication, *supra* note 53.

integration instituted by the NTM.<sup>251</sup> Tariff and non-tariff barriers, hidden impediments, and ongoing international trade disputes seemingly result from the lack of regulatory harmonization between the United States and EU, hindering economic advancement while increasing costs to U.S. and EU businesses and consumers.<sup>252</sup> Accordingly, deeper transatlantic integration could serve as a means of preventing disparities from arising in the legal and regulatory frameworks, resolving outstanding bilateral trade disputes, and of ratcheting regional liberalization towards multilateral liberalization by joining the world's two most important trade regimes. This benefit could be extended to outside countries and serve as a basis for development in the GATT/WTO system.<sup>253</sup>

In pursuit of this realization, the European Commission established a set of nine criteria that need to be addressed in order to effectuate the NTM.<sup>254</sup> These requirements include that the NTM should:

1. address the real barriers to EU-U.S. trade and investment;
2. bring economic benefit to the EU and the United States commensurate with the effort involved;
3. not damage and should indeed promote our objectives in the future multilateral negotiations within the WTO, to which we are committed;
4. not lead to the creation of new trade obstacles to third countries or reduce their access to EU and U.S. markets. Nor should it weaken their support for multilateral liberalization;
5. be ambitious and capture political interest, but be technically achievable;
6. be consistent with and should not jeopardize the agreed multilateral rules of the WTO and other international flora (e.g. OECD, WIPO, etc.);
7. serve to enhance the broader political relationship between the EU and the United States;
8. benefit consumers and should preserve a high level of

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251. See *supra* Part II.

252. See *supra* Part II; see generally European Union Preparatory Acts: The European Parliament and the Economic and Social Committee: The New Transatlantic Marketplace: Communication from the Commission to the Council, COM(98)0125 final [hereinafter Draft Communication].

253. Steinberg, *supra* note 17, at 244-47.

254. See Draft Communication, *supra* note 252.

protection for health, safety, consumers, and the environment; and

9. not impede the further development of the Community aquis.<sup>255</sup>

Within these parameters, the European Commission calls for a comprehensive and aggressive approach to making the NTM a reality and for a NTM Agreement, aimed at achieving the following objectives:

1. the widespread removal of technical barriers to trade in goods through an extensive process of mutual recognition and/or harmonization, promoting both consumer and business interests;
2. a political commitment to eliminate by 2010 all industrial tariffs on a Most Favored Nation basis through multilateral negotiations, provided that a critical mass of other trading partners do the same;
3. a free trade area in services, bearing in mind the criteria and requirements established by the Council;
4. liberalization beyond multilateral or plurilateral agreements in the areas of government procurement, intellectual property, and investment.<sup>256</sup>

Accordingly, the realization of the NTM would likely result in positive macro-economic benefits for both the United States and EU. The European Commission claims that the removal of existing tariff and non-tariff barriers could add 125 billion euros to the EU's annual national income and add another 25 billion euros through the elimination of industrial tariffs.<sup>257</sup> From a micro-economic perspective, the NTM would mean greater economies of scale for the EU and United States, reduced costs for businesses and consumers, and less uncertainty for EU and U.S. firms.<sup>258</sup>

#### B. COMPONENTS OF THE NEW TRANSATLANTIC MARKETPLACE

An aggressive and expansive NTM will attempt to resolve the various contentious areas that the United States and EU find objectionable in their counterparts legal regimes. The components of the NTM may include eliminating technical trade barriers for goods; tariff elimination; freedom of services; gov-

255. *Id.*

256. *Id.*

257. *Id.*

258. *See id.*

ernment procurement; and, various other possibilities.<sup>259</sup> In order to adequately construct the contents of the NTM concept, the following section briefly analyzes each of these areas.

### *1. Eliminating Technical Trade Barriers for Goods*

Underlying many of the concerns expressed by the United States and EU in their respective NTE and Commission Reports, technical barriers represent a major impediment to free trade and competition in the transatlantic community.<sup>260</sup> Technical barriers take the form of information and labeling of goods, technical specifications and performance requirements, testing procedures that goods must comply with, requirements for declarations or certificates to accompany goods, accreditation of bodies authorized to certify goods, and the marking of goods to validate their conformity with certain requirements.<sup>261</sup> Accordingly, the NTM would attempt to ensure public confidence in product safety and security through "a framework for convergence of law, procedure and practice involving the various legislative and regulatory bodies."<sup>262</sup> Such a framework would also expand agreements such as the Mutual Recognition Agreement<sup>263</sup> to cover other areas and products, essentially aiming to create a market system whereby the approval of a product for use on one side of the Atlantic can, as far as possible, be marketed on the other side without facing further formalities or duplicate requirements.<sup>264</sup>

Convergence of law, procedure, and practice remain paramount to the removal of technical barriers to trade through mutual recognition. Through regulatory cooperation and harmonization, such an objective can be achieved, though diverging U.S. and EU principles over health, environmental, and safety concerns pose the greatest obstacle, especially in the developing area of biotechnology.<sup>265</sup> In any event, the United States and EU must agree on the sectors and products that will fall within the ambit of mutual recognition liberalization and, at the very least, the agreements should be made through the NTM to prevent unnecessary or duplicative regulatory burdens maintained by

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259. *Id.*

260. *See supra* Part II and note 215.

261. *See supra* Part II; *see also* Draft Communication, *supra* note 252.

262. Draft Communication, *supra* note 252.

263. MRA, *supra* note 48.

264. *See* Draft Communication, *supra* note 252.

265. *Id.*



both trading partners.

## 2. *Tariff Elimination*

Tariffs, which permeate the trade laws of both the United States and EU and consequently impede free trade, are another concern. Building on the common approach of WTO members who voluntarily reduce tariffs on a Most Favored Nation (MFN) basis in hopes of leading other states to do the same, the NTM would likewise work towards an elimination of all industrial tariffs by 2010 on a MFN basis.<sup>266</sup> Through an agreement dictating the number of members allowed in addition to the United States and EU, the NTM could foster a zero tariff policy and entice other states to benefit from tariff elimination by reciprocally dissolving their own tariffs on industrial goods.<sup>267</sup>

However, industrial tariff elimination in the NTM may be limited in scope. Areas with high levels of specificity and sensitivity, such as fish and fish-related products, must be addressed through more complex procedures.<sup>268</sup> Agriculture presents another contentious issue that the NTM will find difficult to address, especially given the discrepancies in the fundamental structures of EU and U.S. agricultural sectors. Without harmonization, free trade in agriculture may not be possible.<sup>269</sup>

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266. *Id.*

267. *Id.*

268. *See, e.g., id.* at 39; *see also supra* notes 191-92 and accompanying text.

269. For example, the EU continues to lead the world in the use of agricultural export subsidies. The EU's reliance on these subsidies stems from its Common Agricultural Policy (CAP), which supports producer prices at levels that are generally above world prices (prices prevailing in other markets). In order to export commodities to other markets, the EU must sell them at the prices prevailing in importing markets, meaning the EU must subsidize the exports to compensate for the difference between the EU price and the world market price. *See generally* INTL' INFO. PROGRAMS, U.S. DEPT OF STATE, USTR ZOELICK SUPPORTS AGGRESSIVE STANCE ON AGRICULTURE TRADE, at <http://usinfo.state.gov/topical/econ/wto/02072201.htm> (July 22, 2002) [hereinafter NTE Supports]. However, recent legislation in the United States, specifically the Farm Bill of 2002, will raise U.S. subsidies for domestic farmers by upwards of seventy percent, a matter the United States contends is still less distorting than EU practices. *See* EMBASSY OF THE U.S., FACT SHEET: U.S. INTERNATIONAL OBLIGATIONS UNDER 2002 FARM BILL, POLICIES LESS TRADE DISTORTING THAN THOSE OF EU, JAPAN, at <http://www.usa.or.th/news/press/2002/nrot066.htm> (June 25, 2002).

### 3. Freedom of Services

The elimination of all restrictions covering the establishment of service sectors in areas such as telecommunications, financial services, business and professional services, and transport, remains a lofty and ambitious goal for the NTM. Accordingly, based on General Agreement on Trade and Services<sup>270</sup> schedules, the NTM would seek to: (1) liberalize market access on the basis of host country control, thus, eliminating all market access restrictions and (2) eliminate all regulatory obstacles through the mutual recognition of qualifications, regulations, and other requirements.<sup>271</sup> Benefits would include, among others, greater public procurement possibilities, greater certainty of market access, and the elimination of nationality and non-transparent licensing procedures.<sup>272</sup>

The primary problems preventing the realization of such goals lie inherently within the governmental and institutional structures of the United States and EU. Specifically, the bifurcated federal-state-municipal system of the United States, as well as the fact that the EU is a composite of fifteen unique sovereign states with the inherent problem of harmonizing the laws of the member states, make the freedom of services objective of the NTM a formidable goal indeed. However, a strong commitment to the freedom of services that transcends the multi-layered system of governance in the United States and EU will make this objective attainable.

### 4. Government Procurement

Government procurement represents an additional area of dispute between the United States and EU that may adequately be addressed in the NTM through the extension of full national treatment between the parties.<sup>273</sup> The United States and EU may encounter some difficulties, however, in extending market access beyond what is currently required in the Government Procurement Agreement.<sup>274</sup> Namely, the EU must "commit to an exchange of national treatment and a guarantee of fair and

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270. *Supra* note 170 and accompanying text.

271. NTE Supports, *supra* note 269.

272. *See generally id.*

273. *See id.*

274. Agreement on Government Procurement, Apr. 12, 1979, GATT B.I.S.D. (26th Supp.) 33 (1980).

transparent treatment of all suppliers and service providers from both parties;” while the United States must remove all “Buy American” preferences for the benefit of EU goods and extend exemptions and national treatment for small businesses to EU firms.<sup>275</sup> Specifically, the NTM will need to address: (1) the elimination of national treatment exceptions covered under the Agreement on Government Procurement<sup>276</sup> and the U.S.-European Community agreement of 1995; (2) complete geographic and entity coverage; and, (3) the elimination of existing sanctions.<sup>277</sup>

### *5. Other Possible Components of the New Transatlantic Marketplace*

As evidenced by the numerous complaints lodged within the trade barrier reports published by the EU and United States, additional sectors may be addressed and related problems resolved under the NTM framework. First, intellectual property and the varying systems for registration, such as the U.S. approach to patent registration through its exclusive use of the “first to file,” as opposed to the EU’s “first to invent” system, present an opportunity for harmonization under the NTM.<sup>278</sup> Also, the NTM could serve to foster and address investment contentions between the United States and EU, specifically urging the development of a Multilateral Agreement on Investment that would cover market access and protection of goods, services, and financial assets.<sup>279</sup> The NTM may also address labor issues aimed at fully implementing the existing International Labour Organization conventions;<sup>280</sup> business enterprise development through improvements in the business environment risk capital access; entrepreneurship enhancement, innovation, and training; e-commerce issues through trade and service liberalization; mutual recognition of standards and harmonization of laws; data protection on the global information network scale; competition policy with an aim to distinguish anti-trust and state-aid; and taxation issues in regard to unfair treatment of

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275. Draft Communication, *supra* note 252.

276. Agreement on Government Procurement, *supra* note 274.

277. Draft Communication, *supra* note 252.

278. *Id.*

279. *Id.*

280. See, e.g., Freedom of Association and Protection of the Right to Organise Convention (ILO No. 87), 68 U.N.T.S. 17, entered into force July 4, 1950.

income tax exemptions and taxes on e-commerce.<sup>281</sup>

In essence, the NTM represents an ambitious and aggressive move toward transatlantic economic integration and trade liberalization. Envisioned as the next step in U.S.-EU trade relations under the NTA in 1995, the NTM concept seeks to provide a forum for the two trading partners to tackle the numerous trade barriers presently maintained within their respective legal and political regimes.<sup>282</sup> In theory, economic benefits will be derived from the NTM, increasing market competition and, thus, generating savings for consumers and businesses on both sides of the Atlantic. However, innovative ideas always encounter the imminent questions of viability and implications, and the NTM is no exception, especially given the amount of work inherently involved and the level of support that will be necessary for its realization.

#### IV. THE VIABILITY OF THE NEW TRANSATLANTIC MARKETPLACE AND ITS IMPLICATIONS ON WORLD TRADE

The NTA encompasses many areas in which the United States and EU continue to work together, but its greater importance lies in its promise, in its potential, and in what it is capable of becoming.<sup>283</sup> Indeed, the most forward-looking component of the NTA, with the capacity to dramatically redefine U.S.-EU trade relations, arises in the NTM concept. While in theory the NTM's call for eliminating all tariff and non-tariff barriers seems somewhat realistic and attainable, the actualization of such an objective will be much more problematic and complicated. The following section analyzes the viability of the consummation of the NTM, accounting for political and economic concerns, as well as the possible conflict the NTM may pose to the world's multilateral trading system.

From a logistical standpoint, the time frame for implementing a completed NTM remains a subject of much debate. Many supporters of the NTM call for integration in stages, step-by-step over time, with no defined establishment of the free trade

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281. Draft Communication, *supra* note 252.

282. See generally *supra* Part II.

283. See generally Earl Anthony Wayne, *The Potential of the New Transatlantic Partnership: An American Perspective*, in *THE NEW TRANSATLANTIC AGENDA AND THE FUTURE OF EU-U.S. RELATIONS 3* (Jörg Monar ed., 1998).

area from the onset.<sup>284</sup> In fact, this appears to be the approach advocated by the NTA, which calls for an NTM that would “progressively eliminate” transatlantic tariffs and non-tariff barriers.<sup>285</sup> Perhaps the most common element of this progressive approach lies in efforts to harmonize technical standards and initiate mutual recognition agreements, as is characteristic of the past seven years of the NTA.<sup>286</sup> However, this approach may create inconsistencies with the world’s multilateral trading system and cause problems for countries outside of the scope of such agreements. Mutual recognition agreements remain immune from free-riding by third countries, given that accession requires a level of confidence in the quality and reliability of a state’s regulatory bodies, but such agreements will not be easily converted for multilateral use.<sup>287</sup> The piecemeal efforts of this approach would preclude the NTM from becoming a free trade area under GATT Article XXIV until it schedules the liberalization of “substantially all trade,” thus precluding preferential treatment for U.S. and EU production.<sup>288</sup> Rather, the United States and EU would be forced to offer the outcome of each piecemeal, negotiated result, to other WTO members on a MFN basis.<sup>289</sup> In effect, this approach opens the door for hostility from third countries that free ride from U.S.-EU negotiations and an unwillingness to continue to negotiate. These problems can be avoided, however, if negotiations and agreements progress beyond the scope of the WTO and offer outside countries the opportunity to receive MFN or national treatment on the condition they accede to the agreements and undertake the obligations therein.<sup>290</sup>

In contrast to the progressive integration approach, the alternative means for actualizing the NTM, via a comprehensive and quickly negotiated strategy, remains equally difficult. Agricultural issues related to subsidies and the use of innovative technologies, such as genetically modified organisms, represent a matter that may only be successfully negotiated through a gradual, progressive approach. In addition, the criteria of GATT Article XXIV and the MFN problem associated with the piece-

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284. Steinberg, *supra* note 17, at 248.

285. Draft Communication, *supra* note 252.

286. *See supra* Part III.B.

287. *See supra* Part III.B.

288. Steinberg, *supra* note 17, at 248 (commenting on GATT, *supra* note 23, at art. XXIV).

289. *Id.*

290. *Id.*

meal approach likewise pervade the comprehensive plan, requiring accession to be open to third countries willing to undertake the terms of the U.S.-EU agreement if Article XXIV criteria are met, otherwise national treatment must be offered.<sup>291</sup>

Along with the free-riding problem inherent in the conclusion of bilateral agreements under either approach to the NTM, the internal legal structures of the United States and EU likewise raise questions as to the viability of an NTM. Variant federal, state, and municipal regulatory schemes in the United States present countless headaches for EU officials and businesses, as highlighted in the Commission Report.<sup>292</sup> Likewise, the refusal of European states to maintain policies consistent with the regulatory procedures of the EU poses similar difficulties for U.S. companies and administrators. While these diverging internal regulatory schemes represent pivotal points of contention, no easy answers exist. Long-term, sustained integration seems to be the best answer, by which U.S. and EU officials must seek to reconcile these internal trade barriers. However, the length of time inherently involved in this process will require a defined commitment to achieving harmonization and uniformity, which will be problematic given the open door for political animosity to disrupt the process.

Indeed, the role of politics is a fundamental problem in the development of the NTM. Highly sensitive issues permeate the scope of transatlantic trade, many of which demand resolution before a free trade area can exist. Domestic settlement of issues such as government procurement, agriculture subsidization, and service barriers, will require focused and resolute leadership on both sides of the Atlantic. In many ways, the priority of trade liberalization must be fundamental, for political leaders dealing with removing these trade barriers will be forced to variant positions on issues uncommonly coupled together. Public interest groups and business sectors commonly allied with certain political parties will find themselves in conflict over trade policies, implicating financial and political support problems, as well as obstacles in the maintenance of positions of power. For the most part, trade barriers exist for many defined and specific reasons, reasons that unequivocally spell business sector protection. Abridging these business protections by removing trade impediments and opening the doors to economic competition may

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291. Steinberg, *supra* note 17, at 247.

292. Commission Report, *supra* note 162, at 13.

be beneficial to consumers, but will not be welcomed by targeted and affected companies. In turn, political turmoil will be a likely consequence, possibly undermining the authority and mandate of the political actors working towards the actualization of the NTM.

Though many political, logistical, legal, and social obstacles remain in place, the NTM remains a viable concept that could be realized gradually within several years. The institutional framework of the NTA, the TEP, and the various dialogues will aid in facilitating the NTM's development, but will only be successful with clearly defined goals and resolutions by U.S. and EU officials. Through the progressive elimination of tariff and non-tariff barriers advocated by the NTA, deep economic integration can occur and expand transatlantic trade relations. In many ways, trade liberalization and integration works on a slippery slope, where small steps towards these goals ultimately mandates further and further steps. In actuality, the process has already begun; a harmonized and synthesized transatlantic economy will inevitably unfold given market demands – how long the process will take and should take remains the question to be answered.

## CONCLUSION

As the paradigm of time continues to unfold, questions and uncertainties remain unanswered and unfulfilled. With each dawning day serving to clear the ambiguities of the fleeting night, direction and certainty become more discernible and apparent. Likewise, as issues arose after the end of the Cold War amidst U.S.-EU relations, clarity and guidance soon unfolded. Goals for future economic and trade relations defined themselves in various agreements and dialogues, prompting aspirations for further trade liberalization and market integration. As disputes and conflicts continued to arise over barriers to trade, prevalent on both sides of the Atlantic, the idea for a marketplace free of restraints and obstruction to trade soon emerged. Currently, the United States and EU stand on the frontier of realizing this lofty and ambitious aspiration. Questions ranging from whether the NTM is even viable, to whether it is almost inevitable, remain the subject of much discussion and debate. The future maintains a monopoly over these answers. Where U.S.-EU trade relations will go remains to be seen, as time's grip will soon release these answers and reveal what the future

holds on transatlantic relations.



