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Transatlantic Governance in the Global Economy

Edited by
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Transatlantic Civil Society Dialogues

Francesca Bignami and Steve Charnovitz

Among the most interesting features of the New Transatlantic Agenda are the initiatives that are designed to link private actors and enable them to influence official policy making.¹ Called “building bridges across the Atlantic” or “people-to-people links,” these initiatives are intended to generate broad-based support for intergovernmental cooperation in trade liberalization, deregulation, immigration, justice, and a host of other areas (Wayne 1998; Krenzler 1998). This chapter surveys the efforts to institutionalize transatlantic civil society dialogue and offers suggestions on how the undertaking can be improved.

In the New Transatlantic Agenda (NTA) of 1995, the United States and the European Union declared,

We recognize the need to strengthen and broaden public support for our partnership. To that end, we will seek to deepen the commercial, social, cultural, scientific and educational ties among our people. We pledge to nurture in present and future generations the mutual understanding and sense of shared purpose that has been the hallmark of the post-war period. (New Transatlantic Agenda, Title 4)

In the NTA, the governments specifically committed themselves to strengthening ties between their business communities. This was followed, in May 1997, by a People-to-People Conference on Bridging the Atlantic, which was attended by representatives of government and civil society. Finally, in the Transatlantic Economic Partnership, launched in May 1998, the US and the EU pledged support for new transatlantic dialogues involving American and European non-governmental organizations such as environment, labor, and consumer groups.

This array of civil society initiatives establishes bridges and people-to-people links in two ways. First, European and American laboratories, universities, think tanks, and other institutions are engaged in cultural and educational exchanges and joint projects. Second, European and American interest groups are meeting to forge joint positions on issues central to high-level negotiations between their governments.

The first type of civil society initiative, transnational exchanges and projects, is not a new phenomenon. They have figured prominently in transatlantic relations at least since the end of World War II and draw on expertise and knowledge from both sides of the Atlantic.² In 1990 and again in 1995, the US and EU governments reaffirmed their commitment to scientific and cultural exchanges and joint projects (*Transatlantic Declaration on EC-US Relations; New Transatlantic Agenda*). Among the concrete results are the Agreement on Higher Education and Vocational Training, signed in 1995, which partners different educational institutions; the Agreement for Scientific and Technological Cooperation, signed in 1997, which promotes cooperative research between US and EU research facilities; and the unofficial Transatlantic Information Exchange Service (TIES), which uses the Internet to post current information about joint European-American projects.

The second set of civil society initiatives is more directly aimed at intergovernmental policy making.³ Starting with the Transatlantic Business Dialogue in 1995, the United States and the European Union have officially encouraged and funded meetings of interest groups from both sides of the Atlantic. In part, the meetings (and the interaction between the meetings) simply permit information exchange on issues important to industry, labor, consumers, environmentalists, and other groups, regardless of their American or European identities. But the more important function is to allow interest groups to reach common positions on various issues that they can take to governments and press for in ongoing bilateral negotiations. Even though transatlantic civil society has been holding a conversation for nearly two centuries, the evolving dialogues on business, labor, the environment, and consumer issues are *new* because they are sponsored by the governments for the express purpose of obtaining policy advice. This contrasts with past dialogues, which typically had no government support.

In this chapter, we focus on the second type of initiative—collaboration between private sector groups on both sides of the Atlantic to influence intergovernmental policy making. Since the Transatlantic Business Dialogue and the Transatlantic Labor Dialogue are covered in depth in earlier chapters, we concentrate on the Transatlantic Consumer Dialogue and the Transatlantic Environment Dialogue. Neither, however, has arisen in a historical or social vacuum. Therefore, we briefly trace the history of transatlantic cooperation among social groups and nongovernmental organizations (NGOs). We also draw comparisons with the business and labor dialogues and cover unofficial civil society dialogues not sponsored by the governments.

In the first section of this chapter we provide a conceptual framework for evaluating the contributions of private sector dialogues to governance. In the second section we discuss some important episodes in the historical development of transatlantic civil society. Then, in the third and fourth sections, we describe the different dialogues. In the third section we cover the official EU–US Consumer and Environment Dialogues, and in the fourth we discuss a number of unofficial dialogues, thus providing a complete panorama of the exchanges on EU–US relations occurring among different segments of civil society. In the fifth section, although conclusions are premature, we attempt to gauge the success of the civil society dialogues—business, labor, consumer, and environment—narrowly as a function of their role in EU–US relations and more broadly in light of the aim of creating a transatlantic civil society.

CONCEPTUAL FRAMEWORK

Interest group politics is one of the dominant paradigms in the study of domestic politics and public law. In the political science literature, interest group preferences, organizational capacity, and resources determine public policy outcomes (Wilson 1990). In the law, the design of constitutional and administrative law have, from Madison onward, been informed by the operation of interest group politics (Mashaw 1997). Debate exists between those, in the tradition of Arthur Bentley, David Truman, and Robert Dahl, who perceive interest group politics as benign and those, such as E. E. Schattschneider and Mancur Olson, who point to its distorting influence on politics. Debate exists over the extent to which interest groups—as opposed to state administrators and politicians with traditions and ideologies of their own—shape public policy (Evans et al. 1985; Pierson 1994). Nevertheless, everyone agrees that interest groups are important political actors and that constitutional and administrative law should reflect that central role—either by enabling interest group participation, if their influence is perceived to be constructive, or curtailing it, if interest group influence is seen as pernicious.

In the study of international law and politics, by contrast, interest groups typically occupy a marginal place. Rather, sovereign states, state interests, power relations among states, and the international institutions that sometimes constrain and shape state behavior constitute the basic analytical tool kit (Kingsbury 1998, 350). This should come as no surprise, since states and their governments are the principal actors in the international relations system. International institutions, the natural focal point for transnational interest group mobilization, exercise very little authority; to the extent that international institutions do have authority over single states, they generally must obtain the consent of those very same states. Thus interest groups with an international policy agenda are perceived to mobilize domestically because only through states can they obtain action on international issues.

Yet this state-centered framework for understanding international relations has always overlooked the reality of transnational interest group and social movement mobilization. Given the extreme fragmentation of authority in the international relations system—in theory each state has exclusive and sovereign authority over its territory—interest groups have always had an incentive to advocate their causes abroad, with the assistance of their foreign counterparts. Very rarely is one state actor willing or able to impose its preferences on other states, and therefore interest groups must work to create consensus among the numerous states responsible for international governance. This accounts for the rise of the nineteenth-century transnational antislavery and peace movements that we discuss in the following historical section. Moreover, the decline of state sovereignty and the corresponding expansion of treaty-based international law have created greater incentives for transnational interest group and social movement mobilization.

As discussed in the introduction to this book, the rise of transnational coalitions and social movements has been documented by a number of scholars. This chapter contributes to that literature by describing the role that business, labor, consumer and environmental groups have played in the transatlantic relationship. In our conclusion, taking our lead from Risse-Kappen and Keck and Sikkink, we draw on the theory of collective action as well as political opportunity structures to explain the emergence of the dialogues and their varying levels of success. As collective action theory would predict, business was the first mover, followed by labor, consumers, and environmental groups. As Maria Green Cowles's research shows, the large multinationals that were part of the Business Dialogue had an advantage over other interest groups, including national employer organizations, in organizing and sustaining mobilization. Political opportunity structures also contributed to the emergence and success or failure of the dialogues. The Business Dialogue was established thanks to active lobbying by the US Department of Commerce, overcoming opposition from both national European employer organizations and the European Commission. By contrast, the Consumer Dialogue was vigorously promoted by the Commission, winning over skeptics in the US administration. Moreover, because of different institutional opportunity structures, the Labor, Consumer, and Environment Dialogues were far less successful than the Business Dialogue in obtaining government action on their recommendations. On the American side, the trade policy establishment was simply not organized to incorporate and accommodate demands from consumers and environmental groups.

After examining the role of the dialogues in US–EU relations, we take the analysis one step further and reflect on the implication of our observations for the design of public international organizations and intergovernmental law-making. In other words, we ask whether, given the pattern of interest representation we see emerging, interest groups *should* play a role in transatlantic policy making and, if so, through what type of legal institutions. We find that,

even though the transatlantic dialogues have promoted transnational cooperation between business, labor, consumers, and environmentalists, overcoming national self-interest, they have heightened distrust among those groups. For instance, the Consumer Dialogue has led to increased solidarity among American and European consumer groups but has also hardened them in their opposition to further trade liberalization and the business interests perceived to be behind globalization. Rather than reject a role for transnational interest groups, we argue for "dialogue among the dialogues," namely, forums that would bring together different interest groups on concrete transatlantic policy issues. In addition, since we find that the Business Dialogue has been more successful in obtaining policy results in large part due to the institutional structure of European and American trade policy and not to business's natural advantage in organizing collective action, we suggest that American policy making in the trade area be redesigned to accord a greater role to agencies responsive to labor, consumer, and environmental interests.

HISTORICAL BACKGROUND OF TRANSATLANTIC CIVIL SOCIETY

Civil society organizations have been engaged in transatlantic cooperation for two centuries. The Atlantic Ocean was not much of a barrier. This section provides a brief overview of some of the most important episodes. Doubtless, there are others that have not come to our attention.

The first transatlantic movement was the campaign against the slave trade and slavery in the early nineteenth century (Fladeland 1972). Organizations in the United States and the United Kingdom worked together to challenge national policies and achieve international agreements. According to one human rights scholar, these private groups

unceasingly wrote letters, organized meetings, sponsored lectures by fugitive slaves, conducted investigations, supported boycotts of slave-produced goods . . . petitioned governments, and pressured diplomats to consider such actions as making the slave trade an act of piracy [and] granting navies the right to search ships. (Lauren 1998, 42)

The next transnational campaign was the peace movement. These efforts began with Anglo-American cooperation in the early nineteenth century and gradually extended to the rest of Europe and different parts of the world.

The Congo reform campaign of the early twentieth century was also distinctly transatlantic. At the root of the campaign were human rights abuses perpetrated by King Leopold of Belgium, who personally owned the Congo. The leader of the British human rights campaign, Edmund D. Morel, traveled to the United States in 1904 and helped establish the American Congo Reform Association

that later lobbied the US government. By 1908, under intense international pressure, Leopold was forced to sell his Congo Free State to the Belgian government.

In the wake of the two world wars, transatlantic cooperation continued. For example, the Inter-Allied Labor and Socialist Conference held in London in September 1918, which included representatives from the American Federation of Labor, the British Trades Union Congress, and the French General Confederation of Workers, made a number of recommendations for the Versailles peace treaty (*Resolution of the Allied and Social Conference* 1919, 77–79). The Marshall Plan, which began in 1948, included several initiatives involving government-labor cooperation. For example, the intergovernmental Organization for European Economic Cooperation gave special status to the Trade Union Advisory Committee (TUAC), which included trade union representatives from most of Western Europe.

During the late 1950s and early 1960s, several NGOs began working to support Atlantic security arrangements. In 1954, the Atlantic Treaty Association (ATA) was established to link citizen associations supportive of the North Atlantic Treaty Organization (NATO). Among the founding members were the Atlantic Council of Canada, the French Association for the Atlantic Community, and the Iceland Association of Western Cooperation. The purpose of the association was to educate and inform the public about NATO and to promote solidarity and democracy. In 1955, the North Atlantic Assembly was established to bring together members of parliament of NATO countries for an annual conference and other activities. In 1960, the US Congress authorized the president to appoint a Citizens Commission on the North Atlantic Treaty Organization (NATO).⁴ The duty of the commission was to participate in meetings with similar citizens commissions in other NATO countries. Such a meeting was held in 1962 when private delegates from fifteen countries issued the Declaration of Paris, which called for “the creation of a true Atlantic Community . . . which must extend to the political, military, moral, and cultural fields” (Mally 1976, 128). Specific recommendations included a trade partnership between the European Economic Community and the United States and the establishment of an Atlantic high court of justice to decide specified legal controversies. The Declaration of Paris, however, failed to gain any support from the NATO governments.

There were also notable attempts to promote cooperation on nonsecurity issues. The Atlantic Council, founded in 1961, sought to encourage European–American business cooperation as a strategy for building stronger ties between the continents (Atlantic Council 1967, 242–51). The Atlantic Council also supported transatlantic cooperation on the environment. For example, in the early 1970s, it held a series of meetings with government and business participants from North America, Europe, and Japan (Kneese et al. 1971, 351–54). The final report pointed out that norms and standards affecting products would create barriers to trade unless “reciprocal recognition” were afforded by all parties. It recommended

that governments make a significant effort to use similar standards and control methods as the basis for imports (Conference Report 1971, xxv). Furthermore, the report suggested that international economic organizations, including the GATT and OECD, search for general principles, codes of conduct, and consultative procedures aimed at reducing the international economic distortions that can easily arise out of differences in national measures for environmental protection, consumer protection, and sanitary regulations (Conference Report 1971, xxvi).

OFFICIAL DIALOGUES

Consumer Dialogue

Beginnings

The Transatlantic Consumer Dialogue (TACD) was initiated in response to the Transatlantic Business Dialogue and the perception that business was being allowed to unduly influence bilateral trade talks, to the detriment of consumers (TACD 1998). In 1995, Consumers' International and the European Consumers' Organization began lobbying government officials for a dialogue of their own that would, like the TABD, receive government recognition and have direct access to policy makers. On the American side, some consumer activists were frustrated by the US government's inattention to consumer interests in trade matters and went directly to the European Commission to push for a Consumer Dialogue.

By mid-1997 the Commission had come to support the idea. The Amsterdam Treaty, signed in June 1997, contained an amendment to the consumer protection provision, in which the Community pledged to "contribute to protecting the health, safety and economic interests of consumers, as well as to [promote] their right to information, education and to organize themselves in order to safeguard their interests" (EC Treaty, Article 153 [ex art. 129a]). The Commission, therefore, obtained a clear mandate to fund consumer groups. Furthermore, European members of parliament, the Economic and Social Committee, and the Commission's Directorate-General for Health and Consumer Protection were all highly supportive of the proposal. After some lobbying by the Commission, Americans came around to the idea and, at the EU-US summit held in May 1998, the two sides officially committed themselves to the Consumer Dialogue.

Consumers International and the Consumer Federation of America (CFA) were selected to lead the effort and received grants from the Commission and the US Information Agency. The money was to go to two transatlantic meetings, the creation of a Web site, and the distribution and circulation of material. The EU contributed EUR110,000 and the USIA contributed \$60,000. Thus the most significant portion of the funding, about 70 percent, came from the EU. The TACD has recently received funding for another set of meetings: \$69,000

from the US and EUR120,000 from the EU. Again, the European share is more significant than the American.

Mobilization

The first meeting was held on September 25–26, 1998, in Washington, D.C. Representatives from about fifty consumer organizations, involving more European than American organizations, attended. A number of government officials also attended. The meeting was principally organizational. The representatives voted to launch the TACD and selected Consumers International, as an international organization with members in both the US and Europe, to serve as coordinator for the dialogue. In the aftermath of the meeting, three different working groups were set up (the Food Working Group, the Electronic Commerce Working Group, and, for remaining issues, the Dialogue Working Group, later renamed the Trade Working Group) and the date for the second meeting was set.

The second meeting was held on April 23–24, 1999, in Brussels and strong recommendations were adopted. This time representatives from about sixty consumer groups attended. Because the meeting was held in Brussels and was therefore more convenient for European participants, double the number of European organizations were represented as compared to American organizations. On the first day, the three working groups met and on the second day, at the plenary session, the summaries and recommendations prepared by the working groups were discussed and the recommendations approved. Before the meeting, topics were divided among the members of the different working groups, who then prepared papers that were translated and circulated and served as a springboard for debate and eventually recommendations at the meeting. At the plenary, the consumer representatives adopted around twenty different recommendations that had come out of the working groups and decided to hold another meeting in September or October 1999 in the United States, to allow time for them to discuss the many unresolved issues with their respective memberships and together settle upon more recommendations before the WTO ministerial. Consumer activists were pleased with the cultural exchange aspect of the meeting as well as the concrete policy positions that came out of the conference.

On the European side, participation was easy to organize. A system of consumer representation already existed in the European Community and served as the basis for European participation in the TACD. In the United States responsibility for consumer policy rests with a host of different agencies, but in the Community, the Health and Consumer Protection Directorate-General (DG) is the central agency for consumer affairs. In 1995, an official committee composed of consumer representatives was established to advise the Health and Consumer Protection DG. The Consumer Committee brings together consumer representatives from each of the fifteen member states, along with representa-

tives from five major EU associations: European Consumers' Organization (BEUC), Confederation of Family Organizations in the European Community (COFACE), European Community of Consumer Cooperatives (EURO COOP), European Inter-Regional Institute for Consumer Affairs (IEIC), and the Consumer Unit of the European Trade Union Confederation (ETUC). All twenty were automatically placed on the list of TACD consumer representatives. The others were chosen from major European consumer groups not officially represented on the Consumer Committee, for instance, the UK Consumers Association.

Not only was the TACD list of consumer representatives ready-made on the European side, but European consumer groups have significant experience working together and specifically working together on trade-related issues. National consumer groups, as members of umbrella organizations such as BEUC and EURO COOP, habitually hammer out consensus positions on issues relating to harmonization, mutual recognition, and other aspects of the single market (Young 1997). Since 1995, they do so on the official Consumer Committee as well as in their European-wide lobbying associations. In fact, in preparation for the September 1998 meeting, the members of the Consumer Committee met several times to hammer out their position on EU-US consumer issues and elect their members of the joint EU-US Consumer Dialogue Steering Committee.

Mobilization for American consumer groups was more difficult. The Consumer Federation of America and others continued, well after the inaugural September meeting, to recruit consumer groups to participate in the dialogue. To a certain extent, this might reflect the fact that the core of the consumer movement is to be found in a handful of Washington-based individuals and organizations (Mayer 1989, 53), and although this might be no different from Europe, Europe has fifteen national capitals to the single US capital. It is also tied to the lack of any precedent similar to the Consumer Committee in the European Union. And because consumer groups have traditionally not had much of a role in trade policy or other international policy, they lack the expertise or interest that they have in purely domestic issues.

Furthermore, the American consumer movement was ambivalent about two facets of the Consumer Dialogue. First, many groups mistrusted the Consumer Dialogue because it was government funded and sponsored. Europe has a long tradition of government sponsorship of consumer activism, and consumer representation is institutionalized through special advisory committees. In the United States, however, the relationship between consumer groups and the government is far more adversarial (Mayer 1989, 142). Funding generally comes from private foundations and grassroots donations. Symptomatic of this, under their charters, Consumers' Union and Public Citizen may not accept government money. Aside from the occasional negotiated rule-making proceeding (where industry and consumer representatives are selectively invited to participate in the drafting of rules)

and a few advisory committees, consumer representatives are not formally consulted by government agencies. The administrative procedure of notice and comment is the standard vehicle for consumer participation in agency policy making—an arm's-length, judicially supervised process in which all interests and interest organizations can participate.

To those wary of government involvement in the consumer movement, the choice of Consumers International and Consumer Federation of America to organize the dialogue simply confirmed their suspicions. On the one hand, Consumers International was a natural choice. With forty years of experience and 260 member organizations in 110 countries, it is considered the principal player in the realm of international consumer affairs. Likewise, Consumer Federation of America is a major player in the US consumer movement. On the other hand, Consumers International and Consumer Federation of America, as a member of Consumers International, have a reputation among some groups for taking a so-called narrow approach to consumer interests, meaning that trade liberalization is seen principally in a positive light because of the lower prices and greater choice it brings to consumers. Certain groups therefore thought that the dialogue would function as a government tool for promoting a free trade agenda rather than a mechanism for incorporating nontrade interests into bilateral trade negotiations.

The second facet of the dialogue that initially caused problems for American consumer groups was its trade-related agenda. Unlike the European consumer movement, the American movement is divided on trade liberalization. Those groups aligned with Public Citizen have traditionally opposed trade liberalization while those aligned with Consumers Union support it, albeit with conditions. This fault line came out most clearly in the Uruguay Round, when Consumers Union declared itself in favor of approval and Public Citizen against it.

These two stumbling blocks to the TACD come together in a speech given by Ralph Nader at the Washington, D.C., meeting. As one participant recounts:

Nader took the opportunity to restate his well-known objections to NAFTA, GATT, and the World Trade Organization as well as to any Dialogue support by funds from the US government. Nader views free trade agreements as subverting the ability of individual nations to enact strong consumer protection standards. These standards are attacked as nontariff barriers to trade, and secretive, industry-dominated review panels decide on their fate. Nader also slammed Consumers Union for its past support of free trade agreements. He asserted that the TACD would consist of "busy work," would destroy the strong agreement that already exists between most US and European consumer organizations, would create the "illusion of consultation and participation" and be misused as a public relations ploy by those arguing for presidential fast-track authority in the negotiation to trade agreements. (Mayer 1998)

Interestingly, one of the consequences of the Consumer Dialogue has been to build solidarity on trade issues within the American consumer movement. Al-

though the September 1998 meeting was disrupted three times because of division within the American ranks, American consumer groups ultimately voted in favor of launching the Consumer Dialogue. The TACD Steering Committee includes both Public Citizen, traditionally skeptical of trade liberalization, as well as Consumers Union, Consumer Federation of America, and US Public Interest Research Group. Moreover, as discussed in detail below, American consumer groups were able to reach consensus positions—among themselves and with their European counterparts—on a variety of issues.

Policy Agenda

The consensus at the second meeting in April was remarkable. Notwithstanding the divisiveness that characterized the birth of the dialogue, representatives were able to reach agreement on roughly twenty recommendations. The common thread running through all of the recommendations was that the TACD consistently sided with Europe.

Food safety. High on the list of TACD priorities was mandatory labeling of all genetically engineered foods and ingredients. Genetically modified organisms have caused significant controversy in the international trade world. Some consumer groups and scientists claim that crops genetically engineered to resist weed-killing chemicals and insects might pass on those genes to other plants, creating a new generation of “superweeds” or might threaten biodiversity by having a toxic effect on harmless or beneficial insects. Indeed, some fear that antibiotic resistance genes used in some genetically modified crops might get passed on to people, creating strains of bacteria resistant to antibiotics. In response to claims that GMOs are potentially harmful to humans and the environment, the European Community has begun to develop a labeling and certification scheme for GMOs. In marked contrast, the US does not require labeling or certification of genetically altered foods and opposes the introduction of such regulatory schemes abroad. Notwithstanding the absence of scientifically conclusive studies showing GMOs to be harmful, the TACD advocated the approach taken by the European Community. The dialogue called for mandatory labeling of GMOs and called on “the governments of the U.S. and the EU to establish effective and mandatory government approval systems of human health, safety and environmental protection.”

The TACD also recommended a total ban on the use of antibiotics in animal and food production except where disease has been identified in a particular animal or group of animals. This grows out of concerns that the use of antibiotics as growth promoters and for prophylactic disease prevention purposes will create antibiotic-resistant strains of bacteria in humans. Although both Europe and the US allow the use of antibiotics to prevent disease, it appears that, after cutting back on the types of antibiotics permitted, Europe will soon impose a total ban. Again, the TACD has come down on the side of caution, even though the

science is still uncertain and one of the results might very well be higher prices to consumers; again, the TACD has taken the same approach as the European Community.

In another food safety recommendation, the TACD advocated the prohibition of bovine somatotropin (BST), a hormone used to stimulate milk production in dairy cows. The European Community adopted a moratorium on BST use in 1990 in response to concerns that it could lead to abnormal growth in humans. By contrast, in 1993, the US Food and Drug Administration found that BST was safe. At the April 1999 meeting, the TACD urged the US to ban BST and the European Community to convert its moratorium into a permanent ban. As with GMOs and antibiotics in animals, the Consumer Dialogue has more in common with Europe than with the US government.

Also in the food safety area, the TACD urged the US and EU to institute a safety and efficacy review for dietary supplements, as is currently the case for pharmaceuticals. European and American consumer groups also called for added steps to reduce illnesses caused by pathogen contamination of food products (e.g., salmonella) and for a hazard-based inspection program covering food production from farm to table, including, among other things, frequent and unannounced inspections by authorities. On nutrition labeling for food products, an area in which certain EU member states lag behind the US, the TACD recommended that the EU take action and that both the EU and US press for nutrition labeling rules in the Codex Alimentarius Committee (Codex).

On a more general level, the TACD called for consumer participation and transparency in the Codex, the WTO, and the equivalency determinations made by national regulatory authorities in implementing mutual recognition agreement obligations. Thus in the wake of the April meeting, the Center for Science in the Public Interest, a member of the TACD, urged the Department of Agriculture to allow for full consumer participation in determining whether foreign poultry and meat inspection systems guarantee levels of safety equivalent to the US standard. Last, the Consumer Dialogue opposed the Sanitary and Phytosanitary (SPS) Agreement requirement that WTO member countries conduct risk assessments showing the need for regulation when imposing sanitary or phytosanitary measures.

The principal area of disagreement between the American and European consumer organizations was meat hormones. In the well-publicized WTO hormones case, brought by the US against the EU, the Appellate Body found that the EU had insufficient scientific evidence to warrant its ban on hormones in beef. Reflecting the difference in attitudes between the EU and US governments, American consumer organizations in the Consumer Dialogue were unwilling to support a ban on hormones in meat.

Electronic commerce. In the electronic commerce area, the TACD favored government regulation in areas such as privacy and consumer protection. Privacy protection for consumer data is an area in which European and American

regulatory approaches differ considerably (Shaffer 2000). The EC Data Protection Directive, which entered into force in October 1998, gives individuals significant rights over personal information supplied to businesses and other entities and requires member states to establish a variety of enforcement mechanisms. Problematic for the US is a provision that prohibits EU-based companies from transferring data to third countries that do not provide equivalent protection for personal information. An agreement being negotiated between the US and the EU would permit data transfers if US companies voluntarily adhered to certain "Safe Harbor" principles for the protection of consumer data. The TACD came down against the Safe Harbor Agreement on the grounds that it lacked effective mechanisms for enforcement and consumer redress and that it failed to guarantee consumers access to personal information provided to businesses, as under the EC directive. Rather, the TACD advocated adoption of the International Convention on Privacy Protection.

The TACD also called on the governments to establish minimum bilateral standards for consumer protection in electronic commerce, for example, guaranteed consumer recourse to the laws and courts of the consumer's home country. Furthermore, the Consumer Dialogue advocated the expansion of "fair use" exceptions to intellectual property rights, thereby rendering information more accessible to educators, citizens, and other third parties. Finally, on a more general note, the TACD vindicated a place for consumers in domestic regulatory processes for setting electronic commerce standards. Taken together, the TACD recommendations demonstrate a distrust of industry self-regulation, currently the preferred US approach, and a preference for internationally set consumer protection standards.

General trade. In the general trade area, the TACD rejected the failed Multilateral Agreement on Investment (MAI) as a model for international investment rules, largely repeating the arguments that resulted in the defeat of the MAI in 1998. The Consumer Dialogue found that such investment rules would threaten the ability of governments to protect consumers, workers, the environment, and public health. The TACD also critiqued the overly protective intellectual property regime for pharmaceuticals in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and advocated rules that would allow for greater access of the poor to necessary drugs.

In this area, the main issue on which consumers were unable to reach agreement was the US-EU banana dispute. This dispute, which was decided by the WTO in favor of the US, involves the EU system of preferential treatment for certain banana importers. European consumer organizations were divided between the Germans, for whom cheap bananas took on symbolic value after the fall of the Berlin Wall, and the French, Italian, and Spanish, whose countries directly benefit from the EU system or have historical ties to the Caribbean nations that benefit from the system. Therefore the Consumer Dialogue settled for the more general statement that WTO obligations should not trump other

international obligations, including the Lomé Convention under which the EU had granted certain banana importers preferential treatment.

The consensus at the April meeting was impressive. Indeed, agreement among European and American consumer organizations on issues such as GMOs, antibiotics in livestock, and dairy cow hormones dates back to the Uruguay Round. The overwhelming TACD support for Europe on these issues, however, raises the difficult question of precisely who represents the American consumer—the US government or US consumer organizations? Do American consumers welcome the lower prices that science in food production brings, as their national officials, accountable to their elected representatives, maintain? Or are they fearful of the possible risks that such technologies pose, as the leaders of their interest organizations maintain? The same questions apply to government regulation of electronic commerce. In our conclusion, we take up this issue again and ask to what extent interest organizations are capable of representing their constituencies. Because of space constraints and the complexity of the issue we cannot provide any definitive answers.

Access to Policy Making

Perhaps the most novel element of the Consumer Dialogue is the commitment, albeit weak, that EU and US policy makers have made to take into consideration TACD recommendations. The clearest statement comes in the *Transatlantic Economic Partnership*, in which the parties agree that the TACD will “feed into the TEP process” (statement, section 15; Action Plan, art. 3.8). Groups such as Consumers International have, for years, hammered out common positions among member groups and taken these positions to the Codex, the United Nations, and various other international organizations. They have had observer status in the United Nations and the Codex (but not the WTO). They have educated the public and campaigned on various issues. Never, however, had they been promised direct, formal access to policy makers in the course of intergovernmental negotiations.

Members of the TACD promoted their recommendations in a number of ways. First, at the April 1999 meeting, government officials from both the US and the EU participated as observers and respondents in the working group sessions and the plenary. On the American side, about twenty government officials representing the Federal Communications Commission, the Federal Trade Commission, the US Trade Representative, the State Department, the Commerce Department, the Department of Agriculture, the Food and Drug Agency, the National Highway and Traffic Safety Administration, and the US Mission participated. On the European side, the Directorates-General for External Relations, Industry, Agriculture, Internal Market and Financial Services, and Health and Consumer Protection were represented. For the most part, consumer activists were pleased with the level of engagement and involvement demonstrated

by government officials at the conference. This was the first point at which consumers brought their transatlantic position on trade-related issues to the US and EU administrations.

Second, the recommendations were sent to the relevant government officials on both sides of the Atlantic, many of whom were at the meeting. On the American side, the USTR served as the point agency for collection and distribution of recommendations to the relevant agency officials, the equivalent of the Department of Commerce for the Business Dialogue. The USTR also organized a few interagency meetings, attended by consumer representatives, at which TACD positions were discussed. On the European side, the recommendations were sent to the Health and Consumer Protection Directorate-General and, after a series of interagency meetings, the Commission issued a written response.

Third, the Consumer Dialogue sent a formal statement to the US president, the German government (which held the EU presidency), and the Commission president before the EU-US summit in June 1999. The summit results, however, were disappointing to consumers. Not only did the leaders fail to take up any of the issues of concern to the TACD, but, in a largely symbolic gesture, they refused to meet with members of the TACD Steering Committee for the formal presentation of TACD recommendations. Since Clinton and Schroeder did meet with representatives of the Transatlantic Business Dialogue, this was taken as a direct attack on the Consumer Dialogue and its mission.

Last, consumer associations used all of the other channels normally available to them in the domestic policy-making process. Thus TACD rejection of the US-EU Safe Harbor Agreement was submitted to the Department of Commerce as part of the notice and comment proceeding on the agreement. On the European side, the Consumer Committee urged adoption of the TACD recommendations to the Health and Consumer Protection DG.

To date, the promise of a formal role for consumers in the transatlantic policy-making process has been largely unfulfilled. Although European consumer organizations had easy access to the Commission through the Health and Consumer Protection DG, the same was not the case in the US. Unlike the Commission, jurisdiction over consumer affairs in the US is divided between many agencies, which pursue a variety of missions, and take back seat to the USTR and Department of Commerce on trade matters. The Federal Trade Commission, responsible for electronic commerce, is more clearly aligned with consumer interests but the Department of Agriculture and the Food and Drug Agency are less so. The designation of the USTR as the agency responsible for gathering TACD recommendations and distributing them to the appropriate agencies demonstrates how ill equipped the executive branch is to accommodate consumer interests in trade policy. Unlike the Department of Commerce, the USTR, the Business Dialogue's designated agency, has never been aligned with consumer interests. And unlike the Department of Commerce, which has the resources to dedicate one staff member to each recommendation made by the

Business Dialogue, the USTR has one staff member who is responsible for shepherding all of the Consumer Dialogue's recommendations through the interagency process.

Even more disappointing was the absence of a new role for the consumer voice at the international (as opposed to purely national) level of governance. Perhaps this is inherent in the intergovernmental nature of transatlantic relations, in which power rests entirely with the United States and the European Union and is not shared with supranational institutions. Yet the EU-US June summit presented an opportunity for consumer representatives to meet jointly with the leaders of the *New Transatlantic Agenda*. Unfortunately, that opportunity was denied. Moreover, the *Transatlantic Economic Partnership* contains a provision that promises interest groups more direct access to intergovernmental negotiations. Under Article 4 of the Action Plan, a steering group composed of US and EU delegations and assisted by several specialized working groups is to prepare the semiannual summits. Article 4 directs the steering group to "provide a horizontal forum which can receive recommendations made by business, environment, consumer and labor dialogues." There has been talk of instituting an "outreach group" to act as the "horizontal forum," but nothing has materialized yet. Thus institutional mechanisms through which TACD representatives would have direct access to intergovernmental negotiations and would no longer be entirely subordinate to their national trade officials are possible, but they still have not been put to use.

Environment Dialogue

Beginnings

The Transatlantic Environment Dialogue had precursors in the transatlantic network that environmental NGOs had started building in the early 1990s. Among their activities was a roundtable seminar on establishing a "transatlantic environmental policy" organized by the European Institute in 1992 (European Institute 1992).⁵ A year later, the Natural Resources Defense Council (in Washington) and the Foundation for International Environmental Law and Development (in London) organized a joint study group to examine international trade and the environment and make recommendations (Natural Resources Defense Council and Foundation for International Environmental Law and Development 1995).

Mobilization

Planning for an environmental dialogue began in early 1998 after officials at the US Environmental Protection Agency alerted NGOs that the TABD was working on new mutual recognition agreements that could affect the environment. The NGOs then obtained a planning grant from the Mott Foundation to establish their own dialogue. In the summer, the Clinton administration offered the

National Wildlife Federation (NWF) \$100,000 to establish an Environment Dialogue. Initially, environmental NGOs were reluctant to accept government funds; eventually they agreed that NWF should accept the money on behalf of the nascent Transatlantic Environment Dialogue (TAED) but that it should mainly be expended to cover overseas travel expenses. The European Commission designated the European Environmental Bureau to coordinate European participation and provided a grant of reportedly \$150,000. In September 1998, the environmental NGOs held a meeting in Paris to discuss and plan the dialogue. One benefit of the dialogue, according to certain NGOs, was the information they would obtain on transatlantic negotiations. According to this view, the information would enable NGOs to call their bluff when EU and US officials denied responsibility for lack of progress in environmental negotiations.

Although some governments suggested a dialogue focused on trade and the environment that would parallel TABD efforts, the environmental NGOs resisted a trade-only pigeonhole. They saw the Environment Dialogue as an opportunity to improve transatlantic coordination on a broad range of environmental issues and therefore announced that the TAED would make recommendations to EU-US high-level consultations on the environment (which had been ongoing for about twenty years), EU-US summits, and the TEP. As they explained after their first meeting, the TAED was created "in response to bilateral government initiatives under the EU-US New Transatlantic Agenda, but is in no way intended to legitimize these processes" (TAED press release, May 3, 1999).

The first full-scale meeting of the TAED was held May 1-3, 1999, in Brussels. Representatives from about fifty NGOs attended. In the planning phase, US NGOs had welcomed the participation from all interested environmental groups. Most active were Bionet, Climate Action Network, Community Nutrition Institute, Consumer's Choice Council, Defenders of Wildlife, Institute for Agriculture and Trade Policy, NWF, Public Citizen, and the Sierra Club. (There was apparently no effort to recruit any "free market" environmental NGOs.) At the meeting itself, however, European and American NGOs struggled with the issue of which groups should be allowed full membership in the TAED. Some thought that nonmembership organizations should only be accorded associate member status, but eventually it was decided that all nongovernmental, non-profit, noncommercial, and nonpartisan organizations could join the TAED as full members.

TAED planners were also divided on whether government officials should be permitted to participate. The European NGOs wanted more government involvement, the US NGOs less. As some NGO leaders explained:

This situation reflects the differences in attitudes of governments and the experience of NGOs in dealing with the officials. Many but not all US NGOs, especially those involved with health and environmental policies related to trade, have found

that US agencies have no interest in negotiations with NGOs. The government responds only when NGOs demonstrate the capacity to block trade initiatives such as fast track or MAI. By contrast, many European NGOs believe that the European Commission desires to substantively incorporate environmental policies and NGO views into the EU agenda.⁶

In the end, however, the TAED invited government officials to participate. On the last day, the NGOs met with Sir Leon Brittan and other Commission officials in a public meeting that also included officials from the US government and the German presidency of the EU. In October 1999, the TAED held a second round of meetings, which included both NGOs and government officials.

Policy Agenda

The TAED is divided into five working groups. Three address multilateral issues (climate change, biodiversity, trade, and environment) and two address bilateral issues (agriculture and industry). The TAED issued recommendations in each of these areas following the May and October 1999 meetings.

In May 1999, the TAED called for the US and EU to conduct environmental and social impact assessments of each activity within the TEP before implementation and asked that such statements explicitly assess the impact on developing countries. It also urged the WTO to give effect to the precautionary principle in its day-to-day work. On climate change, the TAED called for the US and EU governments to stop subsidizing polluting sources of energy such as nuclear power and fossil fuels. Finally, on agriculture, the TAED argued that WTO rules should not interfere with the right of national governments to choose how genetic technology can be used and labeled.

In June 1999, the TAED repeated many of these positions in a set of recommendations to the EU–US summit. For instance, it declared that a “sustainability assessment of the impact of both past and proposed future WTO liberalization must be undertaken by the U.S. and EU with the full participation of civil society.”⁷ The TAED also called for the establishment of an Eminent Persons Advisory Group to the WTO that would make recommendations on maximizing the synergies between trade and the environment.

After the October 1999 meeting, the TAED issued new recommendations largely centered on the WTO Seattle ministerial. The statement issued by the Working Group on Trade and Environment made several noteworthy observations and recommendations:

- No movement on environmental protection, sustainable development and animal welfare will take place in the WTO, unless the EU and the U.S.—working together—are willing to put forth stronger substantive proposals and seriously press these issues onto the agenda.

- Protecting Multilateral Environmental Agreements (MEAs) from trade challenges should be a priority for the U.S. and the EU. . . . As a demonstration of good faith, the EU and U.S. should jointly announce an agreement to not challenge at the WTO trade measures taken pursuant to MEAs.
- The current proposal to curb environmentally damaging subsidies is welcome. Both the U.S. and the EU should embrace and strengthen these proposals and add fossil fuels, forestry, and nuclear power subsidies to the list of those in need of phaseout. (TAED statement, October 12–15, 1999)

Among the other significant recommendations to come out of the October 1999 meeting was a statement from the Industry Working Group on European Waste Management Policy (TAED statement, October 15, 1999). It urged the Commission to stand firm on its waste directive, which phases out heavy metals and flame retardants, and criticized the US government for opposing the directive. In an area, therefore, where the US and all European governments were in disagreement, the TAED took the European side. Like the TABD and the TACD, the TAED was willing to come down in favor of one government or another in an ongoing dispute. This potential mediating function is an important dialogue process. It remains to be seen whether such transnational consensus positions will move governments toward a harmonized position.

Access to Policy Making

The TAED meets with government representatives at its conferences. For example, in October 1999, it met with subcabinet officials from the United States and senior career officials from the Commission. Although most of the constituent NGOs within the TAED would be able to secure an audience with government officials outside of the dialogue, the dialogue provides regular access. It also provides access to officials from the “other” government.

The level of officials participating in the TAED has been considerably lower than the TABD. But the level of government participation is commensurate with the levels of the participating NGO representatives, who are not the CEOs of their organizations. Some TAED members lament that the TAED is perceived by governments as being a “second-class” dialogue. The environmental NGOs would like to establish a mechanism for monitoring government responses to the TAED recommendations similar to what the TABD has. After the October 1999 meeting, a TAED working group announced, “We will continue to hold the U.S. and EU accountable to recommendations by tracking their progress in implementing and addressing each of the issues raised” (TAED statement, October 12–15, 1999).

A couple of weeks after this meeting, President Clinton and EC Commission president Romano Prodi held their first official meeting. Among their points of

agreement, reportedly, was a decision to form a new advisory group on biotechnology that would include scientists, consumers, and religious leaders.⁸ This would apparently be outside the TAED process, but it provides another demonstration of how the governments are seeking not only technical and spiritual advice but also legitimization "services" from civil society.

UNOFFICIAL DIALOGUES

In addition to the dialogues officially recognized and funded by the governments, a number of unofficial transatlantic dialogues have formed or gained momentum in recent years. The Transatlantic Dialogue on Sustainable Development (TSDSD) began in 1997 and seeks to promote a colloquy among business, NGOs, and governments on development in the third world. Its members have chosen to address, as their first topic, sustainable agriculture. The TSDSD is organized by the Keystone Center and the European Partners for the Environment. Initial funding for this effort came from the German Marshall Fund and the Luso-American Foundation. It differs from the TAED in that it seeks to include a broad spectrum of stakeholders including business, governments, institutes, as well as NGOs. After two meetings held in 1998, the dialogue is currently on hold because of the lack of US private grant money to match funding from Europe.

The Transatlantic Dialogue of Aviation and Climate Change began in August 1998 with a meeting of central government officials, subnational agencies, NGOs, and business groups. The dialogue is looking at how airplanes affect climate change and air quality. The participants are currently working on policy papers.

The Transatlantic Policy Network (TPN), founded in 1992, links large corporations, members of the US Congress and the European Parliament, chambers of commerce, and institutes. It has working groups that cover the transatlantic marketplace, monetary issues, science and technical cooperation, the Ukraine, and NATO and security issues. Although business oriented, the TPN is more academic than the TABD. The TPN seeks to foster a stronger transatlantic partnership through an extensive program of conferences, forums, seminars, and debates. It has offices in Brussels and Washington.

In March 1998, the Transatlantic Donors Dialogue (TADD) was formed to serve as a forum for both US and European foundations and government aid agencies that fund transatlantic exchanges, dialogues, and multiyear projects. (This effort grew out of the Transatlantic Civil Society Dialogue, proposed during the 1997 People-to-People Conference. Originally, it was planned that donors and NGOs would meet, but the dialogue was later redefined to include donors only.) TADD is coordinated by the German Marshall Fund and the Luso-American Foundation.

The aim of TADD is to coordinate grant making on a broad range of transatlantic issues, including environmental protection, economic development, and immigration. Its focus is somewhat broader than that of the other dialogues because it reaches beyond the European Union and includes Eastern Europe and countries formerly part of the Soviet Union. This process has enabled funders on both sides of the Atlantic to share information on grants, avoid duplication, and make more private funding available for projects. The TADD has also, somewhat unexpectedly, improved the traditionally poor communication between government and private funders in the United States.

The Donors Dialogue is one manifestation of the importance of private foundations in promoting and sustaining strong ties between the United States and Europe. The most active funder is probably the German Marshall Fund, which has supported transatlantic cooperation since the fund's inception in 1972. The German Marshall Fund is currently supporting several transatlantic projects at the American Council on Germany, the American Enterprise Institute for Public Policy Research, the American Institute for Contemporary German Studies, the Brookings Institution, the Center for Strategic and International Studies, the French-American Foundation, the Hudson Institute in the United States, and the Transatlantic Policy Network (German Marshall Fund 1998). In Europe, it is funding Atlantic-Brücke E.V., Germanwatch, Center for International Relations (Warsaw), Centrum für Angewandte Politikforschung, Deutsche Gesellschaft für Auswärtige Politik, and the Institut Français des Relations Internationales. In addition, the German Marshall Fund has supported a series of transatlantic meetings on market instruments for climate change and on migration (along with the Bertelsmann Stiftung).

Although not strictly dialogues, several institutes have carried out research and policy projects with participants from both Europe and the United States. For example, the American Enterprise Institute sponsors the New Atlantic Initiative, which holds periodic conferences on economic and security issues. The initiative has partnered with European institutes such as the Center for a New Europe and the Institut Français des Relations Internationales.

There is also a new dialogue under consideration—a Transatlantic Development Dialogue. It would examine and put forward recommendations on government aid and technical assistance programs in third world countries. The lead NGOs are InterAction (in the US) and the Nongovernmental Liaison Committee (in Europe). Although the European Commission is willing to fund the dialogue, the various stakeholders have not yet agreed to launch it.

CONCLUSION

In this final section, we begin by giving a comparative overview of the dialogues (TABD, TALD, TACD, TAED) and then develop an explanation for

their emergence as well as their different levels of success—success understood both as the ability to sustain transatlantic collective action and to achieve their policy goals. We also analyze this interest group activity from the public law perspective and consider whether the dialogues should participate in transatlantic policymaking and, if so, through what types of public law institutions. In other words, once we satisfy ourselves that the dialogues are making a valuable contribution to transatlantic governance, notwithstanding the civic republican and public choice critiques of interest groups, we make suggestions for improving their operation. Our conclusions are tentative, since the dialogues, especially the consumer and environmental dialogues, are recent developments and the record is limited.

The Conditions That Led to the Emergence of the Dialogues and Their Success (or Failure)

As noted above, transatlantic networking goes back to the early nineteenth century. The idea of a transatlantic community can be traced back to NATO and the attempt, by governments as well as citizen associations, to forge civil society links that would create support for NATO and other types of intergovernmentalism. The specific interests represented in the dialogues—business, labor, consumers, environment—all had prior experience building transnational networks, although labor unions' history of organizing internationally is probably the longest.

The effort, launched by the Bush administration in 1990, to forge a new partnership between the US and the EU that would reflect the realities of European integration created new opportunities for transatlantic interest group activity. Business—a coalition of multinational corporations—came first. During the first five years of its existence, the TABD has attracted the support of large numbers of company leaders who contribute the time and resources necessary to prepare working papers, organize regular meetings, attend those meetings, and lobby their governments. They have achieved numerous policy victories, most notably the Mutual Recognition Agreement on product testing and the 3-G Wireless Licensing Agreement. Next came labor. Yet in the absence of a clear transatlantic labor market agenda, both among EU and US policy makers and trade unionists themselves, the TALD has operated as a sideshow to the labor movement's other international activities. Mobilization, in terms of preparation for meetings and frequency of those meetings, was low and the TALD's policy recommendations gained little receptivity. In the fall of 1998, consumers and environmentalists followed. Consumers organized quickly. Not only did they achieve high levels of participation from consumer organizations, but they immediately elected a steering committee, drafted working papers, and agreed on a host of recommendations that they have taken to the governments. To date, however, the TACD has not had much success in obtaining government action, at least on the American

side. Environmental groups were slower to organize. Although they obtained government funding and started planning their dialogue at roughly the same time as consumers, they had a more difficult time selecting a steering committee. Even though the TAED has met three times, part of the agenda has been organizational and consequently the TAED has not devoted as much attention to substantive policy issues as the TACD.

Undoubtedly, TABD's ability to organize and advocate trade liberalization measures must, in part, be attributed to the fact that the participating multinationals stand to benefit directly from transatlantic trade liberalization. To roughly sketch Olson's logic of collective action, small groups that stand to win from policy change are most likely to organize because of the significant stake that each member has in the outcome (Olson 1965). Large groups, by contrast, have a more difficult time organizing because the same benefits are spread thinly across a large membership. According to Olson, diffuse groups can overcome these hurdles through so-called selective incentives, which may be material incentives, such as special membership perks, or, according to more recent rational choice scholarship, moral incentives, such as the psychological benefits to be had from group solidarity (Moe 1980). Nevertheless, under this theory, small groups have an advantage over larger ones.

For the transatlantic dialogues, this explains the discrepancy in resources available to the dialogues. Although, as Cowles point out, the business leaders in the TABD complain that the transatlantic policy process is too slow and they see too few results, they continue to invest the resources necessary to hold meetings, develop policy positions, and track implementation. One reason that the TALD functions as an adjunct to labor's other international activities is that the ETUC (European Trade Union Confederation) and AFL-CIO do not have the resources to devote to another set of meetings. The big question for the TACD and TAED is whether they will continue to receive government support and, if not, where they will find the funding for meetings and related activities.

Olson's logic of collective action also explains why transatlantic business cooperation succeeded this time around when similar attempts by the American business community in Brussels had failed in the past. Previously, as Cowles explains, European business leaders were reluctant to act independently of their national industry associations. Yet national industry associations have a difficult time mobilizing internationally. They represent a variety of business interests, can be slow moving and bureaucratic, and must fund activities at the local, national, Community, and international levels. By contrast, the multinationals in the TABD, as major exporters of goods and services, stand to directly benefit from transatlantic trade liberalization and therefore have good reason to devote resources to transatlantic coalition building.

The emergence of the dialogues can also be understood as a function of the political opportunities presented by the American and European systems of interest representation. As Risse-Kappen and his coauthors have observed, the

domestic structure of a "target state" can facilitate or hamper interest group access to the polity as well as coalition building within that polity. Coalition-formation and group mobilization depends on domestic institutions designed to accommodate or exclude certain interests. Likewise, the very existence of the transatlantic dialogues was premised on different models of domestic interest representation. Secretary of Commerce Ron Brown proposed American-style government-business consultation. Rather than representation through industry associations, as is common in Europe, he insisted on Washington-style direct corporate representation for the TABD. Although the Commission and European corporations were initially reluctant, they eventually came around to the idea. Similarly, the European Commission proposed a government-funded committee for consumer representatives, similar to the type of representation that exists for European consumers in the Commission. This time, the American government and certain American consumer organizations were reluctant: the government was skeptical that any agreement would be reached and consumer organizations were suspicious of anything involving direct government funding. Nevertheless, due to the impetus from the European Commission, the TACD was established. Thus the system of transatlantic interest representation eventually created was a curious hybrid of American and European styles of dealing with interest groups in the policy-making process.

The ability of the dialogues to achieve policy change can also be tied to the domestic institutional framework for interest representation. The TABD has a close relationship with the Department of Commerce, which has devoted considerable resources to moving policy recommendations through the interagency process and plays an important role in developing US trade policy. The TABD also appears to benefit from close ties with the Commission. Consumers, on the American side, did not enjoy this type of access to trade policy. None of the agencies most responsive to consumer interests are very influential in setting trade policy. Moreover, the USTR, the agency designated as responsible for distributing TACD recommendations, does not have the resources necessary to devote to the process. Therefore, even though consumer organizations mobilized transatlantically and formulated a series of joint demands, they have not yet been able to obtain any policy change.

Public Law Ramifications

Turning to the normative, public law issue of the role interest groups *should* play in transatlantic trade relations, we first explore the case in favor of interest group participation, through individual states as well as international institutions. The dialogues, we find, have led to significant public debate on the Transatlantic Agenda and the Transatlantic Economic Partnership and have, in some instances, allowed European and American groups to play a more direct role in transatlantic policy making. We acknowledge, however, that there are shortcom-

ings. First we present the civic republican critique of interest groups in public life and suggest improvements that can be made to the dialogues in light of that critique. Second, we consider the recent experience with the transatlantic dialogues in light of the public choice critique of interest groups and make additional suggestions for the operation of the dialogues.

Traditionally, the democratic legitimacy of international agreements and organizations is thought to derive from the mutual consent of the contracting party governments which, in turn, are elected domestically. (Actually, the most orthodox model is indifferent to the type of domestic regime.) This is a highly formal theory of democracy that fails to acknowledge the loss of public participation that occurs when decision making is transferred from the domestic to the international arena.

When governments engage in international lawmaking, they escape domestic democratic politics in three ways. First, since governments are delegated authority to negotiate and enter into trade agreements, the public cannot participate as it would when legislators pass domestic laws or government agencies issue domestic regulations (Goldman 1994, 64). Legislatures and agencies are often required to implement international agreements into domestic law, but since the decision has already been reached intergovernmentally, the public cannot exercise the same type of influence as when legislatures and agencies start from scratch. In the United States, to compensate, the president and key trade officials are required to consult regularly with the Senate Finance Committee and the House Ways and Means Committee and to solicit advice from advisory committees formed of interest group representatives. These mechanisms for public participation, however, are criticized as inadequate, largely because they are structured in a way that includes only a fraction of the domestic policy community implicated by trade agreements (Goldman 1994).⁹ Second, governments are sometimes unable to check their negotiators. The more specialized and routine intergovernmental rule making becomes, the more intergovernmental policy-making communities tend to form and escape the control of their national administrations (De Búrca 1996, 352–53). Trade officials from different countries often have more in common with one another than with sister government agencies. Third, when governments delegate rule-making power to international bodies that do not always operate through member consensus, as is the case with the Commission of the European Communities and the Dispute Settlement Body of the World Trade Organization, accountability is two steps removed from domestic politics. The demos to which such lawmakers are accountable is no longer defined by national borders but includes all the participating states; therefore, the political weight of each individual shrinks (Weiler 1995). The so-called democratic deficit may worsen with economic globalization and the increase in constitutional free trade rules and harmonization decisions that control and shape national policy making.

More active participation by interest groups, both in the domestic foreign policy making process and international institutions, is one type of solution to

this legitimacy problem. Interest groups can also be expected to contribute know-how and expertise to the public policy issues that impact them (Schuck 1997, 583–86). In the European Community, which has been engaged in a quest for greater legitimacy for the almost fifty years of its existence, the Commission funds and consults a variety of interest groups in drafting policy proposals (Kohler-Koch 1997, 54–55). In the transatlantic relationship, European and American negotiators may improve the democratic legitimacy as well the quality of the bilateral agreements they reach by opening themselves to greater participation from civil society.

Certainly, the transatlantic dialogues have fostered debate and learning on transatlantic, as well as global, issues. Cowles points to how, in the TABD, American business leaders came to learn more about the workings of the European Union and the specific obstacles facing European companies in the US market. Knauss and Trubek describe the various activities that have enabled the AFL-CIO and ETUC to learn more about the other's labor markets and industrial relations system. We find, in our study of consumers, that participation in the TACD led American and European consumer organizations to think more carefully about issues such as privacy rights and hormones in beef and also introduced American organizations to new issues, namely, the banana dispute and the interests of developing countries. The dialogues have also enabled the same groups to mobilize—and participate—more effectively in other international forums. For instance, the solidarity and consensus generated in the dialogues have enabled consumer and environmental organizations to act more forcefully on WTO issues. Last, through the dialogues, certain interests, namely business, acquired a more significant role in the policy-making process. As Cowles notes, before the TABD was created, European business was not well organized on trade issues and lacked direct, formal channels to Commission officials. On the American side, the strong partnership between the Department of Commerce and the TABD improved business access to trade policy makers. Because of the nature of the transatlantic partnership as a series of intergovernmental meetings, without a permanent international organization, this newfound role for business was through national governments, and not at a higher level of global governance.

Notwithstanding the benefits that the dialogues have brought, numerous shortcomings must also be acknowledged. The first is linked to the civic republican critique of interest group participation in governance (Baron and Dunoff 1996; Galsto 1994). Although it is difficult to generalize, at the center of the republican model is a community discussion in which individuals participate directly and arrive at a common definition of the public good. Interest groups, which filter individual participation and further narrow, selfish ends, are thought to interfere with this process. When individuals identify themselves as members of interest groups rather than as members of a larger community, public virtue and democratic deliberation are lost. Moreover, civic republicans fear that certain interests will use their power to close the public sphere off to other interests.

We do not agree with civic republicanism's rejection of pluralist interest group politics. Associations and interest organizations are not necessarily at odds with a government process that promotes the public good. As Cass Sunstein has noted, civic republicans undervalue the need for intermediate organizations that serve as both checks on government and as arenas for the cultivation and expression of civic virtue (Sunstein 1988, 1573). Yet we find evidence that the dialogues, by building solidarity with the global business, labor, consumer, and environmental communities, have also worked to heighten the mutual distrust that generally characterizes relations between those groups. Put differently, the dialogues are indeed fostering transnational identity formation and creating a more global society. That society, however, is a highly fractionalized one in which interests escape the moderating influence of local and national electoral politics and social patterns of conflict, compromise, and accommodation. In the language used by Wapner and other students of global civil society, what we see is the globalization of interest organization and social movement mobilization, but without the civic tradition or shared public sphere that would make it a society.

To address the problem of polarization, two improvements can be made to the dialogues. First, the different groups—industry, labor, environmentalists, consumers, and others—must be encouraged to communicate with one another, and not only with their European or American counterparts. In other words, a dialogue among the dialogues should be created. This could occur on concrete transatlantic issues, in which two or more dialogues have a stake. For example, in the current dispute between Europe and the United States on data protection, members of the Business and Consumer Dialogues should sit down and hammer out data protection measures which, when implemented by American corporations, would bring them into compliance with European requirements. A dialogue among the dialogues should be encouraged on broader issues as well, such as improving the social safety net. This would encompass subjects such as unemployment benefits, worker retraining, entrepreneurship, tax incentives, and environmental justice and would involve all of the transatlantic dialogues. Yet other areas for collaboration among the dialogues would be health and federalism (i.e., the proper role of subnational authorities in national and international governance). The one precedent for a dialogue among the dialogues suggests that this will not be an easy enterprise. In May 1999, the Keystone Center proposed a meeting of all the transatlantic dialogues, but none agreed to participate.¹⁰ Nevertheless, it is a valuable enterprise that deserves government funding as well as the support of the organizations already involved in the dialogues.

A second improvement that can be made to address civic republican concerns is to ensure all of the transatlantic dialogues fair and equal access to policy makers. At the EU-US summit in June 1999, the TABD chairs met officially and were photographed with US and EU leaders. To their dismay, the TACD and TAED were not invited. The symbolism of this preferential treatment was not lost on anyone. Moreover, it reflects what happens domestically

in the formulation of trade policy. In the United States too little attention is given to labor, consumer, and environmental interests, since the USTR and Commerce Department play the central role. The symbolic and institutional politics should be reformed to guarantee equal treatment for the transatlantic dialogues.

Finally, we turn to the public choice critique of interest group politics. Building on Mancur Olson's theory of collective action, a number of legal scholars have pointed to the distorting influence of "special interest capture" in politics and administration (Farber and Frickey 1991). Because of their collective action advantage over more diffuse groups, special interests are believed to exert disproportionate influence over policy makers, to the detriment of the public good. In response to these defects, American legal scholars have proposed a series of public law reforms that would temper the role of special interests (Aranson et al. 1982; Mashaw 1990; Sunstein 1986).

In many respects, this account of the distorting influence of interest groups on public policy is exaggerated (Schuck 1997). Notwithstanding the predictions made by public choice, public interest groups, as well as special ones, have organized. As we discussed above, consumer and environmental organizations have formed active transatlantic dialogues of their own. Moreover, all of the dialogues, including the Business Dialogue, have fostered debate and learning on transatlantic policy issues, thus contributing to the transatlantic political process.

Nevertheless, the public choice critique brings to light two major flaws with the transatlantic dialogues. First, business or, more clearly, multinational corporations have had an easier time organizing than other interests. Although policy makers have attempted to overcome some of the disadvantages faced by more diffuse interests through government funding, the fact remains that the TABD has been far more successful than the other dialogues. The second flaw, directly related to the first, is that the governments, by funding the transatlantic dialogues and giving them privileged access to policy makers, risk entrenching certain interests and organizations at the expense of others. The transatlantic dialogues might simply reinforce the influence of the so-called special interests.

A number of steps can be taken to address these public choice problems. First, American and European government officials should take into account the difficulties facing labor, consumers, and environmentalists. Not only should they continue to fund the dialogues, but they should redesign domestic institutions to give the TALD, TACD, and TAED greater opportunities to participate in the policy-making process. For as we demonstrated above, the success of TABD can be attributed in large part to its expertise and close relationship with the Commerce Department and the European Commission and not solely to its organizational advantages. Second, the governments should ensure that interest representation in transatlantic trade policy occurs not only through the dialogues but through other institutional mechanisms, thus ensuring that groups left out of the

dialogues also have an opportunity to influence policy making. Thus the US and the EU should continue to improve public debate in legislative and administrative politics, and on trade and other international issues. As we explained above, foreign policy has traditionally been less open to domestic politics than other types of policy and the governments should continue to address this problem. Moreover, in improving public participation, the governments should include representatives of foreign and international organizations. For instance, when the US government or the European Commission establishes an advisory committee, why not reserve a certain number of seats for foreign participants? If the governments are serious about transatlanticism, these formal advisory structures should seek broader input.

There is no transatlantic civil society. Although civil society organizations in the United States and Europe *are* thinking more transatlantically now than they were ten or twenty years ago, they are doing so as members of discrete interest groups and social movements. They do not participate in a shared public sphere. Yet with growing globalization, one can ask whether the new focus on building a transatlantic society is really appropriate now, given the economic and political importance of the rest of the world. Why not take all the resources that go into the transatlantic dialogues and invest them in building better global institutions and nurturing a global civil society?

The question is a close one, but we come down in favor of continued transatlantic efforts. Coordinating international policy and creating participatory, democratic policy-making mechanisms is always difficult. If the transatlantic process can contribute, then the effort is worthwhile. The evidence suggests the American and European publics might one day participate in a transatlantic community that, together with strong political leadership, will dampen nationalist urges in the pursuit of common interests.

NOTES

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1. We do not hyphenate the word "transatlantic" in order to deemphasize the Atlantic Ocean.

2. Examples include the American Field Service program, Fulbright Scholars, and co-operation and information exchange on atomic energy. See Memorandum of Understanding between the United States of America, the European Atomic Energy Community (Euratom), the Kingdom of Belgium, the Federal Republic of Germany, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, and the Kingdom of the Netherlands in the field of nuclear science and technology information, 74/560, 1974 O.J. (L 307) 19 (Euratom). Even though the American Field Service and Fulbright programs are international rather than transatlantic, they provide numerous opportunities for transatlantic

exchange. Bilateral friendship and cultural societies go back to the early nineteenth century if not before.

3. In using the term "civil society," we do not imply that the citizenry, in its dialogue with government, puts forward one face. Rather, civil society consists of groups with separate histories and interests who nevertheless participate in a routinized process for reconciling their differences. When it operates well, stakeholders act "civilly" toward one another even when they disagree.

4. Pub. L. No. 86-719, 74 Stat. 818. The Commission terminated in 1962.

5. The European Institute, established in Washington, D.C., in 1989, is a nonprofit center for dialogue on economic, political, and security developments in Europe, as well as European relations with the United States.

6. Confidential e-mail interview, January 24, 1999.

7. Transatlantic Environment Dialogue, Message to the EU-US Summit, June 21, 1999.

8. "Clinton, Prodi Agree to Efforts on Developing Countries, GMOs," *Inside U.S. Trade*, October 29, 1999, 1, 21.

9. Indeed, a Washington federal court recently found that two trade advisory committees were not "fairly balanced" as required under the Federal Advisory Committee Act because they did not include environmental representatives. See *Northwest Ecosystem Alliance v. Office of the United States Trade Representative*, 1999 U.S. Dist. LEXIS 21689 (W.D. Wash.).

10. The US government has also been encouraging communication and attempting to create a more coherent process by asking the dialogues to comment on each other. For example, in March 1999, US Undersecretary of Commerce David Aaron called a meeting of members of the TAED, TALD, and TACD to solicit comments on the November 1998 recommendations from the TABD.