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Vers un droit international économique transatlantique
Towards a Transatlantic International Economic Law

Sous la direction d'Hervé Agbodjan Prince

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Rekindling the Spirit of Washington and Brussels: Introductory Remarks on the Emergence of Transatlantic International Economic Law

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The notion of transatlantic relations, aside from somber references to the dark era of the Atlantic triangular slave trade¹, generally refers to a special relationship binding the United States of America (US) and Europe. In this sense, the idea of melding Europe and North American into a “transatlantic community” founded on shared values and an “integration dynamic” is an enduring dream which traces its roots to the late fifties.² However, in the years that followed, the foreseen idea of commercial and economic integration gave way to political and military cooperation during the Cold War.

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¹ Historically, “transatlantic relations” refer to Atlantic triangular trade (1501-1830), implying trade of commodities between Africa, Europe and the Americas, including the trade of slaves. This article does not purport to study the history of “transatlantic relations” globally. It only refers to the commercial and economic relations between North America and Europe since end of the Second World War. This series of articles is produced within the context of the emergence of transatlantic international economic law, whose advent coincides with the *Canada-European Union Comprehensive Economic and Trade Agreement* (CETA), which has applied provisionally since 2017.

² Karl Deutsh et al, *Political Community and the North Atlantic area: International Organization in the light of Historical experience* (Princeton: Princeton University Press, 1957); Eric Philipart & Pascaline Winand, eds, *Ever Closer Partnership (Policy-Making in US-EU Relations)* (Bruxelles: P.I.E.-Peter Lang, 2001).

Since the early nineties, the idea of an economic partnership between the European Union (EU) and the US has re-emerged. There have since been multiple joint initiatives, conducted in an informal manner, which have all failed in building the great transatlantic market. Among these, we include the 1990 *Transatlantic Declaration on EC-US Relations*³, which purported to bring the two blocs closer together both in political and economic terms, but failed in achieving a stronger economic partnership. Five years later, on December 3rd 1995, the EU/US Summit in Madrid led to both countries entering into a *New Transatlantic Agenda* (NTA)⁴, bringing to the forefront objectives such as “Contributing To The Expansion Of World Trade And Closer Economic Relations” and “Building Bridges Across The Atlantic”⁵. This all led to the execution of a *Transatlantic Economic Partnership* (TEP)⁶ in 1998, strengthening bilateral cooperation in the field of trade and investment, including further alignment on technical barriers to trade, mutual recognition, intellectual property rules and regulation of financial markets.⁷

Further negotiations between the US and the EU aiming to conclude a modern and progressive free-trade agreement were started in 2013, with parties meeting in both Washington and Brussels. These negotiations were expected to lead to the signing of the *Transatlantic Trade and Investment Partnership* (TTIP).⁸ This agreement, deemed ambitious and controversial, never came to be. TTIP, which already faced strong opposition on both shores of the Atlantic, was tabled once Donald Trump became US

³ See *Transatlantic Declaration on EC-US Relations*, 12 November 1990, online: <europa.eu/parl/cmsdata/124320/trans_declaration_90_en.pdf>

⁴ See *The New Transatlantic Agenda*, 3 December 1995, online: <europa.eu/parl/cmsdata/124321/new_transatlantic_agenda_en.pdf>

⁵ *Ibid.*

⁶ *Transatlantic Economic Partnership*, 18 May 1998, online: <eeas.europa.eu/archives/docs/us/docs/trans_econ_partner_11_98_en.pdf>.

⁷ *Framework for Advancing Transatlantic Economic integration between The European Union and the United States of America*, 30 April 2007, online: <eeas.europa.eu/archives/docs/us/docs/framework_trans_economic_integration07_en.pdf>; Vicki Birchfield, «La négociation du Partenariat Transatlantique de Commerce et d’Investissement (TTIP): comparaison entre les motivations, les oppositions et l’opinion publique des États-Unis et de l’Union européenne» (2015) 26: 2 *Politique américaine* at 129-158.

⁸ European Union, News archive, “EU Negotiating texts in TTIP”, (14 July 2016) online: <trade.ec.europa.eu/doclib/press/index.cfm?id=1230&serie=866&langId=en>.

President in 2016. Negotiations towards a new TTIP were slowly started up again in 2019.

Nonetheless, the ambition of building a “transatlantic community” remains strong. In the meanwhile, the goal of strengthening ties between the West’s two great economic blocs has been furthered by the *Canada-European Union Comprehensive Economic and Trade Agreement (CETA)*⁹. Although Canada has so far kept to itself with respect to the US/EU relationship, it now seems clear that transatlantic economic integration will not go further without Washington’s next-door neighbour. Likewise, the future US/EU trade agreement is likely to draw inspiration from CETA. Thus, through its skillful conduct of bilateral relations, Canada might just achieve the *trilateralization* of the “transatlantic community”.

We are thus confident that the implementation of CETA (subject to its provisional application) combined with an incoming American administration which seems more inclined towards multilateralism, will lead to the emergence of a legal framework for the “transatlantic community”. This new body of law shall be based upon three pillars: Canada-EU bilateralism, a newly formulated TTIP and a EU-MERCOSUR trade agreement.¹⁰ Notwithstanding early difficulties in implementation and ongoing criticism, CETA marks the beginning of a process of transatlantic commercial and economic integration, which will give way in the short or medium term to the construction of transatlantic international economic law.

In preparing this special issue, we reached out to both academics and EU high civil servants so that they may provide us with their critical and informed perspective on this emerging body of law. Throughout the study of targeted topics – market access for goods (Philippe Musquar); market access for services (Nanette Neuwahl); competition and antitrust (Pierre Larouche); intellectual property (Ysolde Gendreau); the environment (Francesca R. Jacur); culture (Lucia Bellucci); immigration (Anaïs Contat and Martine Valois) and provisional application (Hervé Agbodjan Prince),

⁹ See Government of Canada, *Text of the Comprehensive Economic and Trade Agreement (CETA)*, online: <international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng>, accessed March 3, 2021; *Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part*, [2017] OJ, L 11/23.

¹⁰ European Union, Press release, “EU and Mercosur reach agreement on trade”, (28 June 2019), online: <ec.europa.eu/commission/presscorner/detail/en/IP_19_3396>.

our aim has been to draw the contours of the law governing this developing “transatlantic community” with a special focus on CETA’s provisions. However, it seems clear that this process of reflection must be pushed further and that this special issue only marks the beginning of construing a legal framework for regional commercial and economic relations.

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