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Beiträge zum Transnationalen Wirtschaftsrecht

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Chains Across the Rhine

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Chains Across the Rhine

The river Rhine flows more than eight hundred miles from Switzerland to the sea.

Midway along the Rhine's meandering course through Germany, is an island in the river. On the island is Pfalz castle.

Shaped like a large ship, the castle Pfalz was built on the island by the King of Bavaria in 1326 as a way to collect tolls from trading ships traveling along the Rhine.

To make certain the tolls were paid, long chains were linked to both sides of the river gorge in a narrow passage near the castle. When a ship approached, the soldiers in the castle raised the chains across the Rhine.

If a trader paid the toll, then the chains were lowered, and the ship was allowed to pass. If a trader refused to pay tribute to the keepers of the castle, then the ship was seized, and he and his crew were thrown into the castle dungeon – a floating raft at the bottom of a well.¹

For hundreds of years, chains were raised across the Rhine at Pfalz castle. And the island castle with its lengthy chains was not the only such tolling station on the river. Through the centuries, there were many tolling stops along the river's winding way through the German countryside. The tolls filled the treasuries of the feudal lords who kept all the many castles along the Rhine – and they added considerably to the cost of trading on the river.

Germany was long divided by river tolls and other tariffs. It has been said that in Germany the “proliferation of tolls was a byword for madness.”² As late as 1815, Germany still had 38 different tariff systems.³ As Germany gradually became one country, the river tolls on the Rhine, and numerous other tolls throughout Germany, gradually disappeared, along with the small principalities that collected them. The creation of the *Zollverein* customs union in the nineteenth century opened up most of the country to free trade.⁴ The elimination of internal tolls, tariffs, and other customs barriers to trade was a major factor in the eventual unification of Germany.

Today, the castle on the island in the Rhine continues to impress passing tourists, an imposing abandoned fortress astride an abiding river. But today there are no longer any chains across the Rhine at the castle Pfalz, and the removal of those and other chains that barred the way to trade has helped make Germany a leading trading state.

Today, the river Rhine is one of the world's busiest corridors of trade, and the trade on the Rhine has helped Germany become the world's leading exporting country.

¹ *Pfalz castle* is at Marker 546. See generally “Pfalzgrafenstein – The Island Castle”, available on the internet: <<http://www.geocities.com/athens/oracle/3592/castles/pfalz.html>> (visited on 11 October 2005); “The Rhine River, Germany”, available on the internet: <http://www.travelswithfriends.com/Destination_Rhine_River.htm> (visited on 11 October 2005).

² *Landes*, David S., *The Wealth and Poverty of Nations: Why Some Are so Rich and Some So Poor*, New York 1998, 246.

³ *Ibid.*

⁴ *Ibid.*

Vast quantities of Germany's exports flow past Pfalz castle, and past all the other picturesque castles on the river, down to the North Sea, and out into the wide world from the waters of the Rhine.

Yet, even today, other chains remain. Other chains remain that slow the progress of Germany and other trading states along all the many rivers of world trade. Other chains remain that slow the progress of Germany and other nations in other essential global endeavors besides trade. Other chains remain that, like the chains that once spanned the river Rhine at the castle Pfalz, must likewise be lowered and removed.

First of all, there are chains of commerce.

For all our progress along the Rhine, and for all our progress toward freer trade elsewhere in the world, the barriers to trade throughout the world remain much too high. There are still tolls that slow the rivers of commerce in every part of the world. These tolls take many forms in many different parts of the world, but, in one form or another, they all tend to leave traders imprisoned in the dungeon of the keepers of the local castle, floating on a raft in the bottom of a well.

For all their constant talk about trade, the nations of the world do not seem to understand fully that our gains from trade can be maximized everywhere only if the tariffs and other chains that continue to impede trade are minimized everywhere. This is true even of two of the greatest traders in the world – the European Union and the United States of America.

Both should know better. No one in the world benefits any more from trade than Europeans and Americans. Yet not even Europe and America seem truly to comprehend that European and American interests alike are best served by lowering the remaining barriers to trade, across the Atlantic and around the world. Instead, Europeans and Americans consume far too much of their energies and resources in often needless bilateral disputes. And the chains of commerce remain.

There are chains too of perception.

The perception persists in the world that the nations of the world are much too different to share a common view of the world, or to share common values about how life in this world ought to be lived.

Something different might be expected of two places that share a common view and common values because they share so much of their history and their heritage – the European Union and the United States of America. Few others have more in common in the world than Europeans and Americans.

But even Europeans and Americans seem divided – and increasingly so – by the chains of perception. In a poll conducted in the summer of 2003 by the German Marshall Fund, 79 percent of Europeans said they thought Europeans and Americans have different “social and cultural values.” 83 percent of Americans agreed.⁵

⁵ *Ash*, Timothy Garton, *Free World: America, Europe, and the Surprising Future of the West*, New York 2004, 71.

This apparent perception threatens even some of the very best friendships between Europeans and Americans. In Germany, according to another recent poll, the percentage of Germans who thought of America as Germany's best friend fell from 50 percent in 1995 to just 11 percent in March, 2003.⁶ More and more, such chains of perception seem to divide Germans and other Europeans from Americans.

There are also chains of will.

There are chains of will that keep us from working together in all the ways we should.

The political will seems to be lacking in leaders throughout the world to come together and work together to address trade and other areas of shared global concern. They seem to lack the will to be candid with those they are supposed to lead about the difficult choices that are needed to reap the benefits of trade, and to benefit also from addressing other pressing global issues. They seem to lack the will to take the real political risks at home that are needed to make those difficult choices.

Nowhere is this more disappointing than in Europe and the United States. For if Europe and the United States cannot summon the will to do, together, what must be done for Europe, for America, and for others, then the chains that divide us will be drawn ever tauter, they will be pulled ever tighter, across all the rivers of the world.

Perhaps worse, private citizens in both Europe and the United States, informed citizens on both sides of the Atlantic, concerned citizens who care deeply about the fate of trans-Atlantic relations, seem content to pursue their own private interests while our elected leaders betray our shared public interest by pursuing the reckless indulgence of their personal idiosyncrasies.

Thus, the chains remain, long after the keepers of the castle Pfalz have faded into fable.

But, like the chains across the Rhine, these chains that divide us today can also be removed. For these chains of commerce, these chains of perception, and these chains of will, all conceal the reality of the ties that truly bind all people everywhere, and that especially bind Europe and the United States as kindred parts of a common humanity.

One often overlooked reality of the trans-Atlantic relationship is the fact that Europe and the United States share a common economic fate.

In a provocative essay much discussed on both sides of the Atlantic, the American strategist and polemicist *Robert Kagan* has written, "On major strategic and international questions today, Americans are from Mars and Europeans are from Venus."⁷

But *Kagan* said not a word in his lengthy essay about economics – or about the economic ties that bind Europe and the United States. He wrote a lot about "power and weakness." He wrote nothing about the fact that the future economic power of both Europe and the United States will depend on the strength, and not the weakness, of the other.

⁶ *Ibid.*, 63.

⁷ *Kagan*, Robert, "Power and Weakness", *Policy Review* (June-July, 2002).

American firms have \$3 trillion in assets in Europe, and European firms have \$3.3 trillion in assets in America.⁸ Half of the total foreign earnings of U.S. companies come from Europe, and there is more European investment in Texas alone than there is American investment in all of Japan.⁹

German economic ties to the United States are among the strongest in Europe. Outside of the European Union, the United States is the leading source of German imports and the leading destination for German exports.¹⁰ The United States has more assets in Germany than in all of Latin America.¹¹

Given these numbers, and given many others like them, the notion that Europe and America might somehow succeed economically by going their separate ways is revealed as the sheer fantasy that it is. Economically, our fate is one and the same. It cannot be separated.

Likewise, there is the increasingly neglected reality that Europe and the United States share common values.

Americans are *not* from Mars, and Europeans are *not* from Venus. We are from the same small and ever-shrinking planet we call “Earth.”

To be sure, stereotypes abound on both sides of the Atlantic about those who live on the other side. We all know them well.

In the stereotype, Americans are trigger-happy militarists. We are relentless privatists. We are smiling imperialists. We are soulless materialists. We are selfish individualists. And we are naive optimists.

In the stereotype, Europeans in turn are gun-shy pacifists. They are placid statistes. They are dour declinists. They are abstract theorists. They are timid effectists. And they are world-weary pessimists.

These exaggerated stereotypes are only that – stereotypes. They are exaggerations. They are caricatures. They are a consequence, in part, of the fact that Europeans and Americans do have different points of view. Given our different experiences, and given our different circumstances, it is not at all surprising that the world sometimes does look different from different sides of the Atlantic.

The fact the Europeans and Americans have different angles of vision must not be allowed to obscure the reality that Europeans and Americans see through the same eyes. We see through the same shared eyes of an ultimate idealism that transcends the day-to-day differences that give rise to all of the trans-Atlantic stereotypes.

Here is the voice of one vision of the world. All men are created equal. They are endowed by their Creator with certain unalienable rights. Among these rights are life,

⁸ *Ash*, Free World (Fn. 5), 122.

⁹ *Ibid.*, 79.

¹⁰ *Germany Embassy*, Fact Sheet: Germany and America – A Strong Alliance for the 21st Century, Washington, D.C.

¹¹ *Ash*, Free World (Fn. 5), 79.

liberty, and the pursuit of happiness. These are the words of the American, *Thomas Jefferson*.¹²

Here is the voice of another vision of the world. Every human being is a free and unique and autonomous individual, with intrinsic value, with inherent dignity, and with the right to be treated always as having value and dignity, not as a means, but as an end. This is the voice of the German, *Immanuel Kant*.¹³

This is the same voice. This is the same uplifting voice of human emancipation. This is the universal voice of what the whole world has come to call “human rights.” This is the enduring voice of all those everywhere in the world who seek the full measure of freedom, and the full measure of the blessings of freedom, for all humanity.

This is the timeless voice of the Enlightenment.

The values Europeans and Americans share are the humane and liberating ideals of the Enlightenment. Devotion to freedom. Hope for the future. Confidence in the potential for human progress. Enthusiasm for science, art, literature, and all the other expressions of the noblest in the human spirit. Commitment to the ongoing human enterprise. Boundless passion for freedom of thought. Boundless belief in the potential of open minds in open societies in an open world.

There are many versions of this voice, but, to my listening ear, nowhere are these shared values heard more clearly than in *Schiller’s* “Ode to Joy” as set to music in *Beethoven’s* Ninth Symphony. This is the European anthem, but, as I hear it, this European anthem is an American anthem as well. (My wife, *Rebecca*, likes the tune so much she made it the ringer on her cell phone.)

This is the true trans-Atlantic voice. This is the genuine voice of the abiding and universal values that Europeans and Americans share. Beyond all the exaggerations, beyond all the caricatures, beyond all the stereotypes, this is the voice that Europeans and Americans alike must hear and heed.

This is the voice we must strive to serve.

For the enduring values that unite us are far more important than any passing events that may divide us.

But neither Europe nor America can serve these values successfully if we try to serve them solely on our own.

For another reality is that Europe and America share a common role and a common responsibility in the world that can only be fulfilled by a true and equal partnership.

More than two centuries ago, *Kant* observed that his was an age of enlightenment but *not* an enlightened age.¹⁴ We might say the same of our age. Whatever the loftiness of our shared values, ours is definitely *not* an enlightened age. And it will not become any more enlightened if Europeans and Americans do not find more and better

¹² These words are found, of course, in the American Declaration of Independence (1776).

¹³ See *Kant*, Immanuel, Critique of Practical Reason, Königsberg 1787.

¹⁴ *Ibid.*, “What Is Enlightenment?”, Königsberg 1784.

ways to work together to fulfill our shared task of enlarging the domain of human freedom, and of making it possible for many more people throughout the world, to choose to give their freedom more real meaning in their own lives.

Neither Europe nor America can do this alone. For either of us to think otherwise is shortsighted and self-defeating. A policy of unrelenting unilateralism by the United States is utterly foolish. A policy of “Euro-Gaullism” by Europe – a policy that somehow poses Europe as a rival counter-power to America’s supposed “hyper-power” – is equally so. Such perverse policies on *either* side of the Atlantic will lead to decline on *both* sides of the Atlantic, and will have unfortunate consequences as well for the rest of the world.

America cannot afford the condescending indifference to the views of our European allies that so often seems to characterize contemporary American foreign policy. Likewise, Europe cannot afford the reflexive anti-Americanism that so often seems to substitute for real and concerted European action.

The continued success of the American experiment with democracy is clearly in the interest of Europe. Likewise, the continued enlargement and the continued unification of a free and peaceful and prosperous Europe is clearly in the interest of the United States of America.

The relationship between Europe and the United States is much like the relationship between two of Germany’s greatest poets, *Schiller* and *Goethe*. Both were talented. Both were ambitious. Both were competitive. Both were sensitive. Both were prone from time to time to misunderstand the other. And yet they became in time the best of friends.

They did so because they both made an extraordinary effort to do so. The 999 letters that remain of their many years of correspondence are “among the treasures of literary history.”¹⁵ They are also testimony to the necessity of *communication* to achieving mutual sympathy and mutual understanding.

Like *Schiller* and *Goethe*, Europeans and Americans must communicate. We must communicate if we hope to enhance our mutual sympathy and our mutual understanding. We must communicate if we hope to have a true and equal partnership in pursuit of the fulfillment of our many shared aspirations. And we must understand – on both sides of the Atlantic – that communication is not just *talking*. By far the most important part of communication is *listening*.

If we listen to one another as we should, then we will begin to realize that we do continue to share our most cherished values, and we will begin to realize as well that we can only serve those values successfully if we serve them together as partners.

A true and equal partnership between Europe and the United States can begin with international trade.

This year marks the tenth anniversary of the creation of the World Trade Organization. My friend *Carlo Trojan*, the European Ambassador to the WTO, has described 2005 as a “year of opportunity” for the WTO. I agree. I also believe that the op-

¹⁵ *Durant, Will/Durant, Ariel, Rousseau and Revolution, New York 1967, 597.*

portunity for the world to remove many of the remaining chains to trade this year will be missed unless Europe and the United States truly begin to work together this year as partners in world trade. Thus, to me, this is not only a year of *opportunity*, but also a year of *necessity*, for the WTO.

The opportunity seen by Ambassador *Trojan* and others for trade at this time is considerable. According to the World Bank, a successful conclusion of the Doha Development Round of global trade negotiations could increase overall global income by more than \$500 billion *annually* by 2015. Much of this increase would add to the economic growth of Europe and the United States. More than 60 percent of this increase would add to the economic growth of developing countries – and help lift 144 million people out of poverty worldwide.¹⁶

The world's need for the WTO may be illustrated by recalling a familiar anecdote about that foremost German philosopher of the Enlightenment, *Kant*. Professor *Kant* was a confirmed bachelor and a creature of habit who spent nearly all of his long life in the small town of Konigsberg. Every afternoon after lunch, at the exact same time every day, he took a walk through the town. He strolled beneath the linden trees along the avenue of the town at precisely half past three o'clock. It is said that all of the townspeople of Konigsberg set their clocks according to the time every day when *Kant* walked by.¹⁷

The world of trade is like the town of Konigsberg. It needs clocks. It needs all the clocks of trade to be set to the same time every day. It needs what the 148 countries and other customs territories that are Members of the WTO describe in the WTO treaty as “security” and “predictability” in world trade.¹⁸ This is why the Members of the WTO have established the rule-based multilateral trading system under the auspices of the WTO. Having all the clocks of trade set to the same time every day eases the flow of trade, increases the volume of trade, and thus increases the economic growth inspired by trade worldwide.

It is also said that when *Kant* took his daily afternoon walk through Konigsberg, he was always followed by a servant. The servant carried an umbrella in case it might rain.¹⁹ The world trading system also needs an umbrella, because sometimes it rains. Sometimes there are disputes between countries about trade, and about the meaning of the rules of trade, and thus there is need for a way of resolving those disputes by clarifying what the rules mean. This is why the Members of the WTO have created the umbrella called the WTO dispute settlement system. For eight years, I was one of the servants who helped carry it.

Ten years after the establishment of the WTO, the world needs more and better rules to help make certain that all the clocks of world trade continue to be set to the same time, and to help make certain that the umbrella of dispute settlement affords

¹⁶ *World Bank*, 2003 Global Economic Prospects: Realizing the Development Promise of the Doha Agenda, Washington D.C., 2003.

¹⁷ *Durant*, Will, The Story of Philosophy, New York 1961, 264.

¹⁸ Article 3.2, WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

¹⁹ *Durant*, The Story of Philosophy (Fn. 17), 264.

sufficient shelter from the occasional showers of rain. This is the purpose of the Doha Development Round.

This purpose can only be fulfilled through a partnership between Europe and the United States. Unless Europe and the United States work together as partners, the clocks of trade will not tell the right time, and the umbrellas that shelter the trading system will fill with holes. The round will fail, and the gains from the round that are foreseen by the World Bank will not be realized.

For this reason, Europe and the United States must reach a negotiated settlement on a number of their most divisive bilateral trade disputes, find common ground on the agricultural issues that are the keys to the success of the round, and move forward together as partners on a broad array of issues at the negotiating tables of the WTO. This alone can create what can truly be called “success” in the Doha Development Round.

The United States and Europe have suspended their WTO dispute settlement proceedings in the so-called “Boeing-Airbus” dispute relating to subsidies for the production of large civilian aircraft. I offer no view on the merits of either the American case against Europe or the European case against America in this complicated trans-Atlantic dispute. But I am very much of the view that both sides to the dispute are right to seek a negotiated settlement. Far better for the United States and Europe to focus at this time on negotiation than on litigation.

Foremost among the issues for negotiation is agriculture. The gains from the round anticipated by the World Bank cannot be achieved without significant changes in agricultural trade. Conclusion of a global agreement that will reduce significantly the agricultural production subsidies that distort global trade in agriculture is unquestionably the key to the ultimate success of the round. Europe has by far the most such trade-distorting subsidies. The United States is next.

The courage of the American trade ambassador, *Robert Zoellick*, in insisting on moving forward with global trade negotiations during the midst of an American presidential election campaign made the negotiations on a “framework” for a global agreement on agriculture possible. The courage of the European trade minister, *Pascal Lamy*, in proposing an end to European agricultural export subsidies made the negotiations on a “framework” for a global agreement on agriculture successful.

Now comes the hard work. Now comes the critical task of adding substance to the form of the framework on agriculture. For decades, the United States and Europe have preached the logic of comparative advantage and the benefits of freer trade to developing countries. Now the developing countries comprise a growing majority of the Members of the WTO, and now they are rightly seeking the benefits of freer trade in an area of trade where they have a comparative advantage – agriculture. Thus, now we have the opportunity in Europe and in the United States truly to practice what we have long preached in international trade.

We have urged all the rest of the world to remove *their* chains. Now we must also remove *our own*.

Only if Europe and the United States are willing to make significant concessions to developing countries in agriculture, and in other politically sensitive sectors of trade, will we have a truly successful Doha Development Round. Only if we agree to give them significant additional access to our markets will they agree to give us significant additional access to their markets for services and for non-agricultural industrial and consumer manufactured goods. Only then will they be willing to give us also more of all we are seeking in the protection of intellectual property rights and in the elimination, through “trade facilitation,” of customs “red tape.” Only then will we have a basis for beginning to build on the accomplishments of this round by negotiating on investment, procurement, competition policy, and other increasingly pressing issues in the next round.

And only then will we be able to measure the success of the Doha Development Round for developed and developing countries alike in terms that approach the \$500 billion in additional annual global income foreseen by the World Bank.

A true and equal partnership in trade between Europe and the United States alone can enable us to achieve such success. Furthermore, the success of a partnership between Europe and the United States in trade can not only help us in trade. It can also inspire us to act together as partners in numerous other areas where global action is urgently needed.

At Erfurt, in Germany, in 1183, when the Holy Roman Emperor *Frederick II* was presiding at a solemn session of his diet, the floor of the hall where they met fell through, and many of his counselors were drowned in the cess pool that lay below.²⁰ The emperor and his counselors learned the danger of not having a strong foundation for their work together. So must we.

Trade is only one area where we need a strong foundation for our shared efforts in this era of ever-growing “globalization.” In addition to trade, there are many other areas of shared global concern that demand international cooperation, international rules, and international institutions.

The tragedy of the recent tsunami in Asia showed all too vividly the need for international agreement on the early warning systems that could save thousands of lives when the next tidal wave comes. The SARS scare in China, the bird flu scare in Southeast Asia, the AIDS epidemic in Africa, other pandemics worldwide reveal the need for more, and for more effective, global approaches on health care. The newest evidence affirming anew the reality of global climate change is perhaps the most compelling of all too many examples of the urgency of international action to protect our endangered environment.

We can build the strong foundation we need to succeed in these and other essential global efforts only through increased reliance on the international rule of law. Trade is only one example of how respect for the international rule of law can help build a strong global foundation for freedom. There must be many others. There will be others only if Europe and the United States both live up to our best traditions by

²⁰ *Nicolson*, Harold, *Good Behaviour, being a Study of Certain types of Civility*, London 1955, 117.

sharing a continuing mutual commitment to establishing and upholding the international rule of law.

Above all, the partnership between Europe and the United States must be a partnership devoted to achieving a world in which *all* can share in the bounty and in the blessings of freedom. My hope is that, on both sides of the Atlantic, we will devote ourselves more than ever before to the making of such a partnership. Europeans and Americans alike must rise above recent events to renew our friendship and reaffirm our alliance. We need, in trade, what the new European trade minister, *Peter Mandelson*, has described as a “fresh start.” And we certainly need a “fresh start” in other areas of common concern as well.

President *Bush* announced last December in his speech in Nova Scotia that “building effective multinational and multilateral institutions, and supporting effective multilateral action” would be the foremost foreign policy goals of his second term as President of the United States. He reiterated his intention of reaching out anew to America’s friends and allies around the world in his second inaugural address.

Many of those friends and allies remain – despite all – in Europe. Germany is certainly prominent among them. President *Bush* will soon be visiting Europe. He will visit with leaders of the European Union in Brussels on February 22. He will visit Germany on February 23. The White House has said that the President hopes to “reach out to friends and allies in the European Union and NATO” and to “deepen trans-Atlantic cooperation, building upon our shared values.”

I wish him every success in achieving those goals.

This is an historic moment. It is a moment when the European Union and the United States have an unprecedented opportunity to come together and work together as partners in service to the universal cause of human freedom. On *both* sides of the Atlantic, we must be mindful of what history should have taught us by now. Such opportunities can be missed. Such moments can pass. The world keeps turning, and it may not always turn our way.

While we can, we must remove all the chains that remain.

That great German, *Goethe*, told us, “All things are connected.”²¹ He explained the connection of all things in international terms in his conversations late in life with his friend *Eckermann*. *Goethe* said:

“[T]he business of hatred between nations is a curious thing. You will always find it most powerful and barbarous on the lowest levels of civilization. But there exists a level at which it wholly disappears, and where one stands, above the nations, and feels the weal or woe of a neighboring people as though it were one’s own.”²²

On both sides of the Atlantic, we must seek this higher level of civilization. Europeans and Americans alike, this must be our shared aspiration.

²¹ *Eckermann*, Johann, *Conversations with Goethe*, London 1946, 191.

²² *Ibid.*, *Goethe to Eckermann* (March 15, 1829).

Not chains, but civilization. The higher level of civilization that sees all the world as one, and that strives to serve all the world by serving all of humanity.

Not chains, but connections. The connections of a oneness that transcends our seeming otherness, and helps us see all the others in the world as if they were our own.

Not chains, but gains. The gains from the connections of trade, and from all the other connections that can come from a true and equal partnership between Europe and the United States.

Not chains, but freedom. The free flow of the full measure of freedom for all, past the imposing castles that would bar the way, down the winding river to the sea, and out into *all* the wide world.

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