

**POLICY COMPLIMENTARIES IN THE  
MULTILATERAL CONTEXT AND  
NEW APPROACHES IN INTERNATIONAL  
COOPERATION: A FUNCTION FOR VOLUNTARY  
PRINCIPLES AND COLLABORATIVE INITIATIVE  
IN THE ASEM PROCESS**

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I. INTRODUCTION

*"Last year's words belong to last year's language. And the next year's words await another voice."*

-T.S. Eliot<sup>1</sup>

In a rapidly globalizing world, where economies are increasingly becoming interdependent and integrating at various levels, policies implemented by economies in the internal sphere may have repercussions, if not in fact designed to operate, on the external front, spilling over effects into other economies. There arises an insistent need to address questions of policy complementarities at international or multilateral levels and efforts are, in fact, headed towards this complex area. In the meantime, the impulse is strong to take measures characterized by national, regional or even multilateral approaches to complementation of policies, finding wide recognition or acceptance at an international level in some cases but provoking tensions among or conflict of policies in others. These considerations form the touchstone of this paper.

It is recognized that the problem of policy complementarities has a broader dimension than the constraints of this paper would permit of treatment on a comprehensive basis. This paper aspires to cover only an aspect of that problem that relates mainly to trade policy and attempts to present one possible perspective among many. Focus is made in the area of international economic cooperation, while excluding the field of political cooperation and, at the same time, limiting treatment of other areas of international cooperation only to the extent that they interact with economic cooperation.

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<sup>1</sup> Quoted as closing words of the Secretary-General, Report to the Ninth Session of the United Nations Conference on Trade and Development, Midrand South, Africa, 11 May 1996 [hereinafter UNCTAD IX Report], ¶ 355, speaking of "the renewed spirit, approach and language required by the new times."

In general, the paper starts out with an examination of policy integration in the external relations<sup>2</sup> of the European Union (EU) and an assessment of EU's strategy towards Asia, with emphasis on the Association of South-East Asian Nations (ASEAN). The analysis shifts to a broader context, amidst globalization trends and the concomitant challenges and opportunities, the on-going search for policy complementarities within multilateral frameworks towards achieving greater coherence in global policy-making, and the new forms of international cooperation emerging. The objective is to draw some practical conclusions, as well as possible directions and applications, that might serve to enhance understanding and cooperation between Europe and Asia, in particular EU relations towards the ASEAN.

In detail, this paper is divided into three segments. The first segment takes the components of the external policy of the European Union as starting point and proceeds with an analysis of samples of EU policies with external implications. It underscores how various policies combine or are integrated, in particular in the domain of trade policy, highlighting areas where tensions or conflicts among the policies arise, as they manifest themselves on the external front.

In the backdrop of the rapid evolution towards economic globalization, the second segment discusses the primacy of the multilateral trading system under the World Trade Organization (WTO), as well as efforts being undertaken in the context of the WTO and other multilateral institutions to analyse complementarities among various policies touching on or related to trade policy. It highlights the situation as an ongoing process, far from completion. At the same time, having regard to that problem and the search for autonomous solutions remaining pending, it acknowledges the need to act in the international or multilateral context according to a rules-based system, identifying the limits of bilateral or multilaterally agreed solutions outside of or which do not complement the multilateral framework of the WTO, and underscoring the need to uphold the credibility of the multilateral system and the obligation of WTO Members to contribute towards such end. It discusses various other emerging approaches towards coherence in global policy-making and, in light of the challenges and opportunities of globalization and the need to carry forward world trade liberalization, it identifies an avenue for international cooperation and for managing growing international and inter-regional interdependence, as an inescapable imperative of globalization based on voluntary principles and collaborative initiatives.

<sup>2</sup> The European trade policy, or the common commercial policy in European Union (EU) usage, converges with its association and development policy to constitute, comprehensively, its external relations policy; together with the common foreign and security policy (CFSP), which is inter-governmental in character, they define the landscape of EU's foreign policy. The common commercial policy occupies the centre stage of European external relations. One of the desires of the Founding States is to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade (Preamble, 6th paragraph, Treaty Establishing the European Economic Community [EEC Treaty], as amended by the Treaty on the European Union (TEU). This is now simply referred to as EC Treaty. Hereinafter, all references to articles are understood to refer to the EC Treaty unless otherwise specifically indicated).

The third segment analyzes in more detail the mechanisms of voluntary principles and collaborative initiatives which lie at the heart of the Asia-Pacific Economic Cooperation (APEC) model. The implicit assumption is that, inasmuch as Asia figures both in the APEC forum and the Asia-Europe Meeting (ASEM), insights may be drawn from the APEC model which might be useful in evaluating parallel developments, directions and approaches under the ASEM framework. It underscores the potential for complementing trade liberalization drives in the Asia-Pacific hemisphere with efforts on this side of the Atlantic if, within the ASEM Framework, voluntary principles and collaborative initiatives were considered towards harnessing contributions from Asia and approaching the objective of convergence of regional and multilateral liberalization initiatives. It suggests that pending completion of projects to develop multilaterally acceptable solutions to the problem of policy complementarities at the international level, voluntary principles and collaborative initiatives, complemented by private sector participation, can provide a coherent and broad multilateral basis for taking forward international trade liberalization into the next century.

## II. INTEGRATION OF EC POLICIES IN EU'S EXTERNAL RELATIONS AND THE ASIAN DIPLOMACY

Europe<sup>3</sup> when it meets Asia, carries an integrated set of policies that defines its objectives and courses of action, which must also be true of Asia when it meets Europe. Such an integrated set of policies has an internal and external dimension<sup>4</sup> and the complexity of the interlinkages between and among such policies can only be discussed neatly in a selective and, to some extent, simplistic manner. Nevertheless, an attempt to survey and analyze those policies and such interlinkages contributes to a clear appreciation of the policy issues that may arise between both sides, and might serve the function of enhancing "mutual understanding and awareness" leading, in turn, "to cooperation on the identification of priorities for concerted and supportive action."<sup>5</sup>

Such a survey and analysis cannot avoid recognizing the great trends rapidly enveloping both regions during the last decade and confronting them now on the threshold to the next century: (1) the wave of trade liberalization and its impact

<sup>3</sup> Technically, there is a constant endeavour towards unity in trade policy in the European Union (EU), entailing common external representation (Opinion 1/75, Local Costs, [1975] ECR 1355, at 1363) by the European Community (EC), albeit trade policy itself is such a complex system consisting of trade policy (in the form envisaged in Art. 113, Treaty establishing the European Community [hereinafter referred to simply as EC Treaty]; also, references to articles are understood to refer to this Treaty unless otherwise specifically indicated) and other policies which may be integrated with it. Also, although the common commercial policy is external in orientation, it is both internal and external in conception and composition (*id.*), neither one of the components necessarily taking precedence over the other.

<sup>4</sup> *Id.*

<sup>5</sup> One of the principles guiding the ASEM process (Asia-Europe Cooperation Framework [hereinafter ASEM Cooperation Framework], ¶ 12, 3rd indent).

upon national and regional policy areas; (2) globalization, the single global market emerging from accelerating multilateral trade liberalization processes and the growing interdependence of economies; and (3) the shifting geo-political environment, enlargement of regional groupings and the emergence of economic diplomacy in international cooperation. The private sector, as an aspect of liberalization which lies at the core of the vision of a globalized economy and a factor of growing importance in international cooperation, is also a necessary element of the discussion that follows. It is in the context of these awesome developments that cooperation between Asia and Europe is taking place.

#### A. Trade liberalization and policy integration in the EU

To Europe, the common aspiration of multilateral trade liberalization is at least as old as the Treaty Establishing the European (Economic) Community<sup>6</sup> albeit younger than the GATT/WTO;<sup>7</sup> in Asia, it is relatively new and not a few of the countries in the region are still in the stage of transition from planned economies.<sup>8</sup> In a reference obviously including the EU, regional groupings have been described as a vast "laboratory" to test approaches to multilateral rule-making<sup>9</sup> and indeed, as has been suggested,<sup>10</sup> in this respect Asia may learn vastly from EU toward its own objective of economic integration. But even Europe is now confronted with a new form of multilateral trade liberalization that has enormously changed the landscape of international economic cooperation<sup>11</sup> and the full implications of the phenomenon of economic globalization spawned by it is, as yet, hardly fully understood.<sup>12</sup>

<sup>6</sup> See Art. 110, which speaks of "the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers."

<sup>7</sup> See UNCTAD IX Report, Chapter I: Trade and Development in a Liberalized and Globalizing World Economy, ¶ 7.

<sup>8</sup> *Id.* at ¶ 5, which partly reads: "... In the dynamic economies of East and South-East Asia, liberalization has in some cases been proceeding at a deliberate pace, with government measures to open markets to foreign competition and reduce support for the private sector being put in place gradually, as industries in the sectors in question acquired the necessary competitive strength in international markets. In other Asian countries, liberalization was more rapid. ...."

<sup>9</sup> *Id.* ¶ 239.

<sup>10</sup> Opinion of the Economic and Social Committee on Relations between the European Union and ASEAN, OJ No. C 097, 01/04/1996 p. 0031, ¶ 2.2.3: "The EU could make available its know-how in these fields, providing governments with the assistance they need to resolve the inevitable problems and resistance to implementing a free trade agreement and an open market."

<sup>11</sup> See Opinion of the Economic and Social Committee on "Employment, Competitiveness and Economic Globalization," OJ No. C 158, 26/05/1997, p. 0014, particularly pars. 2.17, 3.1, and 5.1. To the same effect, but in a different context, see UNCTAD IX Report, *supra* note 1, ¶ 339, regarding cooperation as "a *sine qua non* for meeting the challenge of globalization."

<sup>12</sup> "336. In this intervening period between the old and the new, it is no wonder, as Gramsci would say, that all kinds of morbid symptoms come to the surface, that fear and insecurity thrive alongside hope and bright expectations" (UNCTAD IX Report, *supra* note 1).

The new international situation forces a reassessment of the interlinkages between and among policy areas and a fresh appreciation of their complementarities on a national, regional and multilateral context.<sup>13</sup> The developments in the area of agriculture may serve as an illustration, in the context of the new situation, of the general pattern by which issues emerge and develop, from market access to policy integration. In particular, the central points are: (1) market access liberalization, (2) implications to the home market, (3) structural adjustments required, and (4) policy integration possibilities.

1. Where trade liberalization confronts European policy, in general, the agenda is clearly drawn: improving the global competitiveness of Community firms "in open, competitive markets."<sup>14</sup> World trade liberalization includes the agricultural sector.<sup>15</sup> In the area of the common agricultural policy, foreign market access translates to making "more use of the increased scope for access to third country markets."<sup>16</sup> This implies identification of market access impediments in third countries and the adoption of measures to gain and maintain European share of those markets.<sup>17</sup> A two-way process is envisaged and a balance of benefits is anticipated.<sup>18</sup>

2. To the EU home market, trade liberalization implies reforming the Common Agricultural Policy (CAP), through the reduction of subsidies and working for liberalization of world, including Community, agricultural trade through the re-

<sup>13</sup> See *Id.*, *inter alia*, pars. 81, 109, 112-114, 117-120.

<sup>14</sup> See White Paper on "Growth, Competitiveness and Employment," European Commission (1993) Opinion of the Committee of the Regions on the White Paper on Growth, Competitiveness, Employment: "The Challenges and Ways Forward into the 21st Century", Committee of the Regions; Commission 1 Reg. Devel., Econ. Devel., Loc. and Reg. Fin., OJ No. C 210, 14/08/1995 p. 0001: 6. endorses the general lines proposed by the Commission in its White Paper for improving the global competitiveness of Community firms in open, competitive markets. See also Commission Communication on "The Global Challenge of International Trade: A Market Access Strategy for the European Union" (COM(96)0053) and Opinion of the Economic and Social Committee on "The Global Challenge of International Trade: A Market Access Strategy for the European Union," Economic and Social Committee; Sect. for Ext. Relations Trade and Development Policy (87), OJ No. C 056, 24/02/1997 p. 0047, re: Trade and Competition Policies; Trade and Investment; Trade and Social Context; Trade and Environment.

<sup>15</sup> See Annex IA of the Agreement Establishing the World Trade Organization (WTO), relating to Agreement on Agriculture. See Resolution on the Conclusions to be drawn from the First Year of Application of the GATT Agreements in the Agricultural Sector, European Parliament [hereinafter Resolution on GATT application to EU Agricultural Sector], OJ No. C 362, 02/12/1996 p. 0253.

<sup>16</sup> Resolution on GATT Application to EU Agricultural Sector, *supra* note 15, ¶ 1, supporting the efforts of the Commission, to make more use of the increased scope for access to third country markets.

<sup>17</sup> *Id.*, noting at ¶ 11, that in some third countries exports of certain products from Europe, in particular, are considerably impeded by the introduction of the tariff system and by the use of the 'safeguard clause,' and calling on the Commission to take appropriate action to maintain the European share of those markets.

<sup>18</sup> *Id.*, at ¶ A, expressing the view that a properly functioning system of exports, with satisfactory prices and organized in a way with which the industry can work, ultimately benefits all primary producers, in both the exporting and the non-exporting Member States.

removal of import restrictions.<sup>19</sup> In particular, such a reform includes opening the Community markets to foreign agricultural products.<sup>20</sup> Such a reform may, however, impact on the interests of producers, both in the Community and in other states with which it has international obligations.<sup>21</sup>

3. The need for structural adjustments may arise both at the home and in foreign markets. At the home front, this might call for strategies to enable EU obligations towards its partners and EU producers to be met,<sup>22</sup> on account of concerns about their situation.<sup>23</sup> This might imply retaining and improving certain aspects of the Community's agricultural regime in order to protect the interest of producers in EU partner states in accordance with undertakings under international obligations, and those of Community producers.<sup>24</sup> Implementation of commitments might occasion increases of the administrative and financial burden on the exporting industry, while creating more uncertainty.<sup>25</sup> Other implementation problems might also be encountered<sup>26</sup> and more comprehensive measures might be required.<sup>27</sup> Alternatives could be sought and a more rational approach might be found.<sup>28</sup> On the

<sup>19</sup> See Resolution on the European Community's Cooperation with the Developing Countries of Asia and Latin America [hereinafter Resolution on Cooperation with Asia/Latin America], European Parliament; Comm. Development and Cooperation (84), OJ No. C 309, 05/12/1988 p. 0110, ¶ 12, second clause.

<sup>20</sup> *Id.*, at ¶ 13: "In view of the importance of commodity exports for many Latin American and Asian developing countries, calls on the Community institutions to do all that is possible in the relevant international fora to ensure more remunerative prices for commodities while at the same time further reducing tariff and non-tariff restrictions on commodity imports."

<sup>21</sup> See, e.g., Resolution on the WTO Panel on Bananas, European Parliament [hereinafter Resolution on Bananas], OJ No. C 167, 02/06/1997 p. 0148, ¶ 3, expressing deep concern "about the impact that this opinion has already caused among the banana producers in the Community and the traditional exporters of bananas among the ACP."

<sup>22</sup> *Id.*, at ¶ 4, urging the Commission to present a clear strategy for the future banana market which enables EU obligations towards its ACP partners and EU producers to be met.

<sup>23</sup> *Id.*, at ¶ 1, regarding concerns about the problematic situation of smaller producers in the traditional banana-supplying countries and for similar suppliers within the EU.

<sup>24</sup> *Id.*, at ¶ 5, expressing support for retaining and improving the Community banana regime in order to protect the interests of producers in the ACP states, in accordance with the undertakings entered into under the Lome Convention, and those of Community producers.

<sup>25</sup> Resolution on GATT Application in the Agricultural Sector of EU, *supra* note 15, ¶ C, observing, as regards the day-to-day operation of the CAP, significant increase of the administrative and financial burden on the exporting industry, while creating more uncertainty.

<sup>26</sup> *Id.*, at ¶ B.

<sup>27</sup> *Id.*, at ¶ 4, asking the Commission to submit as soon as possible "a detailed review, particularly of the agricultural aspects of the application of the new WTO rules, and to highlight the disadvantages facing operators and farmers in the Union," and calling on the Commission "to ensure that this review includes a sector-by-sector analysis, with particular reference to the difficulties encountered by the operators concerned, to be presented by June 1997 at the latest."

<sup>28</sup> *Id.*, at ¶ 5, asking the Commission, "in keeping with the undertakings entered into in the Union in the agricultural sector, to put in place a more active agri-food export policy and to make full use of both subsidized and non-subsidized export opportunities in order to safeguard the Union's share of the world market."

external front, structural adjustments in one country may affect another,<sup>29</sup> and to some extent may even be damaging.<sup>30</sup> As barriers to trade are falling down everywhere, such structural adjustments will not be isolated events.

4. Ultimately, policy integration problems are identified.<sup>31</sup> Although it is important that world trade liberalization should continue, "including in the agricultural sector, this must be achieved within a responsible political framework covering the environment, the social and economic aspects and development cooperation."<sup>32</sup> This might spell, on the one hand, market access impediments through the application of more stringent standards.<sup>33</sup> Also, integration of other policy considerations into the programme of market access could mean "an alternative market regime which fulfils the objectives of sustainable (banana) production in accordance with the representative organizations of small producers and workers directly affected by the regime."<sup>34</sup> On the other hand, policy integration may also pursue enhancement of foreign market access.<sup>35</sup>

<sup>29</sup> *Id.*, at ¶ 6, asking the Council for a comprehensive review to be carried out in the Singapore Ministerial Conference of the WTO not only of import arrangements, export subsidies and domestic aid but also of the implications of the agricultural reform for countries that are net importers of food products. To the same effect, see UNCTAD IX Report, *supra* note 1, *inter alia*, ¶ 141 on "transitional impacts" of post-Uruguay Round multilateral trade liberalization, and ¶ 142 on the "likelihood of adjustment pressures on developing countries.... recognized at the Marrakesh Ministerial Meeting in 1994."

<sup>30</sup> Resolution on Cooperation with Asia/Latin America, *supra* note 19, ¶ 12, pointing out that the Community's common agricultural policy "has had a particularly damaging effect on certain agricultural-exporting developing countries, with world cereal, beef and sugar prices being depressed as a result of the sale of Community and US surpluses on the world markets at prices that are highly subsidized through export refunds."

<sup>31</sup> Resolution on GATT Application in the Agricultural Sector of the EU, *supra* note 15, ¶ 7, asking the Council "to reaffirm its determination to see better account taken of environmental problems by the WTO and asks that the Singapore conference broaden the terms of reference of the Committee on Trade and the Environment which should be established on a permanent footing in order to guarantee that WTO rules are compatible with the principles of sustainable development."

<sup>32</sup> *Id.*, at ¶ D. See also Resolution on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the Common Transport Policy Action Programme 1995-2000 (COM(95)0302 - C4-0351/95), European Parliament; Comm. on Transport and Tourism (94), OJ No. C 181, 24/06/1996 p. 0021, ¶ 13, calling on the Commission to carry out an accurate study of the social and employment-related implications of liberalizing the transport sector in Europe and to submit a report on the subject to Parliament, and point to innumerable calls (which have remained unheeded) for liberalization processes to be paralleled by social accompanying measures.

<sup>33</sup> *Id.*, at ¶ 8, taking the view that, "in several sectors, the standards of the Codex Alimentarius do not need to be considered appropriate for the European Union and that the latter must reserve its express right to apply tougher standards."

<sup>34</sup> Resolution on Bananas, *supra* note 21, 6, stressing that there is, however, "a need on the part of those concerned with the future of the regime to begin to devise proposals for an alternative regime which fulfils the objectives of sustainable banana production in accordance with the representative organizations of small producers and workers directly affected by the regime."

<sup>35</sup> Resolution on GATT Application in the Agricultural Sector of the EU, *supra* note 15, 12, stressing that "joint use of the various Commission services involved (DGs I, III and VI) is essential for preserving the EU's share of the world market for agricultural products"

From these, in order to illustrate the extraordinary complexity and difficulty of the problems that might arise in the context of international cooperation in a globalized environment, a further examination of the process of policy integration in the EU may be pursued along the following cross-cutting themes: a. the environment, b. the social and economic aspects, c. development cooperation, d. investment, e. competition, and f. other policy areas, such as health and consumer policies. In addition, there are also areas for potential "cross-complementation" of Community policies with the national policies of the EU Member States, serving as a source of further complications.

#### a. Environment

As regards the environment, which is fast becoming the most insistent of recent global concerns,<sup>36</sup> the EU, as every other actor in international trade, is constantly integrating<sup>37</sup> its responsibilities for environmental policy in its external relations.<sup>38</sup> Overcoming environmental problems by means of international cooperation was included in the catalogue of environmental policy objectives at Maastricht.<sup>39</sup> The EC itself has acceded to various environmental protection agreements.<sup>40</sup> In ad-

<sup>36</sup> One of the activities of the Community which is listed in Art. 3(1)(i), is to pursue "a policy in the sphere of the environment."

<sup>37</sup> See The Commission's Work Programme for 1996, /\* COM/95/512 FINAL \*/ , OJ No. C 282, 26/09/1996, p. 00043, as to resort to other types of instrument, for example of an economic nature, to promote environmental policy, its principal emphasis being on incorporating the environmental dimension in other policies.

<sup>38</sup> See, *inter alia*, Opinion of the Economic and Social Committee on the Proposal for a Council Regulation (EC) on Environmental Measures in Developing Countries in the Context of Sustainable Development, Economic and Social Committee; Sect. for Ext. Relations Trade and Development Policy (87), OJ No. C 082, 19/03/1996 p. 0018; Resolution of 24 May 1996 on the negotiations in the World Trade Organization (WTO) on Trade and the Environment (OJ C 166, 10.6.1996, p. 260.); Opinion of the Economic and Social Committee on "The Global Challenge of International Trade: A Market Access Strategy for the European Union", Economic and Social Committee; Sect. for Ext. Relations Trade and Development Policy (87), OJ No. C 056, 24/02/1997 p. 0047, re: Trade and Competition Policies; Trade and Investment; Trade and Social Context; Trade and Environment; Opinion of the Economic and Social Committee on "International Trade and the Environment", Economic and Social Committee; Sect. for Ext. Relations Trade and Development Policy (87), OJ No. C 056, 24/02/1997 p. 0052; Resolutions of 22 January 1993 on Environment and Trade (OJ C 42, 15.2.1993, p. 246.) and 24 March 1994 embodying the Recommendations of the European Parliament to the Commission concerning the Negotiations in the Trade Negotiations Committee of GATT on an Agreement on a Trade and Environment Work Programme (OJ C 114, 25.4.1994, p. 35.); Report of the Committee on External Economic Relations and the Opinion of the Committee on the Environment, Public Health and Consumer Protection (A4-0156/96). See also, e.g., The Commission's Work Programme for 1996, /\* COM/95/512 FINAL \*/ , *supra* note 37; on the external level, the EU strives to confirm and further develop its driving role in environmental protection matters by means of international cooperation, acting on the basis of the commitments made at the Rio Summit. Additionally, it conducts in-depth studies of environmental legislation in the countries of central and eastern Europe.

<sup>39</sup> Art. 130(1). This is not, however, an exclusive legal basis. Even if considerations of environmental protection were a contributing factor in the decision to adopt Community measures, that does not of itself mean that it must be covered by Article 130s of the Treaty." (Case C-405/92, *Mondiet v Armarment Islais* [1993] I-6133, at pp. 6175-6176, pars. 27-28).

dition, the EC endeavours to include a clause on the protection of the environment in its agreements with third countries or groups of third countries.<sup>41</sup>

#### b. Economic and social aspects.

i. In the area of industrial policy, in order to address increasing unemployment in the Member States of the EU, the Community perceives the need for a wide range of measures to be taken in order to generate jobs, by creating the necessary conditions for growth, including the intensification of external competition.<sup>42</sup>

In the wider field of economic policy, coordination is required between national and Community policies in the internal market, on the basis of commonly defined objectives, integrated with a competition policy characterized in particular by the principle of an open market economy with free competition.<sup>43</sup> The formulation and implementation of the Community's policies and actions in this sphere and in the implementation of the internal market also integrates policy objectives on economic and social cohesion.<sup>44</sup> The Community, moreover, supports those objectives by the action it takes through the Structural Funds, the European Investment Bank and the other existing financial instruments.<sup>45</sup>

<sup>40</sup> *Inter alia*, Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, European Economic Community, OJ No. L 039, 16/02/1993 p. 0003, Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, European Community, OJ No. L 033, 07/02/1994 p. 0003; Montreal Protocol on Substances that Deplete the Ozone Layer - Declaration by the European Economic Community, European Economic Community, OJ No. L 297, 31/10/1988 p. 0021.

<sup>41</sup> See e.g., Opinion of the Economic and Social Committee on the Proposal for a Council Regulation (EC) on Environmental Measures in Developing Countries in the Context of Sustainable Development, *supra* note 38; Resolution on the Negotiations in the World Trade Organization (WTO) on Trade and the Environment, European Parliament, *supra* note 38.

<sup>42</sup> See the December 1993 White Paper on Growth, Competitiveness and Employment: "The challenges and ways forward into the 21st century", *supra* note 14.

<sup>43</sup> Under Art. 100a, Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Community, as defined in Art. 2 thereof. The Member States and the Community shall act in accordance with the principle of open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Art. 3a. Member States shall regard their economic policies as a matter of common concern and shall coordinate them with the Council, in accordance with the provisions of Art. 102a. As regards monitoring of economic developments in Member States and in the Community as well as the consistency of economic policies with the broad guidelines on economic policies formulated by the Council (Art. 103(2)) to ensure close coordination of economic policies and sustained convergence of economic performances. See Art. 103(3).

<sup>44</sup> *Id.* See Art. 130b conjuncto 130a; the "strengthening of economic and social cohesion" is one of the activities of the Community (Art. 3(1)(k)). As to the interaction between cohesion policy and certain sectoral policies such as transport and research and development (communication), See, e.g., The Commission's Work Programme for 1996, *supra* note 37.

<sup>45</sup> Under Art. 130d, integration of the economic and social cohesion policy with environmental policies, and even with the policy on trans-European networks, is mandated; the Cohesion Fund provides financial contributions to projects in the field of environment and trans-European networks in the area of transport infrastructure.

It is, of course, in the area of the general economic policy that integration among various policies may be observed most often inasmuch as other policy areas constitute but branches of the general economic policy, e.g., competition and trade policy. On the external front, manifestations of the general economic policy may assume, but not exclusively, the form of trade policy measures.<sup>46</sup>

ii. In the area where economic policy integrates with social and cultural policies, EU cultural programmes aim both to improve the economic and social position of people in the cultural sector and to develop a "cultural industry" in Europe, an aim which is also linked with the completion of the single market. In turn, the most important issues with external implications in these areas concern national subsidies and taxation of cultural productions and cultural goods, questions of copyright and the protection of performing rights, social provisions for those involved in the cultural sector, the promotion of audio-visual industry (media policy) and vocational and advanced training in the cultural sector.<sup>47</sup>

The broad scope of trade in the multilateral trading context, which now includes trade in services and trade-related intellectual property rights and protection, encompasses and invites the integration of cultural policy into trade policy, especially as the general aims of cultural policy set out in the Treaty<sup>48</sup> are to encourage, support and, where necessary, supplement the action of Member States in, among others, cooperation with non-Member States and international organizations.<sup>49</sup>

iii. Towards attaining the Community objective<sup>50</sup> of strengthening the scientific and technological bases of Community industry and encouraging them to become more competitive at international level, while promoting researches deemed necessary under other areas of the Treaty,<sup>51</sup> the Community carries out activities, complementing the activities pursued in EU Member States, such as the promotion of cooperation in the field of Community research, technological development and

<sup>46</sup> See, e.g., Local Costs, *supra* note 3.

<sup>47</sup> See e.g., The Commission's Work Programme for 1996, *supra* note 37, re: Report on the account taken of cultural aspects in Community action.

<sup>48</sup> Art. 128.

<sup>49</sup> In fact, the Community aspires, under Art. 3(1)(q), to make a contribution to education and training of quality and to the flowering of cultures of the Member States. Art. 128(3) mandates the Community and the Member States to foster cooperation with third countries and the competent international organizations in the sphere of culture, in particular the Council of Europe. Also, Art. 128(4) requires the Community to take cultural aspects into account in its actions under other provisions of the Treaty, in particular in order to respect and promote the diversity of its cultures.

<sup>50</sup> Under Art. 3(1)(n), one of the activities of the Community is "the promotion of research and technological development".

<sup>51</sup> Art. 130f.

demonstration with third countries and international organizations.<sup>52</sup> The Community perceives that a promising policy on research and technology needs to be backed up by political initiatives in other areas, in particular competition, industrial, social and labour-market policies.<sup>53</sup>

### c. Development cooperation.

i. Of essentially outward orientation, like the common commercial policy, is the Community's policy on development cooperation.<sup>54</sup> Increased involvement by the EC in development policy in the framework of the north-south paradigm dates back to the mid-1970s.<sup>55</sup> Despite the previous absence of clearly defined powers in this area, the Community gradually developed its own range of development policy instruments, together with a financial framework which aspired to correspond fully with the scope of action of EU Member States.<sup>56</sup> However, the Maastricht Treaty stressed that the EC had clearly defined responsibilities to complement the activities of the EU Member States,<sup>57</sup> and at the same time, for the time being, EU Member States have withheld more extensive powers on development policy from the EC.

Prior to Maastricht, a number of general considerations guided EC relations in the area of development cooperation,<sup>58</sup> giving priority to the pursuit of six practical aims,<sup>59</sup>

<sup>52</sup> Under Art. 130(i), a multi-annual work programme, setting out all the activities of the Community, shall be adopted by the Council. Under Art. 130m, in implementing the multi-annual work programme the Community may make provisions for cooperation in Community research, technological development and demonstration with third countries or international organizations. The detailed arrangements for such cooperation may be the subject of agreements between the Community and third parties concerned (which shall be negotiated and concluded in accordance with Art. 228).

<sup>53</sup> See Opinion of the Economic and Social Committee on the Coordination of Research and Technological Development Policies, Economic and Social Committee; Section for Energy Nuclear Questions and Research (86), OJ No. C 018, 22/01/1996 p. 0054.

<sup>54</sup> See *supra* note 2, on the role of development policy in EU's external relations policy.

<sup>55</sup> By the early 1990s, the Community has already managed to develop a wide range of activities in the field of north-south cooperation under the rubric of its other policies. This was achieved through the integration of its development policy with other Community policies. Thus, primarily in pursuit of agricultural policies, it has been a party to international food agreements since 1969 and in the context of the common commercial policy, it has granted developing countries unilateral trade benefits under its generalized system of preferences since 1971. On the basis of Article 235 of the EEC Treaty, the EC has also provided emergency aid under a number of Council Decisions adopted in the mid-1970s. Also, the EC has been working very closely with (private) international organizations in pursuit of developmental objectives.

<sup>56</sup> See, e.g., Resolution on Cooperation with Asia/Latin America, *supra* note 19.

<sup>57</sup> Art. 130u(1).

<sup>58</sup> Most importantly, peace throughout the world, thereby integrating a political objective in development policy.

<sup>59</sup> Pisani Memorandum of October 1982: (1) support for developing countries' own efforts; (2) promotion of self-sufficiency in food with emphasis on agricultural development; (3) development of human resources and respect of the cultural dimension; (4) development of independent capabilities in scientific and applied research; (5) systematic use of available resources; and (6) restoration and maintenance of ecological balance.

including the integration of an environmental policy into the development policy, and finding increasing use in the allocation of resources for development cooperation.<sup>60</sup> Ten years later, the special importance placed by the Community's recent orientation in development cooperation on respect for human rights and good governance was underscored.<sup>61</sup>

While the Treaty of the European Union has, as aforesaid, stressed the concurrent competence of EU Member States (with those of EC) in the field of development policy, it has nonetheless considerably strengthened the legal basis for the Community's development policy.<sup>62</sup> The Community is entrusted with the accomplishment of three goals in the area of development cooperation: (1) fostering economic and social development, (2) integration of developing countries into the world economy, and (3) campaign against poverty.<sup>63</sup>

The most interesting interaction between development cooperation and other policies<sup>64</sup> emerge as the EC has made use, to advance Community development policy, of instruments taken from other policy areas, such as trade, association and cooperation agreements with selected groups of States and individual States, as well as a range of other instruments operating on the external front, at times even global

<sup>60</sup> See Opinion of the Economic and Social Committee on the Proposal for a Council Regulation (EC) on Environmental Measures in Developing Countries in the Context of Sustainable Development, Economic and Social Committee, *supra* note 38, ¶ 1. The Commission has submitted a proposal for a Regulation on environmental measures in developing countries within the framework of Community development aid. It is said that this action tallies with the position adopted by the European Union at the UN Conference on Environment and Development in Rio de Janeiro in June 1992, where the Community approved agreements on biodiversity, climate change, the fight against desertification and the "Agenda 21" action programme without, however, giving specific undertakings to the developing countries. The draft Regulation is designed to help these countries create the necessary conditions for progress on 'sustainable environmentally-sound development' (citing the 5th Community Environmental Action Programme) by providing project assistance.

<sup>61</sup> The Commission presented a Communication on "Development Cooperation Policy" in the run up to the year 2000, in which it explains the consequences of the Maastricht Treaty.

<sup>62</sup> Under Art. 3(1)(r), one of the activities of the Community, is to pursue "a policy in the sphere of development cooperation."

<sup>63</sup> Art. 130u-y add a new title, "Development Cooperation."

<sup>64</sup> Under Art. 130u(1), Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster: -- the sustainable economic and social development of the developing countries, and more particularly the disadvantaged among them; -- the smooth and gradual integration of the developing countries into the world economy; -- the campaign against poverty in the developing countries." Art. 130u(2) requires that Community policy in this area contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms. Also, the Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organizations. Under Art. 130v, the Community shall take account of the objectives of development cooperation (referred to in Art. 130u) in the policies that it implements which are likely to affect developing countries. Under Art. 130w(2), the European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures necessary to further the objectives on development cooperation (referred to in Art. 130u), which may take the form of multi-annual programmes (Art. 130w(1)).

in scope. These include the generalized system of preferences,<sup>65</sup> which grants simplified access to EU markets for the benefited countries, and food aid, emergency aid and financial aid for Asia and Latin America.<sup>66</sup> This presents another external front in which policies of the EU are integrated<sup>67</sup> and come in tension.<sup>68</sup>

ii. As regards EU's human rights policy, while the Treaty does not itself expressly establish human rights as a distinct policy area<sup>69</sup>, it now contains a provision which integrates a human rights policy in its policy on development cooperation.<sup>70</sup> Increasingly, European policy documents insist on linking human rights in all aspects

<sup>65</sup> See *e.g.*, Council Regulation (EC) No. 32/81/94, applying a scheme generalized tariff preferences in respect of certain industrial products originating in developing countries.

<sup>66</sup> See Resolution on Cooperation with Asia/Latin America, *supra* note 19.

<sup>67</sup> "17. The link between trade and development has become progressively stronger in modern international relations. It has been recognized in the context of the United Nations, notably by the United Nations Conference on Trade and Development (Unctad), and in the context of the GATT, in particular through the incorporation in the GATT of Part IV, entitled "Trade and Development". Also, "20. The Court has already acknowledged that the existence of a link with development problems does not cause a measure to be excluded from the sphere of the common commercial policy as defined by the Treaty. It considered that it would no longer be possible to carry on any worthwhile common commercial policy if the Community were not in a position to avail itself also of means of action going beyond instruments intended to have an effect only on the traditional aspects of external trade. A 'commercial policy' understood in that sense would be destined to become nugatory in the course of time (Opinion 1/78 of 4 October 1979 [1979] ECR 2871). (Case 45/86, Generalized System of Preferences, [1987] ECR 1493, at pp. 1521-1522).

<sup>68</sup> See, *e.g.*, Opinion of the Economic and Social Committee on Relations between the European Union and ASEAN, *supra* note 10, where it is advocated that the EU needs to take a more assertive and transparent approach to the forthcoming 1998 GSP arrangements. "In particular, ASEAN countries should only benefit where their overall prosperity and export performance are weak. It is essential that the opportunity is taken to take a more assertive position by the EU and USA jointly. This should be based on a joint strategy aimed at improving access for goods and services and at better protection for intellectual and technical property rights, as foreseen in the joint EU-US action plan, agreed in Madrid in December 1995."

<sup>69</sup> "27. No Treaty provision confers on the Community institutions any general power to enact rules on human rights or to conclude international conventions in this field" (Opinion 2/94, ECHR [1996] ECR I-1759; see ¶ 29, clarifying the scope of Art. 235, *vis-a-vis* promotion of human rights policy; ¶ 32, on Community's perspective on the importance of respect for human rights, citing the preamble to the Single European Act, the preamble to, and Article F(2), and the fifth indent of Article J.1(2) and Article K.2(1) of, the Treaty on European Union. On respect for fundamental rights, see Article F, TEU. Article 130u(2) of the EC Treaty provides that the Community policy in the area of development cooperation is to contribute to the objective of respecting human rights and fundamental freedom. As regard fundamental rights, as forming an integral part of the general principles of law whose observance the Court ensures, see ¶ 33, underscoring that the European Convention on Human Rights has special significance in the Community context (citing, in particular, judgment in Case C-260/89 ERT [1991] ECR I-2925, ¶ 41), and ¶ 34, concluding that respect for human rights is a condition of the lawfulness of Community acts.

<sup>70</sup> See *supra* note 64.

of EU's external relations.<sup>71</sup> There is also a constant call for a human rights policy to be integrated not only in the Community's policy on development cooperation but also in all of EC's agreements with third countries, requiring the acceptance of "human rights," "social" and "democracy" clauses, as in the case of "environmental clauses," as conditionalities for the conclusion of such agreements.<sup>72</sup>

#### d. Investment

In pursuit of industrial policy, resort may be had to trade policy instruments<sup>73</sup> and investments in boosting European presence in geographically expanding markets,<sup>74</sup> using trade policy instruments to develop a coherent legal approach for the

<sup>71</sup> Resolution on Human Rights throughout the World in 1995- 1996 and the Union's Human Rights Policy, European Parliament; Comm. on Foreign Affairs, Security and Defense Policy (94), OJ No. C 020, 20/01/1997 p. 0161; *see also* previous Resolutions and, in particular, those on Human Rights in the World of 12 March 1993 and 26 April 1995 (OJ C 115, 26.4.1993, p. 214; OJ C 126, 22.5.1995, p. 15.), and Resolution of 21 April 1994 on Human Rights in the European Union's Foreign Policy (OJ C 128, 9.5.1994, p. 370.). *See also*, Communication from the Commission on Respect for Democratic Principles and Human Rights in Agreements between the EC and Third Countries (COM(95)0216 - C4-0197/95); Council's 1995 Annual Memorandum for the European Parliament on the Activities of the European Union in the Field of Human Rights (C4-0410/96); Communication from the Commission to the Council and the European Parliament on "the European Union and the External Dimension of Human Rights Policy: from Rome to Maastricht and Beyond " (COM(95)0567), etc.

<sup>72</sup> As to the efforts of the Council, the Commission and Parliament to include Human Rights Clauses more and more systematically in agreements with third countries and to specify the scope of such clauses, *see Id.* *See also*, Resolution on Cooperation with Asia/Latin America, *supra* note 19; Resolution on the Introduction of a Social Clause in the Unilateral and Multilateral Trading System of 9 February 1994 ( OJ C 61, 28.2.1994, p. 89.); Opinion of the Economic and Social Committee on the Communication from the European Commission to the Council and the European Parliament: "The European Community and Mercosur: An Enhanced Policy," Economic and Social Committee; Sect. for Ext. Relations Trade and Development Policy (87), OJ No. C 018, 22/01/1996 p. 0135, etc.

<sup>73</sup> *See* Art. 3(1)(i), on promotion of coordination between employment policies of Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment; also Art. 109h conjuncto Art. 2 and Art. 103(2). Under Art. 109p(2), the objective of a high level of employment shall be taken into consideration in the formulation and implementation of Community policies and activities.

<sup>74</sup> *See* Opinion of the Economic and Social Committee on Relations between the European Union and ASEAN, *supra* note 10, on market access observations: "ASEAN countries maintain strict limitations on the rights of EU companies to establish a presence and to provide services, particularly financial and maritime services. In those countries for example, banks have severe restrictions on their ability to set up branches and to provide banking services. In this context, the maritime transport sector and the shipbuilding sector, which are developing rapidly in ASEAN countries, need to be addressed by the EU with a view to achieving liberalization in the former sector and the application of the principles of the recent OECD agreement (on abolition of shipbuilding subsidies) in ASEAN countries."

promotion of investment abroad.<sup>75</sup> This may entail sharpening trade policy instruments and their extension to other sectors, e.g. to the service sector, where this was recommended in order to push regulated international competition beyond the results of the GATT Uruguay Round, and gain for European firms a more effective market access, as well as the means of reacting to the widespread emergence of strategic alliances on global markets and to discriminatory bilateral agreements.<sup>76</sup>

#### e. Competition

In the sphere of competition policy, the legal system of the European Union effectively penalizes anti-competitive behaviour within the common market but, despite efforts to extend its regulatory regime to anti-competitive agreements or behaviour formed outside but implemented within the Community and having an effect on trade between Member States.<sup>77</sup> Community measures have no legal enforceability on global scale. In contrast, there is as yet no international framework that regulates global competition.<sup>78</sup> Current national or regional efforts, designed to prevent imperfect markets from arising at world level through the formation of transnational oligopolies or monopolies, use industrial and trade policies as regula-

<sup>75</sup> Art. 130(1) requires the Community and the Member States to ensure that the conditions necessary for the competitiveness of the Community exists. The guiding discipline is "a system of open and competitive markets." Under Art. 130(3), the Community shall contribute to those objectives through the policies and activities it pursues under other provisions of the Treaty. *See* Resolution on the Communication from the Commission to the Council "Towards a new Asia Strategy" (COM(94)0314 - C4-0092/94), European Parliament; Comm. on Foreign Affairs, Security and Defense Policy (94), OJ No. C 166, 03/07/95 p. 0064, ¶ 37, view that an agreement between EU and Asia should contain provisions on investment protections, which should become part of the EU Common Commercial Policy, given the inseparable relations between trade and investment in the process of economic globalization.

<sup>76</sup> *e.g.*, the agreement between the United States and Japan on semi-conductors. *See, inter alia*, Resolution of 14 December 1995 on the Communication from the Commission entitled "A Level Playing Field for Direct Investment World-wide" ((COM(95)0042 - C4-0118/95) (OJ C 17, 22.1.1996, p. 175.); and Opinion of the Economic and Social Committee on "The Global Challenge of International Trade: A Market Access Strategy for the European Union ", Economic and Social Committee; Sect. for Ext. Relations Trade and Development Policy (87), OJ No. C 056, 24/02/1997 p. 0047, re: Trade and Competition Policies; Trade and Investment; Trade and Social Context; Trade and Environment.

<sup>77</sup> *See e.g.*, Joined Cases 89/85, etc., Wood Pulp [1988] ECR 5231.

<sup>78</sup> Albeit international co-operation among OECD countries in the control of restrictive practices in international trade, based on a series of Council Recommendation, has been in operation for quite some time (*see* Competition Policy and International Trade: OECD Instruments of Co-operation, Organization for Economic Co-operation and Development (OECD), in particular p. 13 re: "conflict at international level").



tory instruments aimed at protecting home markets against aggressive international competition.<sup>79</sup>

The aspiration of the Community's competition policy<sup>80</sup> is "a system ensuring that competition in the internal market is not distorted." But given the structure of the emerging world trading system, the integration of competition policy with trade policy has become insistent and tensions between such policies figure prominently in the Community's external relations.<sup>81</sup> A certain form of competition policy toward foreign products is reflected by the level of tariff at the Community's borders and its various instruments of commercial defense.

An area in which this problem manifests quite clearly relates to trade policy instruments. These arise not only as a result of agreement-based commercial policy, but also from autonomous commercial policy.<sup>82</sup>

i. Agreement-based commercial policy extends to all EC agreements with third countries relating to trade in goods, recently including agricultural products, as well as services, and even trade-related aspects of intellectual property. Its scope, therefore, encompasses bilateral agreements with particular third countries or multilat-

eral agreements with groups of third countries<sup>83</sup> or they may have global dimension as in the case of the multilateral trading arrangements under the GATT/WTO.<sup>84</sup>

In terms of substantive scope, there has been an expansion of the coverage of agreement-based commercial policy, from one relating merely to trade in goods, to another embracing as well trade in services, and even trade-related aspects of intellectual property, especially following the adoption of the multilateral trading systems annexed to the WTO Agreement.<sup>85</sup> This has also correspondingly widened the scope of the Community's trade policy opportunities.

ii. The field of autonomous commercial policy covers all the trade-related measures enacted autonomously by the EC beyond the framework of treaties or agreement-based obligations to non-member countries. These are of particular importance in protecting the Community economy from damage that can be caused by imports from non-member countries. These instruments manifest not only the integration of various policies with trade policy but also the tension between them, in particular between competition (among domestic and foreign products) and trade policy.<sup>86</sup>

(a) Trade protection measures entail the use of defensive instruments pursuant to trade policy, albeit not necessarily excluding the furtherance of some other policy, normally on foreign competition with Community industries. These trade protection measures, in so far as they are GATT-consistent, embody the perception of an

<sup>79</sup> However, the regulatory conflict between competition policy, on the one hand, and industrial and trade policy, on the other, not only at national or regional level but, even more so, in the international or multilateral context, makes the situation extremely complicated, as these policies are geared towards divergent results. Optimum market results, the acknowledged goal of both industrial and trade policy, do not necessarily converge with optimum market processes which is the avowed concern of competition policy. On these issues, the standpoints of the Member States of the EU have exhibited different approaches at national and regional levels and there has been no consistent regulatory development oriented towards both the European common market and the world market despite increasing awareness that international economic trends incessantly call for Europe to evolve a competition policy that ensures both competition on the European common market and the competitiveness of European firms on the world market. See Opinion of the Economic and Social Committee on "Employment, Competitiveness and Globalization", *supra* note 11.

<sup>80</sup> Art. 3(1)(g).

<sup>81</sup> See Opinion of Mr. Advocate General Tesouro, Case C-327, France v Commission, [1994] ECR I-3641; See also Opinion 1/92 EEA II [1992] ECR I-2821, at p. I-2845.

<sup>82</sup> which are not necessarily mutually exclusive. For instance, a fundamental basis for both the autonomous and treaty-based commercial policy is the common customs tariff, regulated in Articles 9 and 18-29, which gives the Community a common customs tariff vis-a-vis third countries. On a proposal from the Commission, guided by "the need to promote trade between Member States and third countries" the Council can decide autonomous alterations to the common customs tariff at any time (Art. 29(a)). The establishment of a customs union declares itself to be motivated by GATT-consistent objectives, thereby indicating its agreement-based commercial policy aspect. Under Art. 110, the EC Treaty states that by establishing a customs union between themselves, Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers. As to progressive harmonization of systems for granting aid to exports to third countries, to the extent necessary to ensure competition between undertakings of the Community is not distorted, without prejudice to obligations undertaken by them within the framework of other international obligations, see Art. 112.

<sup>83</sup> Commercial agreements concluded by the EC with third countries are both numerous and extremely diverse, albeit common themes are observable which permit their classification for practical purposes. In terms of scope, these may cover all aspects of trade relations or only certain products or groups of products. In terms of substance, their coverage may reach voluntary restraints of imports to the Community and the granting of trade preferences by the Community. The last ten years saw an extensive employment by the Community of its commercial policy opportunities for purposes of developing and integrating more closely its immediate economic surroundings, *i.e.*, Central and Eastern Europe and the Mediterranean. See *infra*, pp. 22-26.

<sup>84</sup> Of particular significance in the context of agreement-based commercial policy are the successive major rounds of GATT negotiations which have taken place since the 1960s. In the Uruguay Round, the Community is credited to have argued successfully for further substantial import duty reductions, the incorporation of trade in services into the international trading system, minimum standards for the protection of intellectual property, a clearer definition of the GATT's regulatory task and a reformed conciliation procedure in trade disputes. It had to make concessions, too, in particular on its trade policy, accepted substantial cuts in export refunds, subsidized exports and the internal level of support; in the field of textiles, it agreed to the step-by-step elimination of the quotas allowed under the Multi fibre Arrangement, which expired in 1994, for the protection of its textile and clothing industry. Unresolved problems persist, particularly in the areas of services and steel (where there is still considerable potential for conflict between the Community and the US).

<sup>85</sup> Report of the Hearing, Case 2/92, OECD [1995] I-521, at pp. I-542 to 550.

<sup>86</sup> For a complex case of policy interaction in this area, see Opinion of the Economic and Social Committee on Relations between the European Union and ASEAN, *supra* note 10, reading *inter alia*: "ASEAN is certainly a major trading partner, but although representing a model for reciprocal, profitable partnership between two regional groupings, numerous problems have clouded EU-ASEAN relations. The ASEAN countries are critical of the EU's anti-dumping policies, the new Generalized System of Preferences (GSP) and the farm-export subsidies. For its part, the EU can legitimately be critical of the problems of tariffs, market access, discriminatory legislation and the absence of environmental clauses in ASEAN countries."

acceptable degree of complementarity between such competition policy with trade policy within the multilateral trading system.<sup>87</sup>

(b) The Community Customs Code is also a form of autonomous trade policy setting, albeit implicit in the framework of a customs union. Based on the concept of an internal market, the Code contains general rules and procedures which ensure the implementation of tariff and other measures introduced at Community level in connection with trade in goods between the Community and third countries. It integrates, amongst others, the implementation of common agricultural and commercial policy measures. The Community's tariff walls reflect its openness or otherwise to competition from foreign products and is, in that sense, also a manifestation of its competition policy.<sup>88</sup>

The degree of tolerance by the Community to competition from foreign products, also termed "the absorption capacity of the Community markets to

<sup>87</sup> (1) The first form of these trade protection measures are anti-dumping duties, which embody a competition policy between products originating in foreign markets and products of the domestic markets, designed for the protection of the latter from price undercutting. (2) As distinguished from anti-dumping measures, anti-subsidy measures do not target unfair trade practices by foreign industries, but subsidized exports from non-member countries to the Community. Like an anti-dumping measure, it addresses a perceived unfair competitive situation between foreign products and those of the home market, the anti-competitive element being embodied in the amount of the subsidy. (3) Additionally, if "serious damage" to a Community industry through a substantial increase in third country imports and considerable price undercutting is established, safeguard measures may be adopted in the form of import monitoring and quotas. (In the context of the Community's common rules on imports, there are safeguard measures applied in general (Council Regulation No. 3285/94, December 1994, OJ L 349/53), safeguard measures applied to Textile Imports (Council Regulation (EC) No 3289/94 of 22 December 1994, OJ No L 349/85), and safeguard measures applied to imports from planned economies (Council Regulation (EC) No 519/94, 7 March 1994, OJ No L 67/89)). Even as regards export, however, protective measures, similarly integrating a competition policy with trade policy, also obtain (In terms of the common rules on exports, there are protective measures applied in general (Regulation (EEC) No 2603/69, 20 December 1969, OJ No. L324/25) and control measures, motivated by foreign policy and security considerations, applied to dual-use goods (Council Regulation (EC) No 3381/94, 19 December 1994, OJ No L 367/1)). (4) In 1984, the Community also adopted the so-called "New Commercial Policy Instrument," to gain the ability to react relatively quickly to unfair trade practices by third countries against imports from the Community. The system required initial use of international conciliatory and consultative procedures with a potential to toughen into confrontational and unilateral measures such as the suspension of trade concessions, increased customs duties on imports from the countries concerned and quantitative restrictions (Council Regulation (EEC) No. 2641/84 of 17 September 1984). New and improved procedures were established to ensure effective exercise of the rights of the Community under international trade rules. Community institutions react to obstacles to trade adopted or maintained by third countries which cause injury or other adverse trade effects, provided that a right of action exists, in respect of such obstacles, under applicable international trade rules. See Council Regulation (EC) No 3286/94, 22 December 1994. (5) Finally, certain foreign policy-related sanctions also constitute a special form of autonomous commercial policy instrument, albeit motivated by foreign policy or security considerations, such as the trade embargoes imposed on Iraq and Bosnia. These types of sanctions can (according to Art. 228a of the EC Treaty) be adopted by the Council by qualified majority on a proposal from the Commission within the framework of the CFSP.

<sup>88</sup> However, in view of the recognition of the paramount importance of external trade for the Community, customs formalities and controls have been abolished or kept to a minimum under the new Common Customs Code. See Council Regulation (EEC) No. 2913/92, 12 October 1992.

foreign products," is extensive under the GSP system,<sup>89</sup> which has been held to be GATT-consistent. Reflecting a new concept of international trade relations between developed and developing countries, it is designed to give more weight to development-policy objectives in trade relations. It relaxes competition policy in pursuit of development policy, within the sphere of trade policy.<sup>90</sup>

#### f. Consumer, health, etc.

i. In the area of consumer policy, "constant improvements . . . of living conditions" in the interest of consumers in the Member States is articulated in the preamble of the EC Treaty.<sup>91</sup> Among the earliest objectives of the Treaty<sup>92</sup> is the "accelerated raising of the standard of living." Agricultural policy is integrated with consumer policy, as it must ensure that supplies reach consumers at reasonable prices.<sup>93</sup> Competition policy integrates a consumer policy inasmuch as the Community competition rules, in particular under Art. 86, EC Treaty, prohibit all abuses of dominant position "to the prejudice of consumers."

In implementing its recent priorities for consumer protection policy, the Commission pays particular attention to financial services. It actively pursues the integration of the "consumers" dimension in other Community policies. In particular, it takes account of consumer interests in the process of liberalizing public utilities.<sup>94</sup>

<sup>89</sup> "10. In a Declaration made on 7 December 1961 the contracting parties to the General Agreements on Tariffs and Trade (GATT) had emphasized the relationship between development aid and trade ("Aid can be no substitute for trade"). Later the granting of tariff preferences was given legal recognition, too; in view of the conflict between the system of generalized preferences and the basic principles of the GATT, and especially the most-favoured-nation clause, an exemption was first granted in 1971 for a limited period. In 1979 a decision was taken in the context of the GATT recognizing that preferences in favour of developing countries were permanently compatible with the GATT." (Opinion of Mr. Advocate General Lenz, Case 45/86, Generalized System of Preferences, [1987] ECR 1493, at p. 1502).

<sup>90</sup> As to possible limits to such relaxation, see Opinion of the Economic and Social Committee on Relations between the European Union and ASEAN, *supra* note 10, reading *inter alia*: "ASEAN countries benefit from EU GSP tariff preferences although some ASEAN countries have grown rapidly, have GDP per head comparable to the poorest EU Member States and have demonstrated successful, aggressive export performance. In some cases, manufacturing employment within the EU therefore suffers."

<sup>91</sup> Art. 3(1)(t), listing the activities of the Community, states that the Community aspires to make "a contribution to the strengthening of consumer protection."

<sup>92</sup> Art. 2, EEC Treaty.

<sup>93</sup> Art. 39(e).

<sup>94</sup> See e.g., The Commission's Work Programme for 1996, /\* COM/95/512 FINAL \*/, *supra* note 37.

ii. The health policy has also developed into an extensively cross-cutting theme, calling for its constant integration as well in the area of trade policy.<sup>95</sup> It was only with the Treaty of the European Union that health was defined as a separate area of European policy,<sup>96</sup> to ensure a "high level of human health protection,"<sup>97</sup> aimed at researching into and combatting serious widespread diseases, including drug dependence, and calling for joint action in the public health field, plus a wide range of explanatory and educational work as a basis for the general promotion of health.<sup>98</sup>

iii. Trade policy may complement foreign policy and security considerations, thereby constituting an instrument of the latter. The integration of foreign and security objectives into a measure, the effect of which is to prevent or restrict the export of dual-use goods, does not operate to remove the instrument from the scope of common commercial policy.<sup>99</sup>

iv. On the external front of its transport policy, the EU recognizes the need to contribute to mastering the traffic problems of modern society, not only within the EU and with respect to neighbouring countries but also with other countries with which the EC as such and its Member States establish treaty relations. The EC Treaty envisions<sup>100</sup> as among the activities of the Community "a common policy in the sphere of transport." The external dimension of the common policy on transport, which

<sup>95</sup> Under Art. 3(1)(p), one of the activities of the Community is to make "a contribution to the attainment of a high level of health protection." Originally, the Treaties establishing the EEC contained no specific provision laying down a common health policy. Only in 1987 did the Single European Act incorporate into the EEC Treaty provisions on Community wide cooperation on health protection and the harmonization of minimum rules regarding the working environment (Article 100a and 118a). Under Art. 100a(3), its proposals envisaged for the approximation ... which have as their object the establishment and functioning of the internal market ... concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking into account in particular any new development based on scientific facts.

<sup>96</sup> Under Title X.

<sup>97</sup> Under Art. 129(1), a high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities. Community action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education. Also, the Community shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

<sup>98</sup> To implement Community health policies, the Council of the EU adopts recommendations by a qualified majority, or incentive measures under the decision-making procedure laid down in Article 189b of the EC Treaty. However, actual legislative powers in this area remain within the competence of the Member States. The Member States coordinate national policies and programmes in these fields in liaison with the European Commission. Other aspects of health protection are regulated under environment policy (Article 130r) and consumer policy (Article 129a). In these cases, the interface between EU's health policy and external relations is not only unavoidable but multifarious. Under Art. 129(3), the Community and the Member States shall foster cooperation with third countries and the competent international organizations in the sphere of public health.

<sup>99</sup> Case C-70/94, *Werner v. Germany* [1995] ECR I-3189, at pp. I-3224; *See also*, Case C-83/94, *Leifer and Others* [1995] ECR I-3231, at pp. I-3224.

<sup>100</sup> Art. 3(1)(f).

also extends to the field of trade in services, has been settled.<sup>101</sup> In the area of the trans-European networks, the Community may decide to cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.<sup>102</sup>

#### g. Complementation with national policies

There are areas in the fields of certain EU common policies which have not yet been fully occupied by the Community.<sup>103</sup> This situation presents a fertile ground for "cross-complementation" between Community policies and national policies of EU Member States.<sup>104</sup> Problems of policy complementation is all the more complicated by the application of the principle of subsidiarity in the field of external relations because there are many other areas of EU policies which do not fall within the exclusive competence of the EC but which, nevertheless, complement trade policy.<sup>105</sup>

Exclusively within the Community's competence are the domains of common commercial policy, as well as of the common policies on agriculture and fisheries and of transport occupied by internal Community legislations. Other areas are shared between the Community and the EU Member States.<sup>106</sup> The implications of shared competence under the Treaty impact upon the "cross-complementation" of

<sup>101</sup> Opinion 1/94, WTO [1994] ECR I-5267, at pp. I-5410-5411; Opinion 2/92, OECD [1995] ECR I-521.

<sup>102</sup> Art. 129c(3).

<sup>103</sup> *See* WTO and OECD cases, both at *supra* note 101.

<sup>104</sup> The 1980 ASEAN-EC Cooperation Agreement, OJ No. L 144, 10/06/1980, p. 0002, for instance, provides: "3. Without prejudice to the relevant provisions of the treaties establishing the communities, this agreement and any action taken thereunder shall in no way affect the powers of any of the member states of the communities to undertake bilateral activities with any of the member countries of ASEAN in the field of economic cooperation and conclude, where appropriate, new economic cooperation agreements with these countries."

<sup>105</sup> In this connection, it may be stated that even in the area of external relations, the Community can only act within the limits of the powers conferred upon it by the EC Treaty and of the objectives assigned to it therein (Art. 3b). Most importantly, in areas which do not fall within its exclusive competence, the Community can take action "only if and insofar as" the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved by the Community. Furthermore, action by the Community cannot go beyond what is necessary to achieve the objectives of the Treaty. *Id.*

<sup>106</sup> The areas of shared competence, which have external fronts, are the policies on competition, employment, the social sphere, economic and social cohesion, environment, competitiveness of Community industry, promotion of research and technological development, development cooperation, education, training and culture, consumer protection, energy, civil protection and tourism, as well as areas of common policies which have not yet been fully occupied by the Community (*See* WTO and OECD, both at *supra* note 101).

Community policies with those of the national policies of EU Member States. Where competence is shared, it is essential to ensure close cooperation both in the process of negotiation and conclusion and in the fulfilment of international commitments.<sup>107</sup> This is all the more imperative in case of the agreements such as those annexed to the WTO Agreement, which are "inextricably interlinked," and in view of the "cross-retaliation" measures established by the Dispute Settlement Understanding (DSU).<sup>108</sup>

### B. Globalization and the European Response

Perceptions are clear in Europe on the implications of globalization and there are calls for a new dynamism in EU policy integration, entailing an adaptive shift in its external relations strategy. The Economic and Social Committee (ESC) asserts that, although "the data do point to a process of globalization, we do not yet live in a fully globalized economy." However, the danger that globalization will proceed asymmetrically, a widely held apprehension, provides the starting-point for the ESC's global policy recommendations.<sup>109</sup>

Despite the emergence of new forms of competition between locations, economic policy has, by and large, remained national or regional in orientation (a situation of lack of an adaptive regulatory shift towards the broader international framework). Also, most economic policy institutions continue to operate nationally or regionally. Asymmetry is developing both as to the supply conditions and as regards the workforce inasmuch as job-seekers continue to operate at regional or local levels while global calculations are becoming the basis of decisions of employers.<sup>110</sup>

A "global form" of policy integration is, therefore, advocated by the ESC, the ultimate aim of which is "to create international versions of the cartels ban, consumer and environmental protection arrangements and social obligations in regard to assets." This also entails establishing global standards "in respect of human, workers' and environmental rights." Besides, it is believed that coherence

<sup>107</sup> That obligation to cooperate flows from the requirement of unity in the international representation of the Community (Ruling 1/78 [1978] ECR 2151, paragraphs 34 to 36, and Opinion 2/91, cited above, ¶ 36; cited in, WTO, *supra* note 101, at ¶ 108).

<sup>108</sup> "Thus, in the absence of close cooperation, where a Member State, duly authorized within its sphere of competence to take cross-retaliation measures, considered that they would be ineffective if taken in the fields covered by GATS or TRIPs, it would not, under Community law, be empowered to retaliate in the area of trade in goods, since that is an area which on any view falls within the exclusive competence of the Community under Article 113 of the Treaty. Conversely, if the Community were given the right to retaliate in the sector of the goods but found itself incapable of exercising that right, it would, in the absence of close cooperation, find itself unable, in law, to retaliate in the areas covered by GATS or TRIPs, those being within the competence of the Member States" (Opinion 1/94, WTO, *supra* note 101, pp. 1-5420-5421, ¶ 109).

<sup>109</sup> Opinion of the Economic and Social Committee on "Employment, Competitiveness and Economic Globalization", *supra* note 11.

<sup>110</sup> *Id.*

in global policy-making would require international organizations "endowed with legitimate economic-policy responsibilities," coupled with internationally effective collective bargaining procedures and forms of social dialogue "to re-establish the negotiating balance on the labour market."<sup>111</sup>

### C. Geo-politics, regional enlargement and new forms of international cooperation

#### 1. Shifting geo-politics and the ASEAN enlargement

Shifting geo-political configuration arising in the aftermath of the Cold War also significantly altered perceptions on EU's foreign policy towards Asia, especially with respect to the ASEAN, alongside globalization trends.<sup>112</sup> It mainly motivated the increase of initiatives to bring ASEAN and EC closer and the objective of mapping out a new model for EU-ASEAN relations. The shift in the balance of world power since the end of the Cold War has led each geo-economic region to seek out alliances and markets to adapt to the challenges of globalization.<sup>113</sup> In the EU, there is a perception that such alliances and potential partners are to be found in groupings which attribute significant importance to economic integration, and with which Europe already has well-established relations. ASEAN, like Mercosur in Latin America, is identified as among such groupings.<sup>114</sup>

<sup>111</sup> The recommended response calls for a dynamic innovation strategy for the European internal market, with the following competitive features: (1) the European social model, as one of the endogenous growth forces which Europe must further exploit; (2) improved conditions for SMEs; (3) infrastructure development (trans-European networks); (3) dismantling of obsolete bureaucratic hindrances or regulatory reform; (4) more active provision of risk capital; and (5) better use of human capital, "so that new goods and services can be encouraged and ultimately new markets opened up". In turn, the core conditions identified for such an innovation strategy are: (1) better management of firms; (2) more worker participation in the innovation process; and (3) the completion of the internal market, the on-going process of economic and monetary union, and enhanced exploitation of the European social model (*Id.* at ¶ 5, *et seq.*).

<sup>112</sup> See e.g., Resolution on the Communication from the Commission to the Council "Towards a new Asia strategy" (COM(94)0314 - C4-0092/94), European Parliament; Comm. On Foreign Affairs, Security and Defense Policy (94), OJ No. C 166, 03/07/95 P. 0064: 2. Advocates a change in attitudes towards Asia, based on realization of the need for a mutually respectful partnership with the Asian countries.

<sup>113</sup> The Commission's Work Programme For 1996, /\* COM/95/512 FINAL \*/, *supra* note 37: 5. ENHANCING EUROPE'S PRESENCE IN THE WORLD It will generally endeavour to propose a comprehensive definition of the Union's international interests and of the policy to be established, to serve them in the form of a coherent set of objectives to be attained with an order of priorities. It will use the instruments it has at its disposal in the first and second pillars to defend the Union's external interests in the most coherent manner possible.

<sup>114</sup> Opinion of the Economic and Social Committee on "Creating a new dynamic in EU-ASEAN relations," OJ No. C 089, 19/03/1997, p. 0024.

A more immediate, trade-related consideration, is EU's position as ASEAN's second most important trade and direct investment partner, coming behind Japan but ahead of the United States. Likewise of immediate concern is the involvement of US' interest in the Asia-Pacific region, which accounts for 56 % of world production and 46 % of world trade.<sup>115</sup> Because of the perceived "propensity of the US to conclude association and cooperation agreements there," it was suggested that the EU needs "to defend and strengthen the position which it has acquired and see that it is not shut out by the region."<sup>116</sup>

ASEAN is itself reconfiguring the South-East Asian landscape by implementing the ASEAN Free Trade Area (AFTA/AFTA Plus) and the ASEAN Investment Area (AIA), and by successive enlargement of the regional grouping through "economic diplomacy" designed to realize the vision of ASEAN-10,<sup>117</sup> which integrates with it, in addition to Vietnam, the CLM countries (Cambodia, Laos and Myanmar). Coming fresh in the wake of the East Timor incident, which evoked condemnation in Europe, the proposed enlargement occasioned policy problems in EC relations with ASEAN.<sup>118</sup> In particular, it exacerbated issues regarding perceived inadequacies in respect for human rights.<sup>119</sup>

<sup>115</sup> See also *infra* note 201.

<sup>116</sup> Opinion of the Economic and Social Committee on Relations between the European Union and ASEAN, *supra* note 10: "The European Union is at a disadvantage when competing with Japan and the US in the Asia-Pacific area for obvious geographic and political reasons"

<sup>117</sup> H.E. Roy Yaki, 31st ASEAN Ministerial Meeting, Manila 24 July 1998. But see assessment of the ESC as to the prospect of ASEAN enlargement going beyond ASEAN 10 (Opinion of the Economic and Social Committee on Relations between the European Union and ASEAN, *supra* note 10, ¶ 3.2.1). Regarding the perspective of the European Parliament on ASEAN enlargement, see Resolution on the Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: "Creating a new dynamic in EU-ASEAN relations" (COM(96)0314C4-0467/96), OJ No. C 325, 27/10/1997, p. 0016, pars. 2 and 24.

<sup>118</sup> Current status regarding the problem "over how to accommodate ASEAN's newest members, who are not signatories to the 1980 EC/ASEAN Co-operation Agreement" is stuck on a deadlock (see Statement of the President of the Council of the European Union, H.E. Wolfgang Schuessel, ASEAN Post-Ministerial Conference 9+1, Manila, Philippines, 28 July 1998). For an appraisal of the seriousness of the diplomatic crisis on this point, see Highlights of Statement of the Vice-President of the European Commission, H.E. Manuel Marin, ASEAN Secretariat, Association of South-East Asian Nations (ASEAN), 1998, ¶ 7, stating *inter alia*: "This year has regrettably seen an impasse between Europe and ASEAN on holding the JCC. Over the last twenty years of our relationship, we have disagreed over questions of substance and of principle, but it is the first time we have had to postpone a meeting..."

<sup>119</sup> e.g., (a) still unresolved problem of East Timor, said to be "instrumental in preventing the EU from reaching the new and wider third-generation agreements which it would like;" and (b) concerns about continuing serious violations of basic human rights in Myanmar (formerly Burma), one of the countries scheduled to join ASEAN). For the latest official statements on this point, see Statement of the President of the Council of the European Union, H.E. Wolfgang Schuessel, ASEAN Post-Ministerial Conference 9+1, *supra* note 118, p. 2, pars. 12-13, concluding: "For these above-mentioned reasons, the EU has to maintain, for the time being, its Common Position on Burma/Myanmar, which prevents it from opening negotiations for an accession to the 1980 EC-ASEAN Co-operation Agreement. As the EU has stated repeatedly, this difference of viewpoints should be resolved by both sides in a positive spirit and should have no bearing on the overall EU-ASEAN relationship."

## 2. The Pan-European Union and Policy Integration

The vision of a future pan-European Union antedates the end of the Cold War and is traced back to the very beginning of European integration.<sup>120</sup> Its pursuit takes upon its wings a whole gamut of EU policies extending over the whole area of the EU enlargement process. From the perspective of policy complementation, it allows the fullest degree of integration over that area. EU's association policy<sup>121</sup> plays the central role towards the realization of the Pan-European Union. The bases of association agreements, of the type that seeks to establish an economic area, aspires towards homogeneity of rules, shared policies, and common objectives.<sup>122</sup>

In Europe, the collapse of the ideological walls led to a surge in the relations between the EU and most of the Central and Eastern European Countries (CEECs), including the so-called "Europe Agreements". A further deepening of relations ensued since the European Council meeting in Copenhagen in June 1993, which declared that those countries that had concluded "Europe Agreements" with the EU could be eligible for membership in the Union.<sup>123</sup> These agreements give the signatories associate status and cover both political and economic relations. In particular, they establish progressive economic integration.<sup>124</sup>

Complementary to its association policy, EU's free trade and trade-related policy<sup>125</sup> also plays a vital role towards the realization of the Pan-European Union.<sup>126</sup> This type of agreement includes provisions for the gradual attainment of compatibility of trade and trade-related legislation with that of the Community. Because free trade agreements, like the association agreements with the CEECs, contemplate

<sup>120</sup> The Founding Treaties of the European Economic Communities call upon other peoples of Europe who share in the ideal of the Founding States to join in their efforts (8th par. Preamble, EEC Treaty).

<sup>121</sup> Art. 238.

<sup>122</sup> The contents of this type of association agreements, aside from the declaration of common objectives and principles, are clauses which substantially reproduce provisions of the EC Treaty, in particular: (1) free movement of goods; (2) free movement of persons, services and capital; (3) competition and other common rules; (4) horizontal provisions relevant to the four freedoms; (5) cooperation outside the four freedoms; (6) institutional provisions. See Agreement on the European Economic Area (EEA), OJ No L 1/3, 03/01/94.

<sup>123</sup> Currently, there are nine such agreements. Six are in force involving Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia, while those with Estonia, Latvia and Lithuania are awaiting ratification (a tenth has been initialled with Slovenia).

<sup>124</sup> The Commission's Work Programme for 1996, /\* COM/95/512 FINAL \*/ , *supra* note 37. It will however, be up to the associated countries themselves to define and implement their own preparatory programmes according to their own priorities (*Id.*).

<sup>125</sup> The legal basis of which is Art. 113.

<sup>126</sup> The bases of free trade and trade-related agreements are historical links, common values, common commitment to the intensification of political and economic liberties, the rule of law and human rights, including the rights of persons belonging to minorities, a multiparty system with free and democratic elections and liberalization aimed at setting up a market economy, shared understanding, common recognition of principles, etc. See e.g., Free Trade Agreement between EC and Estonia, OJ No L 37/2, 31/12/94.

the closest degrees of integration between the EU and the other contracting parties, policy integration is carried on extensive common grounds on almost mirror-image basis.<sup>127</sup>

In contrast, agreements with other countries, such as the association agreements with the ACP States under Lomé Convention IV, or the association or cooperation agreements with the 12 Mediterranean countries, or its partnership or cooperation agreements with various Dialogue Partners, manifest various levels or degrees of parallel policy complementation. Whereas, on the one hand, association agreements, including the mainly development-oriented Lomé Convention IV, witness policy integration being carried on extensive common grounds, on the other hand, cooperation agreements operate on limited common grounds and policy integration in some areas may be characterized by tensions and conflicts. Partnership agreements, being based on the principle of mutual benefits and equality, accommodate diversity and thrive upon the expansion of common grounds through consultative mechanisms, dialogue processes and joint action, albeit there are policy areas which the EU commonly promote in these agreements.<sup>128</sup>

As indicated by the ESC: "(I)t is worth considering whether the EU ought to fix its priorities and apportion its interventions accordingly. The criteria for prioritization are dictated first and foremost by political and security interests, pressing social concerns (immigration), and economic and trade interests."<sup>129</sup> Applying those criteria, among the resulting top priority areas are "the more dynamic areas of Asia and Latin America, such as Mercosur and ASEAN, where economic and trade interests and the conclusion of partnership agreements are the chief concern."<sup>130</sup> This actually comes third, after the Southern Mediterranean rim and CEECs, as they combine all three of the criteria, followed by sub-Saharan Africa, "where the main motivation is the fight against poverty, hunger and disease in order to prevent social and environmental disasters."<sup>131</sup>

<sup>127</sup> See The Commission's Work programme for 1996, /\* COM/95/512 FINAL \*/, *supra* note 37.

<sup>128</sup> See e.g., The Commission's Work Programme for 1996, /\* COM/95/512 FINAL \*/, *supra* note 37. The priorities vary, see *Id.*, at ¶ 5.1. "Relations with non-member countries". As to Mediterranean countries, the promotion of Euro-Mediterranean area of prosperity and stability; as to Central America, "paying particular attention to the search for forms of cooperation more suited to the reality" of that region; as to Asia, contributing to strengthening the European presence in this key region; to the ACP countries, improving the effectiveness and quality of development cooperation; and as to sub-Saharan Africa, reinforcement of development policy by the incorporation of measures to prevent crises and conflicts in Africa.

<sup>129</sup> CEECs, the Treaty on the European Economic Area (EEA), accession negotiations, including close cooperation in the Organization for Security and Cooperation in Europe (OSCE), in the Council of Europe or other fora, constitute a set of initiatives pursued to develop a network of contractual relationships designed: (1) to secure stability throughout Europe and (2) to accelerate economic development in the new democracies. Seen in this context, Europe's interventions or engagement elsewhere must satisfy similar criteria in order to balance with initiatives related to the enlargement process and thereby fit into its priorities.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

However, in its foreign policy towards the ASEAN, the EU is held back by the perception of a great cultural diversity that divides Europe and Asia.<sup>132</sup> For instance, the absence of significant developments in the 20-year ASEAN-EC partnership is attributed to a lack of common ground, leading to a "static" relationship characterized by an absence of common plan.<sup>133</sup> In particular, the differences arise in the area of political and cultural issues such as respect for human rights, freedoms, democracy and minorities, and legal certainty.<sup>134</sup> It is believed that "this prevents relations from finding common ground on which to base a common plan."<sup>135</sup>

Nevertheless, in the continuing EC-ASEAN relations, EU's diplomacy towards the ASEAN has indicated two significant areas of flexibility: (1) the perception that the ASEAN countries, whose culture is based on community spirit, could be more receptive on improving the cultural aspects of the relationship, while "the EU could be ready to embrace the community values which underpin their society"; and (2) support on the part of the EU, showing its readiness to help ASEAN's efforts to guide new members with centrally planned economies towards a market economy and to achieve economic balance, taking into account the "very different development levels of the countries seeking accession to the ASEAN."<sup>136</sup>

On a realistic appraisal of the situation, the ESC has advocated the adoption of "a qualitative approach to ASEAN cooperation," focusing on "such sectors as the environment, infrastructure, telecommunications, energy and vocational training." By reason of EU's heavy commitment to cooperation with the CEECs and the Mediterranean countries, "it lacks the means to make a large financial outlay on cooperation." Thus, EU's "selective and limited engagement" towards ASEAN can, instead, provide "qualitatively significant cooperation" centered on exchanges in the fields of training, culture and improvement of mutual understanding.<sup>137</sup>

### 3. New form of international cooperation

With its analysis of the challenges and opportunities of economic globalization as backdrop, the ESC concludes with a strong call for "a transnational political

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* Some initiatives to improve the cultural aspect of relationship only deepened this perception. One of such initiatives was the forum on "Culture, values and technology - instruments for promoting mutual understanding", held in Venice in January 1996. Its workshops lent confirmation to some perspective that "there can be no significant development of economic relations until cultural exchanges between universities, researchers and persons of culture are stepped up and networks of relations are established between young people and the various strands of civil society". The conclusion was, in short: "mutual understanding and respect for traditions and customs are essential for further fruitful relations. No common plan will be feasible until this network of relations is set up." Thus, in addition to economic and social issues, the cultural aspect, designed to provide a vehicle for closer ties, is gaining increasing importance in EU's diplomatic thrusts towards the ASEAN.

<sup>136</sup> Opinion of the Economic and Social Committee on "Creating a new dynamic in EU-ASEAN relations," *supra* note 114.

<sup>137</sup> *Id.*

initiative": (1) limiting the risks of globalization and (2) ensuring fair distribution of its benefits. Towards such end, the tasks identified are: (1) taking a new kind of international initiative in economic and social policy, including "a competitiveness policy in harmony with Europe's historic roots and the common cultural heritage"; (2) working towards the establishment of effective international institutions to provide a framework for political decisions; and (3) launching a new form of international cooperation in which all operators are called on to become actively involved in their fields of activity in promoting broadly based international cooperation (the "globally oriented European policy").<sup>138</sup>

#### D. Liberalization and Private sector participation

The Commission policy for countries with high growth potential, is that "economic cooperation is aimed at improving the business and regulatory environment in partner countries in order to stimulate two-way trade and investments with the direct participation of the private sector." The Commission's strategy document speaks, *inter alia*, of "promoting business cooperation between European companies and their Asian counterparts ... by increasing information and creating a favourable framework for industrial cooperation and notably for SMEs."<sup>139</sup> Realistically, this perspective did not occasion much optimism for the ESC, which regards risks factors as providing a strong deterrent to private sector attraction.<sup>140</sup> In the broader context of globalization, it was anticipated that

<sup>138</sup> Opinion of the Economic and Social Committee on "Employment, Competitiveness and Economic Globalization," *supra* note 11.

<sup>139</sup> For instance, numerous initiatives have been launched to stimulate greater European investment in the ASEAN countries. In particular, the EC Investment Partners (ECIP), the EC's financial instrument for promoting joint ventures, is expected to prove the most appropriate means of fostering European investment and joint ventures between European and ASEAN SMEs (some 20 regional projects concerning ASEAN are in the pipeline). The ECIP is currently the main instrument for the creation of joint ventures and for encouraging the spread of small and medium scale industry. For infrastructure work greater involvement by the EIB (European Investment Bank) is felt desirable; for some years it has been permitted to fund projects in Asia and Latin America. Also, it is felt that the setting-up of European Business Information Centres could play an important role, notably in the promotion of small and medium-sized businesses and a proper distribution of tasks between these centres and Member States' bilateral chambers of commerce could yield worthwhile results. Stress on small business: (1) the spread of small businesses is beneficial not only economically, but also in disseminating know-how and participation and thus in furthering the cultural growth of society and the affirmation of democratic values; (2) consultation (*i.e.*, responsible involvement of the social partners in the search for possible solutions) is also a powerful instrument for social cohesion and participation, and for a more mature democracy. See Resolution on the Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: "Creating a new dynamic in EU-ASEAN relations" (COM(96)0314C4-0467/96), *supra* note 117, ¶ 9.

<sup>140</sup> Opinion of the Economic and Social Committee on Relations between the European Union and ASEAN, *supra* note 10, ¶ 3.2.7: "... Unfortunately, the private sector is not inclined to invest in high risk countries or those with a serious macro-economic imbalance. It has been observed that even when substantial incentives are provided, there are problems with private sector participation. This constant insistence in European Union documents on private sector participation, while correct in principle, amounts to little in practice if the requisite operational instruments are not created. ..."

structural adjustments occasioned by the post-Uruguay Round rapid multilateral liberalization would not be isolated events.<sup>141</sup> It suggested that here lies the vital challenge to private sector involvement in international cooperation.<sup>142</sup>

### III. THE SEARCH FOR POLICY COMPLEMENTARITIES WITHIN THE FRAMEWORK OF THE MULTILATERAL TRADING SYSTEM

It is useful to take a closer look at the developments that led to the emergence of issues regarding the need for coherence in global policy-making and the considerations that underlie the search for policy complementarities in the international or multilateral level. Central to this effort is the proposition that such a search must take place within the framework of the multilateral trading system. This, however, is an on-going process and largely far from finished. Among the orientations that may be pursued, in the meantime, towards coherence in policy-making is one favouring voluntary principles and collaborative initiatives.

#### A. Liberalization, globalization, regional groupings and the widening domain of the private sector.

Liberalization became central to economic policies throughout the world even before globalization was felt.<sup>143</sup> The common elements of liberalized economic policies are: (1) ensuring that prices are a true reflection of relative scarcities;<sup>144</sup> (2) giving freer reign to the energies of private enterprise;<sup>145</sup> and (3) external transactions as a key component of liberalization strategies.<sup>146</sup>

<sup>141</sup> See Opinion of the Economic and Social Committee on "Creating a new dynamic in EU-ASEAN relations", *supra* note 114, ¶ 2: "As Renato Ruggiero, director of the WTO, stressed at the 1996 Singapore conference, "structural adjustments" are not isolated events, but also (as demonstrated by recent events in Korea) affect the countries of south-east Asia." As regards international cooperation in this area, see Statement Adopted by the United Nations Conference on Trade and Development at its Ninth Session, "A Partnership for Growth and Development", Midrand, South Africa, 11 March 1996, ¶ 13, which reads: "Globalization and liberalization makes all countries more susceptible to external developments, accelerating the transmission of positive impulses and, also, negative shocks. As a result, national and international policies are more interrelated. While these phenomena may reduce some of the difficulties associated with barriers to trade, they may still lead to new problems. Therefore, there is a vital role for international cooperation and partnership."

<sup>142</sup> UNCTAD IX Report, *supra* note 1, ¶ 348: "... For one of the major new developments in international relations in these closing years of the twentieth century has been the emergence of a range of non-governmental actors that exert a growing influence on world affairs. ..."

<sup>143</sup> UNCTAD IX Report, *supra* note 1, ¶ 13.

<sup>144</sup> *Id.*, at ¶ 4.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*, at ¶ 6.

Disengagement of the State from, or the reduction or revamping of its role in, the production of goods and services across virtually whole economies, characterized worldwide efforts towards the privatization of State enterprises.<sup>147</sup> This was accompanied by regulatory reform, aimed at establishing institutions and legal frameworks appropriate for the functioning of a market economy.<sup>148</sup>

Globalization, as a product of liberalization, evolved from the progressive enlargement of the effective economic space available to the private sector, in particular producers and investors.<sup>149</sup> Driven by search for worldwide profits,<sup>150</sup> producers and investors "increasingly behave as if the world economy consisted of a single market and production area with regional or national subsectors, rather than a set of national economies linked by trade and investment flows."<sup>151</sup>

Globalization has also set in motion forces working to accelerate liberalization.<sup>152</sup> Transnational production came to be viewed as a necessity for competitiveness and profitability; in turn, governments came under increasing pressure to provide conditions necessary for worldwide operation.<sup>153</sup> Central to demands for international regulations is the private sector for whose transnational operations these are designed mainly to serve.<sup>154</sup>

Worldwide liberalization proceeded under diverse circumstances, at different speeds, in varying ways,<sup>155</sup> gaining impetus especially from the expansion and intensification of regional integration efforts.<sup>156</sup> The economic policy orientation of regional groupings tended largely towards common

<sup>147</sup> *Id.*, at ¶ 4.

<sup>148</sup> *Id.*

<sup>149</sup> All these developments increasingly widened the domain of the private sector as the role of the State correspondingly diminished. *Id.*, at ¶ 15. Globalization was promoted both in the area of production and finance by: (1) recent advances in information technology; (2) technical progress, reducing costs of international transportation of goods and people and of international communication; and (3) technological progress in manufacturing, making it feasible to decompose production processes. *Id.*

<sup>150</sup> *Id.*, at ¶ 16.

<sup>151</sup> *Id.*, at ¶ 15. With an expanded domain, private sector operations increasingly aspired to transcend national regulations albeit not without, in turn, seeking norms in the international environment.

<sup>152</sup> *Id.*, at ¶ 20.

<sup>153</sup> in particular: (1) further liberalization of international trade, (2) freedom of entry, (3) right of establishment and national treatment, (4) freedom for international financial transactions, (5) deregulation and (6) privatization. *Id.*

<sup>154</sup> Paradoxically, a strong current which emerged from these developments seeks to extend national or regional norms over the international environment, rather than being oriented towards the evolution of an autonomous set of international norms. Thus, one of the tensions in the search for global norms arise from the tendency to promote shifting the operation of national norms over the global sphere, as against the orientation towards the reform of national norms according to an autonomous set of international norms.

<sup>155</sup> *Id.*, at ¶ 5.

<sup>156</sup> *Id.*, at ¶ 13.

directions.<sup>157</sup> Also, common among the objectives of the various regional groupings is "to have a range of opportunities for carrying forward liberalization, rather than relying solely on global multilateralism."<sup>158</sup>

## B. Constraints to national and regional policy autonomy

Among the patterns which emerged from globalization is that economies and regions which regard themselves as competitors increasingly find the need to work together as partners in order to realize individual or regional competitive advantages.<sup>159</sup> For instance, aspects of national competition policy developed with an external front, in particular one requiring international cooperation.<sup>160</sup> In turn, such a direction, in the sense of national or regional competitive thrust by way of international cooperation, brought with it a discernment of the functions of social policy in achieving competitive industrial policy objectives in the broader multilateral context.<sup>161</sup>

But, although national or regional considerations may determine adequately the scope of complementarities between, for instance, trade liberalization, economic development and environmental protection,<sup>162</sup> the same

<sup>157</sup> Such as: (1) increased emphasis on the liberalization of investment and services and on technological cooperation; (2) gradual harmonization of national policies with an impact on trade and investment; and (3) inclusion of new spheres such as environment, competition, labour standards, the liberalization of regional labour markets and monetary union. *Id.*

<sup>158</sup> *i.e.*, to complement global multilateralism. *Id.*

<sup>159</sup> See OECD Policy Brief No. 3-1997, "New Directions for Industrial Policy, Organization for Economic Co-operation and Development (OECD), 1997. See also, Note by the UNCTAD Secretariat, High Level Segment, "Globalization, Competition, Competitiveness and Development," Trade and Development Board, 44th Session, Geneva, 13 October 1997.

<sup>160</sup> See, *inter alia*, Resolution on the Report of the Group of Experts on Competition Policy in the New Trade Order: Strengthening International Cooperation and Rules (COM(95)0359 - C4-0352/95), European Parliament; Comm. External Economic Relations (94), OJ No. C 362, 02/12/1996 p. 0243; Report of the Group of Experts on Competition Policy in the New World Trade Order (COM(95)0359 - C4-0352/95); Commission Communication to the Council "Towards an International Framework of Competition Rules" COM(96)0284; Report of the Commission on Competition Policy - 1994 ((OJ C 65, 4.3.1996, p. 90.)), and in particular the section on "International Aspects".

<sup>161</sup> See *Id.*; See also, Commission Communication on "The Global Challenge of International Trade: A Market Access Strategy for the European Union" (COM(96)0053); Report of the Group of Experts on Competition Policy in the New World Trade Order (COM(95)0359 - C4-0352/95), *supra* note 160; Commission Communication to the Council "Towards an International Framework of Competition Rules" COM(96)0284, *supra* note 160; Report of the Commission on Competition Policy - 1994, *supra* note 160, and in particular the section on "International Aspects"; Resolution on the World Trade Organization (WTO), European Parliament; Comm. External Economic Relations, OJ No. C 362, 02/12/1996 p.; Opinion of the Economic and Social Committee on "The Global Challenge of International Trade: A Market Access Strategy for the European Union", Economic and Social Committee; Sect. for Ext. Relations Trade and Development Policy (87), OJ No. C 056, 24/02/1997 p. 0047, re: Trade and Competition Policies; Trade and Investment; Trade and Social Context; Trade and Environment.

<sup>162</sup> *e.g.*, to what extent trade restrictions may be implemented to promote environmental concerns; in EU context, see the interaction between Arts. 30, on free movement of goods, with Art. 36, on derogations founded on grounds of environmental protection.



approach would not suffice in the international or multilateral context where the parameters of each individual policy must find wider acceptance.<sup>163</sup> Also, while globalization and liberalization have tended to reduce the policy autonomy at national and regional level, no coherent global policy structure covering all relevant areas exists as yet.<sup>164</sup>

### C. Suggested approaches towards coherence

It is widely held that coherence in global policy-making can be achieved through a new form of international cooperation addressing, "by coordinated action at the global level, many policy concerns that can no longer be effectively addressed at the national or regional level".<sup>165</sup> In particular, international frameworks have been advocated both for the regulatory environment governing the activities of private firms as well as for macro-management.<sup>166</sup> Some of the

<sup>163</sup> e.g., to what extent may market access be denied as sanction for failure to observe environmental protection measures taking place elsewhere in the world; see, in particular, Art. XX of GATT 1994, under which it does not appear possible for a WTO member to take extra-jurisdictional trade measures against other WTO members to protect extra-jurisdictional environmental resources. Thus, the WTO Committee, albeit still continuing its work on the matter, has already underscored the importance of policy coordination at national level in the area of trade and environment. See also Report by the UNCTAD Secretariat, "Positive Measures to Promote Sustainable Development, Particularly in Meeting the Objectives of Multilateral Environmental Agreements", Trade and Development Board, Commission on Trade in Goods and Services, and Commodities, Expert Meeting on Positive Measures to Promote Sustainable Development, Particularly in Meeting the Objectives of Multilateral Environmental Agreements, Geneva, 3-5 November 1997. As regards investments, see e.g., Decision of the OECD Council of Ministers of 24 May 1995 to enter without delay into negotiations on the conclusion of a Multilateral Investment Agreement between the 25 OECD states, with the objective of working out a comprehensive framework agreement, with high standards of liberalization.

<sup>164</sup> See detailed discussions below.

<sup>165</sup> UNCTAD IX Report, *supra* note 1, at ¶ 109. See also Opinion of the Economic and Social Committee on "Employment, Competitiveness and Economic Globalization", *supra* note 11. This movement recognizes that "while difficulties whose origins lie in the trade fields cannot be redressed through measures taken in the trade field alone, there are nevertheless interlinkages between the different aspects of economic policy". Among the expected results of this evolution, in addition to such greater coherence, is the reinforced surveillance of national or regional policies under the rules-based multilateral trading system.

<sup>166</sup> In the past, there have been diverse efforts at improving the international coordination of macro-economic policies in IMF, the G-10, the G-7 and the G-5 (*Id.*).

elements of such an international framework identified as critical relate to: (1) trade; (2) international investment; and (3) money and finance.<sup>167</sup>

As regards the approaches, the views differ. One view holds that the goal of attaining "a symmetrical and effective surveillance" of national policies requires global governance and would necessarily touch on difficult national sovereignty issues and require collective participation by all countries.<sup>168</sup> It is pointed out, however, that such difficulties are "common to all aspects of global governance and were successfully dealt with in the case of trade".<sup>169</sup> The GATT/WTO is, therefore, cited as an example of the "approaches that made for success", able to provide guidance as regards aspects of global governance other than trade.<sup>170</sup> Another view strongly opposes the extension of multilateral trade disciplines to non-trade areas.<sup>171</sup>

The need for coherence in global policy-making was explicitly recognized in the Marrakesh Ministerial Declaration which accompanied the Agreement on WTO.<sup>172</sup> There is an indication that the strengthened multilateral trading system has the capacity to contribute to more effective policy surveillance albeit the modalities of such surveillance has been left open.<sup>173</sup>

### D. The issue of structural adjustments or transitional impacts

Contraposed to the spectrum of arguments calling for coherence in global policy-making and the loss of national or regional policy autonomy is the issue

<sup>167</sup> *Id.*, at ¶ 109. See Resolution on the Report of the Group of Experts on Competition Policy in the New Trade Order: Strengthening International Cooperation and Rules (COM(95)0359 - C4-0352/95), *supra* note 160; Report of the Group of Experts on Competition Policy in the New World Trade Order (COM(95)0359 - C4-0352/95), *supra* note 160; Commission Communication to the Council "Towards an International Framework of Competition Rules" COM(96)0284; Report of the Commission on Competition Policy - 1994, *supra* note 160, and in particular the section on "International Aspects"; Opinion of the Economic and Social Committee on the "Global Harmonization of Direct Investment Regulations", Economic and Social Committee; Sect. For Ext Relations Trade and Development Policy (87), OJ No. C 153, 28/05/1996 p. 0055; Resolution on the Communication from the Commission entitled: "A Level Playing Field for Direct Investment World-wide" (COM(95)0042 - C4-0118/95), European Parliament; Comm. External Economic Relations (94), OJ No. C 017, 22/01/96 p. 0175; Communication from the Commission entitled: "A Level Playing Field for Direct Investment World-wide" (COM(95)0042 - C4-0118/95).

<sup>168</sup> *Id.*, at ¶ 114. See also OECD Policy Brief No. 6-1998, "Open Markets Matter: The Benefits of Trade and Investment Liberalization," Organization for Economic Co-operation and Development (OECD), 1998.

<sup>169</sup> Within the framework of WTO, governments "have already accepted a major loss of policy autonomy by agreeing to restrict the use of trade-policy instruments in the context of multilaterally agreed commitments". *Id.*, at ¶ 113.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*, at ¶ 215.

<sup>172</sup> *Id.*, at ¶ 112; See also Agreement Establishing the World Trade Organization (WTO), art. III(5).

<sup>173</sup> *Id.*

of structural adjustments that are felt and need to be addressed at the local level.<sup>174</sup> On the one hand, as economies are increasingly becoming interdependent and integrating at various levels, policies implemented in the internal sphere may, as they often do, have repercussions on the external front, with spill-over effects being felt in other economies.<sup>175</sup> On the other hand, the accelerating pace of liberalization initiatives, by rapidly breaking down obstacles to trade, are not only widening market access opportunities but also bringing changes in the patterns of trade, production and financing as industries in all countries<sup>176</sup> seek to adapt their positions to the growing pressures of competition.<sup>177</sup>

Thus, in many markets undergoing significant changes, national governments straddle between two policy areas that are in dynamic tension: they must address the need for structural adjustment policies, necessarily at local level, as well as policy integration or complementarities at international or multilateral level.<sup>178</sup> While the international environment must be imbued with some degree of rigidity for predictability and certainty, sufficient regard must be given to national diversity and different levels of development for a

<sup>174</sup> See *Id.*, at ¶ 141.

<sup>175</sup> The argument supports the view on loss on national policy autonomy, calling for some internationally accepted norm to govern the actions of individual economies (See *Id.*, at ¶ 111, emphasizing the need for "greater coherence and consistency among policies in interrelated fields of trade, investment, money and finance," emphasizing the long recognition given to the "close connections, and thus the potential for mutually disruptive effects, of policies in these fields").

<sup>176</sup> See *Id.*, in particular pars. 81-83, on the effects of the progressive integration of many countries in Asia and Latin America into the global network of financial markets, involving sharp increases in capital inflow and abrupt occurrence of volatility owing to abrupt shifts in the sentiments of external investors. In this connection, it is observed (*Id.*, at ¶ 83): "Surges in capital inflows are usually erratic and present the authorities concerned with difficult dilemmas." By now, the consequences of this developing phenomenon has been felt in the Asian Financial Crisis that has not yet subsided. From the Philippine perspective, for instance, this phenomenon has been thus described: "It is the phenomenon of massive amounts of capital flowing across national boundaries at lightning speed, bloating economies into fragile bubbles as they rush in and shaking economies to their foundations as they are withdrawn (Keynote Address of the President of the Republic of the Philippines, H.E. Joseph E. Estrada, "Towards a True ASEAN Community", Opening Ceremonies of the 31st ASEAN Ministerial Meeting, Manila, 24 July 1998). See Opinion of the Economic and Social Committee on "Employment, Competitiveness and Economic Globalization", *supra* note 11, ¶ 1.1.8., which expressed apprehension over the situation, even before the Asian Financial Crisis unfurled: "This trend is supported by a globalized financial market. With the help of new communication technologies a short-term investment opportunity arising anywhere in the world can be exploited in seconds, and transaction volumes are many times greater than financial flows in the real economy. The trade is increasingly dominated by funds operating alongside the traditional banking system. This trend, in conjunction with the introduction of multifarious and complex innovative financial derivatives, is giving financial flows a dangerous life of their own, unconnected with real economic processes."

<sup>177</sup> See also OECD Policy Brief No. 6-1998, "Open Markets Matter: The Benefits of Trade and Investment Liberalization", *supra* note 168, which refers to "[t]he immediacy of pains that liberalization can generate". This is an argument calling attention to transitional impacts or structural adjustments necessitated by peculiar circumstances obtaining at the local level.

<sup>178</sup> See UNCTAD IX Report, *supra* note 1, ¶ 172, for examples for possible structural adjustment policies.

range of necessary flexibility.<sup>179</sup> In fact, this perception has gained ground among a substantial number of economic players in the world market and efforts are underway for creative international cooperation that endeavours at balancing both considerations, providing another track towards coherence.<sup>180</sup>

#### E. Another track towards coherence

Because the opportunities and challenges arising from globalization are shared and interdependent, it is common ground that unilateral approaches have been rendered largely inadequate, at times unwise. Appropriate ways of addressing globalization by economies, lying simultaneously at individual, regional and world levels, are constantly being sought in the area of cooperative efforts, focusing on key and closely intertwined challenges and opportunities in areas of common action. Joint assessment of individual, regional and global outlook are being practised in order to identify strong growth prospects and prudent policies, as well as trends towards deeper integration and increased diversification of sectors in the market. Thus, joint efforts are directed to ensure individual, regional and global growth.

A common recognition of beneficial policies and the identification of need for policy adjustments on a timely basis before delays cause market corrections to become costly is another key area for partnership dialogues.<sup>181</sup> Within the context of this model, the primary burden for policy adjustments, of course, falls upon the individual economy's domestic or local policies.<sup>182</sup> However, proponents of this model hold and practice the view that increasing economic interdependence makes it important for the dialogue partners in the field of international relations to take advantage of opportunities for enhanced cooperation, where appropriate or useful, in particular in addressing potentially adverse effects on others.<sup>183</sup>

Moreover, in managing structural adjustments or transitional impacts, governments must accept limits to their own capabilities in solving the questions posed by an interconnected world.<sup>184</sup> Private participation in all levels of international

<sup>179</sup> See *Id.*, at ¶ 168, for "a degree of flexibility with respect to putting in place trade regimes which are consistent with WTO membership"; ¶ 171, flexibility for effective participation in the international trading system by being given room to develop strength in "their capacity in the areas of trade policy formulation and negotiation and institutional adaptation, since the depth and range of expertise required are often not available to the developing countries", etc.

<sup>180</sup> This is the subject of Section IV of this paper.

<sup>181</sup> Joint Ministerial Statement, The Fourth APEC Finance Ministers Meeting, Asia-Pacific Economic Cooperation (APEC), Cebu, Philippines, 5-6 April 1997, at ¶ 5.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> APEC Leaders' Declaration, "Connecting the APEC Community", Asia-Pacific Economic Cooperation (APEC), Vancouver, Canada, 25 November 1997, at ¶ 11.

cooperation is, therefore, acknowledged to be indispensable.<sup>185</sup> Also, a salient feature of this model of international cooperation is that voluntary principles and collaborative initiatives constitute its central ingredients, giving due respect for "diversity and different levels of development."<sup>186</sup> As such, it contrasts sharply with the orientation towards global governance which aspires for internationally binding and uniform rules from above (*i.e.*, of a supranational framework), rather than originating these from below (*i.e.*, through national initiatives), extending deeply down to the private sector. It accords, moreover, with the principle of "common but differentiated responsibility."<sup>187</sup> There is a potential, however, for the two directions to converge inasmuch as voluntary principles and collaborative initiatives also promote harmonization of approaches and standards.

#### IV. VOLUNTARY PRINCIPLES AND COLLABORATIVE INITIATIVES: IMPLICATIONS OF THE APEC MODEL ON THE ASEM PROCESS

Focus may now be turned to an examination of APEC's mechanism for achieving international cooperation to advance shared objectives and to avoid delicate problems of policy tensions and conflicts, through the adoption of voluntary principles and collaborative initiatives. Insofar as APEC seeks to carry forward through voluntary liberalization the rules-based multilateral trading system beyond the scope attained by the Uruguay Rounds, its efforts must be seen in the backdrop of the WTO Built-in Agenda and Work Programme. This will provide a basis for an assessment of the prospects for convergence between regional and multilateral liberalization initiatives towards a single global trading system through the platform of the ASEM process.

##### A. Policy complementation issues within the WTO Built-in Agenda and Work Programme

The existing WTO commitments of member countries require full implementation, according to WTO's built-in agenda for further negotiations and reviews in accordance with agreed time-frames.<sup>188</sup> Declared as priority direction, this was identified as the key to enable the WTO to fulfill its objectives and an imperative requirement for the credibility of the multilateral trading system, indispensable for maintaining the momentum for expanding global trade, fostering job creation and raising standards of liv-

<sup>185</sup> *Id.*

<sup>186</sup> Joint Ministerial Statement, The Fourth APEC Finance Ministers Meeting, *supra* note 181, at ¶ 11.

<sup>187</sup> which has given guidance, *e.g.*, in approaching policy questions in such global policy areas as the environment (see UNCTAD IX Report, *supra* note 1, ¶ 229). This approach also affords a recognition of "differential impacts on countries" a requirement of a true partnership for development in the context of globalization, as acknowledged in the Midrand declaration, adopted at the Ninth Session of the United Nations Conference on Trade and development, Midrand, South Africa, 11 May 1996, ¶ 9.

<sup>188</sup> Ministerial Declaration, Second Session of the Ministerial Conference of the World Trade Organization (WTO), Geneva Switzerland, 18-20 May 1998, ¶ 8.

ing in all parts of the world.<sup>189</sup> Constituting a major share of the WTO Work Programme are a number of provisions calling for future negotiations in various fields of trade and trade-related policies and activities (the WTO Built-in Agenda).<sup>190</sup> WTO Members are committed to engage in the necessary analysis and exchange of information to allow members to understand the issues involved and to identify their interests before undertaking agreed negotiations and reviews.<sup>191</sup>

In the area of policy complementarities, and towards achieving greater coherence in international economic policy-making, working groups within the WTO have been established to examine:

- (1) the scope of complementarities between trade liberalization, economic development and environmental protection, underlining the importance of policy coordination at the national level in the area of trade and environment;<sup>192</sup>
- (2) the interaction between trade and competition policy, including anti-competitive practices, while taking full account of the development dimension and drawing upon the efforts of the Working Group on Trade and Investment, if necessary;<sup>193</sup>

<sup>189</sup> *Id.*

<sup>190</sup> Ministerial Declaration on Trade in Information Technology Products, World Trade Organization (WTO), Singapore, 13 December 1996, ¶ 19.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*, at pars. 16 and 20. The decision to create the Committee on Trade and Environment (CTE), to deal with policy complementarities between trade and environment, was spurred by wide-spread recognition that the use of trade measures, in particular on the basis of provisions in Multilateral Environmental Agreements (MEAs), could lead to a large number of trade disputes under the WTO. This, however, had not materialize, albeit the arguments on this point deserve serious consideration. See Communication from the Association of South-East Asian Nations (ASEAN), "The Relationship between the Provisions of the Multilateral Trading System and Trade Measures for Environmental Purposes, including those pursuant to Multilateral Environmental Agreements", Committee on Trade and Environment, World Trade Organization (WTO), 24 July 1996, p. 2. Alternative directions are suggested in the Report by the UNCTAD Secretariat, "Positive Measures to Promote Sustainable Development, Particularly in Meeting the Objectives of Multilateral Environmental Agreements", Trade and Development Board, Commission on Trade in Goods and Services, and Commodities, Expert Meeting on Positive Measures to Promote Sustainable Development, Particularly in Meeting the Objectives of Multilateral Environmental Agreements, Geneva, 3-5 November 1997. The task of the CTE are: (1) to identify the relationship between trade measures and environmental measures in order to promote sustainable development and (2) to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system.

<sup>193</sup> *Id.*, at ¶ 20(ii). As regards the interaction between competition policy and trade policy, among the suggested directions for examination by the Working Group relate to: (1) the effects of competition policy on trade policy, including the application by one WTO Member of its competition law and policy and the influence this exerts on trade performance and trade-policy setting of another WTO Member, with special emphasis to be devoted to the situation and experience of developing countries; and (2) the effects of trade policy (*e.g.* trade Defense measures) on competition, in particular in the domestic market of a WTO Member implementing such trade policy or measures, also with particular emphasis to be given to the situation and experience of developing countries.

(3) the relationship between trade and investment, including current policy attitudes towards Foreign Direct Investment (FDI) in relation to economic development and growth;<sup>194</sup>

(4) clarification of WTO rights and obligations in relation to regional trade agreements, under the principle of the primacy of the multilateral trading system and the commitment to ensure that regional trade agreements are complementary to it and consistent with its rules;<sup>195</sup> and

(5) the implications of WTO's responsibilities for its cooperation with the Bretton Woods institutions (IMF-WB) as well of the forms such cooperation might take, with a view to achieving greater coherence in global economic policy-making.<sup>196</sup>

While the conclusion of those efforts at examining policy complementarities at WTO level is nowhere near in sight, there is a clearly demonstrated recognition of the seriousness of the tensions and conflicts arising from a lack of coherent approach under the multilateral trading framework to the problems of policy complementation. In the context of the multilateral review and assessment of trade policies, declarations on policy complementarities and authoritative guides to policy complementation had been coming,<sup>197</sup> albeit slowly.

An example of this is the declaration made in the context of the WTO's commitment to the observance of internationally recognized core labour standards and the view that the economic growth and development fostered by increased trade and further trade liberalization should contribute to the promotion of labour standards. It states that labour standards must not be used for protectionist purposes and that "the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question."<sup>198</sup> The declaration concludes, however, that the International Labour Organization (ILO) is the competent body to deal with labour standards, affirming WTO's support for its work in promoting them.<sup>199</sup>

In the meantime, in most areas of policy tensions or conflicts, the alternatives to negotiation under the multilateral framework of the WTO lie in unilateral measures and bilateral or multilateral agreements which are usually

<sup>194</sup> *Id.*, at ¶ 20(i).

<sup>195</sup> *Id.*, at ¶ 7.

<sup>196</sup> Ministerial Declaration, Second Session of the Ministerial Conference of the World Trade Organization (WTO), *supra* note 188, ¶ 3.

<sup>197</sup> World Trade Organization Ministerial Declaration, World Trade Organization (WTO), *supra* note 188, at ¶ 4.

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* Regarding views that the WTO should also address social policy issues, see Resolution on the Introduction of a Social Clause in the Unilateral and Multilateral Trading System of 9 February 1994 (OJ C 61, 28.2.1994, p. 89).

regional in orientation.<sup>200</sup> In respect of inter-regional cooperation, the APEC and ASEM processes may be mentioned, both of which aim to complement the WTO.

## B. Voluntary principles and Collaborative initiatives.

Central to the adoption of voluntary principles and collaborative initiatives within the APEC<sup>201</sup> Cooperation Framework is the element of voluntarism, to give due respect to diversity and levels of development of the member economies<sup>202</sup> and to harness the community spirit of the member economies, most of whom are Asian. Voluntary principles and collaborative initiatives are used as guides in pursuing individual and regional efforts in relevant areas of market development.

### a. Voluntary principles.

Willingness to consider favourably opportunities for voluntary liberalization through individual action plans is essential to the adoption of voluntary principles.<sup>203</sup> Individual actions plans define the state-of-play of the access regimes for individual economies, and describe commitments and intentions for moving to liberalize restrictions, facilitate trade, and establish business-friendly policy regimes.<sup>204</sup> They seek to describe in a transparent manner future directions that can guide business

<sup>200</sup> See Decision of the OECD Council of Ministers of 24 May 1995 to enter without delay into negotiations on the conclusion of a Multilateral Investment Agreement between the 25 OECD states, *supra* note 163. As to the objections of developing countries to the extension of multilateral disciplines to non-trade areas and the ground usually invoked, see UNCTAD IX Report, *supra* note 1, ¶ 215, concluding: "Thus, the challenge facing the consensus-building process is to ensure that the development implications of various approaches and scenarios are fully understood, so that the interests of developing countries can be adequately taken into account."

<sup>201</sup> APEC brings together NAFTA (United States, Canada and Mexico), seven AFTA/ASEAN members (Malaysia, Indonesia, Singapore, Thailand, Brunei Darussalam, the Republic of the Philippines), Papua New Guinea (which has lately also announced a proposal for permanent associate status with ASEAN), ANZCERTA/CER (Australia and New Zealand), China, Japan, South Korea, Chinese Taipei (Taiwan), and Chile. Russia, now a member designate, will assume a full Asia-Pacific economic identity as it joins APEC at Kuala Lumpur in November 1998, together with Vietnam and Peru, a development which will bring APEC membership to 21 and integrating a trade potential which, in 1997, had a combined GDP of 14 trillion dollars, representing 58 percent of world income and 47 percent of world trade. See APEC Member Economies: Key Indicators, APEC Secretariat, 1998.

<sup>202</sup> Joint Ministerial Statement, The Fourth APEC Finance Ministers Meeting, *supra* note 181, ¶ 11.

<sup>203</sup> See Chairman's Statement, The APEC Ministers Responsible for Trade Meeting, Asia-Pacific Economic Cooperation (APEC), Canada, 8-10 May 1997, p. 2.

<sup>204</sup> *Id.*, at ¶ 2. Individual action plans result from a continuous process of finding ways by which voluntary liberalization in the Asia-Pacific region, complemented by trade facilitation measures and economic and technical cooperation, could achieve these objectives and contribute to multilateral liberalization of trade and investment in a manner complementary to WTO.

and investment decisions. Principles, describing core conditions<sup>205</sup> which they are designed to attain, are developed for voluntary adoption by (1) the member economies, (2) the private sector and, where appropriate, (3) the relevant international or multilateral institutions.

(1) Interested member economies translate voluntary principles into Individual Actions Plans (IAPs), subject to a commitment towards constant improvement and an agreement to report on actions taken to implement commitments set out therein. To member economies, the heart of individual action plans is the process of identifying sectors of the economy where early voluntary liberalization would have positive impact on trade, investment, and economic growth in individual participating economies as well as in the region, and generating recommendations on how this can be achieved.<sup>206</sup>

(2) The important role of regional and international private sector groupings not only as advisors but also as partners in achieving common objectives, especially in the formation and adoption of voluntary principles, is recognized.<sup>207</sup> Therefore, in developing concrete and practical measures towards accelerating the development of markets, private sector participation is also stimulated on the basis of voluntary principles (and collaborative initiatives) in order to further shared objectives.

(3) Voluntary principles are disciplines for attaining certain core conditions necessary to attain particular voluntary trade and investment liberalization objectives. International or multilateral institutions may, therefore, play catalytic roles in assisting APEC member economies in achieving the core conditions and are, as appropriate, called upon, also on voluntary basis, to assist the concerned economies in the relevant areas.<sup>208</sup>

#### b. Collaborative initiatives

The starting point for collaborative initiatives is the voluntary adoption of standards and principles among the member economies, while jointly working towards promoting their wider application. Collaborative initiatives provide effective mechanisms for joint training and funding, the exchange of expertise, information and best

<sup>205</sup> *Id.*; see, e.g., Voluntary Principles for Facilitating Private Sector Participation in Infrastructure, annexed to Joint Ministerial Statement, The Fourth APEC Finance Ministers Meeting, Asia-Pacific Economic Cooperation (APEC), *supra* note 181, reaffirmed in APEC Leaders' Declaration, "Connecting the APEC Community," *supra* note 184.

<sup>206</sup> *Id.*, citing APEC Economic Leader Declaration, "From Vision to Action," Subic Bay, Philippines, November 1996. Agreements are made to commit the importance of taking individual action plans forward progressively and continuously, with effective means to assess and review them over time and with target dates to provide information on improvements to the plans. Formal guidelines are used to enhance the transparency and comparability of actions plans, subject to on-going work to continuously improve as well the guidelines themselves.

<sup>207</sup> *Id.*, at ¶ 14. See also, Joint Ministerial Statement, The Fourth APEC Finance Ministers Meeting, Asia-Pacific Economic Cooperation (APEC), Cebu, Philippines, 5-6 April 1997, at ¶ 28.

<sup>208</sup> *Id.* See also, Joint Ministerial Statement, The Fourth APEC Finance Ministers Meeting, *supra* note 181, at ¶ 16.

practices among the member economies.<sup>209</sup> They entail a potential to promote harmonization of approaches and standards, consistent with voluntary principles.<sup>210</sup>

Collaborative initiatives constitute valuable undertakings that will help individual economies and regions to respond to the challenges of globalization and technological innovation.<sup>211</sup> Being premised as well on the voluntary element, participation by individual economies in collaborative initiatives is based "on needs and interests."<sup>212</sup> Collaborative initiatives may also result from on-going efforts in other fora, both regional and international, for which due regard is given by the APEC forum.<sup>213</sup> Like voluntary principles, collaborative initiatives are developed among (1) member economies; (2) the private sector; and (3) international or multilateral institutions.

(1) Member economies undertake to establish mechanisms for actively coordinating with lead economies for purposes of refining work on collaborative initiatives. Recognizing business views as important sources of feedback, they may be requested to provide information on periodic basis regarding the responsiveness of individual action plans to business priorities, and to exercise and continue their monitoring role on an on-going basis,<sup>214</sup> with willingness on the part of policy planners to respond constructively to their recommendations.

In particular, the business sectors are to be assured by policy planners of the desire to work closely with them respecting especially their recommendations on facilitating the movement of business people, enhancing investment flows, strengthening investment protection through transparency, predictability, arbitration and enforcement of contracts, aligning professional standards in the region, involving the private sector in infrastructure planning, the development of policies supportive of small- and medium-sized enterprises, and encouraging greater business sector participation in economic and technical cooperation.<sup>215</sup>

(2) Recognizing the important role of the business in implementing collaborative initiatives, the greatest business sector participation in liberalization and facilitation of trade and in economic and technical cooperation becomes an imperative element of the process.

<sup>209</sup> Joint Ministerial Statement, The Fourth APEC Finance Ministers Meeting, *supra* note 181, ¶ 12.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> Chairman's Statement, The APEC Ministers Responsible for Trade Meeting, *supra* note 203, at 3.

<sup>215</sup> *Id.* Close collaboration among sectoral colleagues and the business sector in pursuing agreed work programmes, giving importance to technological solutions to implementation problems and incorporating therein best practices of business and government, is encouraged.

(3) The role of international and regional multilateral institutions is acknowledged as vital in helping individual economies implement various collaborative initiatives to be undertaken.<sup>216</sup> In particular, efforts of international and regional multilateral institutions in documenting best practices is encouraged.

### C. The APEC process as approaching the changing paradigm in international cooperation

With the ever expanding scope of liberalized trading of in the rules-based multilateral trading system, a widening area of international trade is being incrementally but steadily covered by tightened disciplines. As previously discussed, there is movement as well towards achieving greater coherence in global economic policy-making not only under the auspices of the WTO but also as a result of efforts towards strengthening the relationship between the activities of the WTO and the Bretton Woods institutions.<sup>217</sup>

The area of international economic cooperation lying outside the framework of the multilateral trading system, whether bilaterally or multilaterally agreed, is correspondingly being narrowed down. This is of paramount importance, in particular to small and medium sized trading nations, which may now conduct trade within the scope of the multilateral trading system according to multilaterally agreed concepts, principles and rules rather than resorting to bilateral negotiating power.<sup>218</sup>

Moreover, besides providing a forum for negotiations among WTO Members concerning their multilateral trade relations in matters treated under the agreements embodied in the Annexes to the Marrakesh Agreement, the WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations.<sup>219</sup> Thus, much of what previously were within the scope of bilateral or multilateral cooperation or negotiations may now be addressed within the context of the WTO.<sup>220</sup> The paradigm of international economic cooperation has, therefore, substantially changed, and now operates within a frontier consistent with and complementary to the WTO.

<sup>216</sup> Joint Ministerial Statement, The Fourth APEC Finance Ministers Meeting, *supra* note 181, at ¶ 27.

<sup>217</sup> *Id.*

<sup>218</sup> Note by the GATT Secretariat submitted to the Committee on Trade and Development, "Developing Countries and the Uruguay Round: An Overview", World Trade Organization (WTO), November 1994.

<sup>219</sup> Ministerial Declaration, Second Session of the Ministerial Conference of the World Trade Organization (WTO), *supra* note 188, at ¶ 9. Thus, there is an option to bring within the multilateral trading system trade negotiations lying outside its framework.

<sup>220</sup> A framework for the implementation of results of negotiations among WTO Members concerning their multilateral relations may be provided by the WTO, as may be decided by the WTO Ministerial Conference (Ministerial Declaration, Second Session of the Ministerial Conference of the World Trade Organization (WTO), *supra* note 188, at ¶ 9).

The APEC process, like ASEM, complements the WTO by carrying forward international economic cooperation beside the WTO, but consistent with it.<sup>221</sup> Where appropriate, it also provides a foundation for participation beyond the Asia-Pacific region, with the possibility for incorporating its accomplishment into the WTO.<sup>222</sup> It does so by securing commitments for liberalization, phased-in within reasonable time-frames as may be needed, through voluntary principles translated into individual (rather than collective) action plans and collaborative initiatives based on particular needs and interests of member economies.<sup>223</sup>

APEC believes that all WTO Members need to join in the leadership to further concrete improvements to conducting world trade. Complementing the WTO, by promoting liberalization and facilitation of trade and investment, as well as economic and technical cooperation, would foster jobs and economic growth of the member countries. To APEC, this means urging all WTO Members towards the integration of new areas of trade in goods and services in the WTO with significantly improved market access and national treatment commitments, and with an openness for phase-in commitments for liberalization within reasonable time-frames.<sup>224</sup>

The Asia-Pacific drive towards greater trade and investment liberalization has led to the successful conclusion of an Information Technology Agreement (ITA) and the WTO Agreement on Basic Telecommunications Services in 1996.<sup>225</sup> In addition, participants in the ITA have agreed to work together to broaden participation in the agreement and in expanding product coverage under the rubric of "ITA II".<sup>226</sup> In 1997, APEC urged all WTO Members to work together towards a full MFN financial services agreement in the WTO with significantly improved market access and national treatment commitments from a broad number of participants.<sup>227</sup> In May, 1998, the Second Session of the Ministerial Conference of the WTO declared and welcomed the successful conclusion of the

<sup>221</sup> having full regard to: (1) encompassing, to the extent possible, tariff and non-tariff dimensions and elements of facilitation and economic and technical cooperation; (2) the fullest private sector input, consultation and support; and (3) critical mass, by developing initiatives supported by significant groups of APEC members), taking into account the different levels of economic development and diverse circumstances of APEC member economies (Chairman's Statement, The APEC Ministers Responsible for Trade Meeting, *supra* note 203, at 2). On APEC's aim of deepening and broadening the outcome of the Uruguay Round, see APEC Economic Leaders' Declaration, "APEC Leaders Economic Vision Statement", Asia-Pacific Economic Cooperation (APEC), Blake Island, Seattle, 20 November 1993, at ¶ 15.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> Chairman's Statement, The APEC Ministers Responsible for Trade Meeting, *supra* note 203, at ¶ 6.

<sup>225</sup> *Id.* The EC is a party to the ITA. See Ministerial Declaration on Trade in Information Technology Products, World Trade Organization (WTO), Singapore, 13 December 1996.

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

negotiations on financial services.<sup>228</sup> On the national front, the Osaka Action Agenda of APEC Member Economies contain a broad range of voluntary liberalization measures.<sup>229</sup>

By its strategy, which emphasizes recognition of the diverse interests and circumstances of its membership, APEC claims to have given rise "to entirely new approaches to international economic cooperation," which addresses regional challenges and opportunities "in an integrated fashion so that all members develop the capacity to participate fully in and benefit from this cooperation."<sup>230</sup>

#### D. ASEM<sup>231</sup>

The EU recognizes that the rapidly growing economies of Asia's industrial countries, as newly emerging markets and trading powers with enormous potential, are of vital importance for the Community's external trade. It was in this context that the Community has recently taken major new initiatives in its relations with Asia,<sup>232</sup> under the banner of "The New Asia Strategy," whose main instrument is the ASEM process.

<sup>228</sup> Ministerial Declaration, Second Session of the Ministerial Conference of the World Trade Organization (WTO), *supra* note 188, at ¶ 2.

<sup>229</sup> designed to be achieved by the year 2010 for industrialized member economies and by 2020 by the developing member countries. See The Osaka Action Agenda, Implementation of the Bogor Declaration, Asia-Pacific Economic Cooperation (APEC), (undated).

<sup>230</sup> APEC Leaders' Declaration, "Connecting the APEC Community", *supra* note 184, at ¶ 4.

<sup>231</sup> The ASEM process brings together, on the one hand, Japan, China, South Korea, and ASEAN and, on the other, the European Community and the EU Member States, under the Asia-Europe Cooperation Framework, adopted at ASEM 2.

<sup>232</sup> In December 1994, the Essen European Council approved a new Asia strategy for developing relations with the Asian countries in trade, industrial cooperation, promotion of investment, inter-company cooperation and research and development both on bilateral basis and in a broader regional framework. The first Euro-Asia Summit in Bangkok in early March 1996 when the Community and Asia's 10 leading economic powers defined (1) a market-economy approach, (2) non-discriminatory trade liberalization, and (3) open regionalism, as the bases of closer Euro-Asia Partnership; they also agreed to step up consultations within the World Trade Organization and to mount concrete action programmes in areas such as promotion of investment and the simplification of customs procedures.

As far as concerns the ASEAN, there was a shift from the 1980 ASEAN-EC Cooperation Agreement<sup>233</sup> to the new Asia-Europe Cooperation Framework, approved in April 1998, at the Second Asia-Europe Meeting (ASEM 2) Meeting, an offshoot the implementation of the Commission's Option 2<sup>234</sup> recommendation for dealing with the ASEAN. In terms of scope, the areas of cooperation identified in the Asia-Europe Framework Agreement<sup>235</sup> are substantially the same as those agreed upon in the First Asia-Europe Meeting (ASEM 1)<sup>236</sup> which, if compared

<sup>233</sup> *Supra* note 104. The open-ended nature of the 1980 ASEAN-EC Cooperation Agreement allows it and the Asia-Europe Cooperation Framework to stand together. In particular, as regards *e.g.* economic cooperation, it embodies a clause which provides: "Article 3. *Economic cooperation.* - 1. The parties, in the light of the complementarity of their interests and of their long-term economic capabilities, shall bring about economic cooperation in all fields deemed suitable by the parties." See, however, Resolution on the Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: "Creating a new dynamic in EU-ASEAN relations", *supra* note 117, pars. 4. and 5, where the European Parliament: "4. Notes that its own rights of codetermination seem to have been undermined by a Joint Declaration from the 12th ASEAN-EU Ministerial Meeting on 13/14 February 1997, followed by the Council Conclusions of 24 March 1997 on the Communication, with the choice of Option II of the Communication which approved a package of economic and social cooperation actions, this being the alternative to a new third-generation agreement with ASEAN; 5. Notes too that the Council Conclusions of 24 March 1997 on the Communication stated that, in any new obligations exceeding the 1980 Agreement, the Commission will be authorized to negotiate sectoral protocols to the EC-ASEAN Agreement in the case of sectoral obligations or a general protocol, and points out that it must be consulted on such protocols."

<sup>234</sup> The Option 2 formula for the new EU-ASEAN dynamic has the following elements: (1) an active partnership, based on a declaration and action plan signed by the EU and its Member States and the ASEAN Member States (this element is preferred because it "affords flexibility while also allowing precise focusing on the domains and sectors in which urgent action is required"; it is believed that equal partnership will allow: (a) the development of economic cooperation and (b) the promotion of respective regional markets, trade and investment (c) the identification and elimination of the obstacles in each of these fields, and (d) the creation of a solid basis for discussion of human rights problems in a climate of mutual respect); (2) closer involvement of the private sector in planning, as well as employers' and trade-union organizations in the work of the various committees, as well as the "business dialogue"; and (3) stepped-up and rationalized meetings of the AEMM (EU and ASEAN foreign ministers), SOM (senior EU and ASEAN officials), and, in particular, the EU-ASEAN joint cooperation committee, sub-committees and informal working parties, while allowing the private sector and employers' and trade-union organizations to find "a representative niche within these structures and inject new life into them." See Opinion of the Economic and Social Committee on "Creating a new dynamic in EU-ASEAN relations", *supra* note 114. Compare with Opinion of the Economic and Social Committee on Relations between the European Union and ASEAN, *supra* note 10, and Resolution on the Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee: "Creating a new dynamic in EU-ASEAN Relations" *supra* note 117.

<sup>235</sup> See ASEM Cooperation Framework, *supra* note 5, at pars. 13-15, in particular ¶ 4 as regards cooperation in the economic and financial fields; See also, Chairman's Statement of the Asia-Europe Meeting, The Second Asia-Europe Meeting, London 3-4 April 1998, pars. 9-20, in particular pars. 10-13 as regards economic cooperation.

<sup>236</sup> See Chairman's Statement of the Asia-Europe Meeting, The First Asia-Europe Meeting, Bangkok, 2 March 1996, pars. 9-17.

with the previous areas of cooperative engagement between ASEAN and the EC, as dialogue partners, indicates no significant change.<sup>237</sup>

The ASEM process is still an evolving cooperation framework. At ASEM 2, the Asia-Europe Cooperation Framework identified (1) key objectives;<sup>238</sup> (2) key priorities and major areas of Asia-Europe cooperation for the near future, including a programme of activities for the years 1998 and 1999;<sup>239</sup> and (3) a framework mechanism for the coordination and management of ASEM initiatives.<sup>240</sup> ASEM 2 also launched the Asia-Europe Vision Group, comprising

<sup>237</sup> Survey Joint Declaration, The Twelfth ASEAN-EU Ministerial Meeting, Singapore, 13-14 February 1997; Joint Declaration, The Eleventh ASEAN-EU Ministerial Meeting, Karlsruhe, 22-23 September 1994; Joint Declaration, The Tenth ASEAN-EC Ministerial Meeting, Manila, 29-30 October 1992; Joint Declaration, The Ninth ASEAN-EU Ministerial Meeting, Luxembourg, 30-31 May 1991; Joint Declaration, The Eighth ASEAN-EC Ministerial Meeting, Malaysia, 16-17 February 1990; Joint Declaration, The Seventh ASEAN-EC Ministerial Meeting, Dusseldorf, 2-3 May 1988; Joint Declaration, The Sixth ASEAN-EC Ministerial Meeting, Jakarta, 20-21 October 1986.

<sup>238</sup> *Id.*, Dialogues would have for their object: (1) modalities by which ASEM members can complement and reinforce efforts to strengthen the open and rules-based system embodied in the WTO; (2) trade, investment and other issues, relevant to economic development, including infrastructure development, including infrastructure development and sustainable economic growth and human resources development; (3) implementation of the Trade Facilitation Action Plan (TFAP) and the Investment Promotion Action Plan (IPAP), both of which were adopted at ASEM 2; (4) modalities for enhancing ASEM cooperation in strengthening financial supervision and regulation, fighting against money-laundering, enhancing macro-economic policy consultation and strengthening customs cooperation; and (5) consolidation of business dialogue, emphasizing the central role of the Asia-Europe Business Forum (AEBF) and drawing on inputs from other fora in which business interacts with the ASEM process.

<sup>239</sup> *Id.*, In terms of the key areas of cooperation in the economic and financial fields, the main anchors of the ASEM process for inter-regional economic growth are: (1) promoting economic interaction between the business sectors, with particular reference to SMEs; (2) improving the business environment for increased trade and investment; and (3) facilitating economic growth. These are supplemented by cooperation in other key areas, which consists of: (1) encouraging networking and exchanges, particularly among students, academics, scientists and cultural personalities; (2) improving dissemination of information about ASEM to the public and about the importance of closer Euro-Asian links; and (3) continuing strong support for ASEM.

<sup>240</sup> *Id.*, In order to focus and manage ASEM activities in the key areas identified under the Asia-Europe Cooperation Framework, a qualifying mechanism was established before new ASEM initiatives could be adopted, namely: (1) all new ASEM initiatives should have the support of all ASEM partners; and (2) all new ASEM initiatives should be in line with (a) the key objectives and (b) the work programme agreed at summit level. Furthermore, another mechanism is integrated into the system of qualifying proposals for new ASEM activities, prescribing a number of mandatory requirements: (1) the proposed activity should fit into the agreed priorities and should be of mutual benefit; (2) it should contribute to advance the overall objectives and perspectives of the ASEM process; (3) the participation understanding and awareness through a process of dialogue and lead to cooperation on the identification of priorities for concerted and supportive action, carry forward the key dimensions (of cooperation) with the same impetus (fostering political dialogue, reinforcing economic cooperation and promoting cooperation in other areas). It was also agreed that, as an informal process, ASEM need not be institutionalized and should stimulate and facilitate progress in other international fora. It also aims to go beyond government in order to promote dialogue and cooperation between business/private sectors of the two regions and, no less importantly, between the peoples of the two regions. It will, moreover, encourage the co-operative activities of think tanks and research groups of both regions. See ASEM Cooperation Framework, *supra* note 5.

persons of high calibre and international repute from the ASEM countries.<sup>241</sup> It will submit a report to the Foreign Ministers' Meeting in 1999 then to ASEM 3, along with the Ministers' views on its recommendations. On that basis, the Heads of State and Government, when they meet in the year 2000 (Seoul), will have before them the proposals on a vision for enhanced cooperation and on practical measures for advancing the development of ASEM.<sup>242</sup>

As regards economic cooperation, there is parallelism in substantially all of the anchors of the ASEM cooperation framework with some of the objectives of APEC, notably in terms of: (1) promoting economic interaction between the business sectors, with particular reference to SMEs; (2) improving the business environment for increased trade and investment; and (3) facilitating economic growth.<sup>243</sup>

The agenda for economic dialogues under both the ASEM and APEC processes also run parallel in terms of: (1) support for the open and rules-based system embodied in the WTO; (2) trade, investment and other issues, relevant to economic development, including infrastructure development and sustainable economic growth and human resources development; (3) trade facilitation and investment promotion; (4) inter-regional cooperation in strengthening financial supervision and regulation, fighting against money-laundering, enhancing macro-economic policy consultation and strengthening customs cooperation; and (5) consolidation of business dialogues, emphasizing the central role of a primary business forum, while drawing on inputs from other fora.<sup>244</sup>

<sup>241</sup> For a parallel development, using "the reports of the Eminent Persons Groups and the Pacific Business Forum" towards formulating policies in the cooperative framework of the community of Asia-Pacific economies, see APEC Economic Leaders' Declaration of Common Resolve, "The Bogor Declaration", Asia-Pacific Economic Cooperation (APEC), Bogor, Indonesia, 15 November 1994, ¶ 11.

<sup>242</sup> In terms of agreed principles, the ASEM process if founded on equal partnership, mutual respect and mutual benefits; and aims to be an open and evolutionary process, enhance mutual understanding and awareness through a process of dialogue and lead to cooperation on the identification of priorities for concerted and supportive action, carry forward the key dimensions (of cooperation) with the same impetus (fostering political dialogue, reinforcing economic cooperation and promoting cooperation in other areas). It was also agreed that, as an informal process, ASEM need not be institutionalized and should stimulate and facilitate progress in other international fora. It also aims to go beyond government in order to promote dialogue and cooperation between business/private sectors of the two regions and, no less importantly, between the peoples of the two regions. It will, moreover, encourage the co-operative activities of think tanks and research groups of both regions. See ASEM Cooperation Framework, *supra* note 5.

<sup>243</sup> Asia-Europe Cooperation Framework, *supra* note 5, at ¶ 14. See Asia-Pacific Framework for Strengthening Economic Cooperation and Development, Manila, Philippines, November, 1996, IV. Organizing Themes and Priorities, ¶ 1.

<sup>244</sup> *Id.*



### E. Parallel objectives, different approaches

Despite parallel objectives of the ASEM and APEC processes, one notable difference between the two cooperation frameworks lies in the approach. The cultural aspect of the ASEM cooperation framework is designed to bridge cultural diversity, aspiring thereby to promote mutual respect and enhance understanding between the two regions, underlining in particular the medium of closer people-to-people links.<sup>245</sup> The APEC principles, on the other hand, define mutual respect and equality as including respect for "diversity and the different situations of members, focusing on member economies' strengths."<sup>246</sup> It builds on the "community spirit" which regards disparities and diversities as opportunities for collaboration, and seeks to harness complementary capabilities in order to achieve shared objectives.<sup>247</sup> The APEC cooperation model thrives on voluntary principles and collaborative initiatives, as its central mechanisms, for drawing voluntary contributions, designed to generate "direct and broadly shared benefits" among APEC member economies, with the end in view of reducing economic disparities in the region.<sup>248</sup> In contrast, for an orderly and coordinated development of the ASEM process, a unanimity requirement for qualifying new ASEM initiatives and a multiple-criteria system for determining new ASEM activities, have been established at ASEM 2.<sup>249</sup>

### F. A common challenge to a shared contribution

The potentials of ASEM initiatives, in promoting greater cultural understanding between Asia and Europe than had heretofore been offered by Asia's exposure to Europe, has been obviously accentuated by revolutionary progress in the area of information technology, communications and

<sup>245</sup> *Id.*, at ¶ 11.

<sup>246</sup> Declaration on "An Asia-Pacific Economic Cooperation Framework for Strengthening Economic Cooperation and Development", *supra* note 243, II. Guiding Principle, 2nd indent.

<sup>247</sup> *Id.*, Preamble, 3rd and 4th Recitals. See also APEC Economic Leaders' Declaration, "APEC Leaders Economic Vision Statement", *supra* note 221, at par 1, on "harnessing the energy of diverse economies".

<sup>248</sup> *Id.*, III. Character of APEC Economic & Technical Cooperation, ¶ 3.

<sup>249</sup> See ASEM Cooperation Framework, *supra* note 5, pars. 17-19. This probably serves the interest of legal certainty. It may also be explained by the requirements of the negotiating procedures for contracting international obligations under EC law. See e.g., *supra* note 117, on observations of the European Parliament on the legal impact of the new cooperation framework. This problem should not exist in case of voluntary principles and collaborative initiatives, which do not arise from agreements but *sua sponte*; the individual actions plans (IAPs) resulting from the adoption of voluntary principles are implemented internally by the member economies concerned through the usual legislative processes. See The Osaka Action Agenda, *supra* note 229.

transportation, the same forces that enhanced the process of globalization. Rapid exchanges of views, greatly facilitated capacity for communication, and tremendously improved mobility of persons, all pave the way towards greater understanding. Thus, with globalization, thoughts may as well be liberated from the past and not only trade obstacles but also cultural walls between the East and the Rest<sup>250</sup> may fall.

The stress and strength of the ASEM process on person-to-person linkages and cultural exchanges accords with those developments. European drives towards the integration of human rights, social, environmental and other intertwined global policy issues into the domain of international economic cooperation, a contact point in constant tension between Asia and Europe, is also gaining ground even at a forum participated in by Asia. In the momentous Vancouver Declaration of the APEC Economic Leaders, announcing a deeper level of integration among its member economies by its Vision for the 21st Century, person-to-person linkages was emphasized, together with the integration of some environmental, social and human rights issues within the framework of the economic forum, albeit as yet sticking closely to the economic knitting.<sup>251</sup>

<sup>250</sup> "The West" and "The Rest" are terms accentuating the great cultural divide between Asia and Europe, which to some perspectives, should be the first consideration towards an Asian strategy. See Opinion of the Economic and Social Committee on "Creating a new dynamic in EU-ASEAN relations", *supra* note 114, ¶ 1.2.: "The first consideration is that Asia is not a region like others - neither in political nor in cultural terms - and that precisely for this reason a shared inspiration of civilization and cultural osmosis is lacking between Europe and Asia. Even without citing Samuel Huntington's essay [Samuel Huntington, the well-known political analyst, lecturer at Harvard University and adviser to several Democrat administrations, is the author of the controversial study "The Clash of Civilizations" published in Foreign Affairs (Vol. 72, No. 4, September-October 1993). This argued that most current and future international disputes will break out along the borders between different "civilizations" and will have cultural rather than ideological or economic causes. Huntington postulates a confrontation between the West and the rest of the world, and more especially against a militant Islamic-Confucian coalition, developing on several levels, from military to human rights and to competition for control of the major international institutions. It is plausible to state that Asia provides one of the most probable scenarios for a clash of cultures. While in the West many are convinced that the salient feature of the present situation is the strengthening of a diffuse global economic/financial culture based on modern technological, trading and financial practices "transmitted" through the market, the advocates of the Asian model, in particular the so-called Singapore School [This thesis was put forward in interviews in the American press with Kishore Mahubani, a Singapore diplomat ("The West and the Rest" in National Interest, Spring 1992, and "The Dangers of Decadence: What the Rest can teach the West" in Foreign Affairs, vol. 72, No. 4, September-October 1993), and the former Prime Minister of Singapore, Lee Kuan Yew ("A conversation with Lee Kuan Yew" in Foreign Affairs No. 2, March-April 1994).], reject the line that the development of South-East Asia inevitably involves standardization on the Euro-American model and its system of values (including political democracy). This attitude, widespread amongst the Asian intellectual and managerial elite, stresses the cultural specificity of Asia and rejects the hypothesis that economic growth springs from the particular historical process which has led in Europe to the emergence of the market and of the democratic nation-state. Thus modernity is not identified with the institutions and values typical of western liberalism. There can be "other roads" to modernity and growth, as shown by the experience of those Asian countries which have overcome the barrier of underdevelopment and become part of the world economy, with a role and dynamism of their own. The countries have undergone a cultural revival generated by the economic clout acquired by the region, but this revival is rooted in a great cultural tradition specific to the region, different from and independent of western culture."

<sup>251</sup> *Supra* note 184, at pars. 12-20.

Nevertheless, under the Asia-Europe Cooperation Framework, it may be asked whether the rigidity of the mechanisms installed for the adoption of ASEM initiatives and activities will leave much scope for the Asian spirit of community, manifested in particular by voluntarism and by common but differentiated responsibilities. It still remains to be seen whether those mechanisms will offer the necessary flexibility required by the challenges of globalization, especially in terms of (1) rapid inter-regional emergency response and (2) differentiated approaches according to local diversities and levels of development. Some discernment along these lines were offered by the ESC when it underscored the urgency and necessity of taking action towards responding to the challenges of globalization: "Not least for the sake of its own survival, therefore, Europe should quickly contact other international blocs and press for a globally coordinated economic and social policy which respects the principle of subsidiarity."<sup>252</sup>

## V. CONCLUSION

As the Asia-Europe Vision Group draws recommendations, when they meet in 1999, for a comprehensive Asia-Europe Cooperation Framework for the first decade of the new millennium,<sup>253</sup> it might be useful to consider how voluntary principles and collaborative initiatives, as practised by Asia within the APEC Cooperation Framework, can enhance Asia's participation in the ASEM process and thereby, as in the Asia-Pacific, carry forward voluntary trade liberalization initiatives with Europe in this hemisphere. This could also suggest another inter-regional approach that will contribute towards "convergence between regional and multilateral liberalization initiatives in order to avoid fragmentation of the international global trading system."<sup>254</sup>

In this context, it might also be asked whether cultural diversity, rather than being perceived as an obstacle or a seemingly unbridgeable gap to the new form of international cooperation demanded by globalization, can be managed and tapped as a build block towards a third culture of understanding. Surely, a central touchstone to the issues that will be addressed by the Asia-Europe Vision Group is how best the West and the Rest can approach the timeless reality of global unity.

<sup>252</sup> Opinion of the Economic and Social Committee on "Employment, Competitiveness, and Economic Globalization", *supra* note 11, at ¶ 2.1.5.

<sup>253</sup> See Asia-Europe Cooperation Framework, *supra* note 5, at ¶ 4; See also, Chairman's Statement of the Asia-Europe Meeting, The Second Asia-Europe Meeting, London 3-4 April 1998, ¶ 21, 2nd indent.

<sup>254</sup> See Chairman's Statement, APEC Meeting of Ministers in Charge of Trade, Christchurch, 15-16 July, 1996, at ¶ 17, expressing the view on the special importance, at present, that regional and multilateral approaches to trade and investment liberalization support and reinforce each other.