

INDEX

9/11 attacks, 50, 147 Ahearn, R.J., 195 Alien Tort Statute, 142, 146 accountability amicus curiae, 22-3, 141-2, 144, 146 European Parliament's enhanced Angelo, H., 131 role, 258-64, 286-8 Anti-Counterfeiting Trade Agreement European values, impact of EU-US (ACTA) agreements on, 294-6 European Parliament, role of, personal data, transfer of, 256-61 212-13, 272 PNR Agreements, 276-86 non-disclosure agreement, 244-5 promotion of, 57-8 transparency and democratic SWIFT Agreements, 265–76 accountability, 38, 229-31, 242 TTIP, democratic risks of, 226-8 arbitration, 199 TTIP democratic accountability, area of freedom, security and justice 212-14, 229-34 (AFSJ) weakness in oversight of European Parliament's enhanced transatlantic relationship, 238-45 role, 258-64, 286-8 adjudication techniques mutual recognition, 313-14 alternative techniques, 69-72, 100-1 PNR Agreements, 276-86 Commerce Clause, application of, SWIFT Agreements, 265-76 72-81, 92-3 Argentina, 224 internal market harmonisation assemblies, 45 clause, 81-92 Assembly of European Regions (AER), political process, 93-6 112, 113-14 proportionality, principle of, 96-7 Association of Southeast Asian SCOTUS and ECJ approaches Nations (ASEAN), 155n. 101 compared, 92-3 Atlantic community of law, see transatlantic community of law subsidiarity, principle of, 98-9 Affordable Care Act (ACA), 70, 78-81 Australia, 281, 283 Australia-New Zealand Trans-Tasman Afghanistan, 246, 252 African Union, 45 Model, 194 Agreement on Technical Barriers to Austria, 111-12, 151 Aviation and Transportation Security Trade (TBT Agreement) (WTO, 1995), 172 Act, USA, 276 Agreement on the Application of Sanitary and Phytosanitary Barroso Initiative, 66 Measures (SPS Agreement), 138, Bartl, Marija, 5-6 163,204-6Belgium, 111-12, 119-20, 151



INDEX 317

Bermann, G., 95 Besselink, L., 67 Bickerton, C.J., 39-40 Bigo, D., 300 bilateral exchanges between courts, 19-20 bilateral rule-making, 147-53 biotechnology, 170, see also genetically modified organisms (GMOs) black sites (CIA prisons), 242, 250-1 Boeing-Airbus dispute, 138 Bomberg, E., 113 Bradford, Anu, 120n. 113, 143 Brenncke, M., 92 Breyer, Stephen, 17, 19-20, 21, 22,29-30Britain, see United Kingdom (UK) Bruguière, J.-L., 266-7, 270 Brussels effect (transfer of regulatory standards), 143-5, 153 'Building Bridges between the EU and US Standards Systems' (TEC), 172 Burghardt, Gunter, 117 Bush, George H.W., Sr, 94 business participation in HLWG report preparation, 216-18 Buzek, Jerzy, 56, 271 Cassis de Dijon (Rewe-Zentrale v. Bundesmonopolverwaltung fur Branntwein), 189-90 Centre for Economic Policy Research (CEPR) Report, 218–22 Chang, W.-C., 25n. 70

preparation, 216–18
Buzek, Jerzy, 56, 271

Cassis de Dijon (Rewe-Zentrale v.
Bundesmonopolverwaltung fur
Branntwein), 189–90
Centre for Economic Policy Research
(CEPR) Report, 218–22
Chang, W.-C., 25n. 70
Cheney, Richard, 250
Chevron, 224n. 49
CIA (Central Intelligence Agency),
242, 250–1
civil society engagement in
international relations, 122–7
Claes, Monica, 25–6
Clarke, Kenneth, 251
Clinton, Hillary, 271
coherence between EU counterterrorism
action and values
challenge of, 289–91, 314–15

European values, impact of EU-US agreements on, 291-6 global standards, development of, 311-12 mechanisms for achieving coherence, 297-314 monitoring of EU-US agreements, 301-5 operational oversight, 297-301 reciprocity in agreements, 306-10 transatlantic privacy framework, US privacy standards, adequacy of, 305-6Cohesion Policy, EU, 106, 109-11 Commerce Clause application of, 72-81, 92-3 interpretation of, 70, 85 political process, 93-6 proportionality, absence of, 96-7 subsidiarity, absence of, 96, 98-9 Committee of the Regions (CoR), 112 - 13Committee on Foreign Affairs (AFET), European Parliament, 40 Common Foreign and Security Policy (CFSP), 36-7, 39, 65-6 Common Security and Defence Policy (CSDP), 36-7, 65-6 Common Understanding on Regulatory Principles and Best Practices (High-Level Regulatory Cooperation Forum, 2010), 172 communication, see transatlantic judicial communication community of law, see transatlantic community of law comparative law, use of, 27-33 Compassionated Use Act (CUA), California, 76-7 conferences, 18-21, 136 conferral, see enumerated powers confidentiality, 198-9 Congress, USA, 37-8, 72-81 Controlled Substance Act (CSA), USA, 76-7 Convention on Biodiversity, 152

Convention on Cybercrime, 151



318 INDEX

Corporate Europe Observatory, 215 COSAC (Conférence des Organes Spécialisés dans les Affaires Communautaires), 65, 66 Council, the (Council of Ministers) European Parliament powers, 232, 263 information withheld from European Parliament, 38 PNR Agreements, 277, 283-4 sub-national authorities' access to, 111 - 12SWIFT Agreements, 239-40, 269-70, 272-3 Council of Europe, 45 counterterrorism coherence between EU counterterrorism action and values, 289-91, 314-15 coherence mechanisms, 297-314 EU weakness in oversight of transatlantic relationship, 237-45 European Parliament's enhanced role, 258-64, 286-8 European values, impact of EU-US agreements on, 291-6 global standards, development of, 311-12 monitoring of EU-US agreements, 301-5 operational oversight by EU, 297-301 personal data, transfer of, 256-61 reciprocity in agreements, 306-10 rule-transfer, 144-5, 306-10 transatlantic privacy framework, 312 - 14US policy and transatlantic cooperation, 246-55 US privacy standards, adequacy of, 305-6, see also Passenger Name Records (PNR) Agreements; surveillance by USA; SWIFT Agreements Court of Justice of the European Union comparative law, use of, 27–33 foreign legal materials, use of, 24-5 internationalisation of law, 15-18

jurisdiction, 13-14 litigation relating to bilateral disputes, 139-41 national and supranational courts, relations between, 12-15 transatlantic judicial communication, 9-12, 33-4 visits between the USA and EU, 18-21, 136 Cowles, Maria Green, 217 Cremona, M., 41, 60 Curtin, Deirdre, 37, 38, 67, 230 cybercrime, 150-3 cybersecurity, 150-3 Czech Republic, 224 Dann, P., 36 Dassonville (Procureur du Roi v. Dassonville), 189-90 data protection agreements between criminal justice bodies, 292 EU weakness in oversight of transatlantic relationship, 239-45 European Parliament's enhanced role, 258-64, 286-8 EU-US Data Protection Agreement, 143, 244 mechanisms for achieving coherence between counterterrorism actions and values, 297-314 right to protection, 295-6 transatlantic counterterrorism cooperation, 256-61

values, 297–314
right to protection, 295–6
transatlantic counterterrorism
cooperation, 256–61
transatlantic privacy framework,
312–14
US approach to
counterterrorism, 253–5

US lobbying of European
Parliament, 245, 271,
see also Passenger Name Records
(PNR) Agreements; SWIFT
Agreements

Davids, Willibrord, 21 De Gucht, Karel, 50–1, 223 De Ville, F., 221–2 De Visser, Maartje, 25–6 death penalty, 141–2, 144, 145



INDEX 319

Dekker, L. 37 enumerated powers democratic accountability alternative adjudication techniques, 69-72, 100-1 European Parliament's enhanced Commerce Clause, application role, 258-64, 286-8 of, 72-81 European values, impact of EU-US agreements on, 294-6 internal market harmonisation personal data, transfer of, 256-61 clause, 81-92 PNR Agreements, 276-86 political process, 93-6 promotion of, 57-8 proportionality, principle of, 96-7 SCOTUS and ECJ approaches SWIFT Agreements, 265-76 TTIP, democratic risks of, 226-8 compared, 92-3 TTIP accountability, 212-14, 229-34 subsidiarity, principle of, 98-9 weakness in oversight of equivalency in EU and US trade agreements, transatlantic relationship, 238 - 45191 - 3, 197Department of Homeland Security features of, 196-9 (DHS) harmonisation, 189-91 PNR Agreements, 276, 278-9, 280 initiation of, 194-6 legal test, equivalency as, 196-9 reciprocity relating to PNR Agreements, 308-10 liberalisation, approaches to, 186-9 dialogue multilateral benefits, potential of, 208 effectiveness of, 180-2 prevalence of equivalency, 193-4 Transatlantic Economic Council transatlantic privacy framework, (TEC), 180-2transatlantic judicial US privacy standards, adequacy communication, 25-7, 136-7, of, 305-6see also Transatlantic Legislators' WTO considerations, 200-8 Dialogue Eurojust, 294, 296 dispute resolution EuroLat (Euro-Latin American bilateral mechanism, need for, 184 Parliamentary Assembly), 45 European Commission's 'Europe of the Regions', 106-16 **European Commission** view, 161-2 EU-US dispute resolution, 137-9 Framework Agreement on Relations WTO dispute settlement with European Parliament, 264 mechanism, 159, 161-2, 166 free trade, 161-2 drones, 251-2 global standards, development Early Warning System (EWS), HLWG membership, 214-16, 231 EU, 66 HLWG stakeholder participation, EEA (European Economic Area) Agreement, 190n. 15 information withheld from Eeckhout, P., 36-7, 39, 232 European Parliament, 38 Eminent European Person, TFTP/ knowledge and parliamentary SWIFT oversight, 266–7, accountability, 38, 231-4 270,300-1monitoring of EU-US Emissions Trading Scheme, EU, 61–2, agreements, 301-5 142 - 3, 144PNR Agreements, 277, 282n. enemy combatants, 248-9 103,283-4enhanced interrogation, 249-50 PNR, EU system proposal, 309–10



320 INDEX

European Commission (cont.) information withheld from, 38 international agreements, 37, 39 regulatory cooperation knowledge and parliamentary negotiations, 180-1 accountability, 38, 231-4 SWIFT Agreements, 241, 272-3 Liaison Office, 56-7 TFTP, EU system proposal, 307-8 lobbying by USA, 245, 271 transparency, 229-31 TTIP horizontal provisions, 225-9 national parliaments, role of, 64-6 parliamentary diplomacy, 41-2 TTIP impact assessment, 218-19 TTIP institutions, 222-5 parliamentary diplomacy European Convention on Human benefits, 57-64 parliamentary diplomacy, legal basis Rights, 155n. 101 European Court of Justice (ECJ) of, 46 - 8adjudication approach compared to parliamentary diplomacy, origins SCOTUS, 92-3 of, 43-6 alternative adjudication techniques, PNR Agreements role, 40-1, 71-2,100-159-60, 241-2, 254, 286-8, 292-3, enumerated powers, principle 294-5, 310 of, 70-2PNR Agreements, threat to suspend, internal market harmonisation 51, 260 clause, 81-92 SWIFT Agreements role, 38-9, 40-1, 59-60, 63, 265-76, 286-8, PNR Agreements, 277 political process, 93-6 293 - 4,295SWIFT Agreements, threat to proportionality, principle of, 96-7 subsidiarity, principle of, 98-9 suspend, 51, 260 TFTP operational oversight, 297 European Data Protection Supervisor Treaty of Lisbon effects, 262-4, (EDPS), 275, 299 European Economic Area (EEA) 268 - 72Agreement, 190n. 15 Treaty on European Union (TEU) role, 261-2 European Investment Bank, 107-8 Treaty on the Functioning of the EU European Parliament ACTA role, 212-13, 272 (TFEU), 263 constitutionalisation of TTIP scrutiny, 50–1, 55, 212–14, powers, 67-8 229 - 34cybersecurity, 152 US surveillance programme investigation, 3, 51, 213, 238, delegations, 47 democratic scrutiny of 259-60, 288 agreements, 294-6 weakness in oversight of enhanced role of, 258-64, transatlantic relationship, 238-45 268-72, 286-8 European Regional Development Fund foreign affairs powers, 35-9 (ERDF), 109 foreign affairs role, 39-42, 140-1 European Union (EU) formal transatlantic amicus curiae briefs to US Supreme relations, 48-51 Court, 22-3, 141-2, 144, 146 Framework Agreement on Relations Association Agreements, 190n. 15 with European Commission, 264 bilateral rule-making, 147–53 Cohesion Policy, 106, 109-11 free trade, 161-2 'common interest' discourse in trade informal transatlantic policy, 220-1 relations, 51-6



INDEX 321

data protection, joint EU-US regulation, 143, 244 Emissions Trading Scheme, 61-2, 142 - 3, 144enumerated powers, principle of, 69,70-2equivalency provisions in EU trade agreements, 191-3, 197 European Parliament Liaison Office, 56-7 formal transatlantic relations, 48-51 harmonisation of regulations, 189-91 informal transatlantic relations, 51-6 internal market harmonisation clause, 81-93 internalisation of US security policy, 257-8, 282, 306-8, 315 Korea, equivalency provisions in trade agreement with, 191-3, 197 laws, transatlantic impact of, 60–2 national parliaments, role of, 64-6 non-bilateral interactions with the USA, 141-6 parliamentary diplomacy, benefits of, 57-64 personal data, transfer of, 256-61 PNR, EU system proposal, 155, 308 - 10quasi-institutionalised relations with the USA, 133-41 risk assessment approach, 166 rule-transfer, 143-5, 153-7, 306-10 sub-national authorities engagement, risks of, 122-7 sub-national authorities and EU-US relations, 102-5, 116-22 sub-national authorities influence on EU policy, 105-16 surveillance by USA, 3, 51, 213, 238, 239, 259-60, 288 TFTP, EU system proposal, 155,306-8thematic agendas, 120-1 transatlantic community of law, 1-3 US counterterrorism policy and transatlantic cooperation, 246 - 55

US law applied extraterritorially, 242-4 US preference for an integrated EU, ix weakness in oversight of transatlantic relationship, 238-45, see also Court of Justice of the European Union (ECJ); European Parliament; Passenger Name Records (PNR) Agreements; SWIFT Agreements; transatlantic community of law; transatlantic counterterrorism cooperation; transatlantic judicial communication; transatlantic regulatory cooperation; Transatlantic Trade and Investment Partnership (TTIP) European values coherence between EU counterterrorism action and values, 289-91, 314-15 coherence mechanisms, 297-314 global standards, development of, 311-12 impact of EU-US agreements, 291-6 monitoring of EU-US agreements, 301-5 operational oversight, 297-301 reciprocity in agreements, 306-10 transatlantic privacy framework, 312 - 14US privacy standards, adequacy of, 305-6Europol data protection, 312-13 European values, impact of EU-US agreements on, 294, 296 information withheld from European Parliament, 38 Joint Supervisory Board (JSB), 302-4operational oversight of TFTP Agreement, 297–301 scrutiny of TFTP, 302-5 SWIFT data, 240 EU-US Development Dialogue, 53-4

322 INDEX

EU-US Education Policy Forum, 53-4 EU-US Energy Council, 53-4 EU-US Financial Markets Regulatory Dialogue, 53-4 EU-US Guidelines for Regulatory Cooperation and Transparency (2002), 170, 171, 176 EU-US Insurance Regulatory Dialogue, 53-4 EU-US Regulatory Cooperation Best Cooperative Practices, 171 EU-US Task Force on Biotechnology Research, 53-4 exports, see trade extradition, 291-2 extraordinary rendition, 239, 242, 250-1

Fahey, Elaine, 5–6, 41 Farrah, J.E., 197n. 34 federal systems, 103n. 7 Foreign Account Tax Compliance Act (FATCA), US, 244 Foreign Intelligence and Surveillance

Act (FISA), US, 242–3
Foreign Intelligence and Surveillance

Foreign Intelligence and Surveillance Court, 243

foreign policy, 39–42, 143–4, 248–53 Framework Agreement on Relations between the European Parliament and the European Commission

(2010), 264
Framework for Advancing
Transatlantic Economic
Integration (2007), 171
France, 18, 25, 120–1, 139–40
France v. Commission, 139–40

free trade liberalisation approaches, 183-4, 186-9

ongoing trade agreement negotiations, 161–5, 184–5, 186–8, see also trade; Transatlantic Trade and Investment Partnership (TTIP)

Freedom of Information Act (FOIA), US, 244 fundamental rights, 295–6 Garcia v. San Antonio Metropolitan Transit Authority, 94

Gaza, 145

Geithner, Tim, 271

General Agreement on Tariffs and Trade (GATT)

equivalency recognition, 200–4, 206–7, 208

influence of EU–US trade position, $158\,$

General Agreement on Trade in Services (GATS), 204–6, 207–8

genetically modified organisms (GMOs), 170, 182, 227–8, 234n. 83

Geneva Convention, 155n. 101 Germany

Council representation, 111–12 EU law, integration of, 114–15 national courts and the ECJ, 15–16 regional offices, 114

sub-national authorities, influence of, 118

Tobacco Advertising II, 86–9

ghost prisons, 250–1 Gibbons v. Ogden, 96

Ginsburg J, 19–20, 21, 79, 80

Glenn, Patrick, 9n. 1

Goede, M. de, 296

Gonzales v. Raich, 76-8

Gordon, Philip, 124

Greece, 224

Guantánamo Bay detention centre, 239, 248-9

Gun-Free School Zone Act (GFSZA), US, 73–5, 94

Gutierrez-Fons, José A., 4

Halberstam, D., 98–9
Hammarskjöld, Dag, 43
Harbour, Malcolm, 55
hard law, xiv
harmonisation of regulations, 189–91
health insurance, 70, 78–81
Helms–Burton Act, 137–8
High-Level Working Group on Jobs
and Growth (HLWG)
knowledge and parliamentary

accountability, 232



INDEX 323

membership of, 214-16, 231 recommendations, 163-5, 187-8, 214 stakeholder participation in report preparation, 216-18 third countries, 221 TTIP proposal, 211, see also Transatlantic Trade and Investment Partnership (TTIP) High-Level Regulatory Cooperation Forum, 177, 180, 184-5 Holder, Eric, 313 Howse, R., 227 imports, see trade industry participation in HLWG Report preparation, 216-18 information-sharing information withheld from European Parliament, 38 in transatlantic relations, 239-45 US approach to counterterrorism, 253-5, see also Passenger Name Records (PNR) Agreements; **SWIFT Agreements** Initiative to Enhance Transatlantic Economic Integration and Growth (EU-US Declaration), 171 institutionalisation quasi-institutionalised relations, 133 - 41transatlantic regulatory cooperation, 175-82 and transatlantic relations, 3-4, 135-7 TTIP institutions, xiii, 211-12,222-5institution-light, xii, 135-7 in't Veld, Sophie ACTA Agreement, 229–30 EU role, 237 PNR Agreements, 284 SWIFT Agreements, 38-9, 273n. 66,273-4transatlantic relations and security, reflections on, 6, 237-45 intellectual property, 190-1 internal market harmonisation clause

interpretation of, 71 political process, 93-6 proportionality, principle of, 96–7 subsidiarity, principle of, 98–9 international agreements coherence between EU counterterrorism action and values, 289-91, 314-15 coherence mechanisms, 297-314 European Parliament, role of, 37, 39 European Parliament's enhanced role, 258-64, 286-8 European values, impact of EU-US agreements on, 291-6 global standards, development of, 311-12 monitoring of EU-US agreements, 301-5 operational oversight by EU, parliamentary diplomacy, benefits of, 59-60personal data, transfer of, 256-61 reciprocity in agreements, 306-10 rule-transfer, 144-5, 306-10 transatlantic privacy framework, 312-14 US privacy standards, adequacy of, 305-6, see also Passenger Name Records (PNR) Agreements; SWIFT Agreements; transatlantic counterterrorism cooperation international assemblies, 45 internationalisation of law, 15-18 Internet Corporation for Assigned Names and Numbers (ICANN), 151 Investor-state dispute settlement (ISDS) mechanism, 223-5 Iraq, 246 Italy, 111-12 Jančić, Davor, 4

Joint Supervisory Board (JSB) of Europol, 302–4 Joint US–EU Statement on Early Warning and Problem Prevention Mechanism (1999), 169–70

(Article 114 TFEU)

application of, 81-93



INDEX

324

judicial communication, see transatlantic judicial communication

Katzenbach v. McClung, 72–3 Kennedy, John F., ix knowledge and parliamentary accountability, 231–4 Korea, 191–3, 197

Laeken Declaration on the Future of the European Union, 124
Lamy, Pascal, 159
language, 32–3
law, see transatlantic community of law
Law, D.S., 25n. 70
law-light, 133–5
law making, privatisation of, 227–8
legal materials, 21–5, 27
legalisation of transatlantic relations, xiii
legitimacy, 198–9
Lenaerts, K., 92
Lisbon Treaty, see Treaty of Lisbon
Lopez (United States v. Lopez), 73–5, 85, 93, 94, 98–9, 100

Mak, Elaine, 4 Malmström, Cecilia, 315n. 114 Malta, 151 Mandelson, Peter, 160, 162 Marshall CJ, 96 Mathis, James, 5 mediation, 192-3, 199 Medicaid, 70, 78-81 Mediterranean Union (MU), 120-1 Mercosur, 45 Mitsilegas, Valsamis, 6 Mohamed, Binyam, 251 Mohammed, Khalid Sheikh, 250 Monar, J., 60, 263-4, 267, 271-2 Monsanto, 234n. 83 Moreira, Vital, 55 Morgenthau, Hans, 102–3n. 5 Morpho (security company), 243 Morrall, J.F., 174 Morrison (United States v. Morrison), 75-6 most-favoured nation (MFN) obligations

country-based recognition, 200-1

equivalency recognition, 200–2 origin-based recognition, 200–1 multilateral exchanges, 21 Mutual Legal Assistance Agreement, 291–2, 296, 305, 312–13 mutual recognition agreements (MRAs) assessment of, 173–4 implementation of, 168–9 marine equipment, 170 organic trade, 173 trusted traders, 173

National Federation of Independent Business ('NFIB') v. Sebelius, 70,

national courts, 12-15

78-81, 93 national parliaments, 64-6, 95 - 6Netherlands, the 18, 25 Network of the Presidents of the Supreme Judicial Courts of the EU (NPSIC), 21 New Transatlantic Agenda (NTA), 49, 51, 168, 210 non-papers on the TTIP horizontal provisions, 225-9 institutions of the TTIP, 222-5 stakeholder participation in HLWG Report preparation, 217 non-tariff barriers (NTBs) benefits of elimination, 159-60 equivalency instruments, features of, 196-9 equivalency instruments, initiation of, 194-6 equivalency instruments, WTO considerations, 200-8 equivalency provisions in EU and US agreements, 191-3 equivalency of regulation, prevalence of, 193-4 harmonisation, 189-91 liberalisation, approaches to, 183-4, 186-9 multilateral benefits, potential of, 208 regulatory cooperation, approaches

to, 167-75



> INDEX 325

> > EU internalisation of US

policy, 257-8, 282, 308-10,

bilateral rule-making, difficulties of,

framework for, 175-82 Obama, Barack, 249, 250, 253 ObamaCare (Patient Protection and Affordable Care Act), 70, 78 - 81Occupy movement, 126n. 151 O'Connor J, 19-20 operational oversight of EU-US agreements, 297-301 Organic Trade Equivalence Arrangement, 173 outsourcing impact assessment, 218 - 19Pakistan, 252 Pan-African Parliament of the African Union, 45 Panama, 190n. 15 Panetta, Leon, 251 Parlasur, 45 Parlatino (Latin American Parliament), 45 parliamentary diplomacy by the European Parliament benefits of, 57-64 constitutionalisation of EP powers, 67-8 delegations, 47

as enhancement to foreign affairs

European Parliament Liaison

formal transatlantic relations,

national parliaments, role of,

Passenger Name Records (PNR)

2004 Agreement, 276-7 2006 Interim Agreement, 277-9

2007 Agreement, 279-81

2011 Agreement, 281-6

origins of, 43-6, see also European

profile, 41-2

Office, 56-7

informal transatlantic

relations, 51-6

legal basis, 46-8

Parliament

Agreements

48-51

64 - 6

regulatory cooperation, institutional

311–12, 315 EU system proposal, 155, 308-10 European Parliament, role of, 40-1, 59-60, 241-2, 254, 286-8, 292-3, 294-5, 310 European Parliament's threat to terminate, 51, 260 European values, impact on, 292, 294-5, 296, 314-15 global standards, development of, 311-12 Lisbon Treaty implications, 281-6 reciprocity relating to, 308-10 US privacy standards, adequacy of, 305 Patient Protection and Affordable Care Act (PPACA), 70, 78-81 Patriot Act, USA, 242-3, 253 personal contacts, 18-21 personal data agreements between criminal justice bodies, 292 EU weakness in oversight of transatlantic relationship, 239 - 45European Parliament's enhanced role, 258-64, 286-8 EU-US Data Protection Agreement, 143, 244 mechanisms for achieving coherence between counterterrorism actions and values, 297-314 right to protection of, 295-6 transatlantic counterterrorism cooperation, 256-61 transatlantic privacy framework, 312 - 14US approach to US lobbying of European Parliament, 245, 271,



> INDEX 326 Petersmann, E.U., 162 regulation, 143-5, 153, Peterson, J., 113 see also transatlantic regulatory pharmaceutical industry, 217 cooperation regulatory capture, 217–18 Phillips, Lord, 21 police and judicial cooperation in regulatory cooperation criminal matters (PJC) approaches to, 167-75 European Parliament's enhanced benefits of barrier removal, 159-60 role, 258-64, 286-8 dialogue, effectiveness of, 180-2 personal data, transfer of, 256-61, equivalency instruments, features see also Passenger Name Records of, 196-9 (PNR) Agreements; SWIFT equivalency instruments, initiation Agreements of, 194-6 Pollack, M.A., 63, 104, 121, 122 equivalency provisions in EU and poultry dispute, 138, 180-1 US agreements, 191-3 PRISM surveillance programme, 3, equivalency of regulation, prevalence of, 193-4 51, 239 private life harmonisation, 189-91 coherence between importance of EU-US trade, 158-9 counterterrorism actions and institutional framework, 175-82 liberalisation, approaches to, values, 297-314 right to, 295-6 183-4, 186-9 transatlantic privacy framework, multilateral benefits, potential 312 - 14of, 208 proportionality ongoing trade agreement in EU and US systems, 32 negotiations, 161-5, 184-5, 186-8 principle of, 96-7 rationale for, 166-7 Tobacco Advertising I, 86 regulatory barriers, 159-61 Tobacco Advertising II, 88 risk assessment approaches, contrast Vodafone, 90-1, 92 in, 166 WTO considerations, 200-8 racial discrimination, 72-3 Regulatory Cooperation Council, 211 Raich (Gonzales v. Raich), 76-8, 93, Rehnquist CJ, 70, 73–8 97, 100 responsibilisation strategy, 296 **REACH Directive, 182** Roadmap for EU-US Regulatory Reding, Viviane, 313 Cooperation (2005), 170-1, Rees, Wyn, 6 174, 176 regional trade agreement (RTA) Roberts CJ, 21, 70, 78-81 exceptions, 206-8 rule-transfer, 143-5, 153-7, 306-10 Rumsfeld, Donald, 250 regions Cohesion Policy, EU, 106, 109-11 Rusk, Dean, 43 meaning of, 103-4n. 8 sub-national authorities Safe Harbour Framework, 243-4 engagement, risks of, 122–7 Santos Vara, Juan, 6 sub-national authorities and EU Sapir, A., 181 Sarbanes-Oxley Act, 182 policy, 105–16 sub-national authorities and EU-US Scalia, Antonin, 30 Schulz, Martin, 56 relations, 102-5, 116-22



INDEX 327

Schütze, R., 232 subsidiarity Scotland, 118-19 in EU and US systems, 32 sector-specific regulatory dialogues, 176 principle of, 96, 98-9 security surveillance by USA, regional policy, 109, 111 see surveillance by USA Treaty of Lisbon, 95-6 Shaffer, G.C., 104, 121, 122 Vodafone, 92 Shortell, C., 78 Supreme Court of the United States Skouris, Vassilios, 20 (SCOTUS) small and medium enterprises adjudication approach compared to ECJ, 92-3 (SMEs), 197-8 Snowden, Edward, 3, 51, 240-1, alternative adjudication techniques, see also surveillance by USA 71-2,100-1social networks, 126n. 152 Commerce Clause, application of, soft law, xiv 72-81, 92-3 space, peaceful use of, 137n. 29 Commerce Clause interpretation, Spain, 111-12 speculative security, 296 comparative law, use of, 27-33 SPS Agreement (Agreement on the EU submissions to, 22-3, 141-2, Application of Sanitary and 144, 146 Phytosanitary Measures), 138, foreign legal materials, use 163,204-6of, 22-4 stakeholder participation in regulatory internationalisation of law, 15-18 dialogue, 179-80, 216-18 jurisdiction, 13 state autonomy national and supranational courts, adjudication techniques, relations between, 12-15 69-72, 100-1 political process, 93-6 Commerce Clause, application proportionality, principle of, 72-81 of, 96-7 internal market harmonisation subsidiarity, principle of, 98-9 clause, 81-92 transatlantic judicial political process, 93-6 communication, 9-12, 33-4 proportionality, principle of, 96-7 visits between the USA and EU, SCOTUS and ECJ approaches 18-21, 136compared, 92-3 surveillance by USA coherence between EU subsidiarity, principle of, 98-9 Stavridis, S., 44 counterterrorism action and Stevens J, 77, 97 values, 315 'Stronger EU-US Partnership and a EU complicity, 239 More Open Market for the 21st European Parliament's response, 3, Century, A' (EU Commission, 51, 213, 259-60, 288 2005), 171 weakness in oversight of sub-national authorities (SNAs) transatlantic relationship, 238 EU policy, influence on, 105–16 **SWIFT Agreements** and EU-US relations, 102-5, 116-22 2009 Agreement, 265-8 meaning of, 103-4n. 8 2010 Agreement, 272-6 risks of SNA engagement in civil liberties approaches of EU and USA, 254 international relations, 122-7



328 INDEX

SWIFT Agreements (cont.) European Parliament, role of, 38-9, 40-1, 59-60, 63, 265-76, 286-8, 293 - 4,295European Parliament's enhanced role, 286-8 European Parliament's threat to terminate, 51, 260 European values, impact on, 293-4, 295, 296 European values, mechanisms for achieving coherence with, 297-314 in't Veld's involvement, 38-9, 239-41, 273n. 66, 273-4 Lisbon Treaty implications, 268-72 origins of, 265-8, see also Terrorist Finance Tracking Programme (TFTP)

Takács, Tamara, 5, 186 Task Force on Critical Infrastructure Protection, 150 technical barriers to trade (TBT) Agreement on Technical Barriers to Trade, 172 equivalency recognition, 204-6 ongoing trade agreement negotiations, 163, 164-5 terrorist attacks, 50, 147, 246-55, see also counterterrorism Terrorist Finance Tracking Programme (TFTP) bilateral rule-making, difficulties of, 148-9 EU internalisation of US policy, 257-8, 306-8, 315 EU system proposal, 155, 306-8 European values, impact on, 292, 295, 296, 314-15 European values, mechanisms for achieving coherence with, 297-308 monitoring of EU-US agreements, 301-5 operational oversight, 297–301 reciprocity relating to, 306–8 SWIFT Agreements, origins of, 265-8

US privacy standards, adequacy of, 305-6, see also SWIFT Agreements Thym, D., 37-8, 44-5 Titanium Dioxide (Commission v. Council (Titanium Dioxide)), 82 Tobacco Advertising I, 70-1, 83-6, 93, 98-9, 100 Tobacco Advertising II, 71, 86-9, 93, 100 torture, 249-50 benefits of barrier removal, 159-60 dialogue, effectiveness in regulatory cooperation, 180-2 influence of EU-US trade, 158-9 liberalisation, approaches to, 183-4, 186-9 ongoing trade agreement negotiations, 161-5, 184-5, 186-8 regulatory barriers, 159-61 regulatory cooperation, approaches to, 167-75 regulatory cooperation, institutional framework for, 175-82 regulatory cooperation rationale, 166-7 risk assessment approaches, contrast WTO dispute settlement mechanism, 159, 161-2, 166, see also equivalency; non-tariff barriers (NTBs); Transatlantic Trade and Investment Partnership (TTIP) transatlantic adjudication techniques alternative techniques, 69-72, 100-1 Commerce Clause, application of, 72-81, 92-3 internal market harmonisation clause, 81-92 political process, 93-6 proportionality, principle of, 96-7 SCOTUS and ECJ approaches compared, 92-3 subsidiarity, principle of, 98-9 Transatlantic Business Council (TABC), 53-4, 55Transatlantic Business Dialogue (TABD), 54-5, 136-7, 179-80



INDEX 329

transatlantic community of law alternative interpretations, 131-3, 157 bilateral relations, 137-9 bilateral rule-making, 147-53 dispute forums, 137-9 institutionalisation, 3-4, 135-7 integration through law, 133-5 legalisation of transatlantic relations, xiii litigation in the EU legal order, non-bilateral interactions, 141-6 purpose of this volume, 1-3 quasi-institutionalised relations, rule-transfer, 143-5, 153-7, 306-10 US dominance in security policy, 237 - 45Transatlantic Consumer Dialogue (TCD) equivalency instruments, 199 rule-making role, 136-7 Transatlantic Economic Council (TEC), 54-5transatlantic regulatory cooperation, 53-4, 179-80 transatlantic counterterrorism cooperation coherence between EU counterterrorism action and values, 289-91, 314-15 coherence mechanisms, 297–314 EU weakness in oversight of transatlantic relationship, 237–45 European Parliament's enhanced role, 258-64, 286-8 European values, impact of EU-US agreements on, 291-6 global standards, development of, 311 - 12monitoring of EU-US agreements, 301-5 operational oversight by EU, 297–301 personal data, transfer of, 256-61 reciprocity in agreements, 306-10 rule-transfer, 144–5, 306–10 transatlantic privacy framework, 312 - 14US counterterrorism policies, 246–55

US privacy standards, adequacy of, 305-6, see also Passenger Name Records (PNR) Agreements; surveillance by USA; SWIFT Agreements Transatlantic Declaration on EC-US Relations (1990), 48-9, 51, 167-8 Transatlantic Dialogue on Climate Change and Security, 53-4 Transatlantic Dialogue on Sustainable Development, 53-4 Transatlantic Donors Dialogue, 53-4 Transatlantic Economic Council (TEC) dialogue, 180-2 role of, 53-5, 171-2, 177-9 standards recognition, 172 strategic leadership, 184-5 Transatlantic Economic Partnership (TEP), 50, 62, 139-40, 168, 180 Transatlantic Environment Dialogue, 136-7 Transatlantic Innovation Action Partnership, 173, 178-9 transatlantic judicial communication comparative law, use of, 27–33 dialogue between judges, 25-7, 136 - 7emergence of, 15-18 foreign legal materials, use of, 21-5, 27 future of, 33-4 methodology, development of, 31-3 national and supranational courts, relations between, 12-15 socio-legal research approach, 9–12 visits between the USA and EU, 18–21, 136, see also police and judicial cooperation in criminal matters (PJC) Transatlantic Labour Dialogue, 53-4, 136-7 Transatlantic Legislators' Dialogue equivalency instruments, 199 European Parliament use of, 64 oversight of transatlantic relationship, 63, 68, 238 quasi-institutional relations, 135–6 transatlantic regulatory cooperation, 180 work of, 51-5



330 INDEX

Transatlantic Partnership Regulatory Cooperation Agreement, 161-2 Council, 211 Transatlantic Policy Network, 53-4 stakeholder participation in HLWG transatlantic privacy framework, Report preparation, 216-18 312 - 14transnational parliamentary bodies, 45 transatlantic regulatory cooperation transparency approaches to, 167-75 equivalency instruments, 198-9 benefits of barrier removal, 159-60 restrictions on, 244-5 dialogue, effectiveness of, 180-2 TTIP scrutiny, 229-31 equivalency instruments, features Treaty of Lisbon of, 196-9 Committee of the Regions (CoR), equivalency instruments, initiation 113n, 71 of, 194-6 European Parliament role, 35-6, equivalency provisions in EU and 262-4, 268-72 US agreements, 191-3 European Parliament's influence equivalency of regulation, on counterterrorism agreements, prevalence of, 193-4 258-61, 286-8 harmonisation, 189-91 European Parliament's influence importance of EU-US trade, 158-9 on regulatory cooperation, 181, institutional framework, 175-82 liberalisation, approaches to, European values, 289-90 183-4, 186-9 national parliaments, role of, 64-6 multilateral benefits, potential PNR Agreements, effect upon, 281-6 subsidiarity, 95-6 ongoing trade agreement negotiations, 161-5, 184-5, 186-8 SWIFT Agreements, effect upon, rationale for, 166-7 268 - 72regulatory barriers, 159-61 Treaty of Maastricht, 64, 109 risk assessment approaches, contrast Treaty of Rome, 107-8 Treaty on European Union (TEU) WTO considerations, 200-8 enumerated powers, principle of, 69 Transatlantic Trade and Investment European Parliament, role of, 261–2 Partnership (TTIP) European values, 290 benefits of, 219-22 parliamentary diplomacy, legal democratic accountability, 212-14, basis, 46-7 229 - 34Treaty on the Functioning of the EU democratic risks of, 225-9 (TFEU) European Parliament, role of, 50-1, Article 16, 274–5, 284–5 55, 212-14, 229-34 Article 114, application of, 81–92 HLWG, membership of, 214-16 Article 114, interpretation of, 71 horizontal provisions, 225-9 European Parliament role, 263 impact assessment, 218-19 internal market harmonisation institutionalisation of EU-US clause, 71, 81-92 relations, xiii, 211-12, 222-5 personal data, 274-5, 284-5 institutions of, 222-5 PNR Agreements, 284–5 legal cooperation, 133-4, 139 SWIFT Agreements, 274–5 negotiations, 3, 210-11 trusted traders, 173 Tushnet, Mark, 9n. 1, 77 regulatory cooperation, 185



> INDEX 331

UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, 250 Union for the Mediterranean, 120-1 United Kingdom (UK), 18, 111-12, 118-19, 251 United Nations (UN), 43, 250 United States (US) Agreement Regarding Certain Sanitary and Phytosanitary Measures and Technical Standards Affecting Trade in Agriculture Products, 190n. 15 bilateral rule-making, 147-53 data protection, joint EU-US regulation, 143, 244 enumerated powers, 69-70 equivalency provisions in US trade agreements, 191-3 European Parliament Liaison Office, 56-7 European Union Emissions Trading Scheme, 61-2, 142-3, 144 extraterritorial application of US law, 242-4 foreign policy, 248-53 formal transatlantic relations, 48-51 harmonisation of regulations, 189-91 homeland security, 253-5, 276, 278-9, 280, 308-10 informal transatlantic relations, 51-6 integrated EU, benefits of, ix Korea, equivalency provisions in trade agreement with, 191–3 lobbying of EU on data protection regulation, 245, 271 monitoring of EU-US agreements, 301-5 non-bilateral interactions with the EU, 141-6 obstacles to cooperation, 246–55 parliamentary diplomacy, benefits of, 59-64privacy standards, 305-6 quasi-institutionalised relations with the EU, 133-41

risk assessment approach, 166 rule-transfer, 143-5, 153-7 security policy, dominance in relation to, 238-45 sub-national authorities and EU-US relations, 102-5, 116-22 sub-national authorities engagement, risks of, 122-7 thematic agendas, 120-1 transatlantic community of law, 1-3, see also Passenger Name Records (PNR) Agreements; Supreme Court of the United States (SCOTUS); surveillance by USA; SWIFT Agreements; transatlantic community of law; transatlantic counterterrorism cooperation; transatlantic judicial communication; transatlantic regulatory cooperation; Transatlantic Trade and Investment Partnership (TTIP) United States (US) Congress, 37-8, 72-81 United States (US) Supreme Court, see Supreme Court of the United States (SCOTUS) Universal Declaration of Human Rights, 250 Unmanned Aerial Vehicles (UAVs), 251-2 Uzbekistan, 252 (VAWA), 75-618-21, 136

Violence Against Woman Act visits between US and EU judges, Vodafone, 71, 89-92, 100

'War on Terror', 246-55 Wechsler, H., 93-4 Weisglas, Frans, 45–6 Wickard v. Filburn, 72 Working Group on Cybercrime and Cybersecurity (WGCC), 150-3 World Trade Organization (WTO) country-based recognition, 200-1



332 INDEX

World Trade Organization (cont.)
dispute settlement mechanism, 159,
161–2, 166
equivalency recognition
considerations, 200–8
equivalency test, 196–7
EU–US dispute resolution, 137–9
EU–US trade, 158–9
GMO dispute, 170

harmonisation, 191n. 16 origin-based recognition, 200–1 poultry dispute, 138, 180–1

Yemen, 252 Young, E., 94, 95 Yousaf, Humza, 119n. 104

Zeben, Josephine A.W. van, 4-5