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U.S. Federal States

in Transatlantic Trade and Investment Policy Making

Actors, Access, Aspirations

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**U.S. Federal States
in Transatlantic Trade and Investment Policy Making:
Actors, Access, Aspirations**

Dissertation

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Abstract

In their negotiations for the Transatlantic Trade and Investment Partnership (TTIP) between 2011 and 2016, the European Union and the United States of America (U.S.) aimed to not only reduce tariffs but to also establish regulatory coherence. For the U.S. federal states, the proposed comprehensive deal could offer both possibilities to expand transatlantic trade as well as threats to their legislative authority. This study investigates why and how some states represent their transatlantic trade promotion and trade policy interests despite constitutional limitations, why there is variation regarding these two topics of states' interest representation and what intergovernmental conflicts arise.

Based on original qualitative expert interviews, the analysis shows that U.S. states as noncentral governments are viable actors in transatlantic trade and investment relations. It is evident that a small number of mostly progressive state legislators actively engage U.S. federal and European officials to prevent the loss of state regulatory authority. Regarding the proposed trade deal, interest representation is centered around issues of federalism and sovereignty rather than economic growth opportunities. While trade promotion remains the key driver of states' overall transatlantic activities, these findings expand our view on states' international affairs beyond economic development.

Keywords: federalism, international trade policy, paradiplomacy, subnational interest representation, Transatlantic Trade and Investment Partnership (TTIP)

Abstrakt

In den Verhandlungen zur Transatlantischen Handels- und Investitionspartnerschaft (TTIP) zwischen 2011 und 2016 strebten die Europäische Union und die Vereinigten Staaten von Amerika (U.S.) nicht nur eine Reduktion der Zölle an, sondern auch regulatorische Kohärenz. Für die U.S.-amerikanischen Bundesstaaten könnte dies sowohl eine Ausweitung des transatlantischen Handels bedeuten als auch eine Gefährdung ihrer legislativen Kompetenz. Diese Studie untersucht, warum und wie einige Bundesstaaten trotz verfassungsrechtlicher Einschränkungen ihre Interessen zu transatlantischem Handel und transatlantischer Handelspolitik vertreten, warum es bei dieser Interessenvertretung Varianz bei der Themensetzung der Bundesstaaten gibt und welche föderalen Konflikte entstehen.

Basierend auf eigenen qualitativen Experteninterviews zeigt die Analyse auf, dass die Bundesstaaten eigenständige Akteure in den transatlantischen Handels- und Investitionsbeziehungen sind. Es wird gezeigt, dass eine kleine Zahl meist progressiver bundesstaatlicher Abgeordneter sich aktiv mit föderalen und europäischen Akteuren auseinandersetzen, um einen Verlust ihrer regulatorischen Kompetenzen zu verhindern. Bezüglich des vorgeschlagenen Abkommens dreht sich die Interessenvertretung eher um Fragen des Föderalismus und der Souveränität denn um wirtschaftliches Wachstum. Handelsförderung bleibt der Kern allgemeiner transatlantischer Aktivitäten der Staaten, doch erweitern diese Forschungsergebnisse die Perspektive auf die internationalen Beziehungen der Bundesstaaten über wirtschaftliche Aspekte hinaus.

Schlüsselbegriffe: Föderalismus, internationale Handelspolitik, paradiplomacy, subnationale Interessenvertretung, Transatlantic Trade and Investment Partnership (TTIP)

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List of Abbreviations and Symbols

\$	U.S. dollars
ALEC	American Legislative Exchange Council
avg	Average
CASE	Council of American States in Europe
CSG	Council of State Governments
D.C.	District of Columbia
D	Democratic Party; Democrat(s)
EU	European Union
FDI	Foreign direct investment
FTA	Free trade agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GI	Geographical indication
GMO	Genetically modified organism
GPA	Government Procurement Agreement
IGPAC	Intergovernmental Policy Advisory Committee on Trade
IPE	International political economy
IR	International relations
ISDS	Investor-state dispute settlement
MEP	Member of the European Parliament
NAAG	National Association of Attorneys General
NAFTA	North American Free Trade Agreement
NASDA	National Association of State Departments of Agriculture
NATO	North-Atlantic Treaty Organization
NCEL	National Caucus of Environmental Legislators
NCOIL	National Conference of Insurance Legislators
NCSL	National Conference of State Legislatures
NGA	National Governors Association
NTB	Nontariff barrier
R	Republican Party; Republican(s)
TAA	Trade Adjustment Assistance
TEC	Transatlantic Economic Council
TPA	Trade Promotion Authority, also known as fast track authority
TPP	Transpacific Partnership
TTIP	Transatlantic Trade and Investment Partnership
SIDO	State International Development Organizations
SPOC	Single Point of Contact
U.S., U.S.A.	United States of America
USTR	(Office of the) United States Trade Representative
WTO	World Trade Organization

List of State Abbreviations

For space reasons, in maps as well as some figures and tables, the full state name was replaced with the two-letter state code. The codes are the following:

Alabama	AL	Montana	MT
Alaska	AK	Nebraska	NE
Arizona	AZ	Nevada	NV
Arkansas	AR	New Hampshire	NH
California	CA	New Jersey	NJ
Colorado	CO	New Mexico	NM
Connecticut	CT	New York	NY
Delaware	DE	North Carolina	NC
Florida	FL	North Dakota	ND
Georgia	GA	Ohio	OH
Hawaii	HI	Oklahoma	OK
Idaho	ID	Oregon	OR
Illinois	IL	Pennsylvania	PA
Indiana	IN	Rhode Island	RI
Iowa	IA	South Carolina	SC
Kansas	KS	South Dakota	SD
Kentucky	KY	Tennessee	TN
Louisiana	LA	Texas	TX
Maine	ME	Utah	UT
Maryland	MD	Vermont	VT
Massachusetts	MA	Virginia	VA
Michigan	MI	Washington	WA
Minnesota	MN	West Virginia	WV
Mississippi	MS	Wisconsin	WI
Missouri	MO	Wyoming	WY

1.

Introduction

The opening chapter lays out the impetus for and significance of studying U.S. states in transatlantic trade relations. After introducing the theoretical and methodological basis for my research, I present an outline of my argument and the empirical findings.

For five years, between late 2011 and late 2016, the European Union (EU) and the United States of America (U.S.) were in talks to create the biggest trade agreement the world had ever seen. Political and business leaders on both sides of the Atlantic sought to establish a free trade area that would cover roughly 800 million consumers, and trade and investment to the tune of \$1 trillion and \$4 trillion, respectively. Going way beyond merely reducing tariffs, the EU and the U.S. aimed at integrating their already heavily intertwined economies even further by developing common rules and harmonizing their regulatory standards. Talks stalled in 2016 but had still produced a number of agreements and controversies up until that point.

The proposed deal, the Transatlantic Trade and Investment Partnership (TTIP), was met with mixed reactions. When the Office of the U.S. Trade Representative (USTR), which negotiates trade agreements on behalf of the U.S. administration, first asked for notices for a public hearing on the TTIP in May 2013, it received 359 comments (Office of the U.S. Trade Representative, 2013b). Many large multinational corporations, such as DuPont, Nestlé and Wal-Mart, spoke out in favor of the TTIP, viewing it as an engine for economic growth and job creation. Several environmental and social activists, among them the Center for Food Safety, the Coalition for Sensible Safeguards and the Sierra Club, were concerned about favoring corporate economic interests over climate- and health-related public interests.

While the vast majority of contributions to the USTR came from corporations, business associations and other nongovernmental organizations, there was one submission that stood out as the sole comment from an elected official from a U.S. state: Sharon Treat, a state legislator and member of the Maine Citizen Trade Policy Commission, offered a detailed, eight-page testimony highlighting a variety of policy areas covered in the TTIP that could potentially affect or override Maine legislation and regulation. No other state used the testimony to speak out on the TTIP, but about two years later, Treat joined legislators from four other states in a TTIP discussion with members of the European Parliament. In the meantime, the governor of Washington had sent a letter to the USTR regarding the TTIP's possible positive and negative effects on his state, and the Florida Senate had passed a resolution supporting the conclusion of the proposed trade pact.

Clearly, the TTIP directly and indirectly touches upon the U.S. federal states and provokes them to represent their state-specific interests. Florida legislators, for example, focused on the economic benefits expected for the state, specifically increased exports and job creation. This is also what the governor of Washington pointed to while additionally cautioning against the use of the investor-state dispute settlement (ISDS) mechanism. For

Maine, the USTR testimony dealt with diverse regulatory issues, such as state government procurement rules, environmental policies and health regulations.

These brief introductory examples demonstrate how some states represent their interests regarding the TTIP, even though they are not included in the trade talks. Constitutionally, the U.S. Congress sets the parameters for trade agreements and the USTR negotiates the deals. Trade agreements such as the TTIP have major repercussions for the states, however, potentially impacting their economic development as well as their state regulatory regimes. Especially states' international economic development activities have been a core focus of scholarly work on states in global affairs. This is rightfully so because states heavily emphasize trade promotion when engaging on the world stage: Their most important international goals are to attract foreign direct investment (FDI) and to promote exports. Yet, there is more to international trade agreements than just quantitative questions on what export numbers can be increased and how many new investments from Europe can be expected. Starting with the negotiations for the North American Free Trade Agreement (NAFTA) in the 1990s, states have also turned their attention to trade policy issues going beyond economic development. For example, they were concerned with how international trade rules might affect their own regulatory standards on issues ranging from chemicals regulations to public procurement. This affects the fabric of U.S. federalism because trade talks are no longer just about creating economic growth but also about safeguarding state sovereignty. Yet, apart from one formal consultation process at the USTR, the states have no institutionalized way to make their voices heard in international trade negotiations. Because of this lack of inclusion, states have repeatedly clamored for a bigger say in trade relations, sometimes causing conflicts with the federal government.

With the TTIP covering a wide range of regulatory issues, states once again face the question of what the trade deal might bring for them. On the one hand, the TTIP promises open markets with fewer barriers for state exports. On the other hand, states' past regulatory decisions on chemicals, food safety and procurement might be affected by the transatlantic trade regime. How do states deal with the TTIP's potential effects on their economy and their regulatory standards? Why do some states focus more on economic development and others more on regulatory issues? What means and motivations do governors, state legislators and state associations have to relay their positions to federal and EU actors? What conflicts arise with EU and U.S. federal actors and are they related to trade promotion or policy issues? In answering such questions, this study adds a dimension to the analysis of states in transatlantic trade relations by highlighting topics beyond economic development.

The structure of this study is as follows: The remainder of this inaugural chapter will briefly introduce the current state of research. This study's research questions, its methodology and its significance will be laid out. In chapter 2, the structure of the NAFTA and TTIP negotiations will be briefly reviewed. A historical look at the NAFTA talks is included to showcase the successes and failures states had in previous international trade negotiations. The overview of the purpose, chronology and initiators of the TTIP is a necessary foundation for a later empirical analysis of the proposed trade deal from states' perspectives. In the NAFTA talks, states made their voices heard and succeeded in representing some of their interests in consultations with the federal level. The initiation of the TTIP and its negotiation rounds so far have been dominated by EU and U.S. federal officials, but the chapter will lay bare how states have used and created opportunities to speak on contemporary international trade issues.

How has political science literature dealt with this state-level engagement on international issues including trade negotiations? Even though states are not disregarded anymore as international actors and their global connections and aspirations are acknowledged, in-depth analyses of their role in negotiating and implementing international

trade deals are still scarce. Moreover, they are often limited to issues of trade promotion, so an understanding of if, why and how states use their position within U.S. federalism to engage on trade policy matters is lacking. Chapter 3 will present an overview of two strands of political science scholarship that have nonetheless proven useful in examining states' engagement in international affairs, namely research on international relations (IR) and federalism. I will use the ideas of complex interdependence and paradiplomacy from IR and discussions on the constitutional opportunities and limitations in U.S. federalism to form the basis for the concept of multilayered interest representation, with which to analyze states' roles in the TTIP negotiations.

Having established that states can and do represent their interests in international trade talks but that there are shortcomings in the literature on states in international negotiations, chapter 4 offers the methodological framework to address this gap. I will use qualitative content analyses of official documents, media output and data gathered from a set of 60 expert interviews. These original interviews, along with the written material, provide empirical evidence for states' activities in transatlantic trade and investment. The interviews, conducted in Europe and the U.S. with state, federal and EU officials as well as experts from private organizations, cover 19 states and 17 organizations.

Chapters 5, 6 and 7 are the core qualitative empirical analyses of this study, investigating the variance in states' TTIP interest representation. Chapter 5 draws attention to states' interest representation on transatlantic trade promotion and surveys the means and motivation that states follow when seeking to enhance their economic growth via transatlantic trade and investment. Chapter 6 focuses on states' interest representation on transatlantic trade policy and I present states' means and motivation when trying to safeguard their regulatory authority in transatlantic trade matters. The chapter conclusions for each chapter are short overviews of the empirical findings, summarizing the most important avenues states use and offering a first synthesis of why some states become active and what accounts for variation in the topics states address.

The conflicts that develop in transatlantic trade and investment relations between states, the federal government and the EU are analyzed in chapter 7. The main state-federal divergences were found to concern the very process of how international trade policy is made in the U.S., which will therefore make up the biggest part of the chapter. The concluding chapter 8 weaves together the empirical evidence of chapters 5, 6 and 7 to provide answers to the questions of why and how states speak out on transatlantic trade and investment issues in the context of the TTIP, why there is variance and why there is conflict. The chapter also makes recommendations for potential policy changes and for future research.

1.1 Theoretical and Methodological Background

Studying states' engagement on the TTIP requires an exploratory look at their role in transatlantic trade policy making because this area has not been covered extensively in existing literature. For one, an overview of the avenues and tools states use to make their voices on trade policy issues heard is lacking. We know that states have contacts to Congress, that they form national-level interest groups and that they maintain trade offices in Europe. We do not know, however, if and how these means of interest representation are connected to each other and what other means they use specifically in transatlantic trade policy making. Following from this, the question remains why some states speak out on the TTIP on trade promotion grounds and why others emphasize trade policy issues related to the trade deal. Lastly, we must consider the potential of conflict between the various governmental actors in the U.S. states, the U.S. administration, the U.S. Congress and the EU. While the literature on European regional governments is rich with examples of their clashes with national or EU

institutions, we know little about how peaceful or conflictual the relations are between U.S. states and the U.S. federal level on transatlantic trade topics, or between U.S. states and actors in the EU.

Current State of Research and Analytical Framework

Two broad fields of political science literature are especially pertinent to understanding states' engagement on transatlantic trade and investment topics, namely international relations and federalism studies. International relations scholarship and its subfield international political economy are crucial prerequisites for this study. When considering states as noncentral governmental actors engaging on the global scene, the IR concepts of complex interdependence, globalized markets and paradiplomacy will be used as explanatory frameworks. The states have also received scholarly attention as the core political units of the U.S. federal system, mostly explored in literature on the U.S. constitution and intergovernmental relations¹ in U.S. federalism. How the U.S. constitutional setting affects states' foreign affairs ambitions and capabilities is another foundational framework for this study.

Neither IR concepts nor federalism studies by themselves, however, provide a fitting analytical lens for this research. Existing research cannot fully grasp the nature of U.S. states' engagement in transatlantic trade and investment topics: IR studies alone are still preoccupied with the nation-state, whereas federalism literature zooms in on the domestic setting. Scholarship on trade negotiations acknowledging the multilayered nature of such negotiations is useful for this research but needs to be updated, expanded and geared more towards understanding processes and not just outcomes. Similarly, paradiplomacy can be a helpful concept to use in this study if it is broadened to include topics other than the economy and regions outside of Europe. Therefore, in this study, I will combine existing strands of literature to better capture the nature of states' multilayered interest representation on transatlantic trade and investment topics.

The concept of multilayered interest representation acknowledges that states encompass many actors, that these actors can access many different federal and European stakeholders and that access is sought on a variety of topics. Interest representation is any process states use to articulate their positions to those actors involved in transatlantic trade and investment relations.

Multilayered interest representation is an adaptation of paradiplomacy or multilayered diplomacy that more accurately captures the perspective required to answer my research questions. This concept is drawn from the following findings from IR and federalism scholarship, which are explored more in-depth in later parts of this study:

¹ Intergovernmental relations here and throughout the study are understood in the U.S. federalist sense, meaning relations between the U.S. states and the U.S. federal government. By using the terminology in this way, I refrain from employing the classification that Mark A. Pollack and George C. Shaffer have introduced for transatlantic relations. For them, intergovernmental transatlantic relations mean interactions between central governments. They have the two additional classifications "transgovernmental transatlantic relations" involving the federal states and "transnational transatlantic relations" involving only private actors (Pollack & Shaffer, 2001a, p. 5). Joseph S. Nye and Robert Keohane, who also talk of transgovernmental relations but not specifically in a transatlantic context, use interstate relations for interactions between central governments and their transnational relations refer to interactions between private and nonprivate noncentral actors (Keohane & Nye, 1977, p. 25; see also Nye & Keohane, 1971, p. 4). This terminology is more suitable for the study at hand to avoid confusion with the idea of intergovernmental relations between central states.

- In the U.S. federal system, foreign trade policy powers rest with the federal government, placing legal limits on states' opportunities to engage abroad. Yet, there are enough ambiguities for states to still become actors on the international stage.
- State executives, legislatures and associations are capable of formulating and pushing diverse policy interests, including those with international components. Legislatures in some states still face constraints in their professionalization, however. So, while the constitutional, legal and intergovernmental openings and constraints are exactly the same for all states, differences in policy-making capabilities and activities exist.
- The intricate nature of U.S. federalism has at times led to conflicts over competencies between states and the federal level over foreign policy questions: States want to have a say in international affairs when their authority is touched, as seen in the NAFTA negotiations and in various cases that landed in front of the Supreme Court.
- The international issues pushed by states are overwhelmingly focused on economic development, as all states are actors in globalized markets. This activity has been aided by an opening of international relations to noncentral governments and to economic topics, which allows all U.S. states to pursue global activities apart from the federal government.

In combining the above findings from various strands of literature, I avoid relying on one conceptual or theoretical approach that only inadequately tackles states' engagement on transatlantic trade policy matters. With multilayered interest representation, I can study the different actors, avenues and aspirations involved in states' transatlantic trade relations. Because multilayered interest representation is based on and still close to the idea of paradiplomacy, I can use the modes of state-federal relations in international affairs already identified in the literature to analyze when multilayered interest representation is harmonious and when it is conflictual.

In this study, I will focus my analysis of states' multilayered interest representation on the topics of transatlantic trade promotion and transatlantic trade policy.² Studies from both IR and federalism literature have found that trade promotion is a key driver for states' foreign affairs: Economic concerns such as promoting exports and attracting FDI are the main reasons why states engage with overseas governments, businesses or other organizations. Yet, beyond their economic interests, states are also political actors in a transatlantic regulatory regime. This is what my research emphasizes, thus improving our understanding of states' activities in international relations on trade policy issues. I will not disregard the strong economic impetus states have to engage in transatlantic trade relations. With a view to the TTIP, I cover the topic of trade promotion to explore if, why and how states might connect the trade deal to their own economic development strategies. Do states view the proposed agreement as an engine for economic growth? Do they have concerns or wishes for open transatlantic markets? Beyond this strictly economic sphere, this study additionally underscores states' trade policy interest representation because the TTIP has the potential to shape states' regulatory standards. When and why might states view the trade deal as a force for deregulation? What state interests regarding the TTIP that go beyond the widely covered economic ambitions are relayed to what actors? Analyzing the variance between trade policy and trade promotion interest representation is at the heart of this research and adds a dimension to the study of states as global actors.

² It is implied that "transatlantic trade promotion" and "transatlantic trade policy" also cover investment issues, respectively, but for the sake of readability, I do not always write "transatlantic trade and investment promotion" and "transatlantic trade and investment policy".

Research Questions and Empirical Qualitative Research Methods

At its core, this research is exploratory because states' trade policy interest representation has not been studied intensely before. It highlights the variance between states' trade policy and trade promotion interest representation, instead of only being concerned with trade promotion topics. Specifically, the puzzle is to figure out why some states view the TTIP negotiations mostly in light of their economic development strategies, while others emphasize regulatory issues. This variance in state interest representation has not been addressed in the literature so far. Moreover, by setting my research questions against the backdrop of the TTIP, I can study states' reactions to a contemporary trade deal proposal that is unprecedented in its width and depth and I can include governmental and nongovernmental actors at various levels in the EU and the U.S. Bearing in mind all this, I have drawn up the following research questions:

1. Considering their constitutional limitations in this field, what means do states have to represent their transatlantic trade and investment policy interests and why do some states use them, while others do not?
2. Why and in what ways do some state executives, state legislatures or other state governmental bodies engage with U.S. federal actors and European actors to represent their transatlantic trade and investment policy interests, particularly when these conflict with federal and European interests?

The first part of my first research question aims to find out what means states have to represent their trade policy interests. It illuminates what chances and hurdles exist for states in their trade policy interest representation. This is the most descriptive part of my study, but it is a necessary basis for the question's second part. Here, I explore the reasons and motivations for states to engage on transatlantic trade *policy* issues and contrast this with reasons and motivations for states to engage on transatlantic trade *promotion* issues. Thus, the first question is meant to explain and analyze the variance between trade policy and trade promotion interest representation. By answering this question, the study offers an in-depth look at states as economic actors and political actors in transatlantic trade relations. It also presents interconnected factors contributing to states' trade promotion emphasis or their trade policy emphasis regarding the TTIP.

The second research question tackles intergovernmental conflict in transatlantic trade policy making. Its goal is to uncover the network of actors working in transatlantic trade relations and explore the ways in which states address federal and EU actors with their trade policy interests, which at times might diverge from federal and EU interests. This question stresses the variance between states focusing on trade policy and those focusing on trade promotion, too: It explores the state-federal conflicts in these two fields, leading to an analysis of which area is more prone to divergences and why.

The research questions make it possible to take a rather broad perspective on the means and motivations states have to represent their transatlantic trade policy interests and the conflicts they face. While this might not lead to definitive answers regarding all facets of states' transatlantic trade interest representation, the largely exploratory nature of my study does not allow for too narrow a research question. The exploratory work also makes empirical research and especially expert interviews useful tools for this study.

The starting point for my empirical research approach was to figure out what states are actively working on the TTIP and how. Existing literature has already pointed out official state sources that can be used to gauge states' agendas, interests and activities. In my study, I conduct qualitative content analyses of all state of the state speeches governors gave between 2011 and 2016 to find out how they contextualize the TTIP and international trade. Similarly,

I analyze all state bills and resolutions in that time frame as well as the policy positions passed by state associations such as the National Governors Association (NGA) or the National Conference of State Legislatures (NCSL). Furthermore, I identify and scrutinize informal state groupings actively involved in TTIP interest representation.

This first step of my research already provides results regarding what states are active on the TTIP in what way: Are they focused more on trade policy or trade promotion? Next, I needed to better understand the motivations behind this active engagement and to find the reasons for variance among states. For this, I did not rely only on official state sources and scientific literature. Qualitative interviews with 60 experts from state, federal and EU governments and from nongovernmental organizations enhance my empirical data, allowing me to combine different research methods and sources (discussed in chapter 4). The expert interviews helped illuminate the variance in states' TTIP interest representation, but they also shed light on the intergovernmental conflicts arising in the trade talks.

With this research design, I introduce a selection bias: I only analyze those states articulating their interests on the TTIP and interview people working on this transatlantic trade topic. While I did talk to respondents from 19 U.S. states and 17 organizations from the EU and the U.S., covering roughly half of the U.S. population and economy, it is still a deliberately chosen and thus biased sample. Yet, this approach has the analytical benefit of being able to gather empirical insights from practitioners with state-level expertise on international trade topics. In those states not involved in TTIP interest representation, I would not have been able to answer my research questions of studying states' transatlantic trade policy interest representation.

Another methodological drawback is related to the expert interviews. Overreliance on such talks, issues of subjectivity and concerns over the validity of the interview results are all risks associated with this research method. These limitations are alleviated by combining findings from the interviews with other sources from state documents, media output and scientific literature. Furthermore, the interviewees, while restricted to people knowledgeable in transatlantic trade relations, still come from a wide array of political, academic and nongovernmental backgrounds. The political respondents do not only cover the states, but I am also including respondents from the U.S. federal and EU levels.

1.2 Significance and Argument

States have used many formal mechanisms granted to them within the U.S. federal system to engage international actors on economic and political subjects. In addition, they have created their own linkages abroad and clamor for a bigger say in international matters such as trade negotiations, a policy field dominated by the federal government. Since transatlantic trade and the TTIP in particular have far-reaching effects on states, bringing to light states' activities on these issues contributes to a better understanding of contemporary transatlantic relations that also includes the federal states. This study offers an overview of the actors involved in states' transatlantic trade policy interest representation, their means and motivations and what conflicts arise.

Theoretical and Empirical Significance of This Research

In addressing the topics of transatlantic trade policy from the states' perspective, my study is strictly qualitative. It is concerned with revealing the process behind transatlantic trade relations and states' roles in this process, thus expanding literature on noncentral governments' foreign affairs and on intergovernmental relations in the U.S. federal system. I do not attempt to quantitatively measure policy outcomes by states or as a result of state-federal interaction. Rather, I develop my empirical research argument by analyzing the

motivations, perceptions, activities and potential conflicts states have in the TTIP talks, even though their formal involvement in international trade policy making is minimal. The obvious retort to this enquiry is: Why should we even care what states have to say on transatlantic trade policy? Why should the European Commission and the U.S. administration care?

The general answer to this question is: States do matter in international affairs. Their international endeavors continue to have consequences within the U.S. and on the global stage, despite strict constitutional limitations. For instance, their engagement in previous trade negotiations resulted in enhanced state-federal consultation mechanisms. Trade-related state laws have in the past led to meetings between EU officials and state legislators, prompted the U.S. federal government to intervene and driven the U.S. Supreme Court to issue decisions.

The answer more particular to the TTIP is that the European Commission and the USTR are careful to include a variety of stakeholders in the discussions surrounding the trade deal because it has such wide-ranging potential effects on the economic and regulatory systems in Europe and the U.S. Public interest in the TTIP was muted in the U.S., while European publics were at times loudly in opposition to the proposed agreement. For that reason, negotiators rely on any support they can get. In the specific case of the U.S., governors' public support for trade deals has been adamantly sought after by federal negotiators since the NAFTA. As elected officials, governors and state legislators hold political leverage quite distinct from private business groups or other nongovernmental organizations lobbying on the TTIP. Yet, this distinct role is not well understood and well-studied by political science scholarship.

Despite states' past activities and accomplishments, existing theoretical approaches (discussed in chapter 3) on their own are insufficient in explaining states' contemporary interest representation on transatlantic trade policy. Concepts from international relations, particularly the idea of complex interdependence, acknowledge the blurred line between foreign and domestic affairs, and international political economy research has additionally provided insights on the processes of international trade negotiations. But for the most part, this type of international relations scholarship remains silent on the involvement of noncentral governments such as the U.S. states. For noncentral governments' international endeavors, it is paradiplomacy literature which could be used to explore states' engagement with transatlantic trade policy. The focus here, however, is largely on economic development efforts and bilateral cooperation agreements states might sign. To study states' efforts within the U.S. federal system, such as state resolutions and gubernatorial letters, one could turn to intergovernmental and federal studies. Yet, such literature is mostly concerned with the basic constitutional framework or singular legal cases of states' foreign affairs. These theoretical limitations inhibit a thorough understanding of state-level engagement in international trade issues. In this study, I will alleviate some of these shortcomings by combining, updating and expanding existent research to fully grasp states' efforts in transatlantic trade relations. Findings on the differing interests of governmental actors in the multilayered U.S. system further our knowledge of the balance of powers and potential controversies between governments in the U.S. federal system.

Additionally, this study derives its significance from the unique empirical setting of the TTIP: Beyond the *content* of the trade talks being transatlantic, they also offer a transatlantic *setting* for policy making that U.S. states are not accustomed to. States' domestic regulations and legislation are affected by negotiations that involve not only U.S. federal actors in the national capital of Washington, D.C., but also EU officials in Brussels, Belgium. Previously, U.S. trade negotiations occurred with one or more independent countries or within the World Trade Organization (WTO), but the U.S. has never negotiated a free trade

deal with an organization like the EU. Furthermore, the TTIP dwarfs any other trade agreement in size and the U.S. has not signed a trade agreement in ten years³, so the type of policies under negotiation are different and the scope and depth of a potential agreement are wider, contributing to the unique character of the TTIP.

Economy, Ideology and Personality Shaping States' TTIP Interest Representation

The research questions call for an examination of different facets of states' multilayered interest representation, namely how and why some states relate the TTIP to state regulatory matters and others do not, instead focusing on trade promotion. In my empirical findings in chapters 5, 6 and 7, I provide detailed analyses of these issues. After first reviewing states' activities and means, I found a number of explanations for the engagement and focused on state-federal divergences in TTIP interest representation.

My analysis offers an overview of the means states have available to represent their interests on the TTIP and how they use them. I focus on states' transatlantic trade and investment *policy* efforts (when they are concerned with their regulatory authority) and differentiate this from their transatlantic trade and investment *promotion* efforts (when they are concerned with economic development). I will argue that some states have actively inserted their interests into the TTIP talks and that this interest representation is largely motivated by a desire to protect state regulatory powers and not primarily by economic development issues. Previous studies on states in international matters have strongly emphasized economic development topics, such as promoting exports and attracting foreign direct investment. I address these issues and how they relate to the TTIP in my study in chapter 5. My argument, however, suggests that states voicing their interests on the TTIP are more concerned about safeguarding their regulatory authority within U.S. federalism against potential encroachment by TTIP provisions than they are about economic growth. While trade promotion efforts are still by far the most important part of states' overall international engagement, the TTIP talks have provoked considerable activism for state sovereignty.

While both topics, transatlantic trade promotion and transatlantic trade policy, are connected to the TTIP, each realm involves different actors with different goals and different activities. This study identifies and analyzes the various means of interest representation states use, in line with the first research question. In the realm of transatlantic trade promotion, the most often used means of interest representation are direct contacts between state executives and European businesses. This is a type of parallel interest representation and includes states opening offices in Europe or sending gubernatorial delegations to EU member states. Little conflict with the federal government arises here because states are free to seek out these trade and investment relations with no guidelines and little interference from the administration. Speaking out on the TTIP in a trade promotional context is usually a way for states to advance their economic development goals and has no political connotation. For example, governors from all regions of the U.S. frequently travel to Europe to entice businesses to settle in their states or to tout in-state exporters. In rare cases, governors or other officials from the state executive will connect their economic development goals to the TTIP's potential to ease market access on both sides of the Atlantic. Their primary aim is thus not to sway the TTIP negotiations but to use the proposed deal as a mechanism for better trade and investment relations with the EU.

In the realm of trade policy interest representation, states' aims and avenues stray far away from economic development issues. Rather, states are concerned with maintaining their regulatory authority in U.S. trade policy making and thus most often use the

³ The Korea-U.S. free trade agreement was first signed in 2007 and a renegotiated version was signed in 2012 (Office of the U.S. Trade Representative, 2016j).

intergovernmental means of interest representation. Specifically, states utilize the following means to make their voices heard:

- Consultations with the USTR within the IGPAC
- Letters to the administration or to Congress, sent by individual state legislators/governors or topical groupings of legislators/governors
- Personal discussions with the administration or Congress by governors and state legislators
- Policy resolutions by state associations
- State resolutions

States are driven to speak on policy issues related to the TTIP not because they primarily look towards increasing exports and FDI, but because they seek a greater role in devising and implementing the trade agreement. It is mostly state legislators who pursue these goals. The means listed above highlight states' strategy in achieving this goal: The U.S. administration is their first target in raising awareness for states' positions. While my research also reveals direct connections between state officials and EU actors, coordinated solely by state legislators without any involvement of the federal government, such instances of bypassing parallel interest representation are rare. The major ways for some states to speak out on transatlantic trade policy remain the already existing formal and informal intergovernmental fora and formats.

The means for trade promotional and trade policy interest representation are available to all 50 U.S. states: Any state house could theoretically pass a resolution on the TTIP, any governor could speak out on the proposed agreement and any state association could table a policy position on transatlantic trade and investment topics. Yet, my research shows that only a small number of states became involved in the TTIP talks. I explain states' inaction with several factors, chief among them the lack of resources and knowledge on international trade topics. In line with my first research question, though, I mainly focus on states' *activity* as opposed to their *inactivity*, offering explanations for why some states represent their trade policy interests on the TTIP, while others lack this policy focus.

I will argue that a combination of three factors explains why there is variance between states' transatlantic trade interest representation, namely state economic structures, ideological preferences within a state and state officials' individual, personal backgrounds:

1. State economic structures: I did not find a relationship between common economic indicators, such as a state's gross domestic product, its budget or its FDI links to Europe. Instead, what I refer to with state economic structures mostly concerns the focus of a state's economy, specifically whether a state is heavily focused on agricultural exports or not. I found that states with advanced economic development agencies and dedicated agricultural export strategies tend to speak out on the TTIP on trade promotional grounds, underlining its potential to improve market access for exporters to Europe. This situation often occurs in Republican-leaning states that emphasize economic issues.
2. Ideological preferences within a state: States are not monolithic actors with a single partisan leaning. For example, states with Republican governors might have Democratic legislatures and members of Congress from both parties. Yet, there are distinctions between left- and right-leaning states, for instance indicated by the partisan voting index (see map 6 on page 139). I argue that progressive lawmakers in states typically leaning Democratic tend to voice their opinions on transatlantic trade

policy issues. Their focus is not on market access and economic development strategies but on participating in designing and implementing the TTIP.

3. State officials' individual, personal backgrounds: I argue that a core component of explaining states' interest representation lies not at the general state level but rests with individuals' personal histories and motivations. I encountered highly involved state officials from the executive and the legislatures who became engaged in international trade politics out of personal, political interest. For instance, a governor might care about trade topics because his election campaign was centered around job growth and economic development. Or a state senator might have experienced the effects of international trade at home and decided to become active. Such personally motivated individuals were found to be key drivers of their state's action on the TTIP.

The three explanatory factors I identified are overlapping and intertwined, they cannot be taken as explanations by themselves. Ideology does not matter on its own: Maine, New Hampshire and Vermont – states with a progressive base from the Northeast that are as physically close to the EU as a U.S. state can be – have voiced their opinions on the TTIP. But few other progressive-leaning states have spoken out, and neighboring Northeastern states as well as other East coast states have remained silent. In the same vein, quantitative economic indicators do not matter on their own: The three states mentioned have comparatively small economies and transatlantic trade ties, but that does not mean that all economically small states feel compelled to speak out. Conversely, Florida, Nebraska and Washington – economic powerhouses from all parts of the country with strong, but contrasting, exporting industries – made their interests known on the TTIP, yet other big economies such as New York or Texas stayed rather quiet. Lastly, the empirical evidence gathered in this study points to the significance of personal leadership and commitment when engaging in transatlantic trade matters. I argue that state officials' individual, personal backgrounds are a very important factor in determining whether a state becomes active on the TTIP or not. Yet, even a personally motivated and knowledgeable state official cannot achieve much if the state's economic structures and strategies or the state's ideological preferences discourage any interest in the TTIP.

Arguing that none of the factors on their own matter, I instead find that a combination of them explains the variation in state interest representation on the TTIP. My findings accentuate the distinction between transatlantic trade promotion interests and transatlantic trade policy interests. I argue that the TTIP is contextualized in transatlantic trade promotion terms in states where personally engaged state executives, particularly conservative ones, have built up dedicated economic development agencies based on their need for agricultural exports. Meanwhile, transatlantic trade policy issues come to the forefront in states where personally engaged state legislators, particularly progressive ones, have organized in specialized trade policy commissions, predominantly based on negative experiences with free trade agreements.

Chapters 5, 6 and 7 will provide in-depth analysis and examples of these factors and their combinations. Overall, my study encourages a look at the individual-level factor: Without skilled state officials personally motivated to dive into international trade topics, the formation of a dedicated agency or an informal group working on the TTIP is less likely. A major example was already presented at the beginning of this study with a Maine state legislator taking her background knowledge in international trade to advocate on the TTIP. Other instances include a group of state legislators actively seeking out contacts to European legislators and stakeholders to share their states' perspectives on the regulatory aspects in the TTIP or a governor making Europe his first overseas trade mission to speak out on the proposed deal. These activities, nonetheless, are shaped by the economic and ideological

framework in the state: The Maine state legislator works in a state with a progressive base and the country's most active trade policy commission, the group of legislators is united by a progressive political outlook and the governor traveling to Europe is backed by a highly advanced economic development department with a defined agricultural export strategy. Such combinations do not happen often in the U.S., explaining the general apathy towards the TTIP among the states.

Those states that do become active on the TTIP, however, might find themselves at odds with federal and European negotiators on a range of topics. This study will lay bare conflicting interests within a state and between states and the federal government, which address the fundamental structure of trade policy making in U.S. federalism. State-federal conflicts arise over transatlantic trade policy and barely over transatlantic trade promotion, this study shows. Namely, the complicated process of transatlantic trade policy making with limited state input is the bone of contention, as some state legislators demand stronger involvement in the TTIP negotiations and more access to related documents and actors. States try to guard their own regulatory authority against federal intrusions by way of international trade obligations, while the federal government aims to maintain the status quo. The result is an intergovernmental power struggle over who has what competencies within the framework of U.S. federalism. I argue that this state-federal conflict is still rather muted because states lack the willingness and resources to become engaged and because the formal institutionalized mechanism for state-federal consultation has flaws.

**Theoretical and Methodological Framework:
Noncentral Governments in International Relations**

2.

International Trade Negotiations Past and Present

In offering brief background information on the NAFTA, this chapter shows how states succeeded and failed in representing their interests in previous negotiations. The overview of the actors, debates and structures of the TTIP negotiations provides a basic understanding of the talks necessary for the later analysis of the research questions.

International trade agreements have a long history in the U.S., but the talks for the NAFTA were the first negotiation in which states loudly and continuously claimed a say. While this agreement is smaller in scope than the TTIP and does not cover as many policy fields, it is therefore still instrumental in understanding states' roles in international trade talks. The NAFTA overview in this chapter's section 2.1 will establish states' previous interests and assess how successful they were in asserting them, showing that states have played minor but crucial roles in international relations by representing their interests in trade negotiations.

It must be noted that the three countries involved in the NAFTA, Canada, Mexico and the U.S., started renegotiating their agreement in 2017 (Office of the U.S. Trade Representative, 2017b; The Economist, 2017). This renegotiation is not covered in this study because it started after the 2011-2016 period analyzed in this study (see section 4.2). As a short note, though, states did play a role in the early renegotiations as well: Governors, for example, quickly emerged as key actors in the relaunch of the negotiation, especially as potential pro-NAFTA allies for the Canadian and Mexican national governments (Cassella, 2017; Robichaud, 2017). This was underlined by Canada's Prime Minister Justin Trudeau becoming the first national leader to address a meeting of U.S. governors (Patton, 2017).

After the overview of the NAFTA talks, section 2.2 will establish why a look at the transatlantic trade and investment relationship is of theoretical and empirical interest, considering its continued strength and global importance even in light of emerging powers and markets in other regions. Further, I will outline the basic goals, structures and actors related to the TTIP. Surveying the TTIP's negotiation setting, which shows how dominant actors from the administration and the European Commission have been in shaping the negotiations, is necessary for the key empirical analysis in chapters 5, 6 and 7.

2.1 Why Look at U.S. States in International Trade Negotiations?

Without the intention of providing a comprehensive comparative perspective to the TTIP, this section uses the NAFTA negotiations as a succinct historical example of U.S. states' role in international trade negotiations. It will briefly summarize states' interest representation and what it led to. The NAFTA offers itself as a fitting case in point, as it is somewhat recent and elicited political controversy not unlike the TTIP. For the first time, the federal

government was confronted with states' views on trade policy (Sager, 2002, p. 148), even though there had been intergovernmental debates about the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) as well. Also, the NAFTA was, at the time, the biggest trade agreement in the world, struck between Canada, Mexico and the United States.

One of the initial observations in studies on the NAFTA is often the controversy surrounding its passing in all three member countries (Milner, 1997, p. 206) but especially in the U.S. (Destler, 2016; Hiscox, 2010; Kaiser, 2005; Tangeman, 1996, pp. 243-244; U.S. House of Representatives Committee on Foreign Affairs, 2013; Weintraub, 1994, p. xxi). The agreement was negotiated for the U.S. by the administration of President George H. W. Bush but ratified under President Bill Clinton, who faced tough opposition from some members of Congress and particularly labor and environmental activists. The latter groups staged a high-level lobbying effort against the NAFTA, which made ratification doubtful at some point (Seay & Smith, 1993). In the end, though, the proposed agreement passed both chambers of the U.S. Congress (O'Halloran, 1994, p. 171) and it went into effect on January 1, 1994 (Tangeman, 1996, p. 259).

Involvement of Governors and State Legislators in the NAFTA Negotiations

Formal opportunities for the states to represent their interests were scarce in the negotiations leading up to the ratification. In fact, Franz Gress, a German political scientist, termed the NAFTA "at least 'half-blind' in regard to the states" (Gress, 1996, p. 62). Even though a state official, Wisconsin Governor Tommy Thompson, had floated the idea of a Mexico-U.S. free trade agreement already in 1989 (Seay & Smith, 1993, p. 4; Thompson, 1990, p. 17), it was the federal level which took charge in the upcoming years and then led the negotiations for the U.S.: Congress allowed for the federal executive, namely the USTR, to direct the talks. The negotiations lasted less than four years in total, from mid-1990 to 1993 (Milner, 1997, p. 211), and the committees and working groups were staffed by federal officials from the USTR, the Environmental Protection Agency and the U.S. Departments of Agriculture, Commerce, Justice, State, Transportation and the Treasury (Weintraub, 1997, pp. 71-72).

Many governors spoke out on the proposed agreement during the negotiation period, mostly in favor of it: In a survey, 40 of the 50 governors supported the NAFTA (Seay & Smith, 1993), coming from all parts of the country and from all economic backgrounds. The governors proved to be a crucial ally for the Clinton administration in seeking ratification of the NAFTA (Kaiser, 1998, p. 206; 2005, pp. 93-94; Seay & Smith, 1993), underlining the significance that is attached to the governors' voices in U.S. trade policy. Gubernatorial support is noteworthy not only in that it shows states executives' engagement in international trade policy in general but especially because of the opposition the NAFTA faced among labor and environmental organizations as well as in Congress. In the case of California, the curious constellation arose where the governor supported the NAFTA, saying it would create jobs, while the congressional delegation opposed the NAFTA, saying it would destroy jobs (Seay & Smith, 1993).

Congress nevertheless offered an indirect way for state interests to be represented, as political scientist Robert Kaiser found in his comparison of North American and European integration. He reported that the USTR informed 18 congressional committees in 333 meetings over a 15-month span (Kaiser, 1998, p. 200) and that governors also sought informal access to members of Congress (Kaiser, 1998, p. 205). Yet, institutionalized state representation in the U.S. Senate was rather weak, so state governments engaged in fragmented interest representation using the Intergovernmental Policy Advisory Committee on Trade (IGPAC) and state associations to pronounce their policy positions. The IGPAC at the USTR, established in 1974, is a formalized and institutionalized way for states to engage in consultations with the federal level, which will be analyzed in depth later (see pages 108-

114). At the time, it had a membership of 16 governors, six state commissioners, six state legislators and nine mayors and county officials (Chopra, 1993; Kaiser, 1998, p. 202). It issued a report in 1992 favoring the NAFTA but also addressing some critical issues (Thompson, 1992). Despite this activity, the IGPAC was criticized for its lack of regular meetings and qualified staff (Boer, 2002; Kaiser, 1998, p. 202; Orbuch & Singer, 1995), which limited states' influence in the NAFTA negotiations.

Apart from the IGPAC, governors and state legislatures sought different opportunities to make their voices heard. Informal contacts between governors and the USTR or the president took on an important role in addition to the official IGPAC communication (Orbuch & Singer, 1995, p. 130). Several governors' associations, including the National Governors Associations, spoke out on the NAFTA, 20 state legislatures passed resolutions on the NAFTA, Minnesota released a study on the proposed agreement's effects, North Carolina and Washington installed commissions to scrutinize the NAFTA and the National Conference of State Legislatures also published a statement on the trade deal (Kaiser, 1998, pp. 207-208). The majority of states were for the NAFTA (Hocking & Smith, 1997, p. 101; Weiler, 1994, p. 128), but no matter the opinion on the agreement, it is evident that state executives, legislatures and other state bodies were involved in interest representation on the NAFTA.

Questions on State Sovereignty in the NAFTA Discussions

Many of the resolutions and statements (as well as most of the general political and media debate) dealt with the NAFTA's expected economic effects, such as job losses and gains. But with international trade agreements, questions of state sovereignty are another crucial aspect for state governments to address. After an international agreement is signed, its rules are not automatically superior to state laws (Aceves, 1995, p. 461). Trade agreements such as the NAFTA or the TTIP first have to become U.S. federal law to take effect. Since federal law supersedes state laws, the international trade rules are only superior to state regulations once enacted at the federal level (Cooper, 1993, p. 145; Gress, 1996).

Knowing the general idea that trade agreements indirectly overrule inconsistent state law, several state legislatures addressed questions regarding U.S. federalism, which the IGPAC emphasized, too. In addition, it became clear during the negotiations that the NAFTA would severely affect state sovereignty "because the trade agreement mandates uniform regulations, thereby requiring states to regulate according to the NAFTA guidelines in areas that were previously left to independent state regulation" (Tangeman, 1996, p. 251). The federal government had not done this in previous trade agreements, alarming states that they might lose their "independent lawmaking capacity" (Weiler, 1994, p. 132) due to NAFTA restrictions and new institutions curtailing them. As the NAFTA was a comprehensive, wide-ranging trade agreement and state economies had become more globalized (Tangeman, 1996, p. 249), state governments were keen on protecting their rights to design and implement their own state policies and regulations (Gress, 1996; Hopkins, 2003, p. 156; Paarlberg, 1995; Sager, 2002, pp. 96-99).

Two side agreements, which President Clinton negotiated after the actual NAFTA text had already been finalized, offered a chance for the states to secure promises from the federal level that their own laws could not be preempted under the NAFTA (Paarlberg, 1995, p. 77). However, some members of the IGPAC at the time offered individual comments, which were added to the official report, that stated the need for considering even stronger labor and environmental laws. Overall, the 1992 IGPAC report on the NAFTA was favorable towards the proposed agreement, but it also criticized the lack of access to the text and the limited time frame for states to comment on the proposed agreement. The IGPAC demanded a stronger say in the implementation of the agreement: "IGPAC calls upon the federal government to establish a formal mechanism for consultation and coordination with state and local

governments regarding the implementation of pertinent aspects of trade agreements, including NAFTA” (Thompson, 1992, p. iv). Such criticism would reemerge during the TTIP talks and will feature in chapters 6 and 7.

Meanwhile, some officials from the federal government were making the case that international commerce had been regulated at the federal level for decades and that most state laws complied with the NAFTA anyways (Chopra, 1993, pp. 250-251; Tangeman, 1996). The scope of this study does not allow or call for a thorough legal review of the NAFTA’s effects on state regulations, which can be found elsewhere (Cohn, 2014; Kaiser, 1998; Katz, 2005; Tangeman, 1996), but there is consensus that the NAFTA regulations are binding for states and thus affect their sovereignty.

That the NAFTA binds states is by itself not a menacing circumstance for the states, were it not also for the fact that states had so few formal ways to help develop the NAFTA rules. As described above, negotiations were dominated by the federal level and state interest representation was relegated to studies, proclamations and gubernatorial contacts in Congress. Even these rather weak, disjointed and informal ways of interest representation did lead to some successes for the states, however: “NAFTA is the first treaty through which states have been guaranteed the right to be informed and to participate in trade matters affecting the states” (Tangeman, 1996, p. 265). The way in which these rights were secured exemplifies how trade agreements are adopted in the U.S.

States’ Achievements in the NAFTA

As the NAFTA was an executive agreement, the federal government had to pass implementing legislation, H.R. 3450 (U.S. Congress, 1993), in order for the agreement to enter into effect. Additionally, the federal government prepared a Statement of Administrative Action (United States, 1993), serving as the “definitive interpretation of NAFTA and the actions proposed to implement the agreement” (Tangeman, 1996, p. 264). These two documents established several avenues for states to become involved in NAFTA trade policy and to safeguard some of their sovereignty in policy making, but drawbacks did remain:

- Grandfathering of laws: U.S. states were allowed to keep already existing state laws that conflict with the NAFTA regulations, a process known as grandfathering (Boer, 2002; Chopra, 1993; Kaiser, 1998, p. 219; Weiler, 1993/1994, p. 41). This meant that some discriminations to be eliminated by the NAFTA were kept in place. For example, U.S. states were explicitly excluded from the public procurement rules in the NAFTA, so they could continue favoring state-based businesses in their procurement processes (Chopra, 1993; Hufbauer & Schott, 1993).
- Guaranteed cooperation between the USTR and the states on law conformities: The federal government pledged to help states in conforming their laws to NAFTA standards and to involve the states in developing positions on NAFTA issues (Tangeman, 1996, p. 264).
- Establishment of the NAFTA Coordinator for State Matters: Acting as a liaison between states and the federal government, this position “reveals the federal government’s cognizance that state standards affected by the NAFTA cannot be modified without consultation with the affected states” (Tangeman, 1996, p. 265). The coordinator also works with states’ attorneys general to resolve disputes (Weiler, 1993/1994, p. 41; see also Sager, 2002, p. 107-108). This is a guaranteed way for states to be involved in trade matters, but it is nevertheless a weaker option than involving states directly in the NAFTA dispute resolution mechanism. The mechanism for resolving trade conflicts between the three member countries is not open to the states immediately but only to the federal level (Weiler, 1993/1994, p. 41). States can defend their laws in dispute

settlements only “if the administration agrees to that” (Kaiser, 2005, p. 95), so ultimately, the federal government remains the dominating power in dispute settlement (Orbuch & Singer, 1995, p. 131).

- Establishment of the State Single Point of Contact (SPOC) system: A further mechanism for states to exchange information with the federal level is the State Single Point of Contact. Every state must designate an official responsible for relaying information regarding trade policy matters to the USTR and for disseminating information from the USTR to state agencies (Kaiser, 1998, p. 216; Orbuch & Singer, 1995; Tangeman, 1996, p. 265; Weiler, 1994, p. 129). This system has been criticized as weak and ineffective and will be discussed in more detail later (see page 113).
- Participation in NAFTA committees and institutions: The federal government’s general reluctance to include the states in the negotiations carried over to the establishment of NAFTA institutions. States are not completely shut out, but their participation in the commissions created by the NAFTA is limited. For example, while the Border Environment Cooperation Commission has members from the public and private sectors representing the states, there is only one state member allowed on the Joint Public Advisory Council, which advises the North American Commission on Environmental Cooperation (Kaiser, 2005, p. 95; Mühlfeld, Windolf, Lampert, & Krüger, 1981; Orbuch & Singer, 1995).

In constitutional and formal terms, the federal level asserted its primacy in U.S. commercial and trade policy with the NAFTA negotiations. In political terms, however, it became clear that federal actors could not ignore states’ interests (Smith & Woolcock, 1993, pp. 50, 103). States achieved a certain level of influence through various structures established in the aftermath of the NAFTA ratification. By the time the negotiations for the free trade agreement were underway, states had realized how intricately and irreversibly they are connected to the international economy and how important it is to make their voices heard on trade matters that affect them. In some cases, this prompted states to establish long-term state institutions to deal with trade issues, for instance in Maine, where the foundation of the Citizen Trade Policy Commission was partly prompted by a report on the NAFTA’s effects on the state (Burns, 2015; details follow later in section 6.2). Generally, the scholarship points to the importance of the informal, political processes for the states to shape their interest representation in trade policy: Contacts to Congress and gubernatorial intervention proved valuable in the NAFTA negotiations, whereas formal mechanisms such as the IGPAC were rather weak.

The NAFTA negotiations, overall, prove that the states cannot be overlooked in international trade negotiations. They are willing and capable to develop international trade policy preferences, which then shape the negotiation process, albeit to a small degree. Furthermore, states’, especially governors’, public support or opposition affects the negotiation and ratification processes. The federal government in most cases cannot ignore states’ interests but seeks to accommodate their concerns to ensure the passing of trade legislation. While the states did ascertain that the NAFTA framework included their opinions and positions, the mechanisms established did not provide for deep involvement, as governors demanded more participation in their 1999 NGA meeting (Kaiser, 2005, pp. 95-96). The federal government’s dominance in trade policy matters was therefore cemented, even in light of the states’ successes. This reveals a discrepancy between the recognition of states’ importance in global trade and their still limited role in trade policy making. A similar discrepancy was visible in the TTIP negotiations.

2.2 Why Look at Transatlantic Trade Policies?

The TTIP negotiations are embedded in a wide network of European-U.S. relations (Telò, 2015, pp. 27-29) and its precursors are early-1990s ideas of transatlantic trade cooperation (Pollack & Shaffer, 2001a, p. 16). This section will first provide an overview of the size, character and importance of the transatlantic trade and investment relationship and will then focus on those processes and actors directly related to the transatlantic negotiations as they took form in the TTIP.

I will not offer a historical overview of transatlantic economic partnerships (to be found, for example, in Featherstone & Ginsberg, 1996; Pollack & Shaffer, 2001a) and it is also not the goal of the following paragraphs, or this research as a whole, to analyze public opinion or the contrasting assessments of the economic impact of the TTIP. The talks were clouded by public and political opposition on both sides of the ocean, which took up major parts of media and scientific focus, but for this study, the diverging views on international trade are taken up only when they relate to the context of state interest representation.

The Transatlantic Trade and Investment Relationship

For the purposes of this study, the transatlantic trade and investment relationship refers to the relationship of U.S. actors at the federal and state level with EU actors on transatlantic trade and investment policies. EU actors include its supranational institutions, its member states and the member states' noncentral entities. In my study, I am thus taking a biased and selective view on transatlantic trade relations. It is biased because it excludes Africa, Canada, Central America and South America from the transatlantic discussion, notwithstanding the overwhelming dominance of the Europe-U.S. focus in scientific literature on transatlantic relations. It is selective because, even accepting this bias, it leaves out such transatlantic forums as the North-Atlantic Treaty Organization (NATO) or the Organisation for Economic Co-operation and Development (OECD) (Featherstone & Ginsberg, 1996; Ginsberg, 1989, p. 261; see also Smith, 1984, p. 2; Telò, 2015, p. 27). Yet, for the research questions at the heart of this study, EU-U.S. connections are the suitable canvas: They historically encompass the long-lasting, deep and globally significant trade and investment relationship and, contemporarily, deal with the major transatlantic issue related to trade and investment policy, the TTIP.

Even more specifically, for this study, the focus is on U.S. state actors, thus highlighting states' transatlantic relations as opposed to the federal level's transatlantic relations. U.S. state actors are all actors who in some way represent state interests, such as members of the state executive or state legislature or officials from state associations or state representatives in joint federal-state bodies.

From an analytical perspective, transatlantic trade and investment relations are a prime example of complex interdependence, which characterizes international affairs and have been detailed already (see section 3.1). They are therefore particularly suitable to study noncentral government's interests and interest representation because the interdependent setting allows for consideration of a variety of actors and topics. The characteristics of transatlantic interdependence can be found in empirical data and historical overviews, of which other scholars have provided a more thorough analysis, albeit with a focus on the central level (Featherstone & Ginsberg, 1996; Maria Green Cowles, 2016; Peterson, 2004; Pollack & Shaffer, 2001c; Steffenson, 2005). Without attempting to replicate such comprehensive research, the following examples will be snapshots capturing the significance of transatlantic relations with a view from the U.S. states.

With varying degrees, all U.S. states have historic, economic, cultural, social and political ties to Europe. Transatlantic ties have resulted in conflict and in cooperation

(Lundestad, 2004), as there have been moments of crisis and empowerment between Europe and the U.S. All of this is also true of other world regions, for example Asia or Africa. However, the common colonial history and the inextricable and deep links throughout subsequent centuries makes the Europe-U.S. relationship a special one (Hanhimäki, Schoenborn, & Zanchetta, 2012, pp. 1-2), which alone would justify choosing this relationship over others for a closer examination of U.S. states' international activities. Apart from a shared history, though, there are many contemporary characteristics of transatlantic relations that render it an important topic of scientific inquiry.

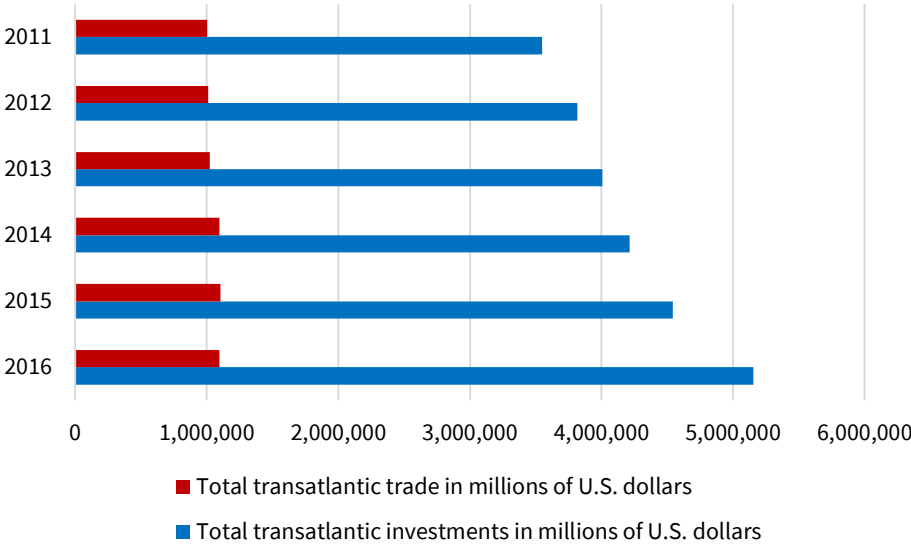
Transatlantic Economic Ties

Transatlantic economic ties are extraordinarily deep and crucial for the world economy. The depth of the economic relationship is exemplified by the sheer amount of trade and investment occurring between the U.S. and Europe (see figures 1 to 3 on the following pages). For example, on average, almost one fifth of a U.S. states' annual exports went to the European Union, looking at the average for the years 2011 to 2016. This number is as high as 37 percent in Connecticut and, in absolute terms, almost \$30 billion dollars for California and Texas (see annex 1). No matter their absolute and relative rankings, for all states, Europe is a key trading partner. For instance, in 2015, all states but Hawaii and Oregon had at least one EU member state in their top ten export destinations and only 15 states did not have at least one EU member state in their top five export destinations (Foreign Trade Division, 2016). Transatlantic trade is facilitated by generally low tariffs between the two parties: Apart from the EU's high tariffs on agricultural products (the most-favored nation tariff, simple average, applied is 11.1 percent for the EU, compared to 5.2 percent for the U.S.; World Trade Organization, 2016a; World Trade Organization, 2016b), tariffs for non-agricultural goods are under five percent in the EU and the U.S.

For a while now, transatlantic investment has been even bigger than trade (Cameron, 2006; Featherstone & Ginsberg, 1996, pp. 3, 144; Peterson, 2004, p. 39; Pollack & Shaffer, 2001b) and constitutes the "backbone of the transatlantic economy" (Hamilton & Quinlan, 2016, p. 19): It totals over \$4 trillion and is the largest investment connection in the world. Additionally, it is estimated that the transatlantic workforce is somewhere between 13 and 15 million people (Hamilton & Quinlan, 2016, p. 13). Similar to the trade relationship, there is some variety among the states: To stick with the example of jobs derived from European FDI, the numbers range from around 4,000 jobs in Wyoming to over 400,000 in California. In relative terms, a little under 40 percent of all jobs from FDI are from European FDI in North and South Dakota. In Connecticut and Rhode Island, that share goes up to almost 80 percent (see annex 1).

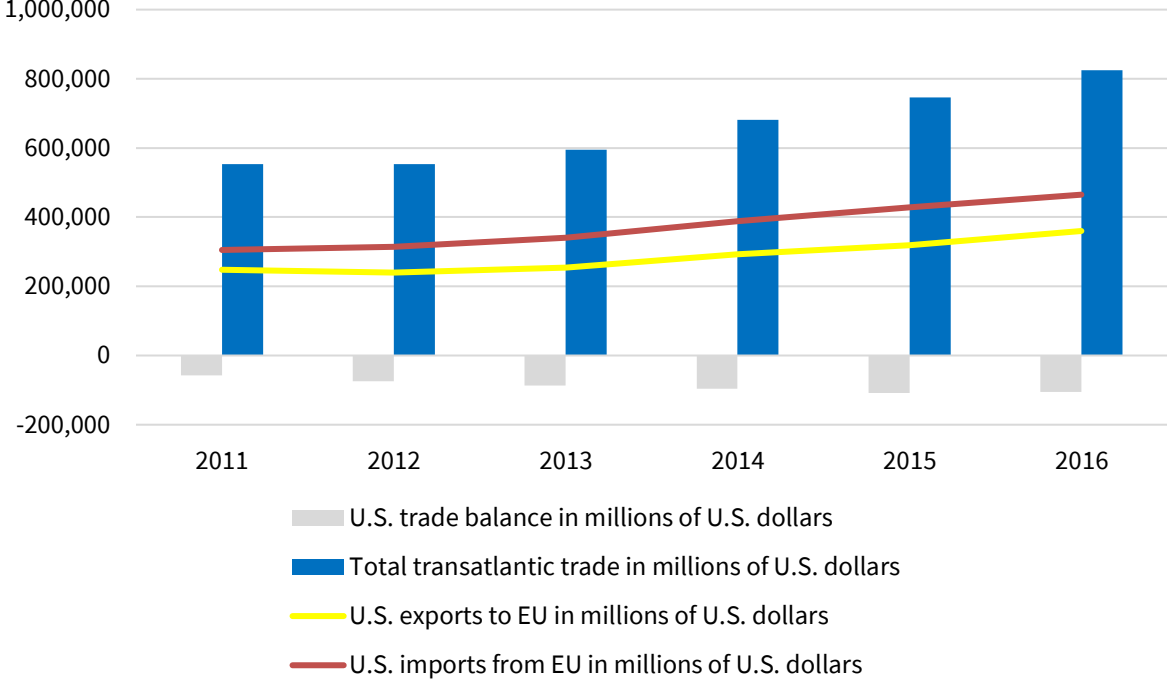
Overall, the export and investment data demonstrate that many states have highly integrated transatlantic markets, as exemplified by high exports to and big investments from Europe. Even those states with smaller engagements in Europe still have considerable transatlantic trade and investment relations and furthermore, there are no states that do not interact with Europe in trade and investment at all.

Figure 1. Transatlantic trade and investment in comparison on a federal level



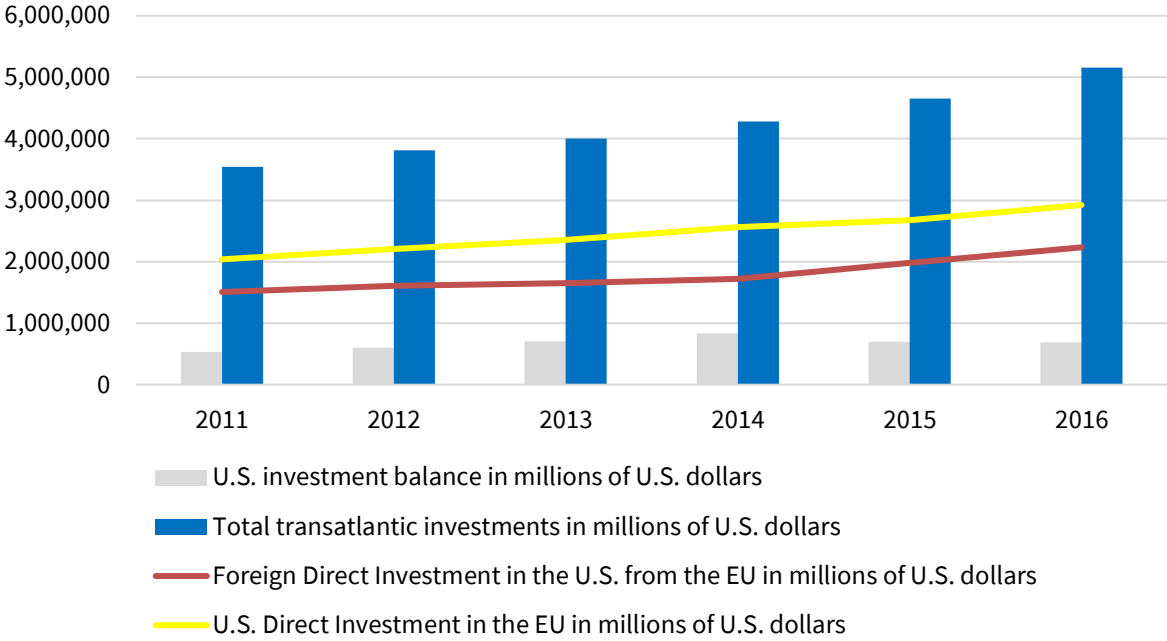
Sources: U.S. Bureau of Economic Analysis (2017b, 2017c, 2017e)

Figure 2. U.S. trade in goods and services with the EU



Source: U.S. Bureau of Economic Analysis (2017e)
 Note: Updated from Akhtar & Jones (2014, p. 9)

Figure 3. U.S. investment relations with the EU



Sources: U.S. Bureau of Economic Analysis (2017b), U.S. Bureau of Economic Analysis (2017c)

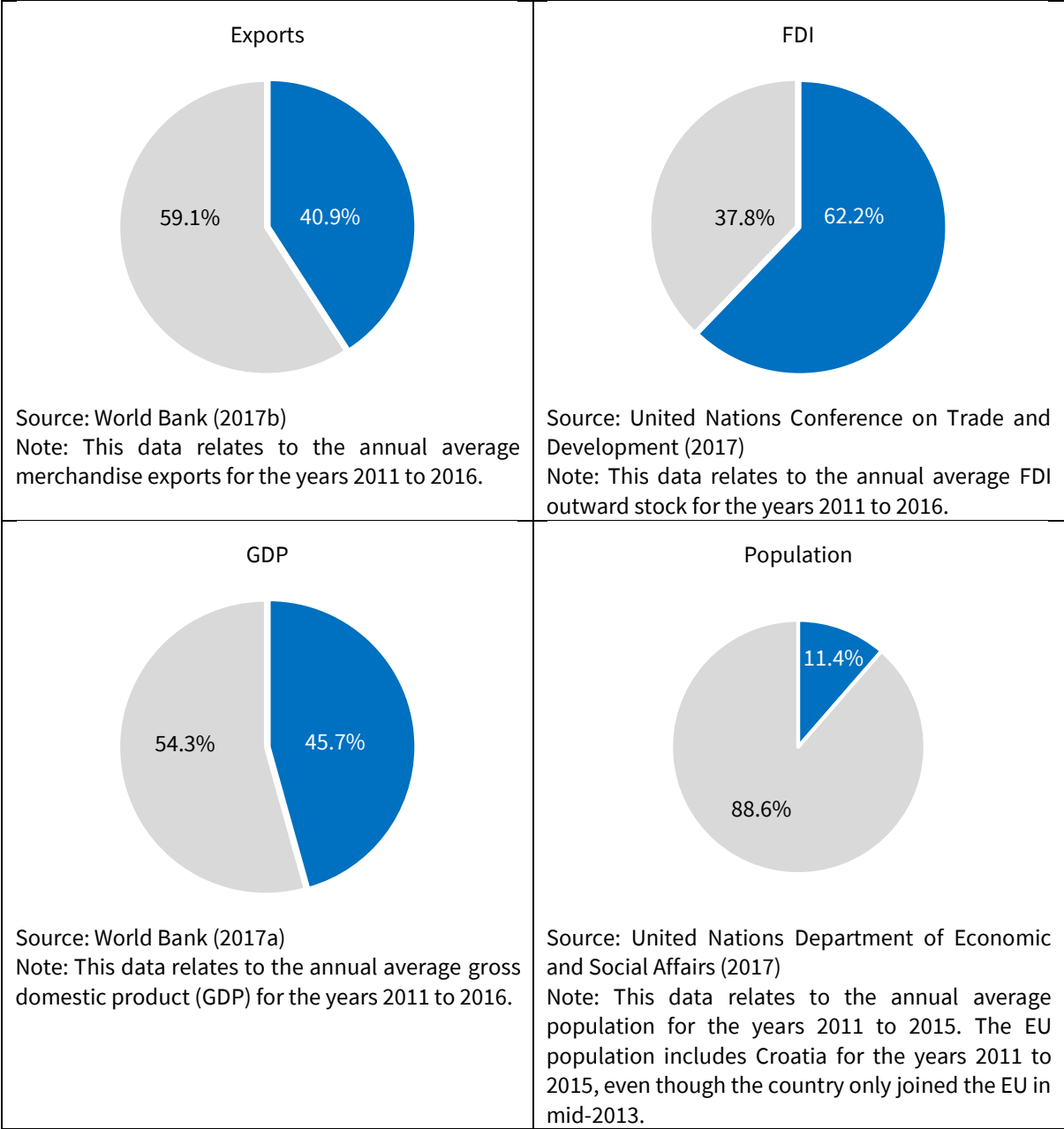
Taken together, the high level of trade, investment and jobs across the Atlantic is indicative of the deeply integrated transatlantic relationship, which is aided by regulatory cooperation and high-level political and business fora. Because this highly integrated transatlantic market continues to be the largest and richest in the world, it is still the dominating driver of the global economy. The often-discussed rise of some Asian nations is reflected in trade and investment relations as well, but it does not come close to the volume of EU-U.S. trade and investment.⁴ In the words of sociologist Saskia Sassen, the transatlantic region is the “centre of gravity” (Sassen, 2004, p. 95) for the global economy (see figure 4 on the following page).

This gravitational center functions without being organized in any institutionalized or formal bilateral fashion, leading either to the conclusion that the transatlantic relationship is so strong that such a bilateral treaty is not necessary or to the inference that the connection lacks deep commitment (Featherstone & Ginsberg, 1996, p. 132). In any case, transatlantic trade and investment relations have been guided solely by multilateral negotiations or sector-based bilateral agreements (Falke, 2017; Featherstone & Ginsberg, 1996, p. 132). This setup has led to some cooperative policy learning but has also exposed the transatlantic partners to long-standing unsolved trade disputes carried out at the WTO (Falke, 2017; Featherstone & Ginsberg, 1996, pp. 168-169, 215; Peterson, 2004, p. 40). The number of trade disputes has grown over time, but it is still relatively small, occurs in few industries and usually concerns low values of trade when compared to the much bigger – and less disputed – investment relationship. For example, the high-profile 1980s EU-U.S. dispute over hormone-treated beef amounted to roughly \$100 million dollars in annual losses for U.S. meat producers at a time of two-way trade worth over \$180 billion (Featherstone & Ginsberg, 1996, pp. 190-192; see also Pollack, 2003, pp. 25). Overall, transatlantic trade and investment has faced few interruptions

⁴ For example, Chinese investment in the U.S. was \$9 billion in 2014 compared to European investments of over \$1.7 trillion (U.S. Bureau of Economic Analysis, 2017b). U.S. exports of goods and services to China were \$165 billion in 2015, while those to the EU totaled \$500 billion (U.S. Bureau of Economic Analysis, 2016).

caused by bilateral disagreements, but the two partners have, over time, repeatedly sought more institutionalized manners of exchange.

Figure 4. Transatlantic economic relations in a global context



Legend: Blue = EU-U.S. share; Grey = Non-EU-U.S. share
Note: Updated from Akhtar & Jones (2014, p. 2).

Little came of the EU-U.S. agreement on a New Transatlantic Agenda, touted as a shift in transatlantic relations in 1995 and encompassing almost all policy fields (Pollack & Shaffer, 2001a, pp. 15-16). Grand plans for a New Transatlantic Marketplace soon gave way to more modest and rather loose modes of cooperation in the Transatlantic Economic Partnership, which was particularly concerned with regulatory issues (Pollack, 2003, pp. 8-9; Pollack & Shaffer, 2001a, p. 16; Steffenson, 2005, pp. 43-46; Stokes, 2005). Even though the activities of the mid-1990s and the content of the corresponding agreements did not lead to institutionalized and formalized frameworks, they clearly show both sides' preoccupation

with economic regulatory issues. The idea of a transatlantic area of free trade and investment flows was only revived in 2011, when the two transatlantic partners sought a formalized relationship with the start of the TTIP negotiations, which is the focus of analysis in chapters 5, 6 and 7.

Transatlantic Cultural Ties

The cultural ties of U.S. states to Europe are expressed formally in sister-state agreements, for instance between California and Catalonia in Spain (California Senate Office of International Relations, 2016). These are mostly focused on building cultural and educational relations but have also taken on an economic dimension (Advisory Commission on Intergovernmental Relations, 1993/1994, p. 34; McMillan, 2012, p. 78; Whatley, 2003, pp. 25-26). States furthermore engage in educational exchanges such as the one between Wisconsin and the German federal state of Hesse (Hessisches Ministerium für Wissenschaft und Kunst, 2016), private or public European heritage organizations in the U.S., for instance the Norway House in Minnesota (Norway House, 2016), or technical consultations with international actors, for example on environmental issues (Whatley, 2003, pp. 27-28). A recent example of the latter comes from California: The state partnered with the German federal state of Baden-Württemberg to form an alliance of noncentral governments fighting climate change. Other European initiators were Wales in the United Kingdom and Catalonia. Since the first signatories met in May 2015, the coalition of noncentral regions has grown to more than 200 jurisdictions that have signed or endorsed the “Under 2 Memorandum of Understanding” (Under 2 MOU, 2018). A liaison office in Brussels supports the initiative’s efforts in Europe (Bagnoli, 2018).

On a more informal and basic level, the U.S. and Europe share broad cultural commonalities, for instance in pop or culinary culture, despite continued societal differences (Featherstone & Ginsberg, 1996, pp. 233-234). Cultural ties are also rooted in a shared ancestry, as millions of Americans in all states claim European ancestry (U.S. Census Bureau, 2013).

Transatlantic Political Ties

On a political level, transatlantic relations are mostly controlled at the federal level. Later chapters will show the states’ trade political ties to Europe. For now, to succinctly highlight the significance of the political ties between the U.S. federal level and Europe as a whole, one look to the past and one to the future will be helpful (for more, see Featherstone & Ginsberg, 1996).

Since World War II, the transatlantic connection has been one of the leading partnerships in the world: Without diving into a historical analysis, suffice it to mention that the Marshall Plan, the founding of NATO, the common political goals in the Cold War and in the fight against international terrorism as well as a resounding consensus on political values, such as democracy, the rule of law or diplomacy, have proven that cooperation has triumphed many times over conflict in the politics of transatlantic relationship. Political science professor Henry Nau analyzed identity and power in international relations and found that the EU is closer to the U.S. than any other world region (Nau, 2002, pp. 87, 244-245), therefore demanding and justifying a permanent political and security partnership. States are part of the European-U.S. security partnership via a U.S. program aimed at enhancing international security cooperation. Within this program, state National Guard units are paired with international militaries and the early focus was on Central and Eastern Europe (McMillan, 2012, p. 121; National Guard, 2016; Whatley, 2003, pp. 16-17, 54).

Yet, while there is generally little transatlantic conflict, political cooperation on international issues has been stalling somewhat since the end of the Cold War (Burwell, 1999)

and especially in the 21st century. This began with a rift over the Iraq War in 2003 and discussions over NATO's direction all the way to more recent disputes over U.S. spying in Europe and not least the proposed free trade agreement at the center of this work.

Furthermore, the future political might of the transatlantic partners is challenged by rising powers all over the world. In fact, the U.S. federal government itself has shifted its political and trade focus to the Asia-Pacific region (Clinton, 2011). Despite all these challenges and talks of the transatlantic relationship in crisis and decline, it is still accepted that the transatlantic relationship is strategically of highest importance because the overlaps in U.S. and European interests are bigger than those in any other world region (cf. Burghardt, 2006, p. 3).

Especially because of previous political complications in the transatlantic relationship, the fact alone that both sides were willing and able to engage in years of negotiations for a comprehensive transatlantic trade and investment agreement are a sign of vitality for the transatlantic relationship. The two partners Europe and the U.S. thereby recognize each other's continued importance for one another. It also confirms the previous finding that despite political and social rifts, transatlantic trade and investment continues to work against the backdrop of complex interdependence (Peterson, 2004, p. 46).

The TEC and High-Level Working Groups on Jobs and Growth

Knowing about the enormous trade and investment relationship that already existed between the EU and the U.S., the two sides aimed to further integrate their markets by negotiating a free trade agreement (FTA). The groundwork for such an agreement was laid by national and supranational transatlantic leaders with little influence by the U.S. states or European constituent regions. In April 2007, the European heads of state, represented by European Council President Angela Merkel and European Commission President José Manuel Barroso, and U.S. President George W. Bush came together for their annual EU-U.S. Summit and put the wheels in motion for what would later become the TTIP proposal (EU-U.S. Summit, 2007). The summit resolution on economic issues, called Framework for Advancing Transatlantic Economic Integration between the European Union and the United States of America, was presented by the three highest-level leaders on both sides of the ocean and has the transatlantic economy as a whole in mind. Its goals and content are similar to what would later be the basis for the TTIP: The framework confirms the strong historical, political and economic ties between the EU and U.S. and calls for broad measures of cooperation in regulatory matters.

To drive and oversee the goals from the framework, the three politicians founded the Transatlantic Economic Council (TEC). Even though the TEC had the "ultimate objective of achieving a barrier-free transatlantic market" (Alemanno, 2011, p. 212), the progress made was comparatively small-scale. The officials focused, for example, on a work plan for e-mobility, joint standards for energy efficiency certifications and closer regulatory cooperation for research bodies in the EU and the U.S. (Transatlantic Economic Council, 2011). Political science scholar Leif Johan Eliasson judges that the few legally binding agreements, letters of understanding and stated intentions were important but that "progress came in part by avoiding the most challenging issues" (Eliasson, 2014, p. 124). Similarly, a study by the Congressional Research Service found the TEC's work to be "uneven" (Akhtar & Jones, 2014, p. 8). The TEC is still regarded as the only formally institutionalized transatlantic dialogue on the national and supranational level and it became a means to refocus transatlantic partners on their relationship during the financial crisis between 2008 and 2012 (Eliasson, 2014, p. 120).

The input by U.S. states – and European regions, for that matter – was very minute, however. The TEC is co-chaired by a U.S. Cabinet-level official in the Executive Office of the

President and a member of the European Commission. At the time of its foundation in 2007, the co-chairs were Allan Hubbard, Director of the National Economic Council, and Günter Verheugen, European Commissioner for Enterprise and Industry (Gray, 2015, pp. 38-39). The top-level annual TEC meetings, which these two officials co-chaired, did not include any state representatives but were composed of other European Commissioners and U.S. Secretaries and national agency heads (European Commission, 2011b). The U.S. states therefore had no direct input into this coordinating body. The framework did call for the inclusion of a broad range of stakeholders, especially from the existing transatlantic dialogues, the Transatlantic Legislators Dialogue, the Transatlantic Business Dialogue, the Transatlantic Consumers Dialogue, and from labor representatives. But U.S. states have only minor and indirect openings here: The Transatlantic Legislators Dialogue brings together members of the U.S. Congress and members of the European Parliament (European Parliament, 2016) but does not include noncentral governmental actors. The other dialogues, including the Transatlantic Business Dialogue (today Trans-Atlantic Business Council) as the most prominent, long-standing and institutionalized one (Steffenson, 2005, pp. 72-75), also do not count state governments among their members.

Apart from the annual meetings among European Commissioners and U.S. Secretaries, high-level working groups were founded, which soon gained considerable flexibility and discretion in how they worked and with what stakeholders (Eliasson, 2014, pp. 120-121). These working groups were made up of cabinet-level national and supranational officials and sought input from a variety of stakeholders. The most consequential working group for the future TTIP negotiations was the High-Level Working Group on Jobs and Growth. At the 2011 EU-U.S. summit, the national and supranational leaders decided to launch this High-Level Working Group and tasked it with “identify[ing] and assess[ing] options for strengthening the US-EU trade and investment relationship, especially in those areas with the highest potential to support jobs and growth” (European Commission, 2011b). It was co-chaired by the USTR and the European Commissioner for Trade, again leaving no room for U.S. states or European regions for direct representation.

Already in its interim report in 2012 (EU-U.S. High Level Working Group on Jobs and Growth, 2012), the High-Level Working Group called for a comprehensive transatlantic trade agreement and these recommendations were reiterated and detailed in its final report, issued February 11, 2013 (EU-U.S. High Level Working Group on Jobs and Growth, 2013). Only a day later, U.S. President Barack Obama disclosed his intentions to start negotiations on the TTIP. It was a very brief, one-sentence remark: “I’m announcing that we will launch talks on a comprehensive Transatlantic Trade and Investment Partnership with the European Union – because trade that is fair and free across the Atlantic supports millions of good-paying American jobs” (Obama, 2013). But it was delivered on a highly visible stage: his 2013 State of the Union address (see table 1 on the following pages). Another day later, the national and supranational leaders of the U.S. and the EU made a joint announcement on the intended negotiations (European Commission, 2013c).⁵

⁵ The European Council had voiced support for a comprehensive trade agreement a couple of days earlier after their meeting on February 7-8, 2013 (European Council, 2013, p. 3).

Table 1. Timeline of TTIP events on the national and supranational level

Phase	Year	Date	Events	
Prenegotiation phase	2011	November 28	EU-U.S. High-Level Working Group on Jobs and Growth is established (European Commission, 2011a)	
		2012	June 19	EU-U.S. High-Level Working Group on Jobs and Growth publishes interim report (EU-U.S. High Level Working Group on Jobs and Growth, 2012)
	October 23		European Parliament passes resolution in support of comprehensive trade agreement (European Parliament, 2012)	
	2013	February 7-8	European Council awaits High-Level Working Group's final report and supports comprehensive trade agreement (European Council, 2013)	
		February 11	EU-U.S. High-Level Working Group on Jobs and Growth publishes final report (EU-U.S. High Level Working Group on Jobs and Growth, 2013)	
		February 12	U.S. President Barack Obama announces start of negotiations in his State of the Union address (Obama, 2013)	
		February 13	Joint Statement by Obama, European Commission President José Manuel Barroso and European Council President Herman Van Rompuy (European Commission, 2013c)	
		March 20	U.S. Trade Representative informs U.S. Congress of intent to negotiate the TTIP (Office of the U.S. Trade Representative, 2013a)	
		May 16	Congressional hearing on TTIP in the U.S. House Ways and Means Subcommittee on Trade (U.S. House of Representatives Committee on Ways and Means, 2013)	
		May 23	Congressional hearing on TTIP in the U.S. Senate Foreign Relations Committee (U.S. Senate, 2013a)	
		May 23	European Parliament passes resolution supporting the TTIP (European Parliament, 2013a)	
		June 13	European Parliament passes resolution welcoming the TTIP (European Parliament, 2013b)	
		June 17	EU member states give European Commission the negotiating mandate for the TTIP; press statement of official start to negotiations by Obama, British Prime Minister David Cameron, Barroso and Van Rompuy (Barroso, 2013)	
	Negotiation phase	2013	July 7-12	First round of negotiations (Washington, D.C.)
			July 24	Congressional hearing on TTIP in the U.S. House Energy and Commerce Subcommittee on Commerce, Manufacturing, and Trade (U.S. House of Representatives Committee on Energy and Commerce, 2013b)
			October 7-11	Scheduled second round of negotiations in Brussels postponed due to the government shutdown in the U.S.
			October 30	Congressional hearing on TTIP in the U.S. Senate Finance Committee (U.S. Senate, 2013b)
			November 11-15	Second round of negotiations (Brussels)
			December 16-21	Third round of negotiations (Washington, D.C.)
2014			March 10-14	Fourth round of negotiations (Brussels)
		March 27-July 13	Public online consultations conducted by European Commission (European Commission, 2014a)	
	May 19-23	Fifth round of negotiations (Arlington, Virginia)		

		July 13-18	Sixth round of negotiations (Brussels)
		July 15	Debates in the European Parliament (European Parliament, 2014)
		September 29-October 3	Seventh round of negotiations (Chevy Chase, Maryland)
	2015	January 20	Obama formally asks Congress for fast track authority in his State of the Union address (Obama, 2015)
		February 2-6	Eighth round of negotiations (Brussels)
		April 20-24	Ninth round of negotiations (New York, New York)
		June 1	European Parliament's Committee on International Trade passes recommendations on the TTIP (European Parliament, 2015b)
		June 9	Vote in European Parliament for June 10, 2015 is postponed (Nielsen, 2015)
		June 18	U.S. House of Representatives passes fast track authority legislation, with TAA provisions in a separate bill (Dumain, 2015)
		June 24	U.S. Senate passes fast track authority legislation, with TAA provisions in a separate bill (Bolton, 2015)
		June 29	Obama signs fast track authority legislation (H.R. 1295: Trade Preferences Extension Act of 2015) (Office of the Press Secretary, 2015; U.S. Congress, 2015b)
		July 8	European Parliament passes recommendations on the TTIP (European Parliament, 2015a)
		July 13-17	Tenth round of negotiations (Brussels)
		October 19-23	Eleventh round of negotiations (Miami, Florida)
		2016	February 22-26
April 25-29	Thirteenth round of negotiations (New York, New York)		
June 14	Congressional hearing on agriculture with a TTIP focus in the U.S. House of Representatives Ways and Means Trade Subcommittee (U.S. House of Representatives Ways and Means Trade Subcommittee, 2016)		
June 15	Congressional hearing on the digital economy with a TTIP focus in the U.S. Senate Finance Committee (U.S. Senate Committee on Finance, 2016)		
June 21	European Parliament committee hearing on the effects of the TTIP on developing countries (European Parliament Committee on Development, 2016)		
July 11-15	Fourteenth round of negotiations (Brussels)		
October 3-7	Fifteenth round of negotiations (New York City, New York)		
November 11	European Commission expects prolonged break in the negotiations (Stearns, 2016)		
Negotiation break	2017	January 17	U.S.-EU Joint Report on TTIP Progress to Date (European Commission, 2017)

Further sources: Dates on the negotiation rounds were gathered from the European Commission (2016c) and the Office of the United States Trade Representative (2016g).

The High-Level Working Group's report strongly recommended a comprehensive, ambitious trade agreement and not just incremental, partial steps towards more cooperation. The areas identified for cooperation were (EU-U.S. High Level Working Group on Jobs and Growth, 2013):

- Market access: Elimination of tariffs, liberalization of services and investment and, crucial from states' perspectives, opening access to government procurement
- Regulatory issues and nontariff barriers: Prevention of nontariff barriers to trade, cooperation on sanitary and phytosanitary (SPS) issues and technical barriers to trade (TBT) and, again crucial for the states, a framework for future regulatory cooperation
- Shared global issues: Cooperation on issues on which the U.S. and the EU have rather similar views as opposed to other global players, such as intellectual property, environment, competition laws, customs, subsidies and transparency

The last point hints at the geopolitical aims the EU and the U.S. had with the TTIP: In the face of a financial crisis and growing competition from developing countries, the two transatlantic partners want to use the proposed agreement to cement their global leadership role in trade and investment rule-making (Falke, 2017). Yet, at the core of negotiations were not global political considerations but trade and investment issues.

The key focus of the High-Level Working Group, which was to become the focus of the TTIP negotiations, was mostly on nontariff barriers (NTBs) to trade. Tariff reductions or eliminations were part of the talks, but since tariffs between the EU and the U.S. were already quite low for most industries before the start of the negotiations, the most consequential and controversial discussions were centered around NTBs (Falke, 2017, p. 202). Because of its ambition to address most parts of the transatlantic economy and its emphasis on NTBs, the TTIP is considered a deep free trade agreement. Deep FTAs include "a broad set of rules and disciplines governing areas such as investment regimes, technical and sanitary standards, trade facilitation, competition policy, government procurement, intellectual property, environment protection, migration, labor rights, human rights, and other 'behind the border' issues" (Chauffour & Maur, 2011a, p. 17).

The nature of the TTIP as a deep free trade agreement covering a wide array of policies and nontariff barriers is of immediate importance to the states in two related ways: The states want the European market to be as open as possible (meaning as little NTBs as possible), so that companies from their states have the best opportunities to export to Europe. Many of the trade barriers in the EU identified by the USTR, for example, directly concern market access issues for industries that are valuable for some states, such as beef or citrus fruit (Office of the U.S. Trade Representative, 2015a; 2016a, pp. 148,151). At the same time, U.S. states want to prevent any infringement on their own regulatory power, as some of the NTBs that the Europeans want to tackle stem from state-level laws and regulations (and not federal rules). For instance, procurement provisions in the U.S. are often regulated by states and states' environmental protection rules could be viewed as NTBs by international companies and governments. Conversely, some U.S. governmental and private actors have criticized the EU's use of the precautionary principle to consumer protection, meaning a product must be proven to be unharmed before entering a market, as a nontariff barrier to trade.

States therefore have to strike a balance between gaining market access in Europe and protecting their own state regulations (cf. Imas, 2005, pp. 23-24), an issue that will feature prominently in chapter 6. Considering the two sides of market access issues explained above, a comprehensive free trade agreement, which removes many market barriers, could offer great economic potential for states and their domestic enterprises. It might conversely impinge on existing state legislation and states' power to legislate and regulate in general.

The TTIP agreement consists of roughly 30 chapters (European Commission, 2016f), each being negotiated by specialists from the USTR and the European Commission, without representatives of state governments present at the negotiating table. Alternating between Brussels and a city in the U.S., the transatlantic negotiators discuss the proposed deal during the various negotiating rounds for the TTIP (see table 1 on page 27). While the first round was largely administrative and procedural in nature (Sutton, 2013), the subsequent negotiation rounds up to round 15 in the fall of 2016 focused squarely on the content of the TTIP through exchanges of text proposals for the prospective chapters.

In between negotiation rounds, there was constant communication between the EU and the U.S. negotiating teams, mostly via e-mail and video conferences. The negotiation rounds, usually stretching over four days, were accompanied by stakeholder meetings, in which representatives from various national governmental agencies, civil society groups and businesses delivered their input to the TTIP process. It has to be remembered, though, that no matter how vocal a group supported or opposed the TTIP, their influence was of an informal and indirect nature, having no immediate say in the negotiating process: Civil society groups and businesses did not partake in the TTIP negotiations and neither did the U.S. states, as was pointed out by multiple respondents and by the U.S. chief negotiator himself. When asked about the role of the U.S. federal states in the negotiation rounds at a public stakeholder forum in Brussels in the summer of 2016, Dan Mullaney replied: “They’re not at the table, but we talk to them constantly in between rounds.”⁶

U.S. Constitutional Arrangements in Trade Agreements

By announcing his intention to engage in free trade talks with the EU, President Obama set in motion a formal political process in U.S. federalism for negotiating trade deals. Such international trade agreements are a federal matter in the United States. The commerce clause in the constitution gives Congress the power “[t]o regulate Commerce with foreign Nations” (United States Constitution, 1789), which can be justified as one way of regulating interstate commerce (Tangeman, 1996, pp. 249-251) and thus includes treaties and trade agreements with other countries.

Trade agreements are either negotiated as treaties or as executive agreements, but in both cases, the federal government is allowed to bind the states to the agreement’s obligations (Tangeman, 1996, pp. 252-253). The official and formal procedure for trade agreements begins with the U.S. federal government negotiating a treaty with foreign countries. Once a deal is reached, the U.S. Senate needs to ratify the treaty with a two-thirds majority. For the TTIP, however, the formal negotiations procedure was not in place, but the more common process of creating an executive agreement was chosen.

For such an agreement, President Obama received fast track authority. This only happened after a political struggle that states were only marginally involved in (see annex 3 for a detailed analysis) and that was particularly long and strenuous due to the nature of the divided government during Obama’s presidency (see table 2 on the following page). Under fast track authority, the White House still leads the trade negotiations with foreign nations, but Congress can only vote the negotiated agreement up or down: No amendments are possible, either the legislators vote for the entire trade deal or they reject it in its entirety (Pearson, 2004, p. 174; Pigman, 2004).

⁶ Question by the author in Brussels, July 13, 2016.

Table 2. Formal power distribution in the U.S.

Time frame	U.S. president	U.S. House of Representatives	U.S. Senate	Governors	State legislators
112th Congress (January 2011- January 2013)	Barack Obama	<ul style="list-style-type: none"> • Republican majority (242-193) • Speaker: John Boehner (R; Ohio) 	<ul style="list-style-type: none"> • Democratic majority (51-47-2) • President: Joe Biden (D) • President pro tempore: Daniel Inouye (D; Hawaii; until December 17, 2012); Patrick Leahy (D; Vermont; from December 17, 2012) 	30 Republicans, 19 Democrats, 1 Independent (2012-2013); 29 Republicans, 20 Democrats, 1 Independent (until 2012)	3,975 Republicans, 3,319 Democrats, 21 others (2012); 3,944 Republicans, 3,356 Democrats, 24 others (2011)
113th Congress (January 2013- January 2015)		<ul style="list-style-type: none"> • Republican majority (234-201) • Speaker: John Boehner (R; Ohio) 	<ul style="list-style-type: none"> • Democratic majority (53-45-2) • President: Joe Biden (D) • President pro tempore: Patrick Leahy (D) 	31 Republicans, 18 Democrats, 1 Independent (2014-2015); 30 Republicans, 20 Democrats (2013-2014)	3,836 Republicans, 3,448 Democrats, 26 others (2014); 3,813 Republicans, 3,418 Democrats, 21 others (2013)
114th Congress (January 2015- January 2017)		<ul style="list-style-type: none"> • Republican majority (247-188) • Speaker: John Boehner (R; Ohio; until October 29, 2015); Paul Ryan (R; Wisconsin; from October 29, 2015) 	<ul style="list-style-type: none"> • Republican majority (54-44-2) • President: Joe Biden (D) • President pro tempore: Orrin Hatch (R; Utah) 	31 Republicans, 18 Democrats, 1 Independent	4,118 Republicans, 3,163 Democrats; 30 others (2016); 4,111 Republicans, 3,163 Democrats, 35 others (2015)

Legend: D = Democratic; R = Republican; Blue = Democratic majority; Red = Republican majority

Sources: Manning (2011, 2014 2016); National Conference of State Legislatures (2011, 2012, 2013a, 2014a, 2015a, 2016d); National Governors Association (2015a, 2016b)

Notes: Vacancies in state legislatures are not counted. The unicameral Nebraska legislature, consisting of 49 state legislators, is not counted because it is nonpartisan.

With fast track legislation enacted, Congress abdicated the opportunity to amend the final TTIP proposal upon its completion. Scholars of U.S. trade politics point out how Congress has, over time, willingly ceded responsibilities and authorities in trade negotiations to the president (Destler, 2005, p. 66; Schiltz, 1996). However, they also acknowledge constraints on the executive, so the administration's dominance should not be overstated, even though fast track authority does favor the executive over Congress and the states.

Political economist Sharyn O'Halloran delivered an argument stressing the continued influence of Congress even with fast track legislation. She points out that while Congress has

undeniably shifted power to the executive, it has simultaneously created a fine web of limits, constraints and reporting mechanisms that ensures that congressional and special interests are taken into account before, during and after trade negotiations (O’Halloran, 1994, pp. 139-175). For example, congressional committees hold nonmarkup sessions to table recommendations to the president, which are very similar to amendments and hard for the president to ignore entirely (O’Halloran, 1994, pp. 149-150; see also Fisher, 2008, pp. 154-155; Koh, 1992, pp. 164-165). Other authors also note how the constraints that come with fast track legislation might empower Congress (Hocking & Smith, 1997, p. 77) and that members of Congress might not even crave full control over U.S. trade policy, as they consider themselves generalists and they do not view trade policy control as necessary for advancing their careers (Destler, 1994, pp. 241-243).

Before any trade deal ever comes before Congress, it has to be negotiated and the executive agency tasked with this is the Office of the United States Trade Representative. Table 3 shows the USTR and other national and supranational actors involved in the TTIP negotiations. Appointed by the president with the advice and consent of the Senate, the head of the USTR is a federal-level official charged with leading all trade negotiations (Schiltz, 1996, pp. 92-94). In 1962, the responsibilities for conducting trade negotiations shifted from the State Department to the newly created Office of the Special Trade Representative in the Executive Office of the President. Congress played a crucial role in creating the office, which remains responsive to both the federal administration and Congress (Destler, 1994, pp. 236, 245). Members of Congress were keen on improving their say in trade matters, but the USTR has developed into an office closer to the executive than the legislature (Pigman, 2004, p. 307).

Table 3. Actors at the national and supranational level involved in the TTIP negotiations

Year	European Union			United States			
	European Commission president	European commissioner for trade	EU chief negotiator	U.S. president	USTR	U.S. chief negotiator	
2011	José Manuel Barroso	Karel De Gucht	Ignacio Garcia Bercero	Barack Obama	Ron Kirk	Dan Mullaney	
2012					Miriam Sapiro, Demetrios Marantis (both acting)		
2013					Michael Froman		
2014					Jean-Claude Juncker		Cecilia Malmström
2015							
2016							

Sources: European Commission and USTR websites

The USTR’s authority and tasks were expanded in the late 1970s and 1980s (Schiltz, 1996, pp. 87-88) and today, renamed Office of the United States Trade Representative, the office has a staff of about 200 in Washington, D.C., Brussels and Geneva, Switzerland (Office of the U.S. Trade Representative, 2016b). It has become a “small, highly professional staff of skilled trade policy experts who advise the President, write trade legislation and oversee the implementation of a range of existing trade laws” (Pigman, 2004, p. 307), even though it could be criticized for being *too* small and legalistic (Peterson, 2004, p. 42).

Eight different committees advise the USTR on a variety of sectoral and social issues, one of them being the Intergovernmental Policy Advisory Committee on Trade or IGPAC for short (Office of the U.S. Trade Representative, 2016c). As already mentioned earlier in this chapter, it gives recommendations and advice from state and local officials to the USTR. The IGPAC will feature prominently later in this study, as it is one of the access points for the states' executives, legislatures and other bodies to make their voices heard in the TTIP talks.

2.3 Chapter Conclusion

International trade negotiations are steered by national governments and supranational organizations. A look at the NAFTA negotiations of the 1990s and the contemporary TTIP talks underscore this central governmental dominance: The U.S. administration negotiates with countries like Canada and Mexico or multilateral institutions like the EU. This might explain scholars' timid interest in studying noncentral governments' role, as shown in the following chapter 3. But noncentral actors are viable international actors and cannot be ignored by central government negotiators.

Officially and formally, states' roles in the NAFTA and TTIP negotiations were negligible. Politically, though, no agreement was realistic without state support, heightening states' status in the negotiations. For the NAFTA, history has proven this: Governors were sought-after allies for the USTR and many state legislatures provided input on various trade promotion and trade policy issues. A similar scenario was developing for the TTIP, as this study will show in the following chapters 5, 6 and 7. While federal negotiators from the office of the USTR exchanged positions with their counterparts from the European Commission, state officials from the executive and the legislature delivered their points of view to the negotiators.

In light of the small institutionalized role of states in trade negotiations, the negotiating processes presented in this chapter underscore the importance of informal means of interest representation. The NAFTA talks brought to light numerous ways for states to compensate for their lack of a seat at the negotiating table, for instance legislative studies, governors' public comments and contacts to Congress. States became active due to the size and importance of the North American market as well as the need to safeguard their regulatory authority. For the TTIP, this chapter showed that the market under negotiation is even bigger and the rules to be implemented even deeper, touching upon state prerogatives in many areas. The negotiation process meanwhile continues to be dominated by the federal level. In the following chapters, I will analyze what points of access states nevertheless sought out and created, what means they used despite their constitutional limitations and what conflicts this interest representation caused.

3. Theoretical Foundations

The goal of this chapter is to lay a theoretical foundation for understanding U.S. states' interest representation in transatlantic trade affairs and to contextualize this study within political science research. I draw mainly from literature on international relations and U.S. federalism to form a theoretical concept suitable for answering the research questions, namely multilayered interest representation.

Why should we even bother looking at noncentral governments and how they represent their interests on international issues such as the TTIP and trade policy? According to most scholars, the nation-state has been, is and will be the primary unit of analysis in international relations. And for the particular case of the U.S., the constitution was partly established to bestow foreign policy-making capabilities upon the central government and not have the states speak for themselves on international issues.

Yet, as the first two chapters have shown, U.S. states have been actively engaged in international affairs for decades. The states voicing their opinions on the NAFTA negotiations is just one of many instances in which states are global actors: Additionally, they have sister-state agreements all over the world, they sign memoranda of understanding with bordering and far-away regions on several topics, they host visiting regional and national politicians, their leaders go abroad to meet business people and political figures, their legislatures pass resolutions on foreign affairs, their military has personnel exchanges with European countries and they are economic forces on the global marketplace as public procurers, exporters and investment destinations for companies in foreign countries.

Clearly, noncentral governments are crucial global actors and the question posed at the beginning of this section is not usually asked anymore. International relations literature has acknowledged that a view of the nation-state as a monolithic, univocal actor, while helpful for analysis in many cases, does not convey the full extent of political decision making, especially in federal systems and especially when it comes to trade policies and politics (cf. Ducháček, 1988, p. 4). One researcher in this field, David Criekemans, even contends that it has become a “platitude to say that national states are no longer the only actors on the international scene” (Criekemans, 2010b, p. 37). Regarding U.S. federalism, the constitution and jurisprudence by the Supreme Court is not as firm on denying states a place on the international stage as it may seem at first sight.

In this chapter, I will first take the IR perspective and consider what noncentral can do in international affairs, outlining how noncentral governments generally gained a foothold in IR analysis. Then, I will take the U.S. federalism perspective to focus specifically on what U.S. states can do in international affairs against the backdrop of their constitutional opportunities and limitations. From these two strands of literature, I will combine several concepts to build a theoretical approach suitable for this study's research questions, namely multilayered interest representation. This is meant to update and expand existing ideas from

IR and federalism to better capture the actors, avenues and aspirations states have in transatlantic trade and investment policy making.

3.1 What Can Noncentral Governments Do in International Affairs?

As mentioned above, IR analyses have come to include activities and actors beyond a nation's central government. In the 1970s, authors began studying noncentral actors in international relations and later, with the rise of the EU as a new form of governance, interest grew in regional governments and their international engagement. Studies highlighting the complex interdependence of the global marketplace and concepts emphasizing noncentral governments' potential roles in international trade negotiations will form part of the foundation for this research and will be reviewed in the following.

Complex Interdependence and Paradiplomacy

One development that sparked IR's move away from only considering nation-states is the rise of transnational actors. Joseph S. Nye and Robert Keohane explored this subject of transnational activities in the early 1970s, which for them were interactions across state borders that were not controlled by the central government (Nye & Keohane, 1971, p. 331). They did not specifically consider noncentral governments and instead mostly dealt with nongovernmental actors. For instance, they highlighted multinational corporations and trade unions in their early work in 1971 (Nye & Keohane, 1971) and through case studies in their seminal book *Power and Interdependence*, they analyzed multinational companies and central governmental interactions in international organizations (Keohane & Nye, 1977). Even though they did not introduce the idea of noncentral foreign affairs just yet, the authors did lay the groundwork for even considering noncentral governments in the first place. Several analytical points raised by Keohane and Nye are important for this study of U.S. states in transatlantic relations:

- Central state power is eroding. Without this very basic acknowledgment, considering U.S. states in scientific studies would be moot. The authors argue that power does not refer only to military might and securing the nation anymore (Keohane & Nye, 1977, pp. 24-25), therefore opening up international relations to a variety of economic or social actors, including U.S. states and other noncentral governments.
- The division of high and low politics is crumbling. The two scholars criticize what is in their view an archaic classification and hierarchy created by realists, separating military "high politics" from "low politics" such as economic or social issues (Keohane & Nye, 1977, pp. 24-25). Crucially for this study, the international military power and responsibility of the U.S. states is miniscule, yet their competencies in economic and social issues make them important actors in the U.S. federal and international political systems.
- Interdependence characterizes the international system. Shaped by transactions among countries and of actors within countries, international politics show that actors are mutually affected by external forces (Keohane & Nye, 1977, p. 8). Because interdependence does not necessarily mean that gains and losses are shared beneficially by all, there is a need for political bargaining. This, too, is of high significance for the study at hand, since states are vying for political and economic capital in the U.S. and abroad.
- Multiple channels exist in international relations. Keohane and Nye propose that it is not only communications and negotiations between central state governments that

constitute international politics but rather a variety of channels between governmental and nongovernmental actors (Keohane & Nye, 1977, pp. 25-26). This broadens the scope of analysis in IR to actors such as corporations and noncentral governments like the U.S. states, additionally emphasizing the role of different domestic actors and policies.

With this concept of complex interdependence, IR scholarship in the late 1960s and 1970s moved away from mainly considering central governments as actors and mainly considering military political issues as topics. This proved helpful in analyzing the transatlantic relationship, which is a prime example of complex interdependence with its multiple actors, various channels and topics other than security (Featherstone & Ginsberg, 1996; Putnam, 1993; Smith, 1984, pp. 29-30). European Union scholars Kevin Featherstone and Roy H. Ginsberg found that the mechanisms of complex interdependence can be observed in the political, economic and social dimensions of Europe-United States relations, albeit to varying degrees and levels of institutionalization (Featherstone & Ginsberg, 1996, p. 66).

While the consideration of noncentral actors first led to analyses of multinational corporations, subsequent decades saw an emphasis on globalization and related subjects such as the rise of nonprofit, nongovernmental organizations (Risse, 2013, p. 430). Yet, importantly for this study, noncentral governments did not immediately and continuously become part of this shift in IR. Keohane and Nye did not focus their analysis on noncentral governments and neither did later major proponents of transnational studies, such as IR scholar Thomas Risse, who studies multinational corporations, transnational advocacy networks and international nonprofit organizations. Noncentral governments were not entirely dismissed, for example being taken into account in David Singer's study on "The Global System and Its Subsystems" (Singer, 1969) already in the late 1960s. But U.S. states or other noncentral regions were rarely the center of analysis in international relations, even when the existence of multiple levels of governments is acknowledged (Featherstone & Ginsberg, 1996, pp. 69-70).

Studying noncentral governments in IR only gained steam in the early 1990s. Acknowledging that other levels of government beyond the central administration are crucial as well, attention turned to exploring regions' interests, competencies and connections to other governmental actors. For example, political scientists Liesbet Hooghe and Gary Marks explored European regions' engagement with national and EU institutions, identifying several channels they can use to represent their interests (Hooghe, 1995; Hooghe & Marks, 1996). The scholars then used their study of noncentral EU governments to establish their idea of multi-level governance as one theoretical approach to explain European integration (Hooghe & Marks, 2001). Later, together with more collaborators, the authors proved on a broader, global scope that regional authority is on the rise in many countries (Hooghe, Marks, & Schakel, 2010; Hooghe et al., 2016). Despite variation among regions and over time, these findings make it abundantly clear that noncentral governments are viable actors in international relations characterized by complex interdependence.

With more attention being paid to regions in Europe and across the world, paradiplomacy emerged as a theoretical concept used widely to study noncentral governments in international relations. Paradiplomacy refers to non-central governments' involvement in international relations through the establishment of permanent or ad hoc contacts with foreign public or private entities, with the aim to promote socioeconomic or cultural issues, as well as any other foreign dimension of their constitutional competences (Cornago, 1999, p. 40).

Of importance for this research are the direct international contacts mentioned in this definition: Paradiplomacy research has been at the forefront of mapping out the connections between various governments in international relations. Ivo Ducháček and Panayotis Soldatos were two of the first authors trying to organize the field and their early classifications are still discussed today. They identify various kinds of paradiplomacy, one of which can be applied to this study (Ducháček, 1988, pp. 12-13; 1990, pp. 18-27; Soldatos, 1990, pp. 37-38): Global paradiplomacy describes direct contacts by U.S. states to other governments with whom neither the states nor the U.S. as a whole shares a border. This type of paradiplomacy encompasses all direct contacts by the U.S. states to European central and noncentral governments and actors. There are nuances to global paradiplomacy, though, some of which authors have already pointed out and some of which this study will lay bare. For example, political scientist John Kincaid, in collecting the roles U.S. states have in foreign affairs, indirectly described various subdivisions of global diplomacy (Kincaid, 1999). For instance, he classified states' international engagement as being opinion forums or "practitioners of goodwill" (Kincaid, 1999, p. 132) via intercultural exchanges. Most prominently, however, he emphasized states' economic development interests in international affairs: Promotional activities to increase trade, investment and tourism were the key examples of states' international engagement (Kincaid, 1999, pp. 122, 125, 126-127). This is also true for many other studies and articles conducted in part as a response to the expansion of states' international economic development activities in the 1980s and 1990s, which was easily visible with a growing number of state trade offices being opened abroad (Fry, 1990a, 1998; Levine & Vandenbrande, 1993/1994; Liner, 1990; McIntyre, 1983; McMillan, 2012; Thompson, 1990). These will be discussed in section 5.2.

The scholarly emphasis on trade promotional efforts when discussing states' global engagement is indicative of a larger trend in paradiplomacy research, which tends to focus strongly on trade promotion (when states care about economic development) and not on trade policy (when states care about their regulatory authority). This becomes clear when reviewing two recent works offering summaries of paradiplomacy discourse and practical examples. Political science scholar Alexander Kuznetsov has identified eleven dimensions in which scholars have conducted paradiplomacy research (Kuznetsov, 2015, pp. 50-99), for example separatist scholarship, diplomacy research and environmental topics. For the dimension "global economy", most of the literature focuses on how noncentral governments might promote their economic development, but only a subset in this dimension deals with the international trade regime in relation to noncentral governments (Kuznetsov, 2015, pp. 79-82). Rodrigo Tavares, a political scientist and former regional official in Brazil, provides empirical case studies of paradiplomatic activities from around the globe, yet these are typically instances of promotional activities, nonbinding agreements or participation in multilateral networks (Tavares, 2016). For the U.S., a number of authors have shown the strong emphasis states place on becoming global economic actors by internationalizing their economic development strategies (for example, Kincaid, 1999; Kline, 1984; McMillan, 2012). Gubernatorial trade missions and representative offices abroad are frequently studied examples of this. For a discussion of such activities, to be taken up in section 5.2, the concept of paradiplomacy can be helpful, but its economic development focus renders it less useful for analyzing other transatlantic trade topics.

There are also terminological and conceptual issues that do not allow using only paradiplomacy as a theoretical approach for this study. Regarding terminology, authors have introduced a plethora of names for international engagement by noncentral governments such as the U.S. states: Paradiplomacy (Aldecoa & Keating, 1999b; Ducháček, 1990; Kuznetsov, 2015; Soldatos, 1990; Tatham, 2013; Tavares, 2016), constituent diplomacy (Kincaid, 1990), multilayered or catalytic diplomacy (Hocking, 1993b, 1996), regional or

substate diplomacy (Criekemans, 2010b), regional interest representation (Hooghe & Marks, 1996; Tatham, 2008, 2012), protodiplomacy (Ducháček, 1988) and postdiplomacy (Aguirre, 1999).

Paradiplomacy has become the most widely used term, but there are criticisms. IR scholar Brian Hocking laments that the word paradiplomacy derives from the state-centric language of IR and that it suggests separateness, not linkages between various levels of government (Hocking, 1993b; 1996, p. 39; see also Criekemans, 2010a). He favors the term multilayered diplomacy instead. Kincaid is equally critical of the nation-state bias implying that paradiplomatic activities are inferior to the federal level's diplomacy, when they are in fact part of them (Kincaid, 1990, p. 74). He opts for the term constituent diplomacy, in turn criticized by Criekemans as lacking imaginative powers (Criekemans, 2010a, p. 3). Hocking stresses that he understands diplomacy as a web of interaction without segmented gate keepers drawn from central government foreign policy elites (Hocking, 1993b, pp. 36, 198), but national-level diplomats might still disapprove because diplomacy is a tool for sovereign states only (Tavares, 2016, p. 8). I will use paradiplomacy in this section before explaining my departure from the term in the chapter conclusion (as also explained in section 1.1).

Even though paradiplomacy is an established concept within political science literature today, the disagreements on terminology alone show weaknesses that carry over into the conceptual understanding as well. The criticism of the very concept of paradiplomacy is, summarized in short, that it lacks a common theory or any theoretical framework, has not generated hypotheses and is therefore only a descriptive tool (Bursens & Deforche, 2010, pp. 153-157; Criekemans, 2010a; Lecours, 2002, p. 92).

Despite these shortcomings, paradiplomacy is a crucial conceptual framework for this research because it accepts the move away from central state analyses. It embraces the finding that interdependent relationships in multiple governmental dimensions shape the global political and economic environment and the notion that domestic politics are vital in considering this environment. In his book on noncentral governments in foreign policy, Hocking starts off by explaining the “interrelatedness of the domestic and international arenas” (Hocking, 1993b, p. 1). Time and again throughout the work, he finds evidence of this blurring of domestic and foreign policy which had first been described decades earlier by Keohane and Nye (Keohane & Nye, 1977, p. 25) or law professor Bayless Manning, at the time president of the Council on Foreign Relations, who had introduced the term “intermestic affairs” (Manning, 1977).⁷ Long-time state observer and publisher Peter Harkness concurs: “Whether it be environmental and energy policy, health care, infrastructure, education, prescription drug pricing, or even foreign trade, it's getting harder to discern which level of government is responsible for what.” (Harkness, 2017)

In the fields of economic development and trade policy, this blurring of the international and domestic spheres is particularly noteworthy (cf. Gress, 1996, p. 59; Hocking, 1993b, pp. 9, 71-72): States are engaged in export promotion for in-state businesses, they are attempting to attract highly qualified students and workers to their states, their regulatory and tax environment competes globally with European regions, they benefit from advanced digital communications and faster and cheaper travel opportunities and they are working in a variety of policy fields with economic repercussions, ranging from climate change to regulatory cooperation. States' education policies do not only have domestic repercussions and their economic development strategies also cannot be detached from the transatlantic context in which they are taking place. These are all examples of how the interdependence of the global economy plays out in practice. A separation of international and domestic

⁷ Two of the authors quoted before did not approve of this term, however, as they rather envisioned a continuum between national and state-level policy dominance (Hocking & Smith, 1997, p. 10).

economic issues is not possible for state governments (Aldecoa & Keating, 1999a; Hocking, 1993a, p. 6; Hocking & Smith, 1997, p. 8; Paarlberg, 1995; Smith & Woolcock, 1993).

Noncentral Governments in International Trade Negotiations

The opening of IR analyses to venues different from military and security politics allowed for a consideration of economic topics in international relations, most prominently put forth by the school of IPE, short for international political economy (Ravenhill, 2008, p. 542). Early on, studies from this field zoomed in on specific topics such as the international monetary system or economic sanctions. Later inquiries touched on international economic regimes and today, a focus on trade policies can be discerned (Ravenhill, 2008, pp. 543-546), which is also the core of this study. Foreign economic policy and international trade policy has been especially prone to a “domestication” (Richardson, 1988, pp. 263-264), provoked by the global economic interdependence discussed above: “One of the central features of the changing environment of trade politics is the erosion of the boundary demarcating the pursuit of the political in international policy (foreign policy) and the economic (foreign economic policy)” (Hocking & McGuire, 2004, p. 6).

Domestic Actors in International Relations

Because of the meshing of domestic and foreign policy, and of economic and political issues, it became necessary to include domestic politics in IR studies. Political scientist Helen Milner, for instance, put forth the argument that domestic politics and international relations are interrelated: The domestic economic and political situation, and the domestic interests and coalitions shape countries’ foreign policies and, at the same time, countries’ international positions influence the domestic setting (Milner, 1997).

Referring to the idea of a two-level game in international relations advanced by political scientist Robert Putnam (Putnam, 1988), Milner conceptualized that in international negotiations, the negotiators have to take into account both international and domestic pressures. In short, research using the two-level-games approach finds that in international negotiations, “[d]omestic goals are pursued via international moves, and domestic politicking is central to international negotiation” (Evans, 1993, p. 397). Notably, though, the IR school integrating the domestic setting or specifically using the two-level-games approach analyzed mostly national-level domestic actors such as the national executive, the national legislature, the national political opposition or national interest groups (for example, Eichengreen & Uzan, 1993; Hensel, 1998; Hiscox, 2010; Krauss, 1993; Milner, 1993; Milner, 1997; Odell, 1993; Putnam, 1988; Schultz, 2013), while only rarely incorporating subnational actors (cf. Moravcsik, 1993; Paul, 2002, p. 467).

The two-level-games approach is fitting for this study but only as a general framework. It cannot cover the complex, multi-layered nature of the TTIP negotiations (Ainley, 2015, p. 37). Therefore, this concept and, more generally, the IR literature incorporating domestic actors must be turned upside down for this study: Instead of continuing to take the view of the central government and to see how it deals with domestic political constraints, I will take the bottom-up view of the noncentral governments. This work will proceed from the U.S. states’ perspective and examine how these noncentral actors – formerly seen merely as domestic constraints – engage with their national government as well as national and supranational governments in Europe. Additionally, this study’s specific field of analysis, international trade negotiations, is a research area in which noncentral governmental actors have been neglected.

International Trade Negotiations Research

Literature focusing on international trade negotiations can be considered a subfield of economic and political economic research. An array of articles and books have been written on international trade negotiations (see, for example, Chauffour & Maur, 2011b; Dür & Elsig, 2015; Mansfield, Milner, & Pevehouse, 2007; Milner & Rosendorff, 1996, 1997; Young, 2016; Young & Peterson, 2006; a theoretical overview is provided by Maggi, 2014), both in multilateral settings such as the GATT or WTO negotiations and in bi- and trilateral settings such as the negotiations for preferential trade agreements (for example, EU-Japan talks or Canada-Mexico-U.S. negotiations). Looking just at the U.S. context, the scientific literature has produced diverse studies, for example regarding the negotiations for the NAFTA and the Canada-U.S. free trade agreement (Cooper, 1999; Kaiser, 1998; Milner, 1997, pp. 203-229; Whalley, 1995), but also on the GATT and the WTO. With an older, but more transatlantic angle, some authors scrutinized the U.S. reaction to the creation of the European single market in the late 1980s and early 1990s, a project then known as “Europe 92” (Conybeare, 1993; Hufbauer, 1990). Some of the analyses included the states, but they generally mirror the dominant trajectory of IR and IPE research in that they have typically analyzed central governments, businesses and, more recently, noneconomic global actors such as international civil society groups. If the domestic setting is considered, authors only seldom do so with a specific focus on noncentral governments (Delagran, 1992; Schaefer & Singer, 1992). For example, Edward Mansfield and Helen Milner find that domestic politics are important determinants for the ratification of preferential trade agreements, yet their research focus lies squarely with national-level characteristics and veto players (Mansfield & Milner, 2012, 2015).

Considering that negotiations for international trade agreements have grown in scope to include nontariff barriers to trade, such as standards and regulations (Hocking & McGuire, 2004), the lack of focus on noncentral entities is a shortcoming of the existing IR and IPE literature on international trade negotiations. These trade agreements, called deep free trade agreements (Chauffour & Maur, 2011a), oftentimes cover nontariff issues, in which noncentral governments such as the U.S. states have legal and regulatory power. As two officials for a governors’ association noted already in 1995, “[n]ontariff barriers are now the focal point of trade negotiations and policy, and rules maintained by states are as relevant as those of the national government” (Orbuch & Singer, 1995, p. 140). With the underlying understanding that interdependence has eroded the central state’s power and has opened IR to a variety of policy fields, it is crucial to include noncentral governments in scientific analyses of trade negotiations because they have become viable actors in the international political economy.

Some studies on international trade negotiations have provided findings on noncentral governments’ involvement. Hocking distinguishes between various roles noncentral governments can play in international negotiations and envisions a multitude of interactions between state, federal and private actors, especially for the prenegotiation phase of trade policy negotiations (see table 4 on the following page): Not only is there dialogue between the noncentral and the central government but also among noncentral governments and with foreign actors. Moreover, in this scenario, states could set the agenda and even serve as surrogate negotiators. The federal government would work to manage state interests and try to gain their support. For the TTIP negotiations, I will come back to this overview in the concluding chapter 8.

Table 4. Noncentral governments' roles in multilayered trade policy negotiations

Stage in policy cycle	Noncentral government role	Patterns of interaction	Central government tasks and strategies towards noncentral governments
Prenegotiation	<ul style="list-style-type: none"> • Agenda setting • Aggregating and articulating regional interests 	<ul style="list-style-type: none"> • Private sector ↔ noncentral government • Central government ↔ noncentral government • Noncentral government ↔ noncentral government 	<ul style="list-style-type: none"> • Establish noncentral government support • Create structure for managing noncentral governments' interests • Evaluate third parties' and their noncentral governments' support
Negotiation	<ul style="list-style-type: none"> • Sustaining support for central government's goals • Focus of opposition as terms of negotiation emerge • Acting as surrogate negotiators 	<ul style="list-style-type: none"> • Noncentral government ↔ noncentral government • Noncentral government ↔ central government • Noncentral government ↔ noncentral government of negotiating partner • Noncentral government ↔ central government of negotiating partner 	<ul style="list-style-type: none"> • Internally: Maximize noncentral government support • Externally: Stress problems of maintaining domestic support for tactical reasons • Maximize third parties' noncentral governments' support to ensure ratification

Source: Hocking (1993b, p. 38)

It becomes clear that U.S. states have a variety of actors to approach and to be approached by. According to Hocking, noncentral governments can use the national government or their own agencies to make their voices heard. They can also represent their interests “[d]irectly to the international system without any intermediaries” (Hocking, 1993b, p. 46). For the EU context, this system is made up of many more actors than, say, the Canadian context: Whereas during the Canadian-U.S. free trade talks in the late 1980s, the U.S. states exchanged information with the Canadian provinces and otherwise left the negotiations to the federal government, for the TTIP, the U.S. states could, theoretically, address not only the supranational level but also the central governments of the EU member states and the noncentral governments of the EU member states. In the Canadian case, two federal governments and 60 noncentral governments were potential actors. In the TTIP case, two supranational institutions, 29 central governments and 123 noncentral governments are potential actors.⁸ Not all of these actors are veto players in the TTIP negotiations because, again, the European Commission is in charge on the European side, and it also must be noted

⁸ EU membership varied during the time frame under consideration, as Croatia joined the EU in 2013 and British voters opted to leave the EU in 2016, even though the exit was not completed immediately. The noncentral regions under consideration are those 73 European regions assembled in REGLEG, the Conference of European regions with legislative power (Conference of European regions with legislative power, 2016). When counting the major socio-economic regions in Eurostat's nomenclature, the number of noncentral actors rises to 148 (Eurostat, 2016).

that U.S. states did not have to interact or even know about all these various governmental levels. Yet, supranational, national and subnational actors have to be taken into consideration when dealing with transatlantic relations because all of them are potential targets for or sources of transatlantic interest representation, making the multilayered nature of U.S. states' foreign affairs even more complex.

Modes of State-federal Relations in International Affairs

Paradiplomatic research has further recognized that there can be different modes of states' engagement with federal and international actors. Noncentral governments can seek alliances with the federal government or with foreign actors and thus have multiple layers to represent their interests at home and abroad. In doing so, they can act in line with or go against the central government (Criekemans, 2010b, p. 39; Soldatos, 1990). It is important to note, though, that paradiplomacy does not, by default, lead to conflicts between the central and noncentral governments, as it can also follow common goals or the conflict could merely be reflective of existing domestic conflicts (Kincaid, 1990, pp. 54-55; see also Tatham, 2010, p. 77). This is echoed in table 5 showing the different modes of paradiplomacy. For example, cooperative activity could be a consultation process in which U.S. states voice opinions agreeing or conflicting with the federal government's view. Parallel actions that U.S. states carry out independently can be in line with or go against overall U.S. foreign policy goals. Determining what modes states choose in transatlantic trade policy will be a key focus of the empirical part of this study in chapters 5, 6 and 7.

Table 5. Modes of U.S. states' paradiplomacy

	Coordinated state interest representation (= state-federal interaction)	Parallel state interest representation (= no state-federal interaction)
In harmony with the federal government	No conflict	
Conflicting with the federal government	Conflict	Conflict and bypassing

Sources: Based on Soldatos (1990, p. 38) and Tatham (2010, pp. 77-78, 90)

It is important to reiterate that paradiplomacy does not have to be conflictual in either setting. Yet, the potential conflicts in multilayered diplomatic actions have received much scholarly attention, especially within EU studies (Keating & Hooghe, 2006; Tatham, 2010, 2013). Michaël Tatham, a political scientist with expertise in European governance, points out how conflictual paradiplomacy may occur and that it does not always have to result in bypassing paradiplomacy (Tatham, 2010, pp. 77-78). Bypassing occurs when a noncentral government pursues different interests than the central government and seeks involvement directly at the supranational level, without central state interaction (Ducháček, 1988, p. 5; Tatham, 2010, p. 78). An example would be an official of a German federal state making a policy proposal to the European Commission that conflicts with the position of the German federal government. Conflicts are also possible in settings coordinated by the central government. An instance of this would be an official of a German federal state opposing German federal policies within the consultation procedure for EU legislation mandated in Germany. Political scientist Sidney Tarrow has drawn up various patterns of political alignment within the EU (Tarrow, 2004, pp. 54-60): The central government can team up with the noncentral government against the supranational level, but it can also go with the supranational level against its noncentral government. The supranational level could also

find allies at the noncentral level or, lastly, noncentral governments can form an alliance of their own.

This brief discussion of the modes of paradiplomatic activities was included to highlight potential avenues for cooperation and conflict but also to hint at the Eurocentric nature of many studies in this field. Due to the unique political setting of the EU, many researchers have focused strongly on the various European regional governments and their potential conflicts with the national and supranational levels. For the U.S., scholars have acknowledged the existence of federal-state conflict in foreign affairs but judged it to be inconsequential. In international economic affairs over the past couple of decades, little conflict is found between the national and state governments (Advisory Commission on Intergovernmental Relations, 1993/1994, p. 34; Kincaid, 1999, pp. 7-9; 2003, p. 81; Kline, 1983, p. 71; Whatley, 2003, p. 9). There are cases that landed before the Supreme Court (see pages 46-47), but these seem to be exceptions and not the rule. They dealt with political and diplomatic issues, which are more prone to intergovernmental conflict than economic issues (Kincaid, 2003, pp. 81-82). That is not to say that there is never state-federal disharmony in global economic issues, as potential disagreements on investment policies were noted already in the early 1990s (Fry, 1990a, pp. 125-126). Overall, though, Hocking argues, “whilst conflictual relations between national and subnational governments are by no means absent, they are but one point on a spectrum of relationships equally characterized by the need for cooperation” (Hocking, 1993c, p. 69; also cf. Hocking, 1993b, p. 69).

This study will apply the considerations on modes of paradiplomatic activities to the contemporary transatlantic trade and investments negotiations, as such research is currently missing. I will analyze the balance between cooperation and conflict on transatlantic trade policy. Theoretically, Tarrow’s constellations of bypassing could also apply to U.S. states and their relations to EU actors: A state could, for example, decide to approach the European Commission with state-specific interests that are not endorsed by the U.S. national government. Whether such conflicting transatlantic interest representation happens in trade policy today is one of the questions to be addressed in this research.

In a broader context, the discussion of states’ paradiplomatic activities speaks to the delicate relation of federalism and foreign policy. While the previous findings are also applicable to nonfederal countries, their practical use is greatest for federal systems such as the U.S. As the literature review has shown, the line of domestic and foreign affairs has been blurred considerably and noncentral entities are engaged beyond their own regional and national borders. This creates challenges for federal systems because the traditionally federally dominated field of foreign policy making is being punctuated by globalization and the complex interdependence of markets. Political scientist Beat Habegger notes that therefore “federated entities are reinforcing their role within the federal framework in order to compensate for loss of powers due to globalisation and internationalisation of law making” (Habegger, 2003, p. 167). For the specific case of the U.S., “[o]ne of the most significant questions is how the constitutional system can accommodate globalization, as illustrated by the adoption of the North America Free Trade Agreement (NAFTA) and by aggressive state involvement in trade policy” (Tarr, 2005, p. 42). Replacing the NAFTA with the contemporary and more far-reaching TTIP negotiations, this study can help further our understanding of if and how federal systems affect trade policy making.

3.2 What Can U.S. States Do in International Affairs?

The end of the previous section already alluded to the intricacies of foreign policy making in federal systems such as the U.S. The national government and the 50 state governments are supposed to speak with one voice internationally, which requires considerable consultations

and bargaining. The roles of the states as constituent units in the U.S. federal system as well as international actors in the global economic and political system is at times obscure, not only due to the interconnectedness of modern markets but also due to constitutional ambiguities and organizational developments in the states. Therefore, this section will examine the states in the context of U.S. federalism and additionally review their policy-making capabilities.

Constitutional and Legal Framework

The previous section showed that IR scholarship generally allows for a consideration of noncentral governments as global actors and that in federal countries, there is a delicate balance to be struck by the central and noncentral governments in foreign policy. What about the specific case of the U.S. federal system with its 50 states? Reviewing elements of the constitution as well as certain legal cases, it becomes clear that states have enough constitutional leeway to become engaged globally.

Legal and federal analysis of the constitution has established that the federal government is in charge of foreign policy in general⁹ and international treaties and agreements in particular. As prescribed in the supremacy clause in Article VI of the constitution, any constitutional rules, federal laws and treaties trump U.S. state law (United States Constitution, 1789). However, states have considerable room to maneuver in foreign matters created by ambiguity in the constitution and legal rulings.

In the constitution, foreign policy-making power is devised as a federal domain, but there are important checks:

- Article II, Section 2 explicitly grants the president the power of treaty making and Article I, Section 10 prohibits the states from doing so (United States Constitution, 1789). This double definition is a strong constitutional provision showing that the ultimate authority in U.S. foreign policy decision making lies with the central government. In addition, the commerce clause in Article I, Section 8 gives wide-ranging powers to the federal level by stipulating that Congress has the power to collect taxes and to regulate commerce with foreign nations and among the states (United States Constitution, 1789). Yet, the president's treaty-making capacities have some qualifications: The commander in chief needs a two-thirds Senate majority to ratify treaties. Considering that the U.S. states thus have the opportunity to represent their foreign policy interests through their congressional delegation and especially their senators, it becomes apparent that the constitution limits to a certain degree the central government's powers in foreign relations (Craven, 1993, p. 13). Moreover,

⁹ The 1789 constitution was, among other things, an attempt to establish foreign policy as a national domain in light of negative experiences the U.S. states had with their first constitution, the Articles of Confederation. Frequently, this supposed "firm league of friendship" (Article III of the Articles of Confederation, 1781), which lacked an actual government (Diamond, 2012 [1974], p. 98), would see federal states ignoring congressional provisions or treaties and engaging in trade wars among themselves (Fry, 1990b, pp. 276-277). Relations between the states were poor and the Articles of Confederation proved inadequate to govern them (Zimmerman, 2011, pp. 3-4). In fact, the Supreme Court has declared that one of the main objectives of the 1789 constitution was for the U.S. to speak with one voice internationally (U.S. Supreme Court, 1840), a sentiment shared by James Madison. In *Federalist No. 42*, he writes, "If we are to be one nation in any respect, it clearly ought to be in respect to other nations" (Hamilton, Madison, & Jay, 2009 [1787], p. 259). However, an originalist reading of the constitution, based on the historical meanings of executive power and foreign policy, argued that the constitution does not grant the federal executive sole power over foreign affairs (Ramsey, 1999), which already shows the intricate nature of the debate.

Article I allows “non-political’ external relations [by states], subject to the supervision of Congress” (Craven, 1993, p. 16).

- The elastic clause in Article I, Section 8 further allows the possibility of international state engagement. On the one hand, the section granting Congress the power to “make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers” (United States Constitution, 1789) reads as a sweeping endorsement that Congress can create all the laws necessary in the U.S. On the other hand, the phrase “necessary and proper” is also understood as a qualifying phrase, meaning Congress can *only* make those laws that are necessary to execute the powers that have already been established in the previous parts of the Constitution’s section. Thus, the elastic clause does give some leeway to U.S. states in formulating their own policies domestically and internationally.
- Lastly, the tenth amendment of 1791 shows in general the powers of the states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people” (United States Constitution, 1789).

The ambiguous statements are indicators that the constitution is not in place to create a national monopoly in policy making (Kincaid, 1991, p. 102) and that there are constitutional protections for the states in place (Sbragia, 2006, p. 17). Thus, the states retain their sovereignty and are not, as legal scholar Julian G. Ku puts it, “mere political subdivisions of the United States” (Ku, 2006, p. 2402). Their formal foreign policy authority is curtailed, but U.S. states can shape federal foreign policy in a variety of ways, for instance through contacts with Congress (Kincaid, 1999, p. 122; see also Kukucha, 2015a, p. 231), through contacts with the federal government or via state resolutions. For instance, several states proclaim in official resolutions their friendship and close ties to the Republic of China (Taiwan), even though the U.S. does not have official diplomatic relations with the country (Alabama House of Representatives, 2016; Oklahoma Senate, 2016; Rhode Island Senate, 2015). Closer to Europe, some states have taken a stance on the conflict in Nagorno-Karabakh in the South Caucasus: Louisiana expressed sympathy for Armenian victims of massacres in 2014 (Louisiana Senate, 2014), while Arizona stressed the strategic importance of the U.S.-Azerbaijan relationship and called on the U.S. to help resolve the conflict (Arizona Senate, 2014).

As these findings show, federalism and intergovernmental relations literature can shine a light on the legal framework in which states engage in foreign policy. A basic understanding of the constitutional setting is crucial for this study, but it does not by itself suffice in exploring state interest representation on transatlantic trade issues. It is also necessary to consider the ramifications of the constitutional setting: How do states act on the world stage within the limited scope given to them? Explorations of this nature, with a particular focus on international affairs, are not widely found in the literature, but there are various in-depth studies of Supreme Court cases in this field. While detailed legal investigations are available elsewhere, a short recap of selected exemplary cases is helpful to understand the trajectory of Supreme Court decisions and how the literature has dealt with analyzing states’ foreign affairs.

Supreme Court decisions have confirmed the predominant role of the federal government in foreign affairs. Still, they have also left space for the states to carve out their own international engagement. The basic direction of U.S. foreign policy has not caused serious and long-lasting issues between the states and the federal government (Advisory Commission on Intergovernmental Relations, 1993/1994). There have been only isolated

incidents in foreign affairs where the states and the federal government were at odds over specific foreign policy topics, three of which are highlighted in the following.

Missouri v. Holland 252 U.S. 416

The state of Missouri objected to the Migratory Bird Treaty Act of 1918 (enforced by Ray P. Holland, the U.S. Game Warden at the time), which the federal U.S. government had made with the United Kingdom in order to regulate the hunting and selling of protected migratory birds. The Supreme Court ruled that treaties take precedence over any conflicting state law, based on the supremacy clause (U.S. Supreme Court, 1920).

International law professor Rahmatullah Khan summarizes the implication of this ruling for state-federal relations in foreign affairs: “States must adhere to the treaties not because international law so requires, but because by adopting a treaty, the federal government is engaging in the exercise of its foreign relations powers” (Khan, 2003, p. 118). Controversy surrounding this case has been ongoing since the early 20th century (for details, see, for example, Resnik, 2008; Robert, 2008), but the ruling has generally confirmed national dominance in foreign affairs (Aceves, 1995, p. 464; Fry, 1990b).

Zschernig v. Miller 389 U.S. 429

In 1968, the Supreme Court (U.S. Supreme Court, 1968) ruled that the state of Oregon was not allowed to limit rights of foreigners in inheritance law (it concerned an East German couple and the Oregon State Land Board). Despite the fact that the Oregon law at hand was not preempted by any treaty or federal law, the court deemed it an “intrusion by the State into the field of foreign affairs which the Constitution entrusts to the President and the Congress” (U.S. Supreme Court, 1968).

Furthermore, it said that state “regulations must give way if they impair the effective exercise of the Nation’s foreign policy” (U.S. Supreme Court, 1968; see also Ku, 2006, p. 2399). The decision has therefore been viewed as another instance of the Court asserting the federal level’s power in foreign affairs (Macey, 2004, p. 368).¹⁰

Crosby v. National Foreign Trade Council 530 U.S. 360

In a highly controversial ruling in 2000 (U.S. Supreme Court, 2000), this case struck down the so-called Massachusetts Burma law. This state law was a prime example of how states may take a stand on political matters by using the economic component of an international issue (Kline, 1993, p. 116): It barred Massachusetts state entities from buying goods and services from companies conducting business with Burma (today Myanmar) due its human rights abuses at the time. The National Foreign Trade Council, a pro-free trade business lobbying group based in Washington, D.C., had sued Massachusetts (represented by Stephen Crosby, the state’s Secretary of Administration and Finance), arguing that federal foreign affairs and commerce powers were violated. The Supreme Court found the state law unconstitutional because it was preempted by federal law, hindered presidential control over sanctions and was “at odds with the President’s authority to speak for the United States among the world’s nations to develop a comprehensive, multilateral Burma strategy” (U.S. Supreme Court, 2000; for an analysis, see Schaefer, 2003). The national government’s presumed primacy in foreign affairs was confirmed (Bloch & Jackson, 2013, p. 215).

The impetus for the Supreme Court ruling did not arise from the federal government: It took a legal challenge from a private business group to assert federal primacy, after the

¹⁰ The decision also gave rise to the dormant foreign affairs doctrine, which cements the federal government’s power over foreign affairs. Thorough legal reviews and opinions of this doctrine are available elsewhere (Schaefer, 2011; Spiro, 1999; Swaine, 2000).

federal government had not taken steps to assert its authority (Boer, 2002, p. 10), even in the face of international opposition from major trade partners. The European Commission and Japan had complained that the state law violated WTO rules (Guay, 2000, p. 359; Sager, 2002, p. 129; Stumberg & Porterfield, 2001, p. 174). It never came to a formal WTO trial or ruling, however, because the National Foreign Trade Council filed suit in the federal district court in Boston. By using allegations from the EU's and Japan's proposed WTO case, the National Foreign Trade Council effectively used the WTO as "a springboard into federal court" (Stumberg & Porterfield, 2001, p. 185).

Interestingly, before the EU and Japan voiced their complaints formally to the WTO, a dialogue fostered by the U.S. Department of State between European Commission officials and Massachusetts state legislators tried to resolve the issue, albeit to no avail. The Massachusetts state legislator who had sponsored the bill in question wanted the EU to increase sanctions on Burma. Faced with the prospect of having to negotiate foreign policy objectives and activities with multiple U.S. states or, potentially, other noncentral governments, the EU declined and formally requested a WTO dispute panel (Kline, 1999, p. 120; Schaefer, 2003, pp. 333-336; Stumberg & Porterfield, 2001, p. 186).

Massachusetts did receive backing from other sides, however. For example, 78 members of Congress supported the state before the Supreme Court (Sager, 2002; Stumberg & Porterfield, 2001, p. 191). The ruling overall can be seen as weakening the states' influence on global matters, but it did not follow the very drastic argument of the plaintiff. Therefore, it left some room for states to become engaged in such international issues (Sager, 2002, p. 140; Stumberg & Porterfield, 2001, p. 204). In fact, even when state laws are ruled unconstitutional, the discussions surrounding the ruling might influence national foreign policy in the end, as was the case with the Massachusetts Burma law (McMillan, 2012, p. 70).

As discussed in the previous section 3.1, there can be tensions in federal systems on foreign policy making between the national government and noncentral governments. The much-discussed Supreme Court cases presented above are such instances in which domestic state law clashed with federal or international standards. The states are interested in preserving their regulatory authority, whether it is challenged by the federal government directly or indirectly via international treaty obligations. Such state interest representation related to international policy questions is different than strictly trade promotional efforts aimed at enhancing exports and FDI. This is a distinction that will guide the empirical part of this study. While there are legal analyses on state-federal conflict, they tend to deal with the outcomes of such conflict, whereas I am focused on the processes potentially leading to state-federal conflicts. Contemporary trade negotiations have not featured in federal or legal scholarship and the findings from existing case studies cannot entirely be applied to the TTIP due to its unique character, its wide-ranging scope and the changed nature of the EU itself. Scholarship on intergovernmental relations in the U.S. is thus valuable for this study because it acknowledges that U.S. states' actions might have an international dimension. An understanding of this international dimension in a sensitive and globally important field as transatlantic relations is lacking, however, which this study will address.

State Policy-Making Capabilities

From the literature review until this point, we now know that noncentral governments are recognized as global actors and that in the specific setting of U.S. federalism, states have ample opportunity to become engaged internationally. The question remains of whether or not states are capable of using the leeway the constitution affords them in international affairs.

As the introductory NAFTA example and the discussion of selected Supreme Court cases have shown, states have been capable of pushing for their own interests on international issues. This is made possible because state administrations and legislatures have become more professional and better organized since the mid-20th century (Beyle, 1988; Beyle & Muchmore, 1983b; Elazar, 1984, pp. 188-189; Fry, 1988, p. 63; 1990b, p. 292; Katz, 2006, p. 302; Moncrief & Squire, 2013; Squire, 1992, 2007; Stouffer, Opheim, & Day, 1996, p. 301). States have a constitutionally guaranteed freedom to design their governments as they please and all the states exhibit a separation of powers into the three branches of government, with the governor leading the executive, a bicameral state legislature (except for the unicameral legislature in Nebraska) and a state supreme court. Some have opted for stronger executives, while in other states the legislatures dominate policy making (Sbragia, 2006, pp. 18-19). In addition, many states have independently elected office holders (such as the attorney general in 43 states) or commissions with elected officials that serve various policy-making functions (Sbragia, 2006, pp. 18-19). This setup further disperses power in the states, but the executive and the legislatures remain the key drivers of state politics, requiring a closer look at these actors in this study.

State Gubernatorial Capabilities and Professionalization

Research has paid some attention to the internationalization of state executives, more so than for state legislatures: Administrations have become more internationalized (Advisory Commission on Intergovernmental Relations, 1993/1994, p. 33) and more focused on economic development strategies, including overseas activities. Starting in the 1960s, economic development became a fundamental part of state government activity. Economic development agencies sprung up across the nation, categorized with hindsight as “second-generation agencies” (Jenks & Wright, 1993, p. 80). Today, every state has an office for economic development, charged with devising and coordinating programs to bring jobs and economic growth to the state. Some of these offices are attached to the governor’s office, others are organized with the state’s department of commerce and still others are quasi-governmental, public-private partnerships. Several states have economic development outposts in Europe, to be discussed in depth in chapter 5.

The move towards economic development and international engagement is part of a wider expansion of gubernatorial powers which can be observed in virtually all states. Governors have gained better staff support, lengthened terms and more control over the executive branch, specifically the budgetary process. Gubernatorial terms are now four years in all but two states and every governor can serve at least two terms today (15 states have abolished gubernatorial term limits altogether). Governors today are also better educated, have more political and business experience and come from a wider variety of backgrounds than their predecessors in the 1960s (Moncrief & Squire, 2013, pp. 57-61). In an extensive study of gubernatorial power, political scientists Thad Kousser and Justin Phillips provide evidence that governors are key drivers of state legislation and the state budget, despite limited formal, institutional powers (Kousser & Phillips, 2012). The authors show that governors are able to push through almost half of the proposals made in their state of the state speeches, either in full or in a compromised version (Kousser & Phillips, 2012, p. 132), but they more significantly have come to shape state politics via their budgetary powers.

Most governors have federal-state liaison officials in the state capitals and 26 states maintain offices in Washington, D.C., with the express purpose of tracking national legislation, lobbying Congress and functioning as an information hub between the state capital and the national capital (Beyle & Muchmore, 1983a, pp. 195-198; Jensen, 2016; National Governors Association, 2011, pp. 2-3; Nugent, 2009, pp. 126-133). The rationale for the establishment of these offices in the 1970s was to have a more direct presence in the

national capital and better access to Congress than the at times ineffective communication lines between state capitals and congressional delegations. Many of the state offices are located in the Hall of the States, a building two blocks from the U.S. Capitol and the U.S. Supreme Court, whose physical proximity to national-level institutions also serves to highlight the importance of close, informal, personal networks being spun between state and federal officials (Jensen, 2016, pp. 73-75). As they are typically used to monitor and shape congressional deliberations on domestic issues affecting the states, these offices will not feature prominently in this study.

State Legislative Capabilities and Professionalization

State legislatures have become engaged in international affairs, via state laws touching upon international affairs or state resolutions on foreign policy conflicts. They have thus taken up topics going beyond their purely domestic responsibilities, which might be seen as a component of expanded competences as well. However, scholars on legislatures' professionalization typically use other factors to measure legislative capabilities.

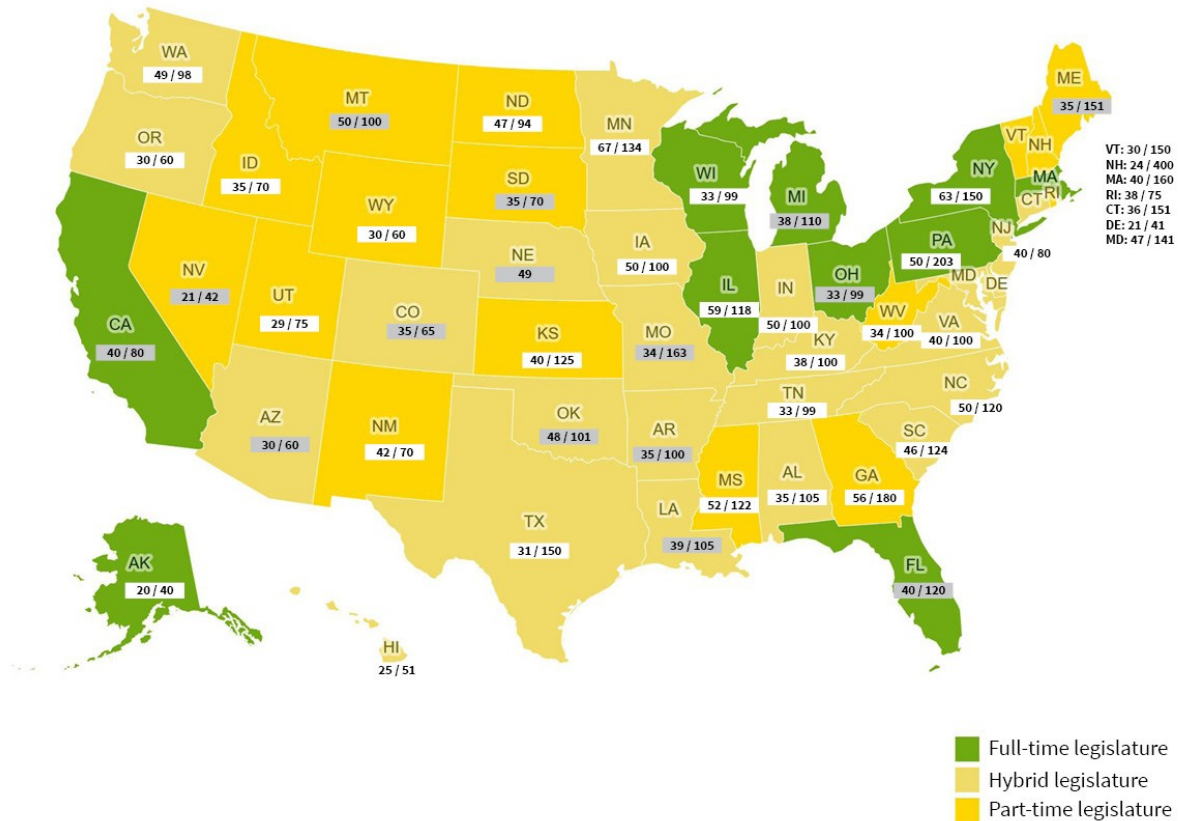
Key indicators for professionalization are individual legislators' backgrounds as well as their staff numbers, salary and the frequency of sessions. It has been found that state legislators are better educated and more experienced now than they were a couple of decades ago (Moncrief & Squire, 2013, p. 63). While the institution of the state legislature itself lags behind in this advancement of its members (Moncrief & Squire, 2013, p. 67), state legislatures have still improved. Generally, state legislatures meet more often than they did in the 1960s and along with increased pay and staff support for legislators, these improved working conditions are indicators of a more professionalized state government.

Differences among states remain (Squire & Moncrief, 2010, p. 115), however, showing that professionalization of state legislatures has not happened across the board. The National Conference of State Legislatures differentiates between full-time, part-time and hybrid state legislatures (see map 1 on the following page). In hybrid state legislatures, legislators typically "spend more than two-thirds of a full time job being legislators" (National Conference of State Legislatures, 2014b). Combining the number of hybrid legislatures with the 16 states having part-time legislatures, only 10 states have legislatures with full-time politicians. As an example of legislative professionalization, the total number of staff for all 50 states has grown from nearly 27,000 to over 31,000 between 1979 and 2015. Still, 17 states have decreased their staff within that same time frame (National Conference of State Legislatures, 2015c). In 15 states, term limits are in place to prevent a dominance of career politicians, which could potentially curb the professionalism of a legislature. This has not been found to be the case, however, as "[t]erm limits do not alter the number of days a legislature meets, the salary its members earn, or the staff that is provided" (Squire, 2007, p. 215), which are all indicators for measuring legislative professionalization.¹¹

None of these measures specifically address the capabilities of state legislatures to deal with international issues such as the TTIP and it has become clear that despite the general trend towards professionalization, some state legislatures are not as fully developed as others. I will go beyond quantitative measurements in this study to illuminate the qualitative traits allowing legislators to become active on transatlantic topics. Their personal and professional motivations to pursue these issues are still aided, though, by the general thrust of state legislatures becoming more ambitious and professionalized.

¹¹ Political scientist Peverill Squire came up with an index to measure state legislatures' professionalization, which has come to be an often-used indicator despite some flaws the author acknowledges himself (Squire, 1992, 2007). The professionalism measure is based on legislative sessions, staff resources and pay, with California ranking the highest and New Hampshire the lowest in 2003.

Map 1. Types of state legislatures with sizes and term limits



Sources: Adapted from National Conference of State Legislatures (2013c, 2014b, 2015d)

Notes: The numbers show the number of state senators and state representatives in each state. Shaded gray are those states with term limits.

State Governmental Interest Groups

A different facet of state professionalization is the improved collective representation states engage in. There are several state associations that serve as lobby organizations for the state executive or legislative groupings (see table 6 on the following page and map 2 on page 53). Prime among these groups are the National Governors Association (NGA), which includes all governors, four regional gubernatorial groupings and the NCSL. The Council of State Governments (CSG) represents all branches of state government and serves as a research institution rather than a lobby group: It “acts as the secretariat for twelve other associations of state officials and is a major source of information on interstate relations” (Zimmerman, 1994, p. 3). In addition to overarching state government associations, there are various groupings of other state officials from the executive and the legislature, for instance the National Association of Attorneys General (NAAG), the National Association of State Departments of Agriculture (NASDA), the National Conference of Insurance Legislators (NCOIL) or the State International Development Organizations (SIDO). Lastly, the Democratic Governors Association and the Republican Governors Association are nation-wide partisan groupings of governors, whose mission is to elect Democratic and Republican governors to office, respectively.¹² They also perform coordinating functions and provide resources to governors.

¹² Other partisan groupings of state officials also exist such as the Democratic Attorneys General Association and the Republican Attorneys General Association or the Democratic Legislative Campaign Committee and the Republican State Leadership Committee.

The development of the NGA exemplifies the professionalization of the state associations. In 1908, President Theodore Roosevelt invited governors to a conference on conservation, which was institutionalized in 1933 at the suggestion of President Franklin D. Roosevelt (for a historical overview, see Cammisa, 1995, pp. 119-120; Haider, 1974; Jensen, 2016, pp. 62-98; Kline, 1983, pp. 45-49). In the beginning, it had the character of a social event (Brooks, 1961, p. 3), but by the 1980s at the latest, the NGA was universally seen as a strong lobby group (Beyle, 1988; Beyle & Muchmore, 1983a, p. 198; Stephens & Wikstrom, 2007, pp. 53, 130): “It has changed from a part-time, largely ineffective annual conference to an association with substantial influence in the national political arena” (Stouffer et al., 1996, p. 339).

The NGA is now an organization that provides information to states and lobbies on their behalf in Washington, D.C. Most importantly for this study, its activities have from time to time included international topics, opening a “point of entry” (Elazar, 1984, p. 195) for states into the nationally dominated foreign policy area. Governors, for instance, focused strongly on international trade in the 1980s (Beyle, 1988, p. 20; Kline, 1983, pp. 111-112, 120-121). A further example for the NGA’s international efforts found in the literature is the 1978 establishment of the NGA Committee on International Trade and Foreign Relations (Ducháček, 1984, p. 14; 1990, p. 10; Kincaid, 1984, p. 103; Kline, 1983, pp. 48-49; 1986, p. 517). However, this committee is not active anymore. The NGA still continues to be involved in international trade as part of its Economic Development & Commerce Committee (National Governors Association, 2016a), which will be further detailed in chapter 5 (see pages 115-116).

Table 6. Gubernatorial state public interest groups

Type	Name	Founded	Headquarters	Membership	Budget	Staff
National gubernatorial nonpartisan lobbying organization	National Governors Association	1908	Washington, D.C.	55 state and territorial governors	\$27.6 million ¹³	120
National gubernatorial partisan lobbying organizations	Democratic Governors Association	1983	Washington, D.C.	Varying number of Democratic state governors	n/a	27
	Republican Governors Association	1963	Washington, D.C.	Varying number of Republican state governors	n/a	24
National legislative nonpartisan organization	National Conference of State Legislatures	1975	Denver, Colorado	7,600 state legislators and staff	\$2.3 million (NCSL foundation only)	n/a
National nonpartisan research organization	Council of State Governments	1933	Lexington, Kentucky	50 state governments	n/a	n/a

¹³ For details on the rather intricate financial structure of the NGA, see Jensen (2016, pp. 83-87).

Regional gubernatorial nonpartisan lobbying organizations	Coalition of Northeastern Governors	1976	Washington, D.C.	7 state governors ¹⁴	n/a	4
	Conference of Great Lakes and St. Lawrence Governors and Premiers	1983	Chicago, Illinois	8 state governors and 2 Canadian provincial premiers ¹⁵	n/a	5
	Midwestern Governors Association	1962	Washington, D.C.	12 state governors ¹⁶	\$367,205	4
	Southern Governors' Association	1934 (disbanded in 2016) ¹⁷	Washington, D.C.	16 state governors; 2 territorial governors ¹⁸	\$1.5 million	3
	Western Governors' Association	1984	Denver, Colorado	19 state governors; 3 U.S.-flag islands governors ¹⁹	\$6.7 million	15

Sources: Associations' websites

Note: The budget is rounded and refers to the latest available revenues as reported by the associations (Midwestern Governors Association, 2014; National Conference of State Legislatures, 2015b; National Governors Association, 2015b, p. 4; Southern Governors' Association, 2010, p. 30; Western Governors' Association, 2015, p. 14).

¹⁴ Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont; the Coalition of Northeastern Governors also provides secretarial support to the New England Governors/Eastern Canadian Premiers grouping, which includes the seven U.S. states as well as five Canadian provinces (New Brunswick, Newfoundland & Labrador, Nova Scotia, Prince Edward Island and Québec).

¹⁵ Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, Wisconsin; two Canadian provinces (Ontario, Québec)

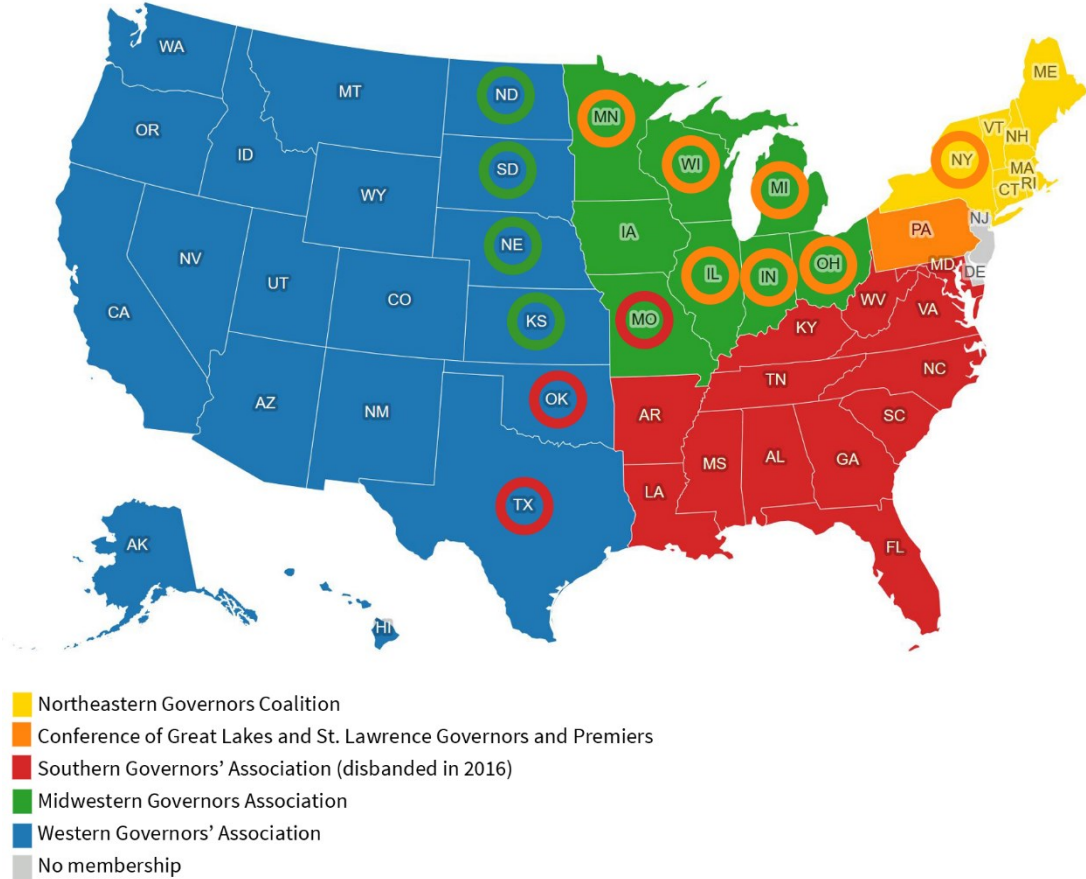
¹⁶ Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin.

¹⁷ Until July 2016, the Southern Governors' Association was in existence, consisting of 16 governors and two territories. The association disbanded in July 2016 due to a lack of support "rendering operations unsustainable" (Southern Governors' Association, 2016; see also Bowman, 2017, p. 15). When possible, information was drawn from the website archived by the University of North Carolina at Chapel Hill (Southern Governors' Association, 2013).

¹⁸ Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia; Puerto Rico, U.S. Virgin Islands.

¹⁹ Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming; American Samoa, Guam, Northern Mariana Islands

Map 2. States and their membership in governors' associations



Sources: Associations' websites

Note: Circled state codes indicate that a state is/was a member of two associations. For example, Kansas is in the Western Governors' and the Midwestern Governors' Association.

Overall, an intergovernmental reading of states in international affairs is crucial in understanding the basic legal standing states have in U.S. federalism. It reveals that they are both constitutionally allowed and administratively capable of acting on the international stage. It also shows, however, that foreign relations in a federal system are at times a controversial subject due to intermingled and challenged competencies. Previous federalism research has focused largely on singular conflictual cases and analyzed their outcomes. This study, however, will highlight the process with which intergovernmental actors in the U.S. do or do not consult with each other and how this relates to their simultaneously ongoing engagement with actors in Europe.

3.3 Chapter Conclusion

Noncentral governments matter on the global stage. They have carved out their own space as capable political and economic actors in a complex interdependent environment in which domestic and foreign affairs overlap. This is the basic insight the literature review in this chapter has produced. The U.S. federal system is flexible enough to allow states some leeway in international relations, even though foreign policy making is a federal responsibility. Combined with the findings that states have generally improved their policy-making capabilities over the past decades, scholarship clearly shows that states cannot be disregarded as mere domestic actors in the U.S. setting. International relations research has

picked up this discovery and considered noncentral governments such as the states as viable actors in trade negotiations. Against the backdrop of a complex interdependent global environment, there are openings for states to engage on topics previously thought to be in the domain of nation-states.

Yet, there are also weaknesses in IR and federalism literature concerning the analysis of states' transatlantic trade relations, which are under consideration in this research. IR and federalism literature in their entirety are too broad to grasp this study's topic because IR scholarship on international negotiations remains focused on the nation-state and federal analyses do not typically dive into states' global economic and political relations. In both cases, considering results of noncentral governments' interest representation, such as opening a trade office or signing a memorandum of understanding, is favored instead of analyzing the actors, structures and processes behind their interest representation. Individual ideas from IR and federalism, however, such as complex interdependence, paradiplomacy and constitutional ambiguity on foreign relations, are crucial elements in forming an analytical framework to answer the research questions.

4. Research Structure

I use qualitative content analyses of official documents and original expert interviews in my study. To provide transparency regarding the selection of cases, data and samples, this chapter presents a step-by-step overview of how I combine qualitative empirical methods to answer the research questions.

Little scholarly attention has been paid to states' trade policy interest representation, even though deep free trade agreements such as the TTIP affect state regulation and states have the capabilities to react to these effects. This research gap discussed in chapter 3 is addressed in this study using a qualitative empirical research design. Such an approach allows for an exploration of states' means and motivations for representing their trade policy interests and the intergovernmental conflicts they encounter. Specifically, the puzzle is why some states choose to view the TTIP in light of state regulatory questions, thus focusing on transatlantic trade policy, while others use the deal as a vehicle to achieve economic development goals, thus focusing on transatlantic trade promotion. It is also unclear what connections states have to U.S. federal and European actors in transatlantic trade relations to make their voices heard, especially on conflictual topics.

The research approach chosen focuses on those states active in transatlantic trade policy interest representation. Analyzing official state documents and the findings from an original set of 60 qualitative expert interviews enables a thorough study of practitioners from the state, federal and EU levels engaged on the TTIP. This is necessary to explore and explain the variance among trade policy and trade promotion interest representation. Yet, this approach also has a considerable drawback: It exhibits a selection bias by excluding states not engaged on the TTIP at all. Therefore, definitive answers as to why states might stay silent can only be deducted from the talks with state officials working on the TTIP. This methodological flaw will be addressed in this chapter. I will give an overview of the research goal and justify the selection of the TTIP as an appropriate case to study states' roles in foreign affairs. The chapter also contains an in-depth description of the analytical steps I took to answer the research questions and what challenges I encountered. Apart from the selection bias, another hurdle was ensuring validity regarding the expert interviews. I will therefore make the choices for my respondents transparent and explain how I combined the findings from the interviews with other sources.

4.1 Research Questions and Analytical Framework

This study aims to shed light on the questions whether, how and why U.S. states become active in transatlantic trade policy making. The literature so far has viewed states mostly as economic actors emphasizing export promotion and FDI attraction, so my research will lead

to an improved understanding of states as political actors, representing their interests on trade policy issues. Furthermore, I intend to uncover the intergovernmental conflicts that arise in transatlantic trade policy making between the states, the U.S. federal governmental and the EU. The overarching research questions for my study therefore are:

1. Considering their constitutional limitations in this field, what means do states have to represent their transatlantic trade and investment policy interests and why do some states use them, while others do not?
2. Why and in what ways do some state executives, state legislatures or other state governmental bodies engage with U.S. federal actors and European actors to represent their transatlantic trade and investment policy interests, particularly when these conflict with federal and European interests?

This study lays out the various options U.S. states have to represent their interests in transatlantic trade policy and what U.S. federal and European actors they are connected to. The analysis will be done specifically against the backdrop of the TTIP negotiations.

The broad research questions address a variety of concerns: What governmental actors at the state level become active and how? What motivations do the executive and the legislature have and do they overlap? How do states deal with the legal limitations placed on them by the U.S. constitution, which gives the federal government the responsibility to negotiate international trade agreements? What options do state executives, legislatures and other governmental bodies have to reach actors in Washington, D.C., and Europe, especially when their interests are at odds with U.S. federal or EU interests? Most fundamentally, my research aims to figure out why some states become active in representing their trade policy interests on the TTIP, while others focus mostly on trade promotion.

This exploration of the variance in states' interest representation on the TTIP is reflected in both research questions. The first question asks for the means that states have at their disposal to make their voices heard on trade policy issues. It then focuses on the variance among states by asking why states use these means to speak out on policy-related TTIP issues. What are their reasons and how do they differ from the reasons to speak out on trade promotion issues? This part of the research question thus allows for a comparison of states focusing on trade policy interest representation and those focusing on trade promotion interest representation on the TTIP. The second research question emphasizes the variance in state-federal conflicts. It asks about the connections states have to federal and EU actors, aiming to uncover the divergences that might exist in transatlantic networks on trade policy and trade promotion. The purpose of the question is to establish the different types of conflicts that emerge in trade promotion interest representation and trade policy interest representation. It can also illuminate whether one area is more conflictual than the other.

Identifying what means and avenues states have to make their voices heard is a valuable descriptive element of the research questions. Their main parts, however, are analytical and exploratory, shedding light on states' motivations and conflicts in transatlantic trade policy interest representation. Considering this is a research field at the nexus of IR and federalism studies that has not received extensive scholarly attention, these rather general and exploratory research questions are necessary. This perspective might not provide definitive answers to all aspects of states' transatlantic trade interest representation, but it does offer new insights into states' foreign relations. The research questions allow for a broader discussion of states in international affairs.

By expanding the view from trade promotion to trade policy, new insights and arguments can be gathered. In this study, my main argument goes beyond the traditional focus of states as global economic actors. Looking at why and how states represent their trade

policy interests on the TTIP, I will argue that securing more exports to or more FDI from the EU is not the only reason for states to become engaged in the discussions surrounding the trade deal. It is oftentimes not even the most important reason. Rather, U.S. states attempt to defend their state sovereignty in light of prospective regulatory preemption by federal and international actors. States and the federal government clash more often over questions of competency in international trade policy than they do over strategic economic development decisions. Thus, I will argue that states' interests in the TTIP are not entirely driven by economic considerations, such as exports, investments or state-specific industry concerns. States' interest representation in transatlantic trade policy reflect their efforts to obtain meaningful roles or strengthen their existing roles in the intergovernmental trade policy-making process in U.S. federalism.

Furthermore, I will argue that variance among states' interest representation is the result of their differing economic structures, different ideological preferences within states and the personal backgrounds of state officials. The combination of these three factors explains why some states become active in transatlantic trade policy interest representation and others do not, instead sticking to trade promotion issues.

The goal of this research is to enhance our understanding not only of U.S. federalism and intergovernmental relations but also of global interactions and linkages between all governments in a federation as well as with private actors. The significance of the inquiry therefore lies in broadening the view on transatlantic relations: This field is often focused on how national and supranational governance structures in the U.S. and Europe relate to each other or to the private sector, for example to multinational corporations or nonprofit organizations. This study also departs from the usual emphasis of economic and investment-related matters over intergovernmental issues of state-federal competencies. Taken together, the study aims to analyze states as multifaceted actors among many others in transatlantic trade relations that work not only on economic but also regulatory issues.

Multilayered Interest Representation

For this research, an analytical framework is required that covers U.S. states' activities in transatlantic trade relations. These occur against the backdrop of an interdependent globalized market and an ambiguous constitutional setting ripe with pitfalls for intergovernmental conflict. This setting, reviewed in depth in chapter 3, is a prime example of how indistinct the line between foreign and domestic policy issues is and how intricate the intergovernmental balance between central and noncentral governments is. Export and FDI promotion have domestic state benefits in mind but are predicated upon direct connections with overseas businesses. International treaties are negotiated by the federal government, but their regulatory effects on states are discussed within the U.S. intergovernmental and judicial systems. Both examples can be classified as global engagement by states, showing how states act on multiple layers to represent their various international interests.

Thus, I consider states' transatlantic activities under the umbrella of multilayered interest representation. This term is deliberately close to the prevailing concept of paradiplomacy or multilayered diplomacy (see section 3.1). But it circumvents some of the terminological issues, namely the insinuation that states always act "beside" or "auxiliary to" the central government ("para") and that they engage in diplomatic representative endeavors ("diplomacy"). This is not the case because there are overlapping responsibilities and also areas in which the states act completely independently of the administration. In short, states' international linkages and their engagement on international topics are multilayered. The multiple layers of states' interest representation can be seen in a number of ways:

- States can address both federal and European actors, and among these, there are governmental and nongovernmental organizations and individuals. Moreover, in Europe, states can be in touch with actors at the regional, national and supranational level.
- States have a host of avenues to make their voices heard, ranging from written statements to personal contacts in the national capital to overseas visits.
- States themselves are multilayered: In this study, I consider state executives, state legislatures, state associations and state-federal bodies, and there are not always clear distinctions possible, for example due to overlapping memberships or joint international projects.
- States work on multiple facets of transatlantic trade and investment relations with different aspirations and goals, for instance on trade promotion to attract FDI or on trade policy to defend state sovereignty, which requires them to devise multiple strategies to articulate their positions.

Interest representation on these topics can be understood as a process in which states feed their positions to the various U.S. and European actors engaged in transatlantic trade and investment relations.

With multilayered interest representation, I can study the different actors, avenues and aspirations involved in states' transatlantic trade relations. The concept acknowledges noncentral governments' engagement as economic and political entities *in conjunction with* other governments and private organizations, instead of focusing on relations between nation-states or between nation-states and private actors. Furthermore, as multilayered interest representation is based on and still close to the idea of paradiplomacy, I can use the related idea of modes of state-federal relations in international affairs (see table 5 on page 42) to analyze when multilayered interest representation is in harmony with the federal government and when it is conflicting with the federal government (see chapter 7).

Trade Promotion Interests and Trade Policy Interests

This study will ponder states' multilayered interest representation on two topics related to the TTIP: I will differentiate between trade promotion interest representation and trade policy interest representation and analyze the differing means and motivations states have in these two fields. This differentiation is based on previous scholarly work on states in international relations and was also echoed in the qualitative interviews conducted for this study.

There is a decent amount of scholarship discussing U.S. states as economic actors in globalized markets. Federalist and paradiplomatic scholarship has taken this up: Authors examine if and how states are legally allowed to sign international agreements or promote their economies globally and whether they are organizationally capable to do so. This has been a strong focus in the literature on states' international affairs, with many studies diving into states' overseas trade offices and their efforts to build business networks around the globe. I have summarized this under the heading "transatlantic trade promotion" and will offer findings on this in chapter 5. An emphasis will be placed on FDI attraction and export promotion, which is the key impetus for states to become engaged as global economic actors and which also reflects the major direction of earlier literature.

In contrast to trade promotion, states' trade policy interest representation has featured less prominently in the literature, even though states do become engaged in policy issues that have nothing to do with promoting exports or attracting FDI. I subsume this under the heading "transatlantic trade policy" and discuss states' interest representation in this area in chapter 6. International political economy scholars have at times highlighted the roles of states in international trade negotiations and I will draw upon this IPE research, specifically

by using a matrix of noncentral governments' potential interactions in trade negotiations (see table 4 on page 41). In doing so, this study will refine and update existing literatures with the contemporary and far-reaching TTIP talks and expand them by focusing more on the processes of interest representation than the outcomes of negotiations.

The division between trade promotion and trade policy might seem inaccurate, considering the argument that speaking out on regulatory issues of international trade policy in a state's favor ultimately promotes their exports and investment standing as well. This is true, but trade promotion could also happen without any link to federal or international trade policy: A governor might go to Europe to meet with potential investment partners. A legislature might pass a resolution reiterating their friendship to another country or region to promote economic development. At the same time, as this study will show, there are also specific trade policy areas in which states emphasize issues related to regulatory authority and federalism that are not linked to economic development. While overlaps might occur, one crucial goal of this study is to explore the variation between these two realms of transatlantic trade relations. My research reveals marked differences between those states emphasizing trade promotion in their interest representation on the TTIP and those states working on trade policy issues. This variance is discernible in the means states use to make their voices heard and the motivations states have to become active in the first place. Intergovernmental conflict can also be viewed in light of the distinction between transatlantic trade promotion and trade policy.

4.2 Methodology, Case Selection and Sample

This study uses a variety of sources for its empirical analysis of U.S. states in transatlantic trade policy. I rely mostly on qualitative content analyses of official state documents (for example speeches), media content (for instance op-eds) and original research interviews. The 60 qualitative expert interviews were conducted in the EU and the U.S. with respondents from U.S. state, U.S. federal and EU governments as well as representatives of state associations, think tanks, activist groups and business associations.

In the following, I will explain the background of selecting the TTIP as the case for my research. I will then detail the benefits and potential drawbacks of using qualitative interviews, what additional sources I used and how I arrived at the sample for my interviews.

The TTIP as a Contemporary Case

Transatlantic trade policy was chosen as the case study topic and this topic has for the past couple of years been synonymous with the negotiations for the proposed free trade agreement between the EU and the U.S., the TTIP. I therefore decided to set my study against the backdrop of the TTIP negotiations, which are used to highlight state actors' various points of access at the federal and European levels and their motives for and means of representing their interests in transatlantic trade policy.

Picking the economic out of all the various transatlantic relations is a logical and justified choice because most of U.S. states' engagement in Europe and with European actors is driven by economic and trade considerations and because recent transatlantic affairs have put an "emphasis on the liberalization of trade and investment" (Pollack & Shaffer, 2001b, p. 290). Examining and explaining states' interest representation on transatlantic trade relations therefore covers the vast majority of the transatlantic activities of U.S. states. Zooming in on the TTIP is not only warranted due to the proposed agreement's prominent place in contemporary transatlantic trade policy, but also because it is the culmination of transatlantic interdependence (Damro, 2016, pp. 191-192) and therefore ties in with previous scholarly literature on interdependence in international relations.

Under consideration for this study are the five years from November 2011 to November 2016, which cover the prenegotiation phase and the first 15 TTIP negotiation rounds. The starting point of 2011 was chosen because this marks the initiation of the modern TTIP talks through a joint EU-U.S. High-Level Working Group, even though formal negotiations did not commence until mid-2013, over two years later (see section 2.2). While the idea of a transatlantic free trade agreement can be traced back until at least the 1990s, it was not until 2011 when EU and U.S. political leaders decided to discuss possibilities to enhance the transatlantic trade and investment relationship. This is taken as the beginning of the prenegotiation phase, which, generally, is a crucial “preparatory phase without which the negotiation would not have taken place” (Zartman, 1989, p. 243).

Late 2016, the end of the Obama administration, was selected as the final point of the analysis because at this point, there was a serious cut and prolonged break in the TTIP negotiations. Obama, the only U.S. president to negotiate the TTIP (see tables 2 and 3 on pages 31 and 32, respectively), was an initiator and supporter of the deal. His successor Donald Trump, however, wanted to overhaul U.S. trade policy, including international trade agreements: Among Trump’s first executive actions as president was the withdrawal from the Transpacific Partnership (TPP) (White House, 2017) and a renegotiation of the NAFTA began in August 2017 (Office of the U.S. Trade Representative, 2017b; The Economist, 2017). Meanwhile, the administration was “evaluating the status” (Office of the U.S. Trade Representative, 2017a, p. 136) of the transatlantic trade negotiations. After Trump’s electoral victory, European Commissioner for Trade Cecilia Malmström expected the TTIP deal to be “in the freezer” (Stearns, 2016) for a while. These doubts over concluding the TTIP warrant the 2011 to 2016 timeline.

Because the conclusion of the TTIP negotiations is still outstanding and in jeopardy, the ratification of the TTIP by all EU member states and the U.S. is not covered in the time frame. While “it is only when domestic ratification [of trade agreements] is achieved that all domestic constraints have been accommodated” (Mansfield & Milner, 2015, p. 65), my research focuses squarely on the prenegotiation and negotiation phases of the TTIP, highlighting the process of states’ multilayered transatlantic interest representation and not the outcome. Further, the ratification phase in the U.S. would be a strictly domestic undertaking, with no transatlantic angle to it.

For a variety of reasons, the TTIP negotiations are a suitable backdrop to analyze states’ transatlantic trade relations and interest representation in transatlantic trade policy. For one, the TTIP is the prime contemporary example of transatlantic cooperation. The fact alone that the negotiations aspire “to create the world’s most ambitious trade agreement between the world’s two largest economies” (Young, 2016, p. 2) makes it empirically important. For the first time, this study will be able to examine transatlantic free trade negotiations, since previously, the U.S. has not concluded free trade agreements with any European country.²⁰ Its transatlantic scope, involving the U.S. and the entire EU, renders the TTIP the ideal canvas to study U.S. states’ involvement in and with Europe. A potential caveat is that the TTIP is an extreme case in international trade negotiations, as political scientist Alasdair Young notes, because the proposed agreement is so highly ambitious, broad and

²⁰ The U.S. has free trade agreements in place with 20 countries (Office of the U.S. Trade Representative, 2016d): Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Jordan, Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru and Singapore. At the time of the TTIP, the U.S. was also negotiating an agreement with eleven Asia-Pacific countries, the Transpacific Partnership, which included some existing free trade agreements (Office of the U.S. Trade Representative, 2016i): Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. As mentioned, President Trump withdrew the U.S. from the negotiations.

deep, and the two negotiating partners are of equal standing (Young, 2016, p. 24).²¹ Yet, the author finds this atypical nature of TTIP to be especially intriguing for research (Young, 2016, p. 24).

Besides the rather abstract and broad idea of the TTIP being the major transatlantic project, there is another empirical reason to look at the transatlantic trade negotiations for this study: The TTIP directly and indirectly affects the U.S. states in a variety of ways. Were the major transatlantic project an issue that is of no concern to the states and does not touch them at all, it would be unsuitable for this study. The proposed TTIP agreement, however, does touch upon state prerogatives because the primary impetus of the TTIP is to promote economic growth and investment across the Atlantic by increasing market access on both sides of the ocean. This is to be achieved mostly by removing nontariff barriers to trade, which will affect state economies directly and indirectly. Various companies or sectors in all 50 states are touched by the rules proposed in the TTIP and so states, too, will experience regulatory and policy adaptations as well as changes in exports and imports, jobs and ultimately tax revenues. The TTIP therefore has the potential to shape states' economic development and political environment, which will be explored in depth in chapters 5, 6 and 7.

Qualitative Expert Interviews

In addition to using existing literature and official data sources, I will rely on empirical data gained in interviews with experts in Europe and the U.S. In political science research, the qualitative expert interview²² is “often the best tool for establishing how subjective factors influence political decision-making, the motivations of those involved, and the role of agency in events of interest” (Rathbun, 2008, p. 686). Also considering that “[s]tudies of state and local government, public administration, and national political institutions offer great potential for the use of interviews” (Peabody et al., 1990, p. 452), this method is highly appropriate for the research questions guiding this project. I therefore set out to find a suitable sample for my study, after having considered some advantages and disadvantages of this research method.

Benefits and Drawbacks of Qualitative Expert Interviews

Qualitative expert interviews in political science can improve our understanding of the personalities involved in political decision making, help with interpreting official documents and uncover information that has gone unrecorded otherwise (Richards, 1996, p. 200). Furthermore, expert interviews enable the researcher to retrieve exclusive information based on personal experiences and involvement. Recognizing that a lack of studies on the practitioners of multilayered diplomacy has been identified (Criekemans, 2010a, p. 4), the use of qualitative interviews becomes especially fitting. The experience gained by officials and other experts in noncentral interest representation is something that cannot easily be

²¹ Young specifically mentions that IR literature tends to focus on asymmetrical negotiations, termed in the global context “North-South” relations, whereas the proposed TTIP features “North-North” relations (Young, 2016, p. 3).

²² There are some language differences to acknowledge regarding terminology: While English literature barely mentions expert interviews, there is much scholarly work on elite interviewing. In German literature, it is the other way around. It has been found, however, that there are few differences regarding the definitions (Littig, 2008, p. 665). Rather, elites can be considered a subset of experts with even greater decision-making powers (Littig, 2008). The term expert will therefore be used in this study on the premise that all elite interviews are expert interviews, but that not all expert interviews are elite interviews. Also, the research questions are not related to studying the elites per se and are not solely focused on the highest sphere of political and administrative power (Littig, 2008).

gathered from many other sources: Oftentimes, interest representation is highly complex and closed to political and administrative outsiders, rendering it unsuitable for personal observation, an alternate approach to data collection (cf. Bogner, Littig, & Menz, 2014, p. 22). As the formal processes of legislative and administrative decision making become more transparent, interviews can help shine a light on informal processes and activities behind closed doors (cf. Beckmann & Hall, 2013, p. 208; Lilleker, 2003, p. 208). They are therefore “often the only means to obtain particular kinds of information” (Rathbun, 2008, p. 690), in this case on the interest representation by U.S. states in transatlantic trade policy. Even with some recorded resources for noncentral interest representation in archives or memoirs, “[i]nterviewing has the advantage of being perhaps the most directed and targeted method in the qualitative arsenal” (Rathbun, 2008, p. 691).

With all these advantages of qualitative interviews in mind, solely quantitative analyses were excluded as an alternative means of data gathering. While quantitative surveys offer the benefit of easy coding and comparability, a questionnaire severely limits the interviewees’ freedom to talk, as it presses the conversation and the interviewee into a strong theoretical girdle defined by the researcher (cf. Lamnek, 2010, pp. 317-318). But even if such a theoretical girdle were to be accepted, it simply does not apply for the research questions at hand: Standardized polls rely on hypotheses and premade questions drawn from a firm theoretical foundation. Such a strong theoretical foundation does not exist for the topic of this study (see chapter 3), making it difficult for any researcher to develop hypotheses that can be easily put into a questionnaire *before* the empirical research. Qualitative interviews with their open and flexible nature are best suited to structure and analyze social processes based on what the expert interviewees report and not based on already existing theories. Additionally, this openness and flexibility, once thought to be a disadvantage, allows the researcher to adapt this format of data collection to the individual needs of the study at hand.

Qualitative expert interviews, despite being widely used in social science research (Bogner et al., 2014, p. 1; Liebold & Trinczek, 2009, p. 32), did for a while suffer from a lack of legitimization as a viable research method. Critics questioned the reliability of interviews and pointed out the lack of a theoretical and methodological foundation (for summaries, see Bogner & Menz, 2002b, pp. 17-18; Rathbun, 2008, pp. 688-690). Still, the ongoing use of expert interviews has led to a professionalization of the method, which includes a firm methodological rationale for their usage. While expert interviews might not be considered a full-fledged part of the qualitative research canon by everyone, they have become an accepted scientific method and presented themselves as the most suitable option for this study.

It is nonetheless necessary to reflect on common disadvantages of qualitative interviews, namely subjectivity, a potential lack of validity and a potential lack of generalizability. Several options exist for researchers to alleviate these issues. Awareness is key, as researchers must be cognizant of possible pitfalls: They need to recognize, for example, that “[t]he data [generated in qualitative interviews], generally in the form of quotes or statements by the respondents, are prone to multiple, subjective interpretations by the researcher, making them less reliable [than some forms of quantitative research]” (Rathbun, 2008, p. 688). Therefore, in this study, I mention interviewees’ positions or backgrounds if this aids in understanding their position on a particular issue. I also include alternative points of view on controversial topics, state institutions or state-federal issues. Furthermore, with each interview, I tried to remind myself that expert interviewees, especially from the realm of politics and administration, might not remember events or processes accurately, either on purpose or accidentally (Lilleker, 2003, p. 208; Mosley, 2013, p. 21; Rathbun, 2008, p. 689). While purposeful deception is rare (Rathbun, 2008, p. 694), “political scientists must be particularly attuned to the issue of strategic reconstruction of events to suit the more vested interests of interviewees” (Rathbun, 2008, p. 689).

In addition to heightened awareness, I took some methodological steps to tackle possible problems with subjectivity. Ensuring transparency regarding the sample selection and aiming to include multiple interview sources with a variety of perspectives in the sample can improve the research. Moreover, “scholars can fruitfully triangulate [interview data] with other sources to resolve ambiguities in the record” (Bleich & Pekkanen, 2013, p. 95; see also Kaiser, 2014, pp. 31-33; Lynch, 2013, p. 37). This chapter will show how for this study, various other sources besides the interviews were consulted, allowing for triangulation of data (Flick, 2004, pp. 178-179).

The validity of the interviewees is also enhanced by not relying on a single set of respondents: The experts are located in the U.S. as well as in Europe and more importantly, the experts come from the noncentral governmental, central governmental and nongovernmental spheres. The caveat of these redundancies is that it might be contradictory to have a large breadth of experts, especially from different areas of government or society. Based on their functions, they might have entirely different perspectives on noncentral interest representation. For example, a state legislator might not even be familiar with the specific intricacies of state interest representation in Europe, while a state official posted in Europe might be detached from the U.S. federal political process. Bringing in these different perspectives is, however, also a valuable benefit of the expert sample. The overlaps of the multiple governments in the U.S., which are a distinct feature of its federal system, are mirrored in the sample. Additionally, including state actors as well as nonstate actors allows for a certain cross-checking of interview responses. The expert sample nevertheless focuses strongly on interviewees with distinct noncentral expertise, as this was taken to be most helpful in answering the research questions.

Benefits and Drawbacks of Deliberative Sampling

To start my research, I first identified those states active in TTIP interest representation, which includes finding and describing the means these states use to make their voices heard. The main analytical task after this was to unearth the motivations for states’ interest representation, to discover the reasons for variance among states and to explore their conflicts with the federal government. This analysis drew heavily on the findings from the expert interviews.

To establish which states are active in transatlantic trade promotion and trade policy, I used nonrandom sampling methods, specifically purposive or deliberative sampling. I scrutinized the state executives and state legislatures as well as other bodies with state representatives.²³ While random sampling has been identified as the “gold standard for making generalizations” (Lynch, 2013, p. 39), it is not always necessary or appropriate to use this form of sampling. For this study, a random probability sample did not present itself as a suitable alternative because with a target population as small as the U.S. states, bias is easily introduced (Beamer, 2002, p. 90). An alternative way to arrive at a nonrandom state sample would have been to pick states based on some predefined quantitative data, such as economic strength, industry focus, geography or political party affiliation. I disregarded this option for lack of reasons justifying any preselection: How, for example, can choosing a state from each of the regions defined by the United States Census Bureau (2010) be explained? Should an economic preselection focus on state gross domestic product, state budgets, state debts or maybe state exports or imports to Europe? If you want to focus on FDI, which is economically far more important than trade, how can you work with limited and outdated state-level

²³ I deliberately omitted a detailed inquiry on state judiciaries, as the judicial branch controls policies envisioned and implemented by the state executives and legislatures. While this might touch upon transatlantic trade policies, judiciaries are not actively engaged in policy making.

statistics? Future research could, however, pick certain states and try to examine their choices in transatlantic relations (see section 8.4). Moreover, by not singling out one or a fixed number of states prior to my analysis, I deviate from the usual method of either looking at just one state or trying to quantitatively aggregate data for all states. This enhances the generalizability because I could compare the different avenues of those states engaging in transatlantic trade policy interest representation.

Purposive or deliberative sampling entails “selecting elements of a population according to specific characteristics deemed relevant to the analysis” and can thus “yield a sample that is loosely ‘representative’ of the population” (Lynch, 2013, p. 41). Representativeness is achieved not statistically but within the context of the study’s content (Lamnek, 2010, pp. 171-172).

Even when achieving some representativeness, a serious drawback with my deliberative sampling approach remains: I introduce a selection bias by only studying those states actively engaged on the TTIP. Apart from logistical and financial limitations that partly led me to choose deliberative sampling, there are analytical reasons as well. Since my research questions called for finding out the means, motivations and state-federal conflicts in states’ TTIP interest representation, it was necessary for me to focus my interviewee search on those individuals and organizations that are actually working on TTIP topics. Otherwise, I would not be able to analyze if and how states make their voices heard on the trade deal or I would have to rely on second-hand sources such as U.S. federal actors. A crosscheck with states that remained silent on the TTIP could be interesting, though, and is an option for future investigations with bigger and more resourceful research teams (see section 8.4). Still, my interviews did explore both potential reasons for states’ engagement with the TTIP and potential reasons for their idleness. This is because generally, the TTIP was not a high-priority issue, so interviewees – even those actively engaging on the trade deal – offered explanations for a lack of attention to the TTIP on the noncentral and central levels (see section 8.2).

In addition to the selection bias in my study, there are some more minor methodological caveats to be kept in mind. First, it has to be made clear that nonstate U.S. territories are excluded from this study: The state population does not include American Samoa, Guam, the Northern Marian Islands, Puerto Rico and the U.S. Virgin Islands because these territories are not incorporated in the U.S. and are not on equal legal footing with the 50 states. For instance, they are not represented in the Senate and do not have voting rights in the House of Representatives. These two points also apply to the District of Columbia (Katz, 2006, pp. 296-297), which is therefore left out of the study as well. These territories form a separate class of noncentral entities which was not the focus of this study.

Second, while they are U.S. noncentral governments, local and tribal governments are also not part of this study. With roughly 19,000 municipalities and 3,000 counties located within the 50 states (O’Toole & Christensen, 2012; Stephens & Wikstrom, 2007, pp. 23-25) as well as over 560 tribal governments (Bureau of Indian Affairs, 2015), the local level plays a considerable role in U.S. federalism and is even, to a certain degree, involved in transatlantic relations (Fry, 1990a, 1998; Guay & Jansons, 2003; Kincaid, 1999). Yet, focusing on the local level’s international activities is not key to answering the research questions, which specifically emphasize states.

Third, it is important to note that when talking of the U.S. states, I am talking about 50 separate and distinct noncentral governments: There is no average “U.S. state” that I can analyze to represent the heterogeneity of the 50 states. The states’ diversity in size, population, economic background, political leanings, history, leadership and many other categories is an integral part of U.S. federalism, which will not be ignored in this study but will be put into context of the research questions. For example, it is equally important to remember that the basic constitutional standing is exactly the same for each state (Bowman,

2017, p. 3), as are their legally guaranteed rights to participate in certain trade policy forums. Also, states do in some instances aggregate their positions, via state-membership organizations such as the NGA.

It is therefore possible for this research to lump together “the U.S. states” when discussing their general standing as noncentral U.S. actors in transatlantic trade relations or when analyzing their legal framework. I refrained, though, from grouping states together in later parts of the analysis that regard specific policy issues or positions taken in transatlantic trade policy. Instead, I will provide state-by-state examples and infer, whenever possible, the general thrust of specific states’ positions and activities. In this way, variance among the states will be highlighted, but overarching tendencies can also be identified.

Lastly, references to other noncentral governments will be made, but the study does not take an international comparative perspective. This intranational approach is adopted to deviate from the more common international and/or comparative method in the literature. Future research could take up the comparative points of view (see section 8.4).

Sources, Respondents and Interviews

As explained above, the first part of my empirical research was to identify states actively representing their trade promotion and trade policy interests regarding the TTIP. To that end, I conducted qualitative content analyses of various state, journalistic and scientific sources on state executives, state legislatures and other bodies with state representatives.

State executives. Governors and their administrations are vital for studying states’ transatlantic affairs because it is the governor who steers a large part of a state’s policy development and implementation. As reported in depth in section 3.2, gubernatorial powers have expanded over time and the state executive today is seen as the highly professionalized primary driver of state politics. While executive powers vary by state (Ferguson, 2014, p. 332), the governor is in most states the chief manager, administrator and agenda-setter for state legislation (Beyle & Dalton, 1983). Governors possess influential appointment and budget powers as well as symbolic, informal powers allowing them to impact the political and economic environment in the state (Stouffer et al., 1996, pp. 333-336). Additionally, the governor has a vast bureaucracy at hand to execute state policies (Stouffer et al., 1996, pp. 367-373), which includes the economic development and agricultural departments involved in international trade as well as European trade representative offices in some cases. The governor, lastly, is a member of a well-known and well-connected lobby group, the NGA. In short: “Governors are the epicenter of politics in the American states” (Ferguson & Foy, 2014, p. 229). These findings justify my choice for examining executive speeches and actions from the governors, other executive agencies and governors’ associations in transatlantic trade policy.

Publicly available data was used to establish topics and priorities of gubernatorial activities in international affairs, primarily through the content in the state of the state addresses. In the state of the state speeches, which are constitutionally mandated in all states and are typically given at the beginning of each year, “the governor details the substance of his or her legislative proposals, in terms of priorities for the legislative session” (Rosenthal, 1990, p. 7). Thus setting the agenda, governors exercise one of their biggest powers as initiators of legislation and state programs (Dye, 1981, p. 176; Dye & MacManus, 2014, p. 210; Kousser & Phillips, 2012, pp. 74-75). An analysis of such briefings is therefore a useful tool in exploring state issues and activities (Nugent, 2009).

In addition to the state of the state speeches, I also analyzed media coverage and interviews on governor’s international engagement, for example their trade missions to Europe. Such travels and representative trade offices in Europe, which usually report to the

states' economic development agency, are seen as key drivers of states' transatlantic trade interest representation. There are also published official statements from governors or governors' associations commenting on U.S. trade relations and specifically on transatlantic trade.

When analyzing these data, I first gathered all available statements, for example all state of the state addresses for the time frame under consideration, and ran a search for the terms related to this study: TTIP, transatlantic, invest, trade, Europe. I also checked for instances when governors talked about the TPP, the NAFTA or global trade in general as well as statements on intergovernmental relations in foreign affairs. After such a quantitative search, I looked at those speeches or statements in which the search terms occurred and made a qualitative check on whether the governors talked about this study's topic and if so, what their articulated interests were.

I focused my research on the governors and their offices as well as the NGA. The regional gubernatorial associations will only feature tangentially because they do not invest their policy efforts in trade issues (for more on the regional governors' association, see Jensen (2016, pp. 146-155)). They deal with rather regionally based topics, such as wildfire prevention (Western governors), new energy resources (Midwestern governors), transportation (Northern governors) or water management (Great Lakes governors). The Democratic and Republican Governors Associations, respectively, are partisan organizations with only a secondary focus on policy issues, reducing their importance for the research questions at hand.

State legislatures. An examination of state legislatures and legislators is essential for this work's research questions because, as established in section 3.2, the legislatures perform the lawmaking functions in a state, have final authority over the state budget and taxing and have oversight powers over the executive (Squire & Moncrief, 2010, pp. 160-184; Stouffer et al., 1996, pp. 291-295). State legislatures introduce and pass bills or resolutions that might touch upon transatlantic trade policy or affect transatlantic trade. Furthermore, the legislatures' national-level lobby group, the NCSL, offers expertise on state politics beyond the state capitals. With these findings in mind, it becomes clear that a look at state legislatures and their associations is necessary for this research.

State legislative action primarily means introduced or passed resolutions and bills in the state legislatures and its committees. Additionally, statements from the NCSL and other state legislators' groups were included in the analysis. All but one state in the U.S. have bicameral legislatures, which means that in those cases I looked at both the state's upper and lower house, usually named Senate and House of Representative. Public records were drawn from academic research databases such as LexisNexis or directly from official state or federal websites or websites of state associations such as the NCSL. I also included press releases by legislative actors and agencies on particular bills as well as media products such as newspaper articles, online articles, videos or audio excerpts, which were, again, gathered from academic databases and through internet search engines. The search terms were deliberately kept relatively wide so as to decrease the possibility of missing documents or news. As an example, I used LexisNexis to look for any bills, resolutions or statutes since 2011 containing the terms "TTIP" or "transatlantic AND trade". The results were cross-checked with the open-source database "Open States" and with the official state websites.

Other bodies with state representatives. In addition to the states' executives and the legislatures, I scrutinized several other types of noncentral governmental actors. Two kinds of bodies will be of particular concern that cannot be easily included in the analysis of executive or legislatures: State commissions and state-federal commissions. The former is

usually a hybrid of state executive, state legislative and/or state nongovernmental actors, with the most important example for this study being international trade policy commissions. A small number of states have such trade commissions, which draw their members from both state houses and from the general citizenry. The latter, state-federal bodies, recruit their members from the state level but with the distinct purpose of advising or consulting with the federal government. For this research, the Intergovernmental Policy Advisory Committee on Trade (IGPAC) at the USTR is the most prevalent of such organizations. Its members come from all over the U.S., from local and state executives, legislatures, judiciaries and professional organizations. The IGPAC's official records, such as their recommendations on various FTAs, are partly available on a dedicated USTR website and partly in an archived version of that website.

Both types of bodies with state representatives – state-level trade commissions and the IGPAC – are directly working in international trade policy and therefore need to be included in this study on states' transatlantic trade policy. Their reports, policy positions and letters are prime example of states articulating their interests on the TTIP. Identifying states' international trade bodies was informed largely by official records and secondary sources, and also incorporated suggestions from respondents. Many of the bodies and mechanisms have been mentioned in the literature before but changes in the intergovernmental structures of the U.S. make the TTIP case especially pertinent, as these changes have not been covered in depth by scientific literature yet.

For all of the above-mentioned bodies, I was not only interested in what positions they took on the TTIP, but I also aimed to uncover potential networks of actors. State officials' connections in Washington, D.C., especially via their Congressional delegation and state associations are well-studied in the literature (see, for example, Cammisa, 1995; Jensen, 2016; Nugent, 2009), so I was particularly intent on addressing state-federal interactions. Connections between state and EU actors are also part of my research.

Once I had analyzed legal databases, media sources and existing scientific literature, I could proceed to the next steps in my empirical research, namely analyzing the means and motivations for states' TTIP interest representation and their conflicts in this field. For this part of my study, I drew from the findings from an original set of qualitative expert interviews.

In identifying such experts, I followed the definition that experts have the ability to transform their knowledge into social actions (cf. Bogner & Menz, 2002a, p. 46; see also Meuser & Nagel, 2002 [1991], p. 73; Pfadenhauer, 2009, p. 452): The expert interviewees, essentially, "have shaped the world around them" (Rathbun, 2008, p. 688). While top-tier politicians are certainly such experts, researchers have to be aware that experts are not only to be found at the highest level of an organization. Instead, social scientists have to find people at all levels who actually prepare and execute decisions and who have the most detailed process knowledge (cf. Meuser & Nagel, 2002 [1991], p. 74). The researcher's interest in experts is therefore not an interest in the person but in the person's institutional and organizational context (cf. Meuser & Nagel, 2002 [1991], p. 74).

For this study, a number of political and administrative experts in Europe and the U.S. have the ability to turn their knowledge into actions and guide other people's actions. More specifically, in order to answer the research questions, it was crucial to identify populations within transatlantic and U.S. intergovernmental relations with knowledge of and/or involvement in state activities in Europe. Six such broad populations were found and grouped without prioritizing them. The final distribution of interview partners from each category is reported in figure 5 on page 74.

Category US1: State officials and politicians. To understand states' positions, linkages to foreign actors and connections to U.S. federal-level actors, it was imperative to interview state officials and state legislators. I sought out respondents both in the state executive and in the legislature. In the executive, the governor's offices usually deal with intergovernmental and international relations. State officials working on behalf of the governors were interviewed to gain insight on gubernatorial priorities. The economic development departments and, in some cases, the agricultural departments in the state executives are further sources, as they are involved in the trade promotion aspects of state activities abroad. In addition to the executive, state legislators were interviewed because some legislatures have become involved in transatlantic trade policy and to check for potential divergences with the state executives. This population includes respondents working in the states' federal relations offices in Washington, D.C.

Category US2: Representatives of state associations in the U.S. Various organizations and associations aggregate state interests in the U.S. and have thus accumulated a large amount of expertise on intergovernmental relations and noncentral governmental interest representation. Such organizations include the NGA, the NCSL and the CSG. Tapping into their expertise was meant to enhance the research by granting a view not particular to a single state but the U.S. states as a group.

Category US3: Nonstate experts, stakeholders and politicians in Washington, D.C. Apart from state officials, there is a host of other experts on intergovernmental relations residing in Washington, D.C., that are involved in transatlantic trade and trade policy. These are U.S. federal actors, EU actors and private actors: Respondents came from U.S. federal agencies, the EU delegation, civil society groups, business associations and think tanks. Interviewees from this category could offer valuable information enhancing the perspectives provided by state actors.

Category EU1: State officials/representatives in Europe. There are 49 trade representative offices maintained by 27 U.S. states in Europe (see section 5.2 for details). Employees in these offices are executing noncentral interests abroad and are the most immediate points of access for European businesses and policy makers. Thus, it can be expected that they know and understand some crucial parts of U.S. states' interest representation in Europe. They were therefore contacted to provide first-hand accounts of the motivations and processes behind states' transatlantic interest representation.

As an important note, it has to be acknowledged that the states' representative offices are not all institutionally equal: Some states maintain an office with a staff, whose sole task is working for a specific state. Other states employ a consultancy company, whose mandate to work for the state might be one among many. Still other states hire a freelance consultant, who runs the European office for the state. Collectively, all of these arrangements will be referred to as "state officials in Europe" or "state representatives in Europe".

Category EU2: Nonstate experts and stakeholders in Europe. This group contains U.S. federal actors and public and private European actors. Federal U.S. actors in the EU include embassy officials or officials in the Foreign Commercial Service and Foreign Agricultural Service. Public actors interviewed were EU officials and private actors were think tank employees and business representatives, as they could all share their knowledge about structural or exemplary evidence of U.S. states' transatlantic interest representation.

For most of the states I had identified as engaging in transatlantic trade policy, I contacted the corresponding potential respondents. For example, if my analysis showed a particular state legislator or committee to have worked on trade policy making, I requested interviews. If I found a certain state organization to be active in trade policy matters, I contacted them. If I read that a governor had spoken out on transatlantic trade issues, I reached out to the governor directly and/or the governor's office and/or the agency responsible for economic development. The level in the hierarchy of the executive or legislature was not the deciding criterion but the level of expertise: Members of state trade policy commissions, members of the IGPAAC, officials in state associations dealing with international topics or economic development specialists from states with strong European trade ties were all crucial for this research, no matter their actual title. In addition to currently serving officials and experts, I also considered former office holders because their expertise still relates to the research questions (cf. Peabody et al., 1990, p. 453). Establishing such a big group of possible respondents improved the qualitative research by ensuring to "receive balanced information from a wide variety of perspectives" (Bleich & Pekkanen, 2013, pp. 90; see also Berry, 2002, p. 2680; Goldstein, 2002, p. 2669, Rathbun, 2008, p. 2694).

With these selections, I again followed nonrandom selective sampling because it was necessary "to purposefully select the individuals who are likely to know the most about the topic and talk to them" (Leech, Baumgartner, Berry, Hojnacki, & Kimball, 2013, p. 214). Random sampling was disregarded as a suitable sampling method, as the "interview subjects are not themselves the topic of the study, but they are rather being used as expert sources of information about some other unit of analysis" (Leech et al., 2013, p. 214), in this case on states' interest representation on transatlantic trade policy.

The sampling method clearly underlines the different choices states make when it comes to their transatlantic interest representation. If a state utilizes an international trade commission, I could focus on that, whereas another state might not have such a commission but instead a governor who is outspoken on the TTIP. I emphasized state sources over respondents from the federal government because the research questions deliberately take states' perspectives, so I needed interviewees with direct knowledge of state activity. By covering the national legislature in my interviews, I still acknowledge the crucial importance of the Congressional delegation for states' interest representation on any topic, not just the TTIP. However, I also recognize the diminished role of the U.S. Congress and especially the U.S. Senate as an institution directly representing states' interests. As a safeguard for federal principles, the U.S. Senate is not as reliable and useful anymore as in decades past (Nugent, 2009, pp. 54-58). Instead, "informal, extraconstitutional practices that state officials have developed" (Nugent, 2009, p. 54) have become more helpful, so these are accentuated in this study. While states have good access to the U.S. Congress and the U.S. Senate in particular (Cammisa, 1995, p. 124), the U.S. Senate is not necessarily a defender of states' rights (Kaiser, 2005, p. 96) and cannot be seen as the only dominant institution that relays states' interests onto the national political scene. Therefore, too strong an emphasis placed on central government actors such as the U.S. Senate would have turned attention away from the importance of formal and informal networks between multiple noncentral, central and nongovernmental actors. Furthermore, my research questions required an analysis of states' perspectives on the TTIP, which can best be gleaned directly from state actors as opposed to indirectly via their Congressional delegation.

Possible interviewees and their contact information were identified by studying official government records, such as organizational charts or press releases as well as journalistic media (cf. Beckmann & Hall, 2013, pp. 200-201). Initial contact with potential respondents was made via e-mail, phone or personally, for example at conferences. Previous researchers have found various obstacles to accessing political decision-makers and

scheduling interviews (Beckmann & Hall, 2013, p. 207; Lynch, 2013, p. 43; Mosley, 2013, p. 13; Peabody et al., 1990, p. 453; Wolff, 2004), but they also report their positive experiences in gaining access (Lynch, 2013, p. 43), specifically regarding the noncentral level (Beamer, 2002, p. 86) and regarding administrative experts (Aberbach & Rockman, 2002, p. 673).

I can confirm both difficulties and successes in accessing political officials. Contact information on the experts was easy to find online in most cases, even though for some politicians or former officials, researching the details was tougher than for current public servants or politicians. The time spent researching the necessary contacts and their information should therefore not be underestimated. Once contacted, many potential interviewees that I had included in my sample frame were quick to respond, helpful in their communication and readily available to schedule an interview. I tried to build a good rapport in advance and during the interviews, which has been described as an “interview intangible” (Beckmann & Hall, 2013, p. 207). There were, however, also cases, in which I never received any response, despite multiple e-mails, calls and voice mails left, or was declined an interview. Rejections were mostly due to time constraints on the interviewees’ part or the sense that they were not well-versed in or responsible for the research topic.

For logistical and financial reasons, I was not able to schedule interviews with experts from all states that have in some way or another dealt with the TTIP. I had to rely on secondary sources in those cases. However, I did gather original empirical material through interviews covering a total of 19 states and 17 organizations as well as the EU and the U.S. federal level. Due to the organizational structure of my research, I started my interviews in Europe with respondents from categories EU1 and EU2 during the first half of 2016. The U.S.-based respondents from categories US1, US2 and US3 were interviewed during a three-month field work period in the states and in Washington, D.C., in the second half of 2016. Taken together, I conducted at least one interview with a state official in the U.S. and/or representative in Europe from 19 states, meaning 38 percent of all states. These states cover roughly half of the U.S. state population, of state exports to the EU, of state imports from the EU and of jobs generated by European FDI, respectively (see figure 9 on page 76).

In total, I contacted 167 potential respondents, which led to 64 conversations with 64 people.²⁴ Considering that I talked to four people twice and had four interviews with two people each, I arrive at 60 interviews. The response rate, calculated by dividing the number of people interviewed by the number of people contacted, was 38.3 percent. The average interview length was 44.5 minutes. The majority of interviews were oral, single-person personal interviews, specifically scheduled for the research, while six respondents were asked a shorter set of questions at a conference. Nine interviews were conducted via phone. 23 interviews were held in Europe and another 45 (including all phone calls) were conducted in the U.S (see figure 6 on page 75; includes those respondents I talked to twice). Three quarters of the interviewees were or used to be state officials or worked or used to work for state associations (see figures 7 and 8 on pages 75 and 76, respectively).

The overview of the state and expert sample in table 7 roughly follows the “interview method appendices” (Bleich & Pekkanen, 2013, pp. 95-104), which aim to create as much transparency as possible about the sampling and interviewing process. Since a number of respondents from each of the populations requested partial or full anonymity, however, I have not offered details on each interviewee in the table, instead opting to give a regional breakdown based on the U.S. Census Bureau’s divisions (U.S. Census Bureau, 2010). Otherwise, it could have rather easily been deducted who I talked to. Again, I did not choose

²⁴ This includes one respondent who requested our talk to not be quoted at all. This conversation is therefore not included in the interview overview (see table 7 on page 71) and no mention of any state, functional or locational details are made, but it is still counted in all the statistics mentioned in this study.

my respondents based on regional affiliation, this is only a categorization devised after the interviews were already conducted (all four regions and nine divisions ended up being covered, though). Similarly, I did not specifically seek out states based on their size or partisanship, for example. Had my initial research shown that only Republican states represented their interests on the TTIP, the sample would have only included Republican states. However, it turns out that the sample is almost evenly split between Democratic-leaning and Republican-leaning states and accurately reflects the picture of the entire U.S. (see figure 19 in annex 2). Annex 2 includes detailed numbers for this as well as other socioeconomic indicators. Figures 20 to 24 in that annex reveal that bigger states (measured in population, economic size and European trade and investment ties) might be slightly overrepresented in my sample since many larger states have representatives in the EU whom I could interview. Nevertheless, the numbers also show that states of all sizes are included in the sample.

In addition to officials from 19 states, I talked to staff members of eleven state associations (ALEC, CSG, NAAG, the National Association of Insurance Commissioners, the National Association of Regulatory Utility Commissioners, NASDA, NCEL, NCOIL, NCSL, NGA and SIDO) as well as staff members from the American Chamber of Commerce in the EU, the Bertelsmann Foundation, the European Policy Centre, Georgetown University, the German Marshall Fund of the U.S., the Institute for Agriculture and Trade Policy, Public Citizen, the Trans-Atlantic Business Council and the U.S. Chamber of Commerce. On the federal level, respondents came from the U.S. administration both posted in Washington, D.C., as well as in embassies in Europe. For the EU, I talked to Commission officials in Brussels and Washington, D.C.

Adding to the purposive sampling method described above, the expert sampling utilized snowball sampling, which means “gradually accumulating respondents in a sample based on recommendations from earlier interviewees” (Lynch, 2013, pp. 41-42; see also Beamer, 2002, p. 91; Rathbun, 2008, p. 696; Richards, 1996, p. 200). To that end, interviewees’ recommendations were taken into account when offered without prompt or specifically requested at the end of an interview. The clear disadvantage is a potential bias by only being connected to people with a similar world view or opinion on an issue (cf. Bleich & Pekkanen, 2013, p. 87; Martin, 2013, p. 115). This was mitigated by relying first on selectively sampled respondents and not on recommendations, and by making the use of interviews gained from recommendations transparent (see table 7).

Table 7. State and expert sample

Category US1: State officials and politicians					
State/organization	Code	Source	Format	Length	Recording
South Atlantic state	US1-1	Conference	Personal conversation	10	No
West South Central state	US1-2	Conference	Personal conversation	10	No
New England state	US1-3	Sample frame	Semi-structured personal	23	Yes
Middle Atlantic state	US1-4	Sample frame	Semi-structured phone	50	No
New England state	US1-5	Sample frame and recommendation	Semi-structured personal	35	Yes
New England state	US1-6	Sample frame	Semi-structured personal	90	Yes
New England state	US1-7	Recommendation	Semi-structured personal	65	Yes

New England state	US1-8	Sample frame	Semi-structured personal	55	Yes
Pacific state	US1-9	Sample frame and recommendation	Semi-structured phone	35	No
East North Central state	US1-10.1	Recommendation	Semi-structured personal	45 combined	No
East North Central state	US1-10.2	Sample frame and recommendation	Semi-structured personal	45 combined	No
Pacific state	US1-11	Sample frame	Semi-structured phone	25	No
West North Central state	US1-12	Recommendation	Semi-structured personal	56	Yes
West North Central state	US1-13	Sample frame	Semi-structured personal	26	Yes
West North Central state	US1-14	Sample frame	Semi-structured personal	40	No
West North Central state	US1-15	Sample frame	Semi-structured personal	20	Yes
West North Central state	US1-16	Sample frame	Semi-structured personal	60	Yes
Mountain state	US1-17	Sample frame	Semi-structured personal	96	Yes
Mountain state	US1-18	Sample frame	Semi-structured personal	57	Yes
Mountain state	US1-19	Sample frame	Semi-structured personal	23	Yes
Mountain state	US1-20	Sample frame	Semi-structured phone	46	No
Pacific state	US1-21	Sample frame	Semi-structured personal	50	Yes, partly
Pacific state	US1-22	Sample frame and recommendation	Semi-structured personal	50	Yes
Pacific state	US1-23	Sample frame	Semi-structured personal	77	Yes
Pacific state	US1-24	Sample frame	Semi-structured personal	102	Yes
New England state	US1-25	Sample frame	Semi-structured phone	42	No
Pacific state	US1-26	Sample frame	Semi-structured personal	61	Yes
Category US2: Representatives of state associations in the U.S.					
State/organization	Code	Source	Format	Length	Recording
State association	US2-1.1	Sample frame	Semi-structured personal	60 combined	No
State association	US2-1.2	Sample frame	Semi-structured personal	60 combined	No
State association	US2-2	Sample frame	Semi-structured personal	29	Yes
State association	US2-3	Sample frame	Semi-structured personal	61	Yes
State association	US2-4	Sample frame	Semi-structured personal	37	Yes
State association	US2-5	Sample frame	Semi-structured personal	52	Yes

State association	US2-6	Sample frame	Semi-structured personal	51	No
State association	US2-7	Recommendation	Semi-structured phone	47	No
State association	US2-8	Recommendation	Semi-structured phone	30	No
State association	US2-9	Sample frame and recommendation	Semi-structured phone	40	No
State association	US2-10	Sample frame	Semi-structured personal	60	No
Category US3: Nonstate experts, stakeholders and politicians in Washington, D.C.					
State/organization	Code	Source	Format	Length	Recording
Business association	US3-1	Sample frame	Semi-structured personal	40	No
Business association	US3-1	Sample frame	Semi-structured personal	30	No
EU	US3-2	Sample frame and recommendation	Semi-structured personal	30	No
U.S. administration	US3-3	Sample frame	Semi-structured personal	29	Yes
Academic	US3-4	Recommendation	Semi-structured personal	54	Yes
U.S. administration	US3-5	Sample frame	Semi-structured personal	44	Yes
U.S. administration	US3-5	Sample frame	Semi-structured phone	35	No
Academic/think tank	US3-6	Sample frame	Semi-structured personal	48	Yes
Academic/think tank	US3-7	Sample frame	Semi-structured personal	60	Yes
Academic/think tank	US3-8	Recommendation	Semi-structured personal	46	Yes
Category EU1: State officials/representatives in Europe					
State/organization	Code	Source	Format	Length	Recording
East North Central state	EU1-1.1	Sample frame	Semi-structured personal	50 combined	Yes
East North Central state	EU1-1.2	Sample frame	Semi-structured personal	50 combined	Yes
Mountain state	EU1-2	Sample frame, conference	Personal conversation	10	No
East North Central state	EU1-3	Conference	Personal conversation	10	No
East South Central state	EU1-4	Sample frame, conference	Semi-structured personal	75	Yes
East South Central state	EU1-4	Sample frame, conference	Personal conversation	10	No
West North Central state	EU1-5	Conference	Personal conversation	10	No
South Atlantic state	EU1-6	Conference	Personal conversation	10	No
East North Central state	EU1-7.1	Sample frame	Semi-structured personal	58 combined	Yes

East North Central state	EU1-7.2	Sample frame	Semi-structured personal	58 combined	Yes
Category EU2: Nonstate experts and stakeholders in Europe					
State/organization	Code	Source	Format	Length	Recording
U.S. administration	EU2-1	Conference	Personal conversation	10	No
U.S. administration	EU2-1	Conference	Semi-structured personal	60	No
Academic/think tank	EU2-2	Sample frame	Semi-structured personal	48	Yes
EU	EU2-3	Sample frame	Semi-structured personal	64	Yes
U.S. administration	EU2-4	Sample frame and recommendation	Semi-structured personal	35	Yes
Business association	EU2-5	Sample frame	Semi-structured personal	33	No
Business association	EU2-6	Sample frame	Semi-structured personal	79	Yes
Academic/think tank	EU2-7	Sample frame	Semi-structured personal	45	Yes
U.S. administration	EU2-8	Sample frame and recommendation	Semi-structured personal	50	No

Note: Only one position of the interviewee prevalent for this research is presented in this table, even though they were a legislator and a member of a state organization, for instance. Apart from this, some of the interviewees also had previous jobs relating to this research, for example switching from governments to think tanks or between government agencies. In addition, some interviewees left their position after the interviews were conducted but before the study was completed.

Figure 5. Interview categories

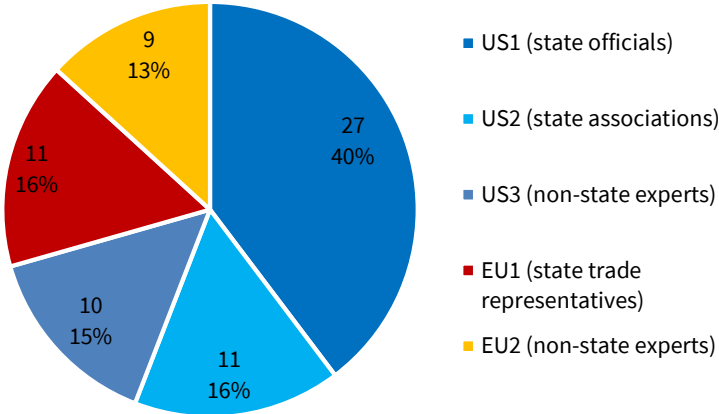


Figure 6. Interview locations

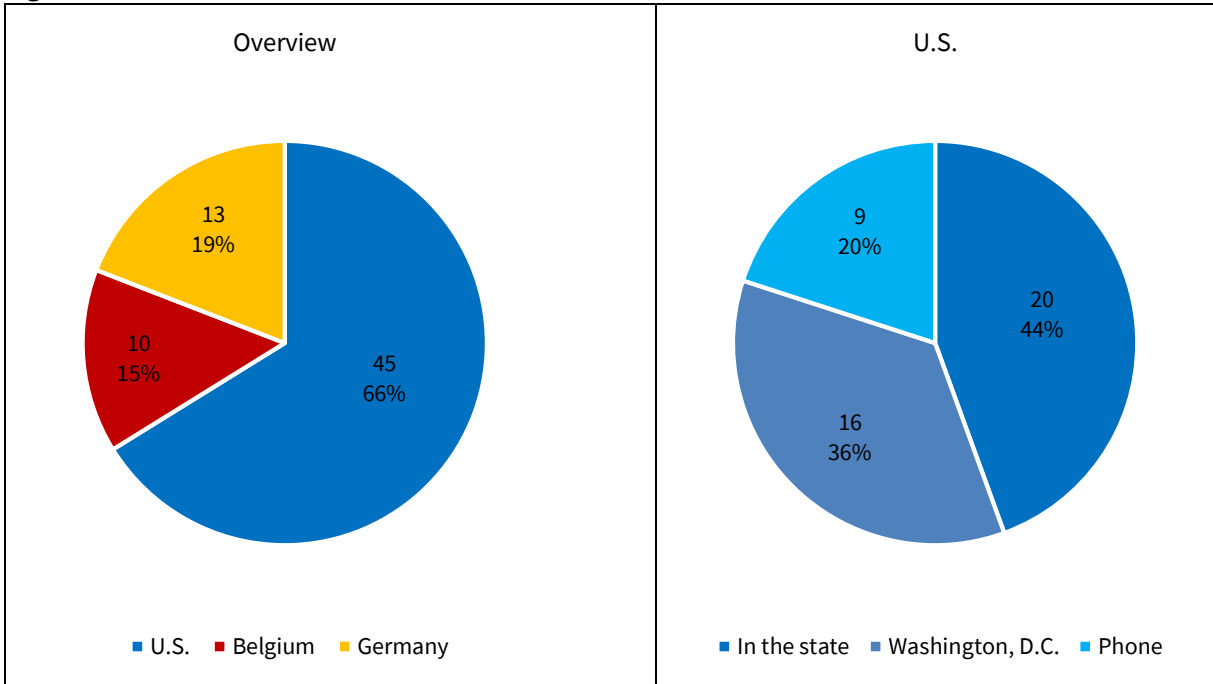


Figure 7. Interviewees' positions

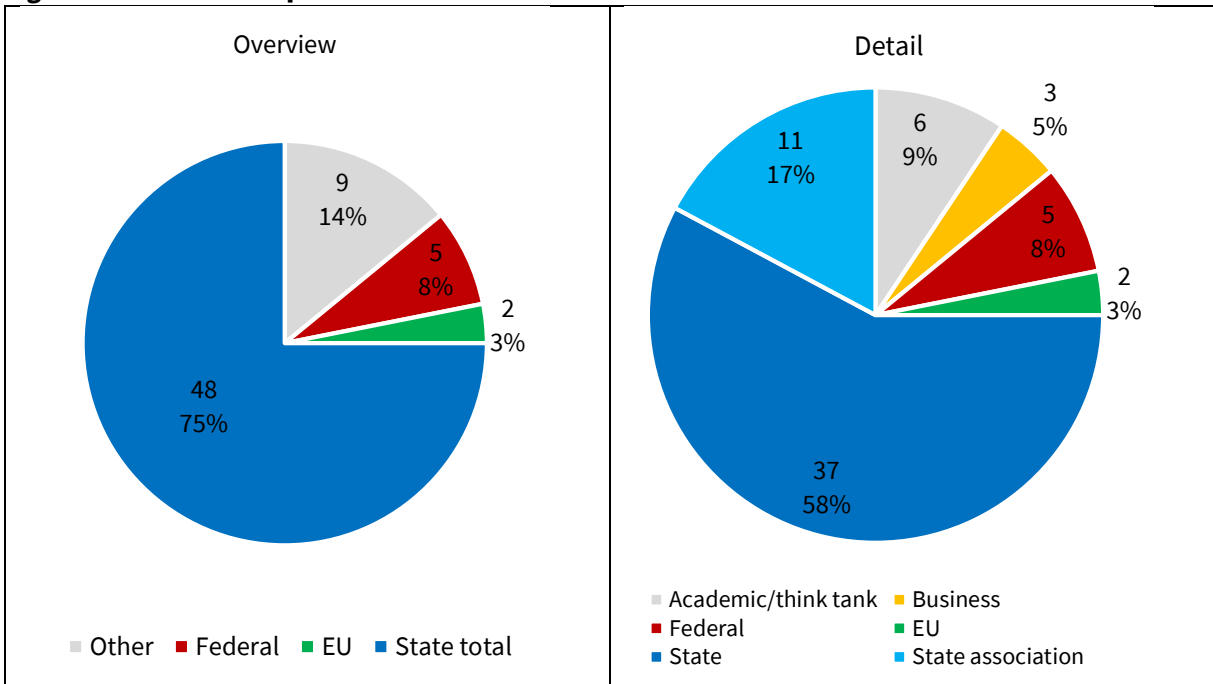


Figure 8. State contacts' positions

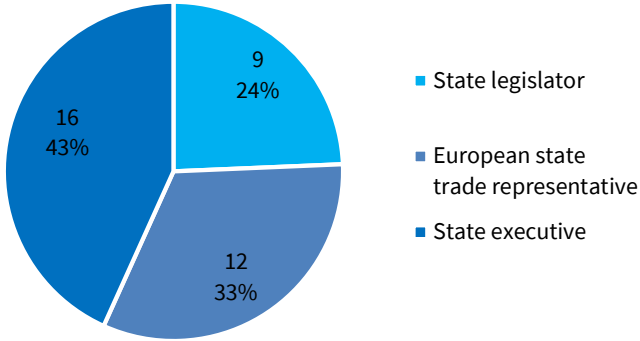
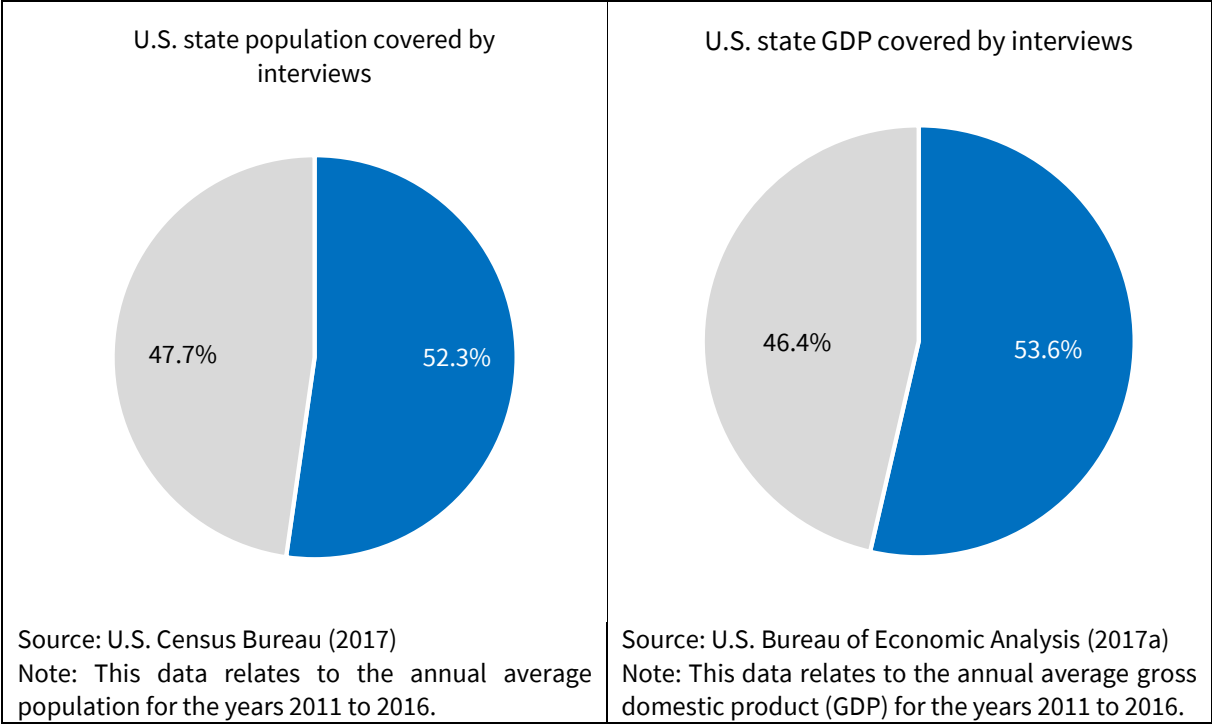
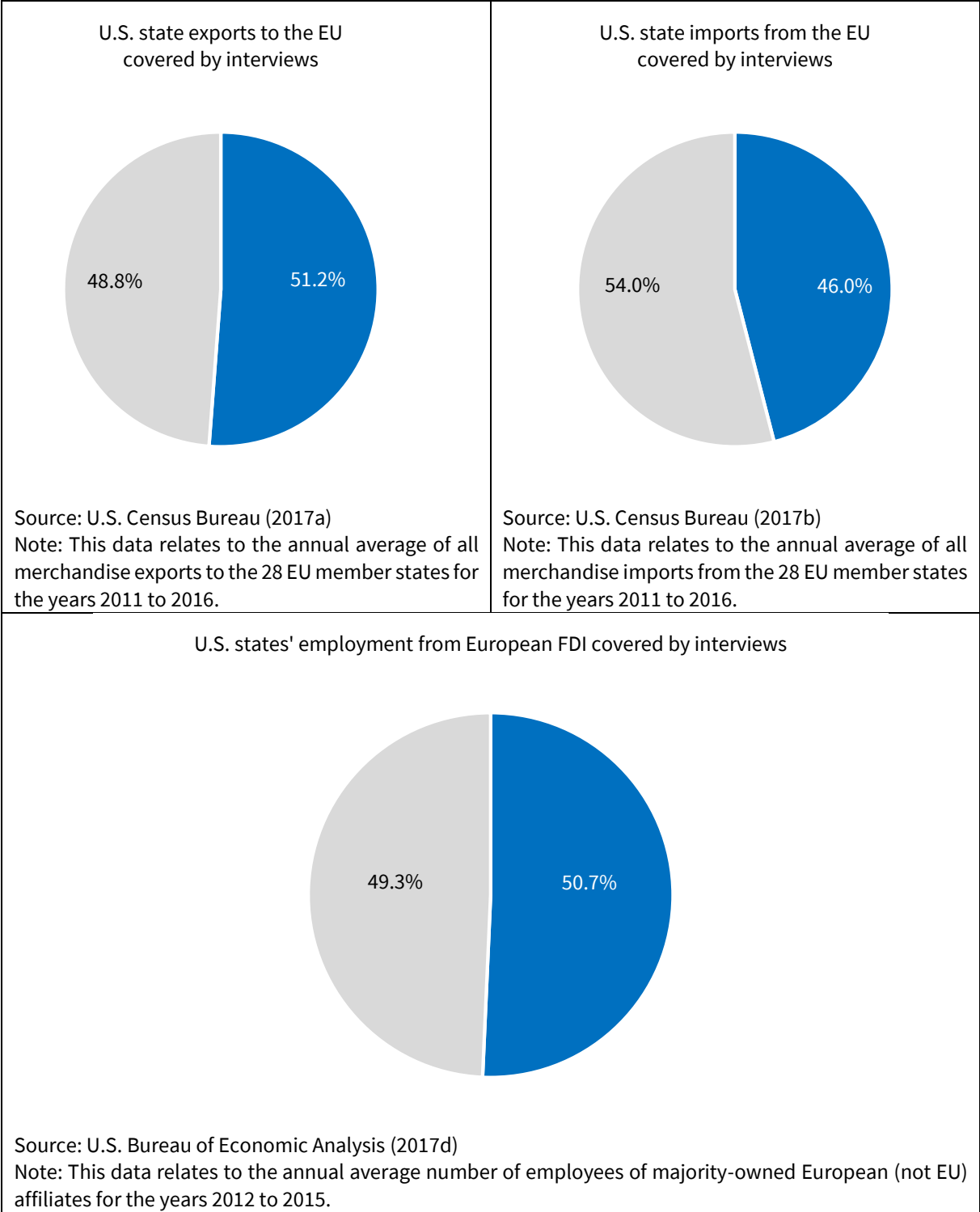


Figure 9. Population, GDP, transatlantic exports and imports and FDI covered in the sample





Legend: Blue = State percentage covered in the sample; Grey = State percentage not covered in the sample

Interview Guidelines and Recordings

The semi-structured format of interviews was chosen for this study because it “can provide detail, depth, and an insider’s perspective” (Leech, 2002, p. 665) and is highly suitable for expert interviewing, thus aligning with the specific qualitative approach taken to answer the research questions. Interview guidelines were drawn up after the literature review to serve several purposes (cf. Bogner et al., 2014, p. 27): Structuring the research field before the

interviews, being an aid during the interviews and forming the basic framework for the qualitative content analysis after the interviews.

Adapting existent recommendations for guideline building (cf. Helfferich, 2011, pp. 182-189), the development started by looking at the guiding research questions and noting any questions that are related to or based on the research questions themselves. This large set of questions was then reduced to a limited number of questions after having eliminated those inquiries that can be answered from other sources or that were not sufficiently open and flexible for an interview situation.

Reducing the number of questions in such a way does not only serve to follow theoretical rules: The purposefully short nature of the guideline was designed to accommodate the political experts' schedules (Peabody et al., 1990, p. 453), thus ideally increasing the chances for access and for addressing the most important topics. The guideline was rather short regarding the list of questions, ultimately containing about twelve questions but included various probes and prompts to be used to dig deeper into certain topics (cf. Leech, 2002, pp. 667-668).

The interview guidelines used a combination of open-ended and closed-ended questions. Open-ended questions seem to fare well in expert interviews because they give respondents more room to formulate their own answers (cf. Aberbach & Rockman, 2002, p. 674; Leech, 2002, p. 665; Leech et al., 2013, p. 216; Martin, 2013, p. 119). Using many open-ended questions enhances both the researcher's and the respondent's flexibility and it increases the validity of the answers because respondents can reply in their own framework (Aberbach & Rockman, 2002, p. 674). Close-ended questions, however, also work in expert interviews, if they are worded well (Beckmann & Hall, 2013, p. 206). They also enable researchers to include quantitative analysis in their work, highlighting that "[i]nterview questions may be used to provide *both* quantitative and qualitative data" (Martin, 2013, p. 117).

The different types of questions, with an emphasis on open-ended questions, made it necessary to rearrange the order of the questions for individual interviews (cf. Aberbach & Rockman, 2002, p. 674; Lilleker, 2003, p. 210; Rathbun, 2008, p. 698). Adapting the question order to the specific interview setting makes the interviews less replicable but increases the validity of the answers because I could show that I was listening and thus create a conversational environment conducive to accurate answers (cf. Leech et al., 2013, pp. 217-218).

In addition to the flexibility in reordering the questions, it was also necessary to adapt guidelines to the different interviewee categories. I prepared a briefing with background information on each respondent and developed a set of questions depending on the location and position of the respondent. The guidelines did not rely on answers for every single question by every single respondent (cf. Bogner et al., 2014, pp. 28-30) because the core concern was not completing a survey but gathering insights on personal experiences and motivations. For some interviewees, I was more interested in gaining a general idea of their work and its place in U.S. transatlantic trade policy making, concentrating mostly on their attitudes and networks. For other interviewees, I needed very specific answers on a single issue of the TTIP, a law from that state or a legislative committee because the respondents were experts in that particular field, so I focused on these inquiries.

Before the interviews started, I asked respondents whether it was fine to record the conversation. In 36 cases (52 percent), consent was given and a recording was produced. For those interviews that I was not allowed to record or did not record for technical or logistical reasons, I took more extensive notes and tried to organize them as soon as possible after the interview. The notes included metadata on the interview situation such as the conversation's surroundings and the respondent's behavior. Collecting this metadata is another advantage

of qualitative expert interviews, as it “facilitates more-accurate use and interpretation of interview data” (Mosley, 2013, p. 7) compared to surveys.

Creating a record of the conversation, very practically, aided with transcribing and coding the interviews. More generally, it enhances the transparency of the interview process, which “helps avoid the accusation of massaging and spinning the data” (Rathbun, 2008, p. 697). Some potential drawbacks of recordings are that an unnatural conversation atmosphere is created (Peabody et al., 1990, p. 454) or that interviewees might refuse to reveal certain information knowing that they are being recorded (Hildebrandt, 2015, p. 249). I can confirm other scholars’ findings, however, that the conversational nature of qualitative expert interviews is not severely inhibited when recording the interview and that few respondents mind recordings (cf. Aberbach & Rockman, 2002, p. 675; Beckmann & Hall, 2013, p. 203; Leech et al., 2013, p. 220).

The interviews were conducted in the respondents’ mother tongues English or German, which is the ideal situation for qualitative interviews (Bogner et al., 2014, p. 44), even though it has to be acknowledged that English is not my own mother tongue. Any German conversations (and literature) quoted in this study were translated by myself and no translators or interpreters were used for the interviews, avoiding the major potential pitfall regarding language in interviews (cf. Bogner et al., 2014, pp. 43-47; see also Lamnek, 2010).

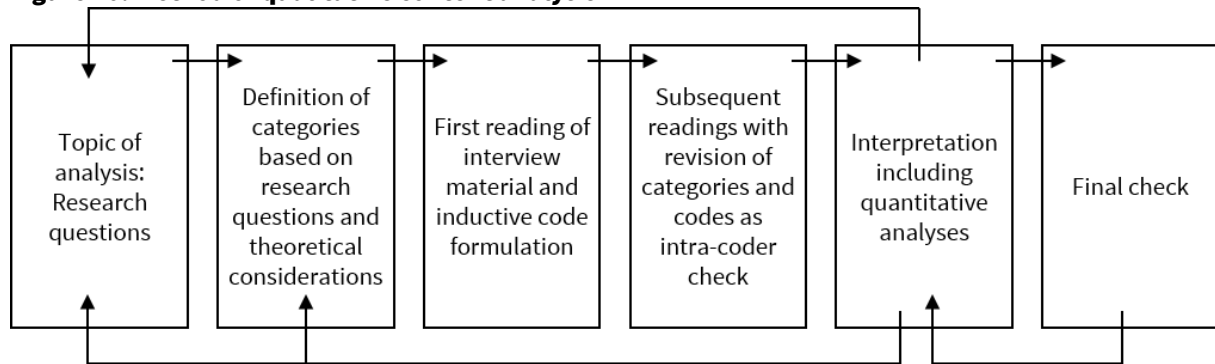
Coding and Analysis

As analyzing qualitative interviews is a form of content analysis (Leech et al., 2013, p. 221), this method of qualitative content analysis was used for this study. Researchers have developed and described various forms of qualitative content analysis. What unites many qualitative content analysis methods is the use of categories to analyze and compare interviews. For example, one way to interpret interview data consists of multiple reads of the interviews, all of which serve to identify and then solidify a set of categories (Mühlfeld et al., 1981). Later models of qualitative content analysis specifically aim for a higher level of reliability by introducing various feedback loops and allowing for multiple coders to analyze the interviews, for instance the system devised by sociologist and psychologist Philipp Mayring.

Mayring’s work, featured in many textbooks as a standard for qualitative content analysis, also informed this study (Mayring, 2014). However, Mayring himself cautioned that it is, in its entirety, not ideally suited for explorative research (Mayring, 2000), which is why it was adapted to fit the specific mold of this study. In order to do this, other researchers’ experiences with qualitative expert interviews in the realm of political science were taken into account (summarized, for example, in Aberbach & Rockman, 2002; Leech et al., 2013; Mosley, 2013; Richards, 1996). From these experiences, it was learned that an individualized pragmatic approach to coding with categories is useful.

The way the interviews for this study were coded and analyzed drew from all of the above-mentioned methods and is as follows (see figure 10 on the following page). The basic categories, which also formed part of the interview guideline, were defined in light of the research questions and the existing literature. Therefore, the research questions steered both the execution and the analysis of the interviews. After each conversation, a transcript of the interview was produced and read thoroughly after completion. The transcripts were full-length notes of the conversations and contained the metadata on the interview situation. Since the interviews were not meant to be analyzed against a psychological or sociological backdrop, however, the transcripts were not verbatim and thus did not include detailed accounts of accents, intonations or dialects (cf. Dresing & Pehl, 2010; Kowal & O’Connell, 2004).

Figure 10. Method of qualitative content analysis



Source: Adapted from Mayring (2014, p. 80)

For the first analysis of the interviews, the theory-based categories were already in place. Under these broad categories, codes were defined during each interview reading. Codes described, for example, certain facts, motivations or behaviors mentioned by the interviewees (see annex 5). They could be deduced from theory but were in most cases gained by induction from the interview material. Over time, codes were more clearly defined and exemplary quotes were attached to them. This method is related to Mayring's inductive category formation (Mayring, 2014, pp. 79-87) and is one way to ensure that clear coding rules exist, which is a crucial requirement of any qualitative interview analysis (Leech et al., 2013, p. 221).

The categories as well as the various codes could continuously be revised and adapted while going through the material, ensuring intracoder reliability. The benefit of a single coder is that the deep background knowledge of the topic is the same for each interview analysis, which helps especially with coding the answers to the many open-ended questions. However, intercoder reliability was not gained in this study due to the lack of a research team, but it could be achieved in the future with other researchers' help.

With all the interviews coded, the major analytical step was to find common themes within the interviewees' responses and to detect variations. Leaving the level of the individual interview, and instead regarding data from all conversations, allowed for a general and generalizing analysis. To some degree, this analysis incorporated quantitative elements because looking at the number of times a certain code was put in place helped inform the decision about how important a specific finding was. Deciphering the importance of the process knowledge gained from the interviews nevertheless was largely a qualitative task, as numbers alone would not have captured the depth of the interviews. The overlap of quantitative and qualitative analysis has been noted as a characteristic of qualitative content analysis before (Lamnek, 2010, p. 481; Mayring, 2014, pp. 41-42). Relying to a certain extent on quantitative analysis has also been criticized because it could lead to a mere classification of texts instead of reconstructing social structures from them (Przyborski & Wohlrab-Sahr, 2010, p. 189). Keeping this potential issue in mind was helpful to avoid just counting categories instead of engaging in an act of interpretation.

The final step of the analysis was introduced as a control mechanism: The entire analysis, condensed from the interviews, was checked again against the interview notes. The goal was to avoid misinterpretations and thus enhance the overall analysis.

Quotes from the interviews are used throughout the studies as exemplary proofs of recurring themes. They are not the sole result of the study and the interviews were not conducted in order to gather a collection of citations. They do serve, however, the important function of avoiding the risk of simplification that comes with categorizing qualitative data.

The quotes have been changed only to comply with the rules of written language, for example correcting grammatical errors from spoken language.

4.3 Chapter Conclusion

The core of this work is a comprehensive study on U.S. states' multilayered interest representation in transatlantic trade relations, specifically policy issues regarding the TTIP. The research questions for the study are the following:

1. Considering their constitutional limitations in this field, what means do states have to represent their transatlantic trade and investment policy interests and why do some states use them, while others do not?
2. Why and in what ways do some state executives, state legislatures or other state governmental bodies engage with U.S. federal actors and European actors to represent their transatlantic trade and investment policy interests, particularly when these conflict with federal and European interests?

Without having a set sample of states to consider, I will find out what state actors are active in transatlantic trade policy and then offer possible explanations for their interest representation and variation among states. The core of this study is therefore an intranational analysis of U.S. states as actors in transatlantic relations, focusing on the variance in the topics of their interest representation on the TTIP.

In conducting my research, I rely on a combination of data sources. I analyze official state documents such as resolutions, state of the state speeches, letters and policy positions. International media content will also inform my study. An original set of empirical data gathered from qualitative expert interviews in the U.S. and Europe adds to my research sources. The interviews were necessary because this study explores a topic at the nexus of IR and federalism research not widely covered as of now. Roughly 60 interviews helped in providing first-hand knowledge regarding the processes of transatlantic trade policy, going beyond merely offering anecdotal quotes.

**Empirical Findings:
U.S. States in Transatlantic Trade Negotiations**

5.

State Trade Promotion Interests in the TTIP

This chapter offers partial answers to the first research question by analyzing the means and motivations of states' transatlantic trade promotion interest representation. I show that state executives with strong economic development strategies and an agricultural background are active in promoting transatlantic trade and investment. Generally, though, trade promotion efforts are found in all states and are characterized by direct connections to European businesses, thus exemplifying parallel interest representation by the states.

Most of states' activities in transatlantic trade relations are driven strictly by economic considerations: State officials aim to increase state exports to Europe and attract investment from European companies to their state. Especially governors and their agencies are directly engaged with European businesses to promote exports and FDI. Sophisticated economic development agencies with a strategic approach to transatlantic trade and dedicated trade offices in Europe allow states to build up direct linkages to European actors. This is an instance of parallel interest representation by the states, which is mostly done in harmony with the federal government. Potential conflicts in this field are addressed in chapter 7.

I present empirical evidence for how and why executive and legislative state officials connect their trade promotion efforts to the TTIP. States' trade promotion efforts are not always linked to the trade talk. Economic development agencies and strategies are in place in most states, no matter if an international trade negotiation is ongoing or not. Nevertheless, a number of governors and state legislatures have addressed federal and European actors to make their positions known on the TTIP with economic development on their minds. It is mostly Republican executives from agricultural states that do so.

5.1 Why State Governments Represent Their Interests in Transatlantic Trade and Investment Promotion

State officials, generally speaking, are well aware of the interdependence of global markets described in section 3.1. In the following paragraphs, I will move from the broad perspective taken in that section to a more state-specific and transatlantic point of view: By analyzing the governors' state of the state speeches as well as taking into account the findings from the expert interviews, I will show that state governments' engagement in transatlantic trade promotion is part of a larger focus on improving state economic development, which enjoys broad bipartisan support. This will be the basis for a later scrutiny of states' active engagement with European businesses to promote trade and investment in light of the TTIP.

Economic Development Strategies

All states are concerned with creating jobs and boosting their economy. As markets have become global, this entails an economic development strategy that embraces international trade. Therefore, many state officials, especially the executive branch in charge of economic

development, have prioritized international trade promotion in the form of increasing exports from the state and investments to the state. This is not a move related to the TTIP but to modern globalization in general. Several authors have highlighted how globalized markets have led to a reemergence of states as international actors (Blase, 2003, pp. 63-100; Fry, 1993, pp. 125-127; Kincaid, 1999, pp. 115-122; Kline, 1993, pp. 106-110; O’Neill, 1990, pp. 182-184). For much of the 19th century, state governments did not look outward much (Kincaid, 1984, p. 98), whereas in colonial times, the future U.S. states had been endorsing their economies “by dispatching agents to Europe and circulating promotional literature” (Kincaid, 1984, p. 96).

Today, trade promotion has become a key component of states’ international activities. In fact, among state officials interviewed in the U.S., 80 percent said that trade promotion is the number one driver for states’ engagement in international affairs. Many interviewees explicitly stated that trade promotion takes precedence over trade policy. The finding from the interviews that economic development is the most important international aspect of governors’ work is validated when analyzing governors’ state of the state speeches, which enumerate governmental priorities and accomplishments.

In the 280 speeches for the years 2011 to 2016, economic development was the second-most addressed topic and mentioned by at least 70 percent of the governors each year (Willoughby, 2016). The main focus was overwhelmingly on education and jobs issues, a finding that has been confirmed in overview analyses of the speeches (Gehl & Willoughby, 2013; Smith & Willoughby, 2014, 2015; Willoughby, 2011, 2012, 2016) and overall, few international topics were included. Yet, export, trade and investment, while not among the most deeply discussed topics, were addressed by a number of governors in their speeches (see table 8).

Table 8. References to international trade in state of the state addresses

Year	Topic	Exports	FDI	Global economy	Trade missions
2011		9 (Idaho, Illinois, Indiana, Kentucky, Michigan, North Dakota, Ohio, Utah, Virginia)	1 (Idaho)	6 (Alaska, Massachusetts, Mississippi, North Carolina, West Virginia, Wisconsin)	4 (Illinois, Massachusetts, Nebraska, North Carolina)
2012		7 (Illinois, Kentucky, Missouri, Ohio, Utah, Virginia, Washington)	1 (Alabama)	5 (Alabama, Iowa, Maine, Ohio, Virginia)	2 (Hawaii, Iowa)
2013		9 (California, Kentucky, Minnesota, Missouri, Nebraska, North Carolina, Pennsylvania, Texas, Virginia)	1 (South Carolina)	3 (Delaware, Maine, Utah)	6 (California, Missouri, Nebraska, New Hampshire, Nevada, North Carolina)
2014		12	2	1 (Minnesota)	4

	(Colorado, Kentucky, Michigan, Minnesota, Missouri, New Hampshire, New York, South Carolina, Utah, West Virginia, Wisconsin, Wyoming)	(Kentucky, South Carolina)		(Illinois, Virginia, Wisconsin, Wyoming)
2015	6 (Connecticut, Kentucky, Missouri, New Mexico, New York, Virginia)	2 (Delaware, Kentucky)	1 (Wyoming)	4 (Kentucky, New York, North Carolina, Wyoming)
2016	5 (Mississippi, New Mexico, South Carolina, Virginia, Washington)	1 (South Carolina)	4 (California, Delaware, West Virginia, Wyoming)	2 (Colorado, Virginia)

Sources: Speeches found on governors’ offices’ websites

Notes: Exports refers to mentions of the importance of international exports, export statistics or governors’ calls for more exports. FDI refers to mentions of the importance of FDI, FDI statistics or governors’ calls for more FDI. Global economy refers to mentions of global competition or the importance of global markets. Trade missions refers to mentions of past trade missions, of past trade agreements with non-European partners or of future pushes for more trade missions.

Table 8 provides a succinct overview of governors mentioning the global marketplace and other trade and investment-related topics in their state of the state addresses. Among those issues, exports were most frequently mentioned. As one example, a 2015 quote from Republican North Carolina Governor Pat McCrory shows a multitude of implications raised by the research questions:

Let’s talk about jobs. As you know, the fight for jobs is global, played at the highest level, and the competition is on our heels. In California while visiting high-tech companies and venture capital firms, I ran into Governor John Kasich of Ohio. I know he wasn’t there to tour the wine country, and neither was I. Just a few weeks ago while on an economic development trip in Europe, other governors preceded me, and I know, followed me after I visited a major company. The governors I’m competing against are good friends, and often neighbors. Like North Carolina, they have cut taxes, invested in education and built good roads. (McCrory, 2015)

Governor McCrory acknowledges that global markets and job markets determine North Carolina’s standing, addresses interstate competition for business and investment in the U.S. federal system and mentions his transatlantic travels in order to boost economic development. Other governors who brought up exports did not choose the anecdotal way in which McCrory went about the topic: Rather, export statistics are a preferred way of showing a state’s economic strength, growth or recovery. For instance, Democratic Kentucky Governor Steven Beshear laid out plans to boost state exports, especially by small and medium sized enterprises, in 2011 and 2012 and then bragged about his state’s export growth

statistics in each of his addresses from 2013 to 2015. Similarly, Illinois Republican Governor Pat Quinn called for a doubling of exports between 2011 and 2016 and Utah's Republican Governor Gary Herbert challenged businesses in his state to export more.

Some governors concurred with their colleague McCrory in stressing the importance of trade missions: Every year, at least two governors said they had been abroad or wanted to go abroad on trade and investment missions. Asia was at the top of the list, but five governors also talked about their trips to Europe (Alaska's Republican Governor Sean Parnell in 2012, Illinois' Republican Governor Pat Quinn in 2014, Wyoming's Republican Governor Matt Mead in 2014, North Carolina's Republican Governor Pat McCrory in 2015 and Virginia's Democratic Governor Terry McAuliffe in 2016). In talking to state-level experts, trade missions to Europe were confirmed as an important aspect of states' transatlantic trade relations. These trade missions are organized differently by each state, but the general goal of getting in touch with European businesses is the same (analyzed in more detail later; see pages 89-145).

Foreign direct investment was, compared to exports, a negligible issue in the state of the state speeches: Only one or two governors per year specifically mentioned FDI statistics or their state's successes or goals in attracting FDI. Yet, even without being included in the speeches, investment attraction is a major international undertaking all states engage in, as the expert interviews revealed. Those respondents directly engaged in trade and investment promotion in Europe, via their state representative offices, actually emphasized FDI attraction over export promotion in two thirds of the cases.

Analyzing the interviews and official documents allows for the conclusion that economic development is a high-priority issue for state officials. With economic development strategies having a strong international component, states emphasize export promotion and FDI attraction. Engaging in transatlantic trade promotion is thus embedded in the larger framework of states' strategic economic development efforts.

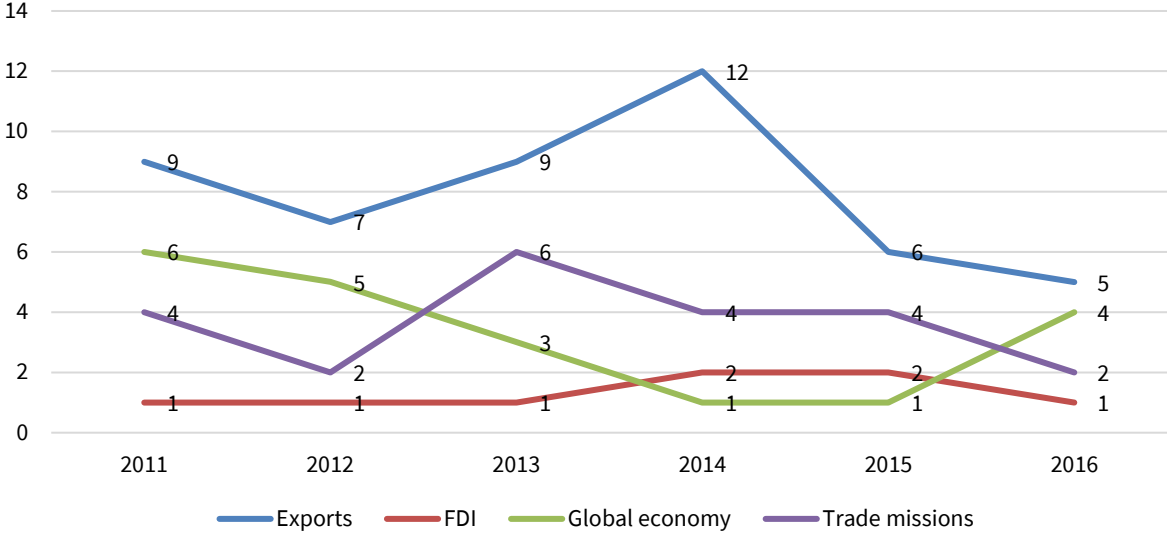
Reasons for Focusing on Trade Promotion

State documents and the interviews conducted for this study show that international trade promotion is a top priority for state governments across the country. Further analysis of these sources reveals the underlying personal and political reasons for this emphasis.

International trade promotion is a goal shared by all U.S. states. In the state of the state speeches, there is no pattern as to which governors report on international trade in their state of the state speeches. 15 states never addressed international trade issues in the time frame under consideration, but that means, in turn, that a majority of the states (70 percent) did reference such topics. Among this majority, all regions, parties, sizes and economic structures are represented. Agricultural exports featured heavily in Missouri or Minnesota, for example, while Alabama stressed its car exporting business. Legislatures in sparsely populated Iowa and Wyoming heard about their governor going abroad just as in densely populated California and Illinois. Republican governors in Alaska and Utah agree with their Democratic counterparts in Delaware and Massachusetts about the implications of the globally competitive market for their states. From Alaska to Hawaii and California to New York, governors from all regions of the U.S. touched upon international trade in economic development.

There is also no change over time: The topic is never the main issue in the speeches but attracts roughly the same amount of attention each year (see figure 11 on the following page), with the only big spike in the mentions of exports after the world economy had put the worst of the economic downturn behind it by 2014.

Figure 11. Number of governors referencing international trade in their state of the state addresses



Notes: Exports refers to mentions of the importance of international exports, export statistics or governors’ calls for more exports. FDI refers to mentions of the importance of FDI, FDI statistics or governors’ calls for more FDI. Global economy refers to mentions of global competition or the importance of global markets. Trade missions refers to mentions of past trade missions, of past trade agreements with non-European partners or of future pushes for more trade missions.

The expert interviews underline the ubiquity of states’ economic development efforts in the U.S. For example, in talking to state-level experts in a strongly Democratic state with high-tech exports, a big population and many urban areas or in a strongly Republican state with agricultural exports, a small population and many rural areas, the importance of seeking economic partnerships in Europe was stressed. State officials from the executive repeatedly pointed out the importance of international trade and investment, for example mentioning that more than 90 percent of their markets are abroad, which necessitates an international trade strategy for states (US1-10.1).

Beyond statistics and broad economic development strategies, a governor’s personal interest in international trade issues was noted as a key driver of states’ trade promotion activities in Europe (US1-5, US-14, US1-15, US1-21, US2-5, US2-10), confirming previous research on governors in international affairs (McMillan, 2012). As an example, politicians might strongly emphasize job creation and economic growth in their (re)election campaign for governor and then, after being elected, make trade promotion a part of their strategy to fulfill that promise. It was found that governors’ personal platforms and what they perceive to be their constituents’ economic priorities are important determinants of their international trade promotion activities. As one respondent put it broadly, a governor’s personal motivation is important, but it reflects citizens’ concerns (US1-14). Thus, voting preferences might play a role in determining gubernatorial interest in international trade: If political candidates conclude that jobs and the economy are topics that could get them elected or reelected, they will try to highlight all issues related to economic development. Governors’ trade promotion goals are therefore linked to their constituents’ needs for jobs and economic growth (US1-14, US2-9, US3-6).

Furthermore, transatlantic trade promotion is a goal shared by state governments across the U.S. because it is politically easier to handle than trade policy. For this reason, too, state organizations’ representatives named trade promotion one of the topics where they can become active: Since many state associations like the Council of State Governments or the National Governors Association have to focus on issues with broad, bipartisan agreement, not

all international topics lend themselves to joint actions due to party political differences. Export and FDI promotion, however, is one of the areas where states from all regional and political backgrounds have common objectives. While there is also strong interstate economic competition, especially for FDI from Europe, states do not disagree along party lines on the general need to foster robust trade and investment relationships with European businesses.

The state of the state speeches stress this state preference for talking about international trade and investment in terms of economic development strategies and not in terms of trade agreements. While many governors addressed international trade in general, not a single governor mentioned the politically charged TTIP negotiations. Only one governor, Democrat Christine Gregoire of Washington in her 2012 speech, referred to international trade agreements at all. When talking about the rise of international trade and its importance to get out of the preceding recession, she said, “New free trade agreements with South Korea, Panama and Colombia will open new markets for Washington” (Gregoire, 2012).²⁵

The absence of the TTIP negotiations from the state of the state speeches is partly due to the nature of the speeches and the time frame under consideration: In 2011, the majority of addresses occurred before the final report of the High-Level Working Group had been published, so most of that year’s speeches could not have referenced the TTIP negotiations in the first place. Later during the recovery from the 2008-2009 recession, one of the worst economic downturns in history, the states were very much focused on fiscal matters, tax issues and job creation in order to boost their economies. Especially the speeches from 2011 to 2013 were dominated by the downturn and even the 2016 round of addresses was characterized by a limited number of topics, restrained language and few innovative promises (Willoughby, 2016). Moreover, gubernatorial speeches typically deal with in-state topics (Nugent, 2009, p. 52).

Yet, apart from the time frame of the addresses, another reason for omitting the TTIP from highly publicized speeches is governors’ wishes to stay clear of politically sensitive and partisan topics. One respondent’s statement can be seen as an overall summary of the findings on gubernatorial trade promotion. The interviewee held that governors might remain silent on the political issues related to trade because they do not want to take a blanket position either pro-free trade or anti-free trade (US2-5). Taking a controversial political stand, other respondents concurred, would have little benefit for them but high political risk (US1-4, US2-9). By focusing on trade promotion over trade policy, governors and other state officials chose a topic with wide bipartisan and constituent support over one with potential political pitfalls (for more on this, see pages 115-116). While it might be hard to find outspoken pro-free trade governors, most governors are “pro-exporters” (US2-5):

Pro-exporters mean, you want to push out as much exports (...) as you can. That doesn’t mean that you’re going to get into the trade policy agreement. You just focus on, what are the tools that you need to make your businesses export and what do you need to do to attract investment? (US2-5)

Lastly, trade promotion is an area of activity for all states because there are few constitutional limitations or restrictions imposed by the federal government. As was seen in section 3.2, states cannot enter into treaties, but, as one respondent put it, they are allowed to do “pretty much everything else” (US1-17) in the economic development realm. This concerns active trade promotion efforts, direct contacts to European businesses as well as

²⁵ Trade promotion agreements with Colombia and Panama entered into force in 2012 as did the revised free trade agreement with South Korea.

signing of memoranda of understanding with national and regional actors in the EU. These types of cooperation with foreign governmental actors, in the form of personal exchanges or formal, yet nonbinding, agreements have become more common over the past 10 years. One expert (US1-22) highlighted how the State Department has decreased requests for prior approval or interference regarding states' activities abroad, suggesting a move towards encouraging the states to become engaged in trade promotion in Europe.

5.2 How State Governments Represent Their Interests in Transatlantic Trade and Investment Promotion

Having established that state governments strongly emphasize trade and investment promotion, it is now necessary to look at how states go about their goals of amplifying European trade ties and how this relates to the TTIP. In the following paragraphs, I will argue that business-related linkages in transatlantic trade promotion are the most important direct connection that states have to Europe and show that some state officials have used trade promotion arguments when speaking out on the TTIP.

For decades, state governments have been seeking investments from Europe and attempting to increase exports to Europe. This is a concerted effort, guided largely out of the state executive. From the interviews, it was found that trade promotion takes precedence over trade policy in state governments and that overall, economic concerns are the most important driver of states' engagement in Europe. Trade offices in Europe are the physical representation of this state governmental priority on trade promotion, which is a case of parallel interest representation because it occurs mostly without interaction with the federal government. Focusing so strongly on trade promotion efforts also carries over to those instances in which governors speak out publicly on the TTIP.

States' European Trade Offices

In the following, I will concentrate on states' European trade representative offices as the direct and permanent connection state executives have to European actors, which are crucial examples of parallel interest representation. They are institutionalized, working-level representations of the state in Europe to attract investment and promote exports. Trade missions have similar goals but are usually short-term, high-profile engagements with European businesses. Nevertheless, trade missions are also an important part of states' transatlantic trade relations, so I will briefly highlight some points regarding such travels before turning to the representative offices.

Trade missions to Europe are conducted by the governor, the lieutenant governor and/or other administration officials with the express purpose of promoting the state to European businesses, both regarding exports and investment (US1-10.1, US1-14, US1-15, US1-16, US1-19). They are not policy-oriented in the clear majority of cases, even if governors at times do meet with foreign political officials. A few transatlantic examples will highlight the trajectory of such trade missions:

- A 2013 trip by Missouri Governor Jay Nixon exemplifies the priorities of European travels (Office of Missouri Governor Jay Nixon, 2013): He went to multiple countries (Belgium, France, United Kingdom), brought along many more business representatives than government officials and proclaimed the goals to be “connecting Missouri businesses with customers in foreign markets and attracting new investments” (Office of Missouri Governor Jay Nixon, 2013). While Nixon did meet with British government officials as well as U.S. embassy personnel, most of his

meetings were with European businesses, trade associations or the respective American chambers of commerce.

- Maine's Governor Paul LePage traveled to Iceland and the United Kingdom in 2014 with the aim of promoting specific industry sectors, focusing on ocean-related business and life sciences in Iceland and on food and offshore energy in the United Kingdom. This trip was partly prompted by an investment an Icelandic shipping company had made in Maine (US1-5; cf. Richardson, 2014).
- In 2015, Governor Gary Herbert of Utah went to five European countries, meeting with businesses, U.S. diplomats and trade associations to promote Utah's industry. His European visits stick out because they also included discussions with political actors in Brussels (see section 6.2; US1-18, US1-19, US1-20; cf. Sullivan, 2015; Utah Governor's Office of Economic Development, 2015).

Overall, respondents involved in the organization of trade missions to Europe, mainly from the state executives and the European offices, stressed economic over political contacts (EU1-1.1, EU1-4, US1-5, US1-10.1, US1-14, US1-15, US1-16). Export promotion and investment attraction are the primary reasons for governors to embark on overseas trips, while policy-related discussions are a bonus at best.

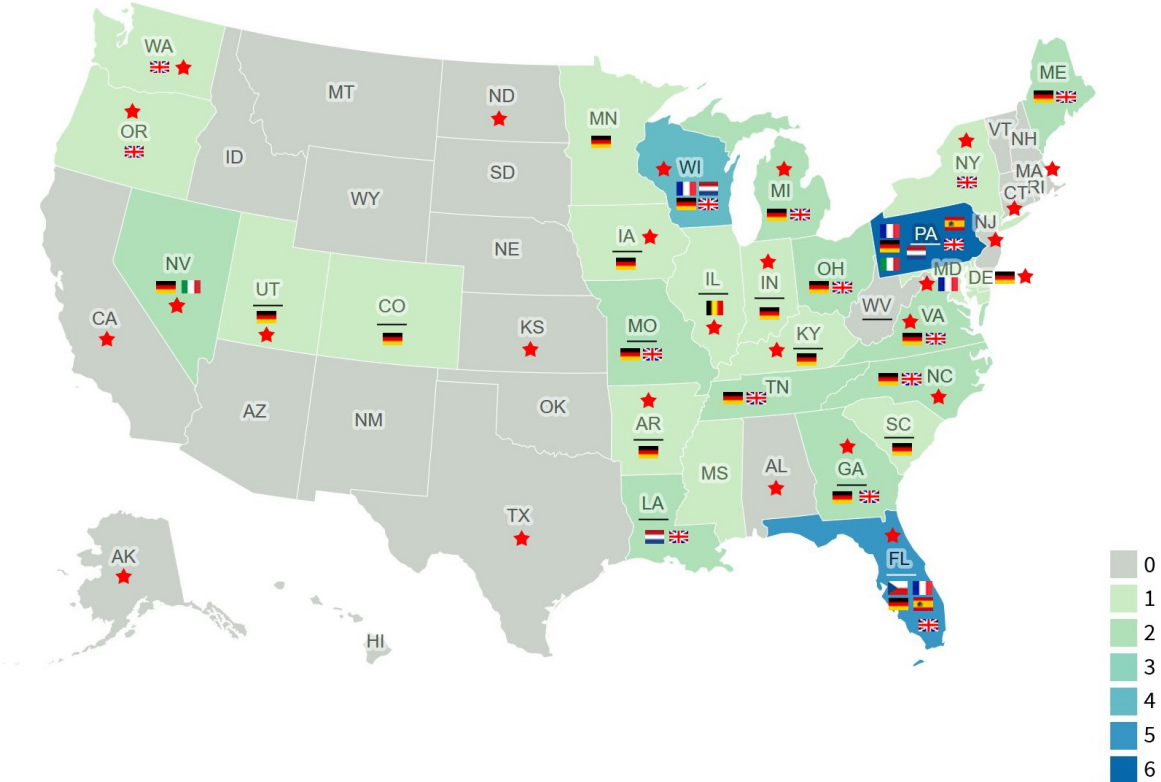
The overseas offices follow this mold of prioritizing business links over policy connections. As a permanent manifestation of states' emphasis on transatlantic trade promotion, the state offices abroad have garnered a reasonable amount of scholarly attention since their inception in the 1960s. In 1953, New York became the first state to open an office abroad and it chose a European location. The office was dedicated to attracting investment and promoting exports and tourism (Levine & Vandenbrande, 1993/1994, p. 43; Fry, 1990b, p. 281 mistakenly says the office was opened in 1963). While in 1970, four states had offices overseas (Fry, 1990b, p. 281), today, there are 196 offices in 27 countries operated by 41 states.

In the EU, 27 U.S. states maintain 49 offices for solely economic purposes, namely attracting foreign direct investment and promoting exports. These offices are located in eight EU member states (Belgium, the Czech Republic, France, Germany, Italy, the Netherlands, Spain and the United Kingdom). 17 U.S. states are members of the CASE (see map 3 on the following page), which is the Council of American States in Europe, a loose network of official state representatives on the continent. Yet, it has to be noted that not all European state offices are part of the CASE: For example, New York has an office in London but is not a member of the CASE. Also, states may not be a CASE member or have an office anywhere in Europe but may still be actively engaged in European interest representation. This was found to be the case for California and Tennessee, for example. They have successfully engaged with European state and nonstate actors to represent their interests in the field of climate change policy and foreign direct investment in the car industry, respectively.

Foreign direct investment is a particular focus of the U.S. states' economic development strategies partly because there is stiff interstate competition for FDI, which has been studied in a multitude of scholarly works (see, for example, Advisory Commission on Intergovernmental Relations, 1993/1994; Aguirre, 1999, p. 22; Ducháček, 1990, pp. 14-15; Kernell, Jacobson, Kousser, & Vavreck, 2015, pp. 113-114; Kincaid, 1993, pp. 31-35; Kline, 1993, p. 106; Zimmerman, 1994, pp. 7-8). Authors have noted how states engage in bidding wars for foreign direct investment, mainly from Europe but also from Japan, with good and bad consequences for the states. In many cases, governors travel to Europe to meet with businesses or business associations, sometimes also talking to regional-level or national-level politicians about the prospective deal. One example from Tennessee illustrates this point: In order to woo the German carmaker Volkswagen to the state, top Tennessee lawmakers from local, state and federal government held multiple personal talks with Volkswagen executives

in Tennessee, visited Germany on publicized trade missions, presented aggressive and record-setting tax incentives comprised of local, state and federal money and mustered a strong marketing effort for the proposed factory site itself (Wang, Flessner, Sher, & Pare, 2008). Tennessee did, in the end, land the contract with Volkswagen.

Map 3. Number and locations of state offices in Europe and Washington, D.C.



Sources: Governors’ offices’ websites

Notes: The flag denotes that a state has a trade office in that country. A star denotes that the state maintains an office in Washington, D.C. An underline under the state abbreviation denotes that the state is a member of the CASE (West Virginia’s Europe office is in Zurich, Switzerland, so it was not counted for this EU-focused overview).

With their focus on FDI attraction and export promotion, states’ offices in Europe serve a different purpose than the offices that some states maintain in the national capital Washington, D.C. (denoted by a star in map 3). As explained in depth in the literature (Jensen, 2016; Nugent, 2009, pp. 126-133), these D.C. offices are outposts of the states to monitor and influence federal legislation. One respondent explained that the task of the state’s D.C. office was to facilitate interaction between the governor and the U.S. Congress, the administration and, at times, international representatives such as embassy officials (US1-26). I will refer to these contacts later in the chapter. Nevertheless, it is interesting to note that more U.S. states have representative offices in the EU than do in Washington, D.C.: 27 states operate 49 offices in the EU, while 26 states maintain offices in the national capital.

The offices states keep abroad are used to spotlight their strategic location, their highly skilled workforce, their infrastructure or their low tax rates with the goal of attracting European businesses. Many studies have confirmed that economic reasons in the form of FDI and export promotion are the main impetus for states to open offices abroad, thus underlining the overwhelming importance of economic matters for the U.S. states in international affairs. Several authors offer accounts of the historical development of the

offices (Fry, 1990a, p. 119; 1998, pp. 68-69; Kline, 1984, p. 6; Levine & Vandenbrande, 1993/1994; Sager, 2002), while a more recent work dives into an analysis of the characteristics and tasks of overseas state offices in discussing governors' foreign economic policy (McMillan, 2012). Governors, via their economic development agencies and the European outposts, are thus actively engaging in world trade and investment relations. This circumstance highlights how governors generally tend to be supportive of open trade and wary of protectionist measures (O'Neill, 1990, p. 188), as was exemplified by the NAFTA negotiations (see section 2.1).

The representative trade offices in Europe are either staffed by full-time state officials or by contracted consultant staff. Full-time state officials always work for only one state. Consultants may have other clients, sometimes even other states. In most cases, the offices in Europe are rather small, staffed by one or two people. With this study's focus on trade policy, I will not dive into detailed descriptions of the trade promotion activities by the offices abroad. Instead, I will briefly outline the most important tasks and then present the offices' connections to the TTIP.

Offices' daily tasks are dominated by the search for potential investors from Europe that are considering or might consider branching out to the U.S. Such investments range from a single sales representative in a state to the construction of a big factory with thousands of employees. In their quest for FDI, states go to great lengths to market what they perceive to be unique traits and benefits of their economic environment. They aim to tell a story of their state and workforce, frequently focusing their marketing efforts on a set number of industries based on in-state economic priorities. For instance, respondents from a Midwestern state explained how six industry clusters guide their work to find investors and importers in Europe (US1-10.1). In a Northeastern state, the government markets the high density of universities to show the well-educated workforce and the possibility for research cooperation (US1-3).

From the analysis of office locations, it becomes obvious that proximity to Europe is the major factor driving establishment of an office in the EU. Only five Western states (Colorado, Nevada, Oregon, Utah and Washington) have offices in the EU. In contrast, of the 14 East Coast states with access to the Atlantic, nine are represented in Europe with offices, along with several states from the Midwest and South. Interviewees did not directly mention proximity to Europe as a deciding factor for opening an office, but this topic did come up indirectly: When respondents elaborated on how European companies select sites for future investment, they described how closeness to Europe, preferably in states within the Eastern time zone and with direct flights to Europe, are important aspects for European investors (EU1-2, EU2-1). Considering their potential investors' preferences, it is therefore reasonable for states closer to Europe to set up offices on the continent.

The results from studying the representative office's tasks and interviewing their officials offer a partial answer to my research questions. In the context of multilayered interest representation, the European offices are examples of parallel interest representation: They are set up with no state-federal interaction and thus allow states to engage with European companies without any federal oversight.

Establishing offices abroad and having them work in trade promotion is the most visible proof for states' parallel interest representation in trade promotion. The motivation is clearly economically driven, against the backdrop of the interdependent global markets described in section 3.1. This parallel interest representation is largely nonconflictual, though, as the states enjoy the freedom to pursue FDI and promote exports as they wish. Only recently has there been some conflict, which will be taken up at the end in chapter 7.1.

Gubernatorial Letters

States’ trade offices pursue trade promotional activities and it was shown that these rarely have a connection to the TTIP negotiations. Nonetheless, some state officials do connect their economic development efforts with the TTIP and speak out on the proposed deal in a trade promotional context. It is mostly governors or other members of the state executive who use trade and investment considerations when discussing the TTIP. Governors write letters to make their interests known to the federal government and apart from qualifying statements by two governors, the overwhelming majority of gubernatorial letters used economic development arguments to support the TTIP. Overall, however, only few governors have spoken out (see table 9), especially compared to the wide-ranging gubernatorial support visible for the NAFTA (see section 2.1).

Table 9. Governors’ public statements on the TTIP

Governor	Date	Measure in which the TTIP was mentioned	Position on the TTIP	Main concerns of measure
Alabama Governor Robert Bentley	December 23, 2013	Joint letter to president, congressional leadership	Pro	Trade promotion/positive economic effects of the TTIP (exports, FDI, jobs)
Arkansas Governor Mike Beebe				
Florida Governor Rick Scott				
Indiana Governor Mike Pence				
Iowa Governor Terry Branstad				
Kansas Governor Sam Brownback				
Mississippi Governor Phil Bryant				
Nebraska Governor Dave Heinemann				
Nevada Governor Brian Sandoval				
New Mexico Governor Susana Martinez				
Oklahoma Governor Mary Fallin				
Pennsylvania Governor Tom Corbett				
Rhode Island Governor Lincoln Chafee				
Utah Governor Gary Herbert				
Kentucky Governor Steven Beshear	February 3, 2014	Letter to congressional leadership	Pro	Trade promotion/positive economic effects of the TTIP

Indiana Governor Mike Pence	April 16, 2014	Speech	Pro	Trade promotion (also strengthening of diplomatic ties)
New Jersey Governor Chris Christie	September 3, 2014	Speech	Pro	Trade promotion/positive economic effects of the TTIP (expansion of TTIP to include Canada and Mexico)
Washington Governor Jay Inslee	December 3, 2014	Letter to USTR	Pro with reservations	ISDS mechanism
Indiana Governor Mike Pence	April 10, 2015	Letter to congressional delegation	Pro	Trade promotion/positive economic effects of the TTIP (exports, FDI, jobs)
Wisconsin Governor Scott Walker	April 14, 2015	Statement	Pro	Trade promotion/positive economic effects of the TTIP (jobs)
Iowa Governor Terry Branstad	April 21, 2015	Letter to congressional delegation and leadership	Pro	Trade promotion/positive economic effects of the TTIP (exports)
Nebraska Governor Pete Ricketts	June 10, 2015	Statement	Pro	Trade promotion/positive economic effects of the TTIP (exports); GMOs
Utah Governor Gary Herbert	June 11, 2015	Statement	Pro	Trade promotion/positive economic effects of the TTIP (exports, FDI)
Michigan Governor Rick Snyder	April 29, 2016	Media interview	Pro with reservations	Procurement

Legend: Blue = Democratic governor; Red = Republican governor

Sources: Governors' offices' websites

The TTIP letter with the most gubernatorial signatures is the bipartisan but Republican dominated letter initiated by Governor Terry Branstad of Iowa from December 2013. It squarely placed the proposed trade agreement in the context of states' economic development strategies. The 14 undersigned governors came from big and small states and covered regions from the Southeast to the Northeast to the Midwest and West. They proclaimed that "FDI creates high paying jobs in our states that support lasting careers in our own communities" (Branstad, 2013). With that in mind, the governors – as "chief executives of their states" – asked the president and the congressional leadership for support for the "the Transpacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (T-TIP), and the Trade in Services (TISA) agreements, which have great potential to help our country compete in a dynamic, global economy" (Branstad, 2013). A respondent familiar with Governor Branstad's position on the TTIP confirmed that the governor is "firmly pro trade"

(US1-14) and views trade agreements as generating more exports, which in turn promote job creation in Iowa. This clearly highlights how international initiatives such as the TTIP are taken to be a part of states' economic development strategies.

It is noteworthy that the 2013 letter was signed by many heavily agricultural states such as Florida, Iowa and Nebraska, with the only major manufacturing state being Pennsylvania (cf. Inside U.S. Trade, 2014). In Iowa, the state whose governor initiated the letter, many agricultural producers are strongly dependent on overseas trade and some, in fact, produce specifically for markets abroad (Behsudi, 2017). Agricultural states, along with the U.S. Department of Agriculture (Behsudi, 2017), thus have a strong interest in gaining access to international markets. As one respondent from a state administration noted, "we've got more cows than people" (US1-15), so "if we're not growing our export markets, I mean, we're dying as a state then, so that's why it's important for us" (US1-15). With domestic production not being met by domestic demand, the governors in their letter sought to remind federal leaders "that the primary purpose of the agreements should be to increase market access, including improved access for US agricultural and manufactured goods abroad" (Branstad, 2013). The governors' letter indicated that they view trade agreements as one way to lower tariffs and abolish nontariff barriers, which in the case of the EU include restrictions on genetically modified organisms and hormone-treated beef or geographical indications (more on this will follow in the next chapter).

Two years after Branstad's letter, on a visit to Europe, "Governor Herbert expressed his support for the TTIP agreement in both of his leadership capacities, first the Governor of Utah [sic!] and as the incoming Chairman of the National Governor's Association" (Sullivan, 2015). The official statement from Governor Herbert's office, who had already signed on to his colleague's earlier letter, repeated some of the trade promotion reasons given before: "The TTIP seeks to help businesses on both sides of the Atlantic by doing away with existing red tape and creating new rules for exports, imports and investment" (Sullivan, 2015). According to an interviewee knowledgeable of the statement, Herbert's outspoken support at the time was due to his general strong inclinations towards free trade but also the fact that Europe has been the top destination for Utah's exports and the top source of FDI (US1-20).

Governor Branstad of Iowa reiterated his stance in a separate 2015 letter (Branstad, 2015) as did Indiana Governor Mike Pence (Pence, 2015). The latter had already spoken at an event on a trade mission in Germany and said that "Europe and America should work together to strengthen our economic ties by adopting the Transatlantic Trade and Investment Partnership. Passage of TTIP will enhance and expand our economic partnerships and diplomatic ties, and I am committed to its passage" (Pence, 2014). Wisconsin Governor Scott Walker also used a trade promotion stay in Germany to note "that the TTIP has the potential to promote the international competitiveness of the U.S. and create jobs and economic growth through increased economic ties with our largest trade and investment partner" (Office of the Governor of Wisconsin, 2015).

In contrast to his colleagues who emphasized the TTIP's expected economic benefits, Governor Inslee of Washington focused his letter on the controversial mechanism of investor-state dispute settlement. A state official familiar with the drafting of that letter said that despite the focus on this controversial issue, it was crucial to emphasize the importance of trade because of Washington's strong export economy (US1-26). The governor's 2014 letter to the USTR thus starts with the proclamation that "[i]nternational trade and investment are critically important to our state's economy" (Inslee, 2014), with export statistics from Washington backing up this claim. A deeper analysis of governors speaking out on policy issues such as the ISDS mechanism will follow in section 6.2. For now, it will suffice to summarize that some governors clearly use their position as elected political officials with

highly professionalized bureaucracies and big economies behind them to speak out on transatlantic trade issues and when they do so, they highlight trade promotional interests.

Restrained State Legislative Work on Trade Promotion Interests in the TTIP

In addition to governors' public statements regarding the TTIP, state legislatures have also represented their interests on the TTIP on trade promotion grounds. State legislators, individually or in groups, have written their own letters, published policy positions and used state resolutions to make their voices heard. These matters will be analyzed in depth in section 6.2 because most of them touch upon trade policy topics regarding the TTIP and not trade promotional aspects (see pages 124-131). In this section, only those state resolutions and policy positions on the TTIP based on economic development and trade promotion arguments, and not on trade policy issues, will be scrutinized.

Through database research, I found a total of 17 state resolutions addressing the TTIP (see table 10 on page 125). Out of these 17 state resolutions, which are formal, nonbinding documents, seven resolutions are focused mostly on economic development issues. The Florida Senate passed three resolutions supporting the TTIP on economic grounds, one each in the years 2014 to 2016. California (in 2013), Georgia (in 2014) and Illinois (in 2015) did so as well. In Washington, the Senate and House introduced a joint declaration stating, among other things, that the TTIP will boost Washington's exports to the EU (Washington Senate, 2015a), but it has not passed the chambers.

Resolutions focusing on economic development and trade promotion issues typically feature a run-down of the importance of transatlantic trade, either in the form of a general description or via the inclusion of statistics or both. For instance, the California Senate passed its resolution which talks about the U.S. and the EU being "each other's largest trading and investment partners" and combining "for nearly one-half of the entire world's gross domestic product (GDP) and for nearly one-third of the world's trade flows" (California Senate, 2013a). Similarly, the resolutions passed in the Florida Senate underline the "vital importance" of U.S. trade with the EU (Florida Senate, 2014, 2015, 2016).

Four of the resolutions even dive into EU-state statistics (in California, Georgia, Illinois and Washington). Taking California as an example again, the resolution goes on to say that "the TTIP agreement would increase California exports to the European Union by up to 25 percent and create 65,000 new California jobs" (California Senate, 2013a). In the same vein, the Georgia House's resolution mentions increased exports to the EU from Georgia by 31.5 percent, "with the majority of growth to be seen in motor vehicles, wood and paper products, chemical products, and other transportation equipment" (Georgia House of Representatives, 2014).

The numbers used in California's resolution appear to be based on a study by the Atlantic Council, the Bertelsmann Foundation and the British Embassy in Washington, D.C. (Barker, Collett, & Workman, 2013, p. 20; Foreign & Commonwealth Office, 2013), and the statistics in the Georgia resolution align exactly with those from the same study (Barker et al., 2013, p. 25).²⁶ This shows that state officials' expectations on the economic benefits of the TTIP are driven by some analyses that have attempted to measure the TTIP's potential economic effects on the U.S. states in numbers. In the study by the Atlantic Council, the Bertelsmann Foundation and the British Embassy in Washington, D.C., titled "TTIP and the Fifty States: Jobs and Growth from Coast to Coast" (Barker et al., 2013), the researchers go state-by-state and analyze prospective growth in exports and jobs. They find, for example, that "[t]he range for estimated export increases is wide, stretching from South Carolina's 187 percent to West

²⁶ The resolution in Washington also mentions exports statistics drawn from the study (Barker et al., 2013, p. 54).

Virginia's 6.6 percent" (Barker et al., 2013, p. 3). Since these numbers are based on estimates and expectations of the most comprehensive and ambitious version of a potential TTIP (Barker et al., 2013, p. 58), they have to be used with caution. While I will not rely on these and other quantitative reports (for example for Texas, The Perryman Group, 2013) in my study, their use in various state houses shows that legislators emphasize export promotion and job creation as key objectives of the TTIP.

In addition to state resolutions, state legislators can also engage various state-level organizations to speak out on the TTIP. Among the various state legislators' associations, the American Legislative Exchange Council (ALEC) stands out as arguing mostly on economic development grounds when discussing the TTIP. The ALEC was founded in 1973 and counts between 1,000 and 2,000 state legislators and private sector representatives from corporations as members (the exact number is not made public). Additionally, the ALEC maintains an alumni network of former members now working in other government positions (US2-10), many of them in Congress or as governors. It is bipartisan, but since it considers itself a conservative organization dedicated to the three principles of limited government, free markets and federalism (American Legislative Exchange Council, 2016), it largely attracts Republican or conservative lawmakers.

Under its conservative themes, the ALEC works, for instance, on tax reform, state budgets or education policy by offering state legislators a forum for exchange and developing model policies, which are policy positions or recommendations. One such model policy, addressed to Congress and the administration, concerns the TTIP. It was passed by the ALEC task force on federalism and international relations in 2013 and calls for a successful passage of the proposed agreement (American Legislative Exchange Council, 2013). It focuses mostly on economic development issues such as job creation and mentions specifically the need for a comprehensive and ambitious agreement that covers all agricultural products.

Regarding state resolutions and policy positions such as the ALEC's, partisan politics are an interesting aspect to note. This will be analyzed in section 6.2 (see pages 124-131). For now, it should be reiterated that by prominently featuring trade and job topics, state legislatures display their awareness of the fact that the TTIP has direct economic impact on their state and its economy.

5.3 Chapter Conclusion

Economic interests in the transatlantic trade and investment environment are the same for all states: Governors, legislators and businesses work towards exporting more to Europe and attracting more investments from Europe. Economic development strategies which define goals, establish industry clusters and often feature overseas outposts can be found in most U.S. states. Within these strategies, Europe is a key trading partner for many states (see annex 1) and today, 27 states have 49 representative trade offices in eight EU member states, which are used to attract FDI and promote state exports, and governors often become personally involved in these tasks by going on trade missions to EU countries.

States' linkages based on trade promotion goals have been the major point of departure for previous literature on states' connections to Europe and, more generally, their international affairs. I have confirmed in this chapter how significant trade promotion efforts are for states: On the global stage, they are largely leaving their mark as foreign economic actors. The most important aspect of state interest representation towards Europe is meant to enhance trade and investment ties across the Atlantic. This task was named as the dominating impetus for states' transatlantic affairs in many of the interviews, a finding also reflected by the fact that governors tend to emphasize economic development in their state of the state addresses. Gubernatorial missions and trade offices in Europe, both

representations of direct state-EU business links, are the key means for this type of multilayered interest representation. This is an instance of states' parallel interest representation in harmony with the federal government, since states act without coordinating with the administration in Europe but also without going against or around the administration.

The fact that it is mostly governors traveling to Europe and that trade offices are steered out of the economic development agencies shows the importance the executive branch attaches to trade promotion matters. Yet, only few governors have connected these matters to the TTIP. This nexus between states' long-standing trade promotion goals and the contemporary trade talks with the EU is the original analytical focus of this chapter, going beyond existing studies on states as foreign economic actors. I conclude that despite overall apathy towards the TTIP, some governors did speak out on the planned deal and when they did so, it was mostly with an eye towards supporting growth in their states. This is markedly different from interest representation on policy issues, which will be taken up in the following chapter 6.

Governors from agricultural states were found to be particularly active in articulating their positions on the TTIP. At various points in time, 20 governors spoke out in favor of the TTIP because of expected economic and job growth. These were mostly from states with a big agricultural sector, for which agricultural exports are crucial, for instance Alabama, Florida, Iowa or Nebraska. Thus, governors have a keen interest in making market entry to Europe, where hundreds of millions of potential consumers reside, as easy as possible for in-state exporters. Better market access includes the resolution of transatlantic controversies over agricultural regulations by one side which the other side deems to be a nontariff trade barrier, for example GIs or rules on genetically modified organisms. And the TTIP could help in finding such resolutions, 15 governors argued in their 2013 letter to the president. While no specific European NTBs were mentioned, the state leaders were clearly conscious of the issues in the agricultural sector, mentioning this industry and its producers repeatedly in the letter. The press statement from the Iowa governor's office accompanying the letter went further, quoting state officials saying that "[o]ur farmers do an amazing job producing safe, affordable food and what they need is fair access to additional markets" and that "[m]ovement on these trade agreements would help enable Iowa's agricultural producers and manufacturers to compete on a level playing field" (Branstad, 2013). This clearly speaks to states' interests in achieving better access to the EU agricultural market via the TTIP.

Apart from the agricultural focus, I argued that governors personally emphasizing international trade issues tend to articulate their interests on the TTIP. These were mostly Republican executives, exemplified by the predominantly Republican 2013 letter. For example, Utah Governor Herbert, at the time also head of the NGA, had made economic growth a centerpiece of his government, Indiana Governor Mike Pence argued for the TTIP stating that "my administration has made job growth job number one" (Pence, 2015) and Nebraska had deliberately implemented an economic development strategy targeting international markets. This latter strategy explicitly included engaging EU actors on the TTIP. But governors, no matter their party loyalties, overall rarely chose the approach of directly representing state interests at the EU level. Gubernatorial trade missions serve the primary purpose of marketing the state and linking up with European businesses, only seldom touching upon ongoing political negotiations that are not under state purview.

In sum, this chapter not only provided support for previous findings on states as economically driven global actors. It also went further by offering empirical evidence for how governors connect their economic interests to ongoing international trade negotiations. State executives, while generally not making the TTIP a high priority, nevertheless discussed the

proposed agreement in writing with the administration and with Congress, showing states' wish to represent their transatlantic trade promotion interests both at home and abroad.

6. State Trade Policy Interests in the TTIP

This chapter offers partial answers to the first research question by analyzing the means and motivations of states' transatlantic trade policy interest representation. Only a minority of states prepare statements or organize meetings on transatlantic trade policy, but they vocally demand that trade negotiations do not undermine state sovereignty and that states' interests are considered in the policy-making process. Mostly individual progressive legislators speak on this.

Educate, medicate, incarcerate: These are three things states mostly care about, as one respondent (US2-3) pointed out. While there are many other domestic functions states oversee, this poignant statement highlights those areas in which the constitution envisions states to have strong regulatory powers, namely the education system, healthcare, and crime and public security. It speaks to the fact that state governments are more concerned with in-state policy issues than with international affairs, a finding from existing research confirmed by a range of other respondents. Yet, as chapter 3 showed, domestic and foreign issues have become entangled and so state officials have become engaged in international matters, including international trade policy.

In a complex interdependent international scene with globalized markets, the vast majority of U.S. states embrace their roles as global actors: The empirical research presented in this chapter showcases how and why they represent their policy interests on the TTIP, for instance with letters to the administration or in transatlantic dialogues. Regarding the planned trade deal, states focus on defending their regulatory framework against potential encroachment by federal or international rules. They aspire to have a bigger say in the negotiations and in the implementation of the agreement. Whereas transatlantic trade promotion, covered in the previous chapter 5, is handled by almost all states, there is only a small number of state-level officials, mostly progressive legislators, focusing on TTIP-related state regulatory issues and not on exports and investments. Areas of conflict on this topic between the states and the federal government will be discussed in the following chapter 7.

6.1 Why State Governments Represent Their Interests in Transatlantic Trade and Investment Policy

State officials, when working in transatlantic trade policy, care more about their own state's legislative and regulatory preferences than about export data or FDI statistics. U.S. states in this way continue their efforts from previous trade negotiations of voicing concerns over potentially losing state sovereignty (see section 2.1 on the NAFTA negotiations). Yet, the findings show rather limited interest representation on these matters. This is somewhat surprising, in that only some state officials seemed to make the connection between trade

policy issues and economic development, which has been such a dominant topic of states' international affairs. In the following, I will explore the motivation behind state officials' efforts regarding the policy provisions of the TTIP and its effects on state regulatory authority, rather than the economic trade and investment issues.

Previous Experiences with International Trade Policy

Those respondents with deep knowledge of international trade negotiations and trade policies, both from state executives and state legislatures, all started their interest in this field in the 1990s or early 2000s. Beginning with the GATT and the NAFTA (see section 2.1), several state officials across the country became aware of potential repercussions for states from international trade policy. For example, a state legislator interviewed for this study explained how the 1999 WTO meeting in Seattle, which saw peaceful and violent protests in the streets against the negative effects of globalization, was motivation to pay more attention to international trade issues (US1-23). Another respondent seconded this sentiment and added that later trade disputes, some involving states, also heightened awareness of the topic (US1-24). State officials' motivation for following and engaging in the discussions surrounding the TTIP therefore have to be understood against the backdrop of states' and individuals' past experiences in trade negotiations. Officials' work on the TTIP is not driven by interest in transatlantic trade policy per se but by their concern about international trade negotiations in general.

From the interviews, it was also gathered that cooperation between state governmental actors and nongovernmental actors proved to be a driving force for engagement with international trade topics. Some respondents explicitly offered that grassroots and academic activism started or supported states' engagement in this field. Cooperation between the state and specific nongovernmental organizations was also mentioned. Thus, nongovernmental organizations need to be included when analyzing what connections states seek internationally and how such actors shape states' international activities (cf. Royles, 2017). Two cases can serve as illustrative examples for this matter: One from a single state, Maine, and one involving almost all of them.

The Maine Citizen Trade Policy Commission, a body that is made up of state legislators as well as citizen representatives and whose work on the TTIP will be analyzed in depth later in this chapter, was created in large part due to local nongovernmental activists putting pressure on the legislature. One respondent familiar with its creation said that the commission was borne out of the Clean Clothes Campaign, which focused on social procurement: It aimed at procurement standards prohibiting the state of Maine to purchase products manufactured with slave labor or from countries without suitable legal standards for lesbians and gays, for instance (US1-6). Realizing that international trade agreements touch upon the issue of procurement as well as many other regulations under state purview, citizens and nongovernmental organizations began to mobilize support for a monitoring body that would track and evaluate international trade policies from the state's point of view.

The respondent thus attributed the creation of the commission partly to the high density of nongovernmental organizations in Maine and the traditionally strong civil society in the state (US1-6). Indeed, official records from the Maine legislature are testaments to a venerable campaign to institute the trade commission, fostered by a variety of nongovernmental organizations that engaged citizens throughout the state. Dozens of letters reached the labor committee of the Maine legislature with short statements in support of the bill that was supposed to create the commission. This citizen activism, in turn, can be explained by the fact that many Mainers do not view the effects of the NAFTA as beneficial to themselves. Through the expert interviews and by listening to participants at a meeting of the trade commission in Maine, it became clear that bad experiences with previous trade

agreements served as a powerful driver for citizen and then governmental engagement with international trade policy. Nongovernmental organizations' and citizens' work therefore occurs against the backdrop of general dissatisfaction with increased imports putting U.S. companies out of business or investor claims being filed unjustly against governments in other parts of the world.

It must be noted that other respondents, particularly from think tanks and business associations, would hold that some of these views have to be qualified. They would say the bad experiences cited by citizens are highly individualized instances and speak to an emotional opposition to free trade more than to facts. For example, some interviewees argued that benefits from trade are widely spread among the nation as a whole, whereas negative consequences from trade (which no respondent denied were there) are localized and industry-specific. Furthermore, they argued that trade agreements are an easy political target because they are much more tangible than the abstract concepts of globalization, technology or automation of industries (US3-1, US3-6).

Another example highlighting the collaboration of state governmental and nongovernmental actors is the founding of the Forum on Democracy and Trade. It was created by U.S. state and local officials in 2003 in close cooperation with Georgetown University. A small staff at the school in Washington, D.C., was financed by a package of grants from five private foundations. Law professors researched international agreements related to trade and investment with a specific view on the potential effects for states and localities. One of the interviewees involved in the work of the forum described its task to function as a hub between the states and state associations so that state officials could learn from one another and then address the federal government with their issues (US3-4). For instance, Peter Riggs, the director of the forum at the time, met state representatives in Vermont soon after the foundation of the Vermont Commission on International Trade and State Sovereignty in 2006 (Vermont Commission on International Trade and State Sovereignty, 2008, p. 5).

Whereas the trade policy commissions in Maine and Vermont are still active, the Forum on Democracy and Trade shut down after five years when the grants were not renewed and neither state governments nor the federal government were willing to secure financing for the forum or a similar institution. Nevertheless, the forum is an instance when academic nongovernmental actors provided much-needed research support to understaffed executive offices or part-time state legislators, thus enabling them to become engaged in international trade policy. Another example of such engagement from nongovernmental actors is the activist organization Public Citizen. This group used to work with state officials in the 1990s and 2000s to inform them of perceived threats for state regulatory powers from international trade agreements (US3-8).

While institutionalized fora, to be discussed later (see pages 108-114), might also be an incentive for states to articulate trade policy interests, the interviews clearly pointed to a more decentralized, individual-level motivation to become engaged in the TTIP. Personal experiences and individual interest in international trade policy, supported and driven by academic and grassroots campaigns, are important catalysts for speaking out on TTIP regulatory issues.

Potential Effects of the TTIP on State Regulatory Powers

Related to the overall experiences states had with previous trade negotiations are the direct consequences of the trade deals on their regulatory environment. Grassroots activism and legislators' concerns for trade agreements stem largely from the potential drawbacks for states' powers connected to tackling nontariff barriers to trade.

The NAFTA marked the beginning of an era of multilateral trade deals, which were negotiated outside of the GATT and later the WTO and shifted the focus away from tariffs and duties. One of the respondents who analyzed the NAFTA for the states said that upon reading the document, the thought was, “This is the most sweeping piece of federal legislation I’ve ever read. This changes all the rules. It’s a fundamental rethinking of the way government should operate” (US3-4). Not all respondents would agree to this and there are more nuanced scientific analyses of the NAFTA as well. Nevertheless, the statement speaks to the fact that the NAFTA undeniably went beyond eliminating tariffs in also diminishing nontariff barriers to trade.

The focus on NTBs is even more pronounced in the TTIP because transatlantic tariffs are already low for most industries. So, limiting nontariff barriers has been a key focus of the negotiations from the very beginning (see section 2.2). Generally, such NTBs to trade are (Woolcock, 1991, p. 2):

- Industrial policy-related NTBs such as subsidies that governments use to promote a home-based industry or protect it from global competition
- Regulatory policy-related NTBs by which governments, again, want to promote their own companies
- Structural impediments, which result from a lack of competition or transparency in a market

Subsidies are rare in the transatlantic context, but regulatory policy-related NTBs and structural impediments are prevalent in this study despite the generally open transatlantic market because these are the issues that states are affected by and thus want to make their voices heard on. The following are some of the major issues, which will be taken up again later in this section.

Public procurement. For the states, this regulatory-policy NTB is one of the most controversial and important issues of the TTIP, which also came out in the interviews. The free trade agreement aims at easing market access on both sides of the Atlantic and this includes an opening of procurement markets at all governmental levels. Public procurement is of great significance for the states because they have considerable power over their own procurement markets and many states want to preserve their laws granting preferential treatment to in-state producers and service providers. Examples are rules that favor local agricultural producers or local solar panel makers (US1-14, US1-21, US1-22, US2-2, US3-3).

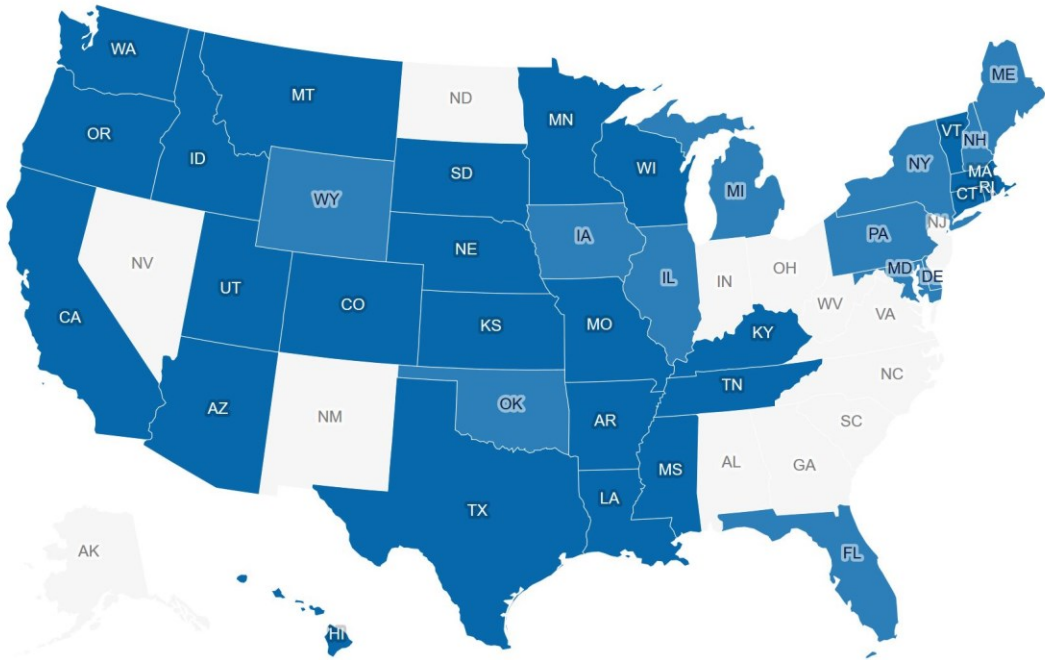
These preferential treatment laws, some of which are called “Buy American” laws (Hocking & Smith, 1997, p. 260), are meant to boost state economic and job growth and have been a controversial item of international discussion before: The WTO’s Government Procurement Agreement (GPA), for instance, specifically does not apply to the state and local level in the U.S. (McNiff, 2015). Even under the latest revisions to the GPA, the U.S. maintains exclusions for the states.

Respondents both from the state and the federal level detailed how the U.S. federal government cannot force states to adhere to international procurement rules, thus obliging them to open their procurement markets. Rather, the administration must ask states to voluntarily sign on to the procurement provisions (US3-5). In the GPA, not all states signed on (see map 4 on the following page)²⁷ and for subsequent free trade agreements with

²⁷ Political economist Dong-Hun Kim has studied why some U.S. governments chose not to adhere to the GPA despite efficiency gains. He argues that a lack of political competition in a state reduces the incentive to join

procurement rules, the number of states covered gradually declined (National Association of State Procurement Officials, 2016b; Woolcock & Grier, 2015, pp. 20-22).

Map 4. State coverage under the revised WTO GPA of 2012



Legend: Blue shading indicates GPA coverage. Lighter blue shading indicates that states are covered in the GPA but with the exceptions of procurement for construction-grade steel (including subcontracts), motor vehicles and coals. Ships and vessels procurement are excluded for all states covered in the GPA. Sources: National Association of State Procurement Officials (2016b), World Trade Organization (2012)

The EU’s stated goal is to remove any barriers to state- and local-level procurement for European companies (see annex 4; also Woolcock & Grier, 2015, pp. 20-22; Yukins, 2014, p. 2). This has been an early and adamantly stated European objective, put forward repeatedly by the then-Commissioner for Trade Karel de Gucht (De Gucht, 2013, 2015). With this, the EU addresses federal-level statutes such as the Jones Act (European Commission, 2016h, p. 151), which requires all maritime transport between U.S. ports to be carried on ships built in the U.S., but it also focuses strongly on state-level “Buy American” or “buy state/local” legislation.

Some interviewees were worried that the TTIP might directly impinge on state sovereignty in the field of public procurement. This would mean that the EU mounts enough pressure to force changes to U.S. legislation, so as to require states to open their markets. The issue is exacerbated by the fact that the U.S. federal government wants to open up the European procurement markets as well and therefore needs to consider the state-level rules as a bargaining chip in the negotiations.

Yet, some of respondents did not view the procurement issue as a major challenge for states precisely because there is no legal way for the federal government to force any trade provisions on the states (US1-24, US2-7). It is questionable whether the EU will have enough negotiation power to provoke legislative changes in the U.S. because the federal government would put up strong resistance out of political calculations: The administration will likely not risk a political battle with state governments over the popular “buy local” measures, even

the GPA because the government can then continue to use government procurement contracts at their political discretion (Kim, 2009).

though some business organizations are against them (American Chamber of Commerce to the European Union, 2014, p. 34; Trans-Atlantic Business Council, 2013, p. 9). The only leeway the federal administration has is in the field of “flow-down funds”, which is federal money provided to the states for state-level procurement. The federal government could theoretically subject these funds to procurement rules under the TTIP but not those funds the states raise themselves. Public procurement therefore is considered by some a “sideshow” (US1-24) to the bigger issue of regulatory cooperation.

Regulatory cooperation, particularly regarding health and environmental standards.

Regulatory cooperation is the TTIP’s key element because it has not been included in other free trade agreements to this extent. With regulatory cooperation, the U.S. and the EU want to tackle NTBs over the long-run. The TTIP in its most ambitious form would not only eliminate duplicate regulations that are in place on either side of the Atlantic at the moment. The proposed agreement aims at creating a mechanism for the U.S. and the EU to jointly review and develop future regulation (European Commission, 2015c). Through information exchange and potentially a regulatory cooperation body, the two trading partners want to create more similar regulations in both markets, for example by accepting each other’s standards (mutual recognition) or by developing joint regulations (harmonization). Supporters hold that this reduces costs for businesses and thus ultimately benefits consumers and workers. Opponents criticize that regulatory cooperation might circumvent domestic democratic institutions and would effectively lead to deregulation and lower standards.

All the governmental parties concerned in the TTIP negotiations – be it European supranational, national or regional actors or U.S. federal or state actors – do not want to lower any existing health, labor or environmental standards. The controversial issue is who has the highest standards: Europe and the U.S. each proclaim superiority in certain areas and criticizes the other side for using safety regulations to protect domestic industries. A particularly contentious divide occurs on the topic of the precautionary principle in consumer protection: The EU follows this principle, which broadly means that before a product arrives to market, it has to be tested and proven unharmed. The U.S. does not rely on this principle in many cases, instead giving its consumers much more leeway to sue class-action lawsuits if products are found to be harmful.

U.S. states are touched by such regulatory questions because they want to ensure the best possible business environment for the companies based in their states. For instance, the American Farm Bureau Federation, a farmers’ and ranchers’ lobbying group at the state and federal levels in the U.S., is opposed to the precautionary principle, which it views as an unjustified regulatory NTB (American Farm Bureau Federation, 2017).

Another regulatory issue is how the TTIP could retain or reform the EU’s way of handling geographical indications, a topic noted as an important state concern by several respondents. These indicators designate that a product comes from a particular region and bar any other products not from that region from using the regional name (European Commission, 2013a). Examples in the EU are “Champagne” or the “Nuremberg bratwurst” mentioned earlier (see page 145). In the U.S., this system is sometimes considered a nontariff barrier to trade favoring European products and some states would thus like to get rid of it.

Issues regarding regulations and standards therefore pose an indirect effect on U.S. states: The direct effect is felt by businesses, but states are interested in keeping and attracting companies so as to broaden their job and tax revenue base. A policy field similar to the geographical indications is the matter of antibiotics and hormones in food production. Furthermore, the contentious issue of genetically modified organisms (GMOs) is on the negotiation slate, an issue that also came up as a key regulatory topic in the expert interviews. This trade conflict has been going on for years without a solution and has become highly

politicized (Falkner, 2004, pp. 252-255). While the EU public is skeptical of GMOs and the EU has effectively banned GMOs, the U.S. federal level is much more supportive of the biotechnology sector and allows GMOs. On the state level, regulations differ: Some states have labeling requirements for GMOs that go beyond the federal standards and are similar to EU regulations. Other states do not have such labeling rules and have big biotechnological sectors open to GMOs. Consequently, some U.S. states fear that if GMOs are banned, their state economies would suffer, and other states are concerned that if GMOs are allowed, their own stricter rules would be annihilated. Similar issues arise for the regulation of toxic chemicals, a topic also mentioned in the interviews.

Investment regulations and the ISDS mechanism. Foreign direct investment is the backbone of the transatlantic economy (see section 2.2) and, again, a double-edged sword for the states. On the one hand, the U.S. states are very eager to increase FDI and tend to engage in intense interstate competition to attract FDI to and retain it in their states (see previous chapter 5). They adapt tax policies to entice multinational corporations and design huge incentive packages for them. This reflects the notion that, from a national perspective, the U.S. is one of the countries that is most open for FDI (Organisation for Economic Co-operation and Development, 2015). On the other hand, the states have a history of supporting their own industrial base by placing strict limitations on foreign investment, especially restrictions on foreign land ownership. Occurring mostly in the 1970s and 1980s, such restrictions were in place out of fear of being taken over by foreign companies and governments (Kline, 1983, pp. 91-96) and have been eased since (Eliasson, 2014, pp. 128-129; Weiler, 1994, p. 126).

While state-level FDI restrictions do not have a big impact (Organisation for Economic Co-operation and Development, 1995, p. 52), the fact remains that some regulations pertaining to investments are state prerogatives. With the NAFTA, for instance, some discriminatory state-level investment restrictions were specifically excluded because they would otherwise have been illegal under the free trade agreement (Chopra, 1993). The U.S. states could therefore be affected by the TTIP if the agreement yields an overarching regulatory framework for investment.

The system of investor-state dispute settlement (ISDS) also touches state issues. In brief, ISDS is a mechanism for foreign private companies to sue central governments over alleged discriminatory practices by either the central or the noncentral governments (for general analyses of the ISDS mechanism in the TTIP, see, for example, Henckels, 2016; Tienhaara, 2017; Tietje & Baetens, 2014; Witkowska, 2017). An international arbitral tribunal, outside of a country's own judicial system, rules on cases brought by companies. The ISDS mechanism is a controversial part of the TTIP negotiations and one that many state officials have focused their work on. The interviews revealed the ISDS mechanism to be a top issue in the TTIP for states, with ten respondents even bringing up specific ISDS cases from around the world without being prompted. Due to the controversy surrounding the topic, the ISDS mechanism had been excluded from the TTIP negotiations for a while and the EU came up with a reformed system, on which there has been no agreement yet, however (European Commission, 2015b).

The ISDS system has been included in many other trade and investment treaties before the TTIP but is nonetheless a topic of contention in the transatlantic context. Supporters say the mechanism protects investors against discrimination, which was the original rationale for the mechanism: It was meant to guard companies from having their property expropriated, for example, or for not receiving the same treatment as domestic companies. Opponents, however, claim it places corporations' interests above public interests and decision making: Foreign companies have the right to sue against legislative and regulatory decisions that do not amount to expropriation but are based on the local public

policy interests of the central or noncentral government. They can thus circumvent the domestic legal system by using the ISDS tribunals (Sachs, Johnson, & Sachs, 2015), what opponents of the ISDS mechanism call “greater rights for foreign companies”.

An often-cited example, also mentioned by several respondents (US1-24, US3-6, EU2-7), is the case of tobacco company Philip Morris suing the government of Uruguay because the country had enacted strict tobacco regulation with the goal of promoting public health. The company lost the case, in the end. The case highlights important facets of the ISDS system: First, the mechanism is used by foreign companies, not domestic ones. If a private U.S. company felt discriminated by U.S. state or federal law, it would use the U.S. domestic court system to file a claim. If the same private U.S. company felt discriminated by Mexican state or federal law, it would use an ISDS panel because the NAFTA includes such an arbitration system. This has been used against the U.S. states as well: They were challenged, for example, on their taxes on alcohol (Downs, 1993). Second, the ISDS mechanism can be used by private companies to challenge state and federal regulation that they view as a trade barrier. It is thus not merely a way for corporations to defend themselves against arbitrary expropriation and this has potential consequences for states’ regulatory powers.

Financial regulations. This topic has been excluded from the TTIP negotiations, so conflict between the states, the federal government and the EU was avoided or at least postponed. One interviewee regularly involved in international financial matters of concern to the states said that activity on the TTIP in this field has been low, but the EU and the U.S. are nevertheless engaging in a dialogue on this issue, for example engaging in separate negotiations on insurance (US2-4).²⁸ A brief review is therefore helpful.

The U.S. exhibits a dualist regulatory system for financial services: State governments and the administration share responsibility in this field (Woolcock, 1991, p. 36). In this dualist system, states have traditionally held a strong authority over banking, investment and insurance policy. For example, states regulate those banks that are not part of the Federal Reserve system and, together with the federal government, also play a role in the regulation of state-chartered banks via the Federal Reserve Board (Woolcock, 1991, pp. 37-39).

Among other things, one consequence of this system is the fragmentation of the U.S. financial market, which is disliked by the EU as a regulatory-policy NTB: European companies must comply with many different rules from the states instead of having a unified regulatory framework. Again, the TTIP could possibly have a centralizing effect or at least contribute to a shift that gives the federal government more power in the eyes of the states if they are stripped of their ability to implement financial regulations.

Similarly, potential conflict could arise in the insurance industry, the area in which the U.S. and the EU are negotiating an agreement aside from the TTIP. In the 1945 McCarran-Ferguson Act, Congress gave states powers to regulate the insurance industry (Woolcock, 1991, p. 37). Some states place limitations on foreign insurers, which could be viewed as discriminatory in the TTIP agreement, as the EU wants to pry open state-controlled insurance markets.

In sum, the findings from the theoretical and empirical data point to state officials becoming engaged in transatlantic trade policy related to the TTIP because they learned about the potential effects of international trade agreements on state regulation from previous negotiations. Citizen activism and collaborations with academic or

²⁸ The insurance agreement between the U.S. and the EU was concluded after the time frame covered in this study. It prompted both favorable and unfavorable reactions from state, federal and business leaders when it was first made public (Behsudi, Palmer, & Cassella, 2017).

nongovernmental actors helped state officials gather enough knowledge to identify those areas of particular significance for states, in which they could then get involved in.

This is a crucial finding already: The primary concern for state legislators engaged in transatlantic trade policy is that state regulatory authority could be overridden by TTIP provisions. They are not primarily concerned with economic development topics. The expert interviews revealed that the issue of state sovereignty is part of the international trade policy debate, which relates to questions on trade policy-making within the U.S. federal system and not to questions on exports and FDI. States aim to safeguard their right to legislate and regulate according to local circumstances against perceived threats from international trade negotiations. To that end, they aspire to amend the TTIP provisions in their favor and, more broadly, to create openings at the federal level for states to provide input.

6.2 How State Governments Represent Their Interests in Transatlantic Trade and Investment Policy

Chapters 2 and 3 showed that international trade policy is handled at the federal level and the preceding chapter showed that state officials nevertheless have reasons to engage in such policies, including trade negotiations. This leads to the assumption that if states want to represent their transatlantic trade interests, they act within the U.S. intergovernmental system and address the administration and Congress. As will be seen in the following paragraphs, states do indeed mostly express their opinions towards the federal government, but there are also some direct linkages to European policy makers.

The Intergovernmental Policy Advisory Committee on Trade at the USTR

By far the most important formal mechanism that state officials have to represent their interests within the U.S. federal system is the Intergovernmental Policy Advisory Committee on Trade at the USTR. It is “easily the most relevant body”, according to a federal-level administrative official (US3-3). A state official concurs by saying that on some issues, “I don’t know that there is much else that can be done [apart from commenting via the IGPAC]” (US1-4). Respondents overall confirmed the importance of the IGPAC for transatlantic trade policy interest representation, even though the body is also a source of state-federal friction, which I will discuss in detail later on (see pages 160-162). In the following, I will present the IGPAC’s characteristics to understand what opportunities and limitations for states’ transatlantic trade policy interest representation it offers.

Purpose

The IGPAC is the only institutionalized way in which state interests on trade negotiations are aggregated and relayed to federal actors. It was established in 1974 and is a loose body made up of elected and nonelected officials from U.S. states and localities who according to the IGPAC charter must consult and advise USTR officials on ongoing trade negotiations (Office of the U.S. Trade Representative, 2014a, p. 1). This is mostly done online or via conference calls. At the end of each trade negotiation, the IGPAC prepares a report for the USTR that gives recommendations from the states’ perspective to guide the subsequent ratification process. The IGPAC’s activities are “advisory only” (Office of the U.S. Trade Representative, 2014a, p. 1), as are the activities of the other seven committees at the USTR, coming from a variety of sectors and societal groups (Office of the U.S. Trade Representative, 2016c).

For the TTIP, there is no public report yet because the negotiations are not completed. Respondents familiar with the IGPAC’s workings did confirm that there have been discussions on transatlantic trade policy among the members and with the USTR, but they

could not provide specific details because the information is classified. Nevertheless, it became clear that in theory, states can use the IGPAC to make their interests on the TTIP known to the administration. A look at the IGPAC's setup, however, reveals some reservations regarding this opportunity.

Membership and Structure

IGPAC membership used to be two-pronged: Governors, mayors and other high-level state and local elected officials were full members. For example, when the committee reported on the NAFTA in 1992, there were 36 members: 15 governors, seven state legislators, seven local and state executive officials, four mayors and two lieutenant governors (Thompson, 1992, p. i; see also Chopra, 1993). A group of staffers made up the second part of the IGPAC, but the staffers were not full members enjoying all the access to negotiation texts (Thompson, 1994; also US2-3).

Under the administration of President George W. Bush, there was a conscious decision to move from a high-level political membership to one that is more focused on the staffers (US2-3), merging the two groups and ultimately leading to a working-level group of state and local experts. Governors' and state legislators' schedules did not permit them to thoroughly read and comment on highly complex and technical trade policy issues (US2-3, US1-24). With this realization, the merger happened around 2002 (Kukucha, 2015a, p. 230) and by 2010, no governor was part of the IGPAC anymore (Office of the U.S. Trade Representative, 2010). Neither was there a gubernatorial member in 2016 (Office of the U.S. Trade Representative, 2016e). Recruiting state-level policy experts who can devote some attention to trade policy issues is certainly a strength of the IGPAC, but there is also a downside to consider because the lack of gubernatorial and mayoral members indicates a diminished clout of the IGPAC within the USTR advisory system.

The USTR selects the officials who serve on the IGPAC, which has been criticized in the literature before as federal-level dominance over the body (Kukucha, 2015a, p. 230; Whatley, 2003, p. 10). One respondent qualified this criticism, saying that whoever wants to be on the IGPAC could apply and would most likely be invited on (US3-5). However, other interviewees pointed to the long and costly security clearance necessary in order to become a member as a big hurdle to membership (US1-7, US3-3), also considering that there is no compensation for the IGPAC members (Kukucha, 2015a, p. 230).

The IGPAC has some distinctive features that set it apart from other advisory committees at the USTR. One respondent called it "the most quirky and unique, odd, unusual committee of them" (US2-3). It does not speak for any particular industry, which is the typical mode of interest representation at the USTR: The IGPAC is a heterogeneous group of state and local officials representing the constituency of U.S. noncentral governments, not a specific industrial branch, such as agriculture, chemicals or pharmaceuticals. It is one of only four committees that is not jointly managed by the USTR and another federal agency such as the U.S. Department of Agriculture, Commerce or Labor (US3-5). The IGPAC reports solely to the USTR.²⁹

This lack of any industry-specific focus has upsides and downsides. Being drawn from state governments gives the IGPAC a certain influence because no one at the office of the USTR or within the USTR advisory committee system is closer to the citizens than the IGPAC. However, the heterogeneity has also been deemed ineffective (Kline, 1993, p. 118) and the fact that states do not have highly specialized industry interests can at times be a weakness

²⁹ The other committees without cabinet-level affiliations are the Advisory Committee for Trade Policy and Negotiations, the Trade and Environment Policy Advisory Committee and the Trade Advisory Committee on Africa, all committees without a singular industry-specific focus and area of expertise.

(US1-24, US2-3, US2-7, US3-5). Because states do not have offensive or defensive economic interests that relate to particular pieces of tariffs negotiations or regulatory cooperation, their voices might get shut out by private sector industry groups who come well-prepared, well-staffed and well-funded to the USTR and offer federal officials concrete demands.

Some of the respondents, mostly state legislators, generally criticized the dominance of corporate interests in trade negotiations, but it was understood that the advisory system relies on and is geared towards including business interests. The states via the IGPAC, however, have for years been playing the “broken record” (US2-3) of broader, more abstract themes than business has: Safeguarding state sovereignty, ensuring equal legal rights for companies at home and abroad, improving intergovernmental relations. These issues have been of high importance to state governments and have been mentioned in every IGPAC report since the NAFTA. Yet, these issues are not the key topics that the USTR negotiates about with its EU partners: They are discussing auto parts, sugar tariffs or drug patents and the expertise for this lies with business groups, which weakens states’ position at the USTR.

Reform Attempts

Finding a mechanism for the broader points on U.S. trade policy raised by the states has been a major undertaking by the IGPAC for the past 20 years. It has, however, not led to significant changes. Already in 1992, Governor Tommy Thompson of Wisconsin, chair of the IGPAC at the time, called for an inclusion of states in implementing the NAFTA (Thompson, 1992, p. iv) and two years later, for the IGPAC report on the Uruguay Round negotiations, he specified the IGPAC’s positions on a new partnership between the federal government and the states: “This partnership will require establishing and funding adequate organizational capacity within the Federal Government to assist state and local governments in the implementation of the [Uruguay Round agreement] and other trade agreements” (Thompson, 1994, p. 3). No such partnership was established, leaving the IGPAC to keep pressing the matter.

Ten years later, in 2004, the IGPAC’s chair at the time, trade policy and economic development expert Kay Wilkie from New York state, offered a memorandum on behalf of the committee on how to improve state-federal consultations in trade policy (Wilkie, 2004). These recommendations were invited by USTR officials. In the memo, Wilkie described how trade liberalization and the nature of deep FTAs, with their focus on nontariff barriers instead of tariffs, have led to states being more affected by trade policy than before. While she is aware of the increased state-federal consultations in trade policy, especially via the IGPAC, the chair is critical of the lack of resources awarded to the committee. This criticism has been put forth by others as well, who point to the general lack of staffing and resources (Kukucha, 2015a, p. 230) and that IGPAC relies on data and staff coming from the USTR (Kukucha, 2015a, p. 230; Whatley, 2003, p. 10).

A deeper and broader system of consultations would be better, the 2004 memo author argues, and she suggests the establishment of a permanent, adequately staffed Federal-State International Trade/Investment Policy Commission (Wilkie, 2004, pp. 7-8). This commission would have the means and ability to research trade policy topics on a defined action plan agenda, such as investor-state dispute mechanisms or procurement, and then make recommendations. The commission would also foster state-federal cooperation on economic development and support the generation of state-level trade and investment data. Like earlier efforts, none of these actions and recommendations have yet to be put into place. One expert attributed this “static” nature of the IGPAC to the fact that no major conflict such as a lost trade dispute with high costs for the states had shaken the foundation of the state-federal consultation process (US2-3).

Successes Prior to the TTIP

Despite these shortcomings, several interviewees pointed to past successes of the IGPAC and all respondents who were familiar with the IGPAC's workings did confirm that it is a functioning body important for states' transatlantic trade policy interest representation. IGPAC members have access to a secure website on which the USTR posts negotiation texts before they are discussed with trading partners such as the EU. Even though there is criticism with regards to the timeliness of receiving these texts (to be taken up later in this section, see pages 160-162), state officials can theoretically comment on the proposals. Additionally, they can express their interests in conference calls and occasional personal meetings. The website and conference calls are the prime means of state-federal communication, with the USTR providing updates in irregular intervals (US1-6, US1-16, US1-24, US1-25, US2-2.2, US3-3). Sometimes new texts are posted after a negotiation round, sometimes without relation to any specific EU-U.S. talks. The conference calls, too, are held when deemed necessary and not, say, every two months or after every negotiation round.

This system has worked in the past, as political scientist Michelle Sager found for the NAFTA and GATT negotiations. Despite criticism regarding the IGPAC's structure, her analysis shows that the IGPAC served a mediating role between states and the federal government, without which compromises that took into account state concerns would have been hard to come by (Sager, 2002, p. 122). More recently, the IGPAC's biggest successes that respondents pointed to were the tobacco carve-out in the TPP, the move away from including necessity tests in free trade agreements and the ISDS carve-out in the Australia-U.S. free trade agreement.

The tobacco carve-out in the TPP means that states' tobacco regulations are exempt from the proposed deal's ISDS system. Tobacco has been a top priority for states since at least the 1990s, when 46 state attorneys general settled "several state-law suits brought [against the four largest tobacco companies in the U.S.] to recover billions of dollars in health-care costs associated with treating smoking-related illnesses" (National Association of Attorneys General, 2016). The 1998 tobacco Master Settlement Agreement was a success for the efforts of state governments, especially state attorneys general, who to this day continue to implement and enforce the agreement. The National Association of Attorneys General has therefore been working to make tobacco and tobacco-related regulation a highly sensitive issue in international trade agreements (US1-4, US2-7).

Because states have helped render tobacco such a sensitive political and not only regulatory issue (US3-3), the IGPAC claims some responsibility for the carve-out for tobacco control regulations in the TPP. For the first time in any U.S. trade agreement, TPP provisions give the signatory nations "the right to decide that its tobacco control measures for manufactured tobacco products cannot be challenged by private investors under Investor-State Dispute Settlement (ISDS)" (Office of the U.S. Trade Representative, 2015f; for original text, see chapter 29.5 in the TPP agreement, Office of the United States Trade Representative, 2015e).

The IGPAC and the attorneys general do not claim that this provision was inserted at their behest, but a respondent with knowledge of the agreement said the NAAG did help put "somewhat strong language" in the TPP (US2-7). In its TPP report, the IGPAC "strongly supports" Article 29.5 of the TPP (Hamilton, 2015, p. 16), which is the tobacco carve-out. In addition, the NAAG had sent a letter to the USTR. It was signed by 48 attorneys general³⁰ and called for the preservation of the "ability of state and local governments to regulate tobacco

³⁰ A first version of the letter included 45 attorneys general in January 2014 (National Association of Attorneys General, 2014b), but a month later, three more attorneys general signed on (National Association of Attorneys General, 2014a).

products to protect the public health” (National Association of Attorneys General, 2014a). In their letter, the attorneys general requested a complete carve-out of tobacco products, which was not instituted in the TPP. Yet, the letter along with meetings individual or groups of attorneys general had with officials from the office of the USTR as well as with members of Congress (US2-7) did help to push the issue.³¹

Another field on which the IGPAC “moved certain issues in certain directions” (US1-24) was the necessity test for trade in services. The necessity test has been discussed by trade policy experts since the WTO negotiations on the General Agreement on Trade in Services (GATS) and the ensuing debates on domestic regulation. A thorough analysis of this provision and the GATS will not be provided here, but the general criticism has to be presented in order to understand the IGPAC’s position.

Article VI.4 of the GATS contains the necessity test, which requires member states to take steps assuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements are not “more burdensome than necessary to ensure the quality of the service” (World Trade Organization, 1995). The necessity test has been criticized for a lack of clarity on what “burdensome”, “necessary” or “quality of service” mean, which could lead to corporate challenges to local, state and national regulation. One respondent gave the example of how states might consider a variety of factors besides quality when assessing the impact of services, for instance the local economic impact, local environmental impact or aesthetics (US3-4).

In short, states were worried that their regulations, based on local circumstances, might be challenged by companies, thus undermining state regulatory authority. U.S. states, via the Forum on Democracy and Trade, studied this issue, provided information to federal U.S. officials and even shared it with officials from other countries (US3-4). The states were not the only actors working on this topic, but their efforts were meant to add pressure on the U.S. administration to push for a review of the necessity test within the WTO. Along with similar calls by various U.S. federal agencies, the federal government amended its supportive view of the necessity test: The U.S., Brazil and Canada circulated a communication within the WTO’s Working Party on Domestic Regulation in 2011 which called the necessity test “inconsistent with the broader objective of developing clear and effective disciplines on domestic regulation” (Brazil, 2011, p. 2). Recent U.S. trade agreements typically do not include the necessity test anymore, which was attributed to the opposition by some U.S. federal agencies along with the IGPAC (US1-24).

Lastly, the Australia-U.S. free trade agreement was mentioned as a partial success for the IGPAC. This agreement, which came into force in 2005, did not include an ISDS mechanism. The official reasoning was that “both countries have robust, developed legal systems for resolving disputes between foreign investors and government” (Australian Department of Foreign Affairs and Trade, 2004), so there was no need for an ISDS system. Underlying this argument was most likely a desire by both countries not to be sued by the other (Dodge, 2006, p. 24). Nonetheless, states’ opposition was a contributing reason for excluding the ISDS mechanism.

As in the other cases, the exclusion of the ISDS mechanism in the Australia-U.S. FTA was not a direct result of IGPAC intervention. Former and current IGPAC members that I spoke to were once again well aware that they cannot push such issues by themselves, but that they can be an important piece of the larger negotiations. One interviewee explained that

³¹ The NAAG did not publicly speak out on other TPP-related issues. In my talks, I heard some suspicion that the tobacco carve-out in the ISDS mechanism was used by the federal government to ensure that no other criticism by the NAAG was made public. I could not confirm this allegation because respondents at all levels – state legislators, state association officials and federal officials – were rather tight-lipped about this topic.

the Australia-U.S. negotiations were hung up on U.S. sugar subsidies in the U.S. and the USTR needed to concede something to Australia. The U.S. business community was strongly in favor of the ISDS system, whereas the Australian government, several U.S. federal agencies and the IGPAC were opposed. The respondent said:

They [USTR] could give that [the ISDS mechanism] away as a concession in the negotiation and, knowing that they had a constituency in the U.S., not just giving it away but saying, you know, also ‘There are people on our side that are concerned about that, too’. The industry folks like it, but IGPAC doesn’t, so... and our Australian counterparts don’t like it, in this case, we will side with the Australian position. I would say that that was... we had a significant impact on that outcome. (US2-3; similar sentiments voiced by US1-4, US1-6)

Respondents agreed that the investor-state dispute settlement mechanism has been the top issue for the states and, specifically, for the IGPAC over the past years (US1-4, US1-6, US1-7, US1-12, US1-22, US1-24, US2-2, US2-9, US3-8). Concerns about the mechanism have been featured in all IGPAC reports since the Australia-U.S. agreement, including the latest document on the TPP, delivered in December 2015 by the committee’s chair Robert Hamilton, Washington state’s trade policy expert from the executive branch. Interviewees knowledgeable of the IGPAC’s work claim that the USTR definitely knows about states’ opposition to the ISDS mechanism (US1-24), also in the broader context of protecting states’ regulatory authority (US2-7). There are, however, still serious reservations about the ISDS mechanism that many respondents do not see addressed by the U.S. federal government, including in the TTIP negotiations, which I will report on later in this section (see pages 155-159).

The respondents familiar with the IGPAC confirmed recent findings about the committee being “fully functional and focusing on the potential impact of TTIP and the TPP on state jurisdiction, especially related to investor-state, regulatory and subsidy issues” (Kukucha, 2015a, p. 231). IGPAC members have been able to comment on text proposals. While the interviews confirmed that the transatlantic agreement took a backseat to the TPP during the time of investigation, the TTIP has been a topic of discussion in the conference calls between the IGPAC and the USTR. The major concern regarding the trade deal has been the investor-state dispute settlement. What conflicts arise on this issue will be explored in depth later.

From the discussion of the IGPAC’s efforts and successes, it is evident that the body facilitates coordinated multilayered interest representation (see table 5 on page 42): In a formalized setting of state-federal information exchange, states can either support or oppose federal negotiation goals on international trade agreements. The confrontation over the ISDS mechanism is a prime example of how conflicting interest representation can occur in a coordinated environment. States use the legally mandated IGPAC reports to speak out on issues of importance to them. While there are instances of states applauding the federal government’s negotiation successes, the reports are primarily a means for states to voice opposition and address state-specific interests that could otherwise be overlooked by federal actors.

State Single Point of Contact

One other formal mechanism of state-federal consultation has to be briefly mentioned: The system of State Single Points of Contact or SPOC for short. The governor of each state selects an official “who is supposed to interact on a regular basis with the office of the U.S. Trade Representative” (Fry, 1998, pp. 89-90; see also Kukucha, 2015a, p. 231). This system, established under the NAFTA implementing legislation (see section 2.1), is designed to

include states' positions in the USTR's considerations and while it is an improvement over no inclusion at all, scholars have pointed to flaws in the setup: "Apart from the provision of press releases, the USTR, for example, does not contact the state administrations on a regular basis while the states' single points of contact provide information primarily on request of the USTR" (Kaiser, 2005, p. 96). Overall, too little information is exchanged, there is no regular or formalized procedure for communication and the information that is exchanged is sometimes incomplete or inconsistent.

The experts I talked to, two of which were their respective state's SPOC, confirmed the minimal engagement in transatlantic trade policy. The SPOC, usually drawn from the states' economic development agencies, are primarily concerned with trade promotion, not trade policy, and thus worry about how trade agreements might affect state exports more than state regulation (US1-20, US1-24, US3-3). Briefing calls with the USTR are the main mode of communication. They have become infrequent compared to earlier free trade negotiations and are mostly an update by USTR officials, not a dialogue on trade policy measures. State Single Points of Contact do not have access to negotiation texts, but the SPOC can always request additional resources and the USTR's speedy provision of such informational material was pointed out (US1-20).

Based on the findings from the expert interviews, the State Single Point of Contact system is not seen as a means for state governments to represent their interests in transatlantic trade policy. The IGPAC is the much more important consultation mechanism at the USTR and in addition to this formal body, states make their opinions known mostly via letters to the administration and to Congress.

Gubernatorial Letters and Policy Positions

"In Congress, you vote on things and you send letters", one respondent quipped (US1-26). A number of other experts I talked to confirmed the importance of letters or policy briefs sent to the administration, a congressional delegation or the congressional leadership, expressing a specific policy position or voicing an opinion in support of or against a federal measure. Such letters are nonbinding and have no legal authority but are still more than a merely symbolic gesture.

One interviewee (US2-10) cited an adage: If a member of Congress gets a call about an issue, that means 100 people care about the issue. If the member of Congress gets a letter about an issue, that means 1,000 people care about it. The respondent would add: A letter from a state legislator means that 10,000 people care about a particular issue. Written statements help federal officials make informed decisions. Crucially, they are also a means for them to justify their voting decisions. In many cases, federal legislators might have made up their mind already about certain policy issues but still face opposition from various interest groups. If they can point to a letter from a state legislator or a governor, their own position and standing gains credibility.

With such high importance attached to writing letters or policy positions, it is not surprising that this is one of the major tools of interest representation used by states. While I had to rely on publicly available policy positions and the background information provided by the sample, it has to be noted that public TTIP interest representation is not the only way that states become engaged in transatlantic trade issues: As one state association official put it, "I do my best work behind the scenes and quietly" (US2-9). The caveat therefore is that only because a state or state association did not publicly voice an opinion on the TTIP does not mean it did not get involved at all. Yet, some governors, state legislators and state associations did publicize letters to Congress or the administration or both, laying out their preferences in transatlantic trade policy.

Governors' letters and public positions on the TTIP have already been partly analyzed in the previous chapter. It was found that governors in the vast majority of cases use letters to the administration or Congress to express support for trade agreements such as the TTIP on the grounds of trade promotion (see table 9 on page 93). In contrast, little public gubernatorial activity was found on trade policy issues, neither by the NGA nor individual governors.

The NGA's Actions

Governors did not use the NGA much to address trade policy issues related to the TTIP. Rather, they spoke out individually or in small groups, which will be analyzed below. The NGA as the governors' most important nationwide representative body did not publicly release any letters, testimony or policy briefs on transatlantic trade and investment policy or the TTIP in particular. Trade policy is not a focus of the organization (US2-8) because governors' and thus the NGA's concern is with the "transactional" side of trade, meaning export promotion and investment attraction (US2-8). For example, one of the NGA's standing committees is exclusively devoted to economic development and commerce, and exports and investments do feature in the NGA's annual meetings. Furthermore, the NGA recently established an office specifically concerned with international trade and investment.

The emphasis on trade promotion over trade policy is also found in the NGA's policy position on commerce. This document touches upon innovation, entrepreneurship, exporting, investment promotion and taxes related to commerce, while containing only one brief reference to trade agreements: "Trade agreements that respect non-discriminatory state and local laws, regulations, and policies, and that affirm that all parties adhere to the rule of law, help create open, transparent, and fair global markets" (National Governors Association, 2015d).

The rather broad declaration on trade agreements speaks to the fact that the NGA relies on bipartisan support when taking a stand on an issue. Trade promotion is such a bipartisan topic, whereas trade policy is not. Not only is there division among governors on whether or not free trade agreements are good, there is also division over whether or not states should even become involved in trade policy in the first place. Two examples from the NGA's meetings highlight these rifts.

The first example is the only officially recorded mention of the TTIP at the NGA, which occurred at the organization's 2014 winter meeting. Republican Governor Bill Haslam of Tennessee spoke out in favor of the proposed agreement, saying that free trade agreements help exports, but his comment did not lead to any policy discussion at the time (National Governors Association, 2014). It was acknowledged, instead, that there was disagreement over the benefits of the agreement. This clearly shows the contrasting views on international trade agreements such as the TTIP among the governors from different parties and regions.

A second telling sample of the contrasting gubernatorial views on trade policy making in general can be found in a debate that occurred at the 2015 winter meeting, dealing with the role of states and the nature of intergovernmental relations in U.S. federalism. Republican Governor Asa Hutchinson of Arkansas opined that states as innovative leaders in a variety of policy fields were oftentimes constrained by the federal government and argued in favor of increased flexibility for the states. He specifically put this into the context of the tense international competition states are facing on the global marketplace. Governor Hutchinson found a few supporters among his colleagues but also faced direct criticism from Governor Tom Wolf, Democrat of Pennsylvania, who emphasized the need for federal regulation of the national and global economy. At this point, Hutchinson clarified his position on what areas the federal government should be involved in: "I mean, immigration. We need to have the federal government engaged in that. And trade policy, the global marketplace. It's the federal

government [that] needs to negotiate these trade rules. We don't do it individually by the state" (National Governors Association, 2015c).

This episode, while not representative, shows that even a governor strongly in favor of states taking on more responsibilities and being granted more flexibility readily acknowledges the predominance the federal government enjoys in international trade policy making. The debate did not continue at that point, but there are also no objections recorded to this statement. Therefore, it is likely that the NGA does not see the need for deep involvement in international trade policy making. Governors also might not see the efficacy of becoming publicly involved in trade policy: Earlier findings show that governors know that NGA testimony or policy statements do not help much in influencing Congress (Beyle & Muchmore, 1983a, p. 199).

Individual Governors' Letters

In the absence of public NGA activity on the TTIP, some governors did openly address the proposed agreement in public statements or letters to the federal government (see table 9 on page 93). Yet, the only letter offering a position on a perceived regulatory policy issue was from Governor Inslee of Washington. Governor Beshear of Kentucky acknowledged in his letter to congressional leadership that "there are complicating factors and critical negotiation points in any trade agreement that go beyond simple free trade concepts" (Beshear, 2014), but he focused squarely on economic development in his argument for the TTIP and other trade agreements.

Governor Inslee, addressing USTR Michael Froman in late 2014 regarding the TTIP, the TPP and the WTO Trade in Services Agreement, voiced concerns about three separate regulatory issues of free trade agreements (Inslee, 2014):

- He warns of a "'race to the bottom' for labor and environmental standards", which is most likely in reference to the TPP, not the TTIP. Many Southeast Asian countries party to the TPP typically have lower labor and environmental standards than Europe and the U.S.
- He urges the USTR to resist pressure from some trading partners to include a necessity test in trade agreements. The U.S. has so far stood firm on this (see discussion above, pages 112-112) and the topic has not surfaced in the TTIP discussions.
- He opposes the ISDS system because he sees it as too risky: While the U.S. has never lost a case³², it is possible that future cases could go differently for the U.S. He argues that with the ISDS mechanism, foreign companies enjoy greater rights than domestic companies by being granted access to extrajudicial panels.

The ISDS mechanism with its related issue of "greater rights" for foreign corporations, which was specifically mentioned as a key interest of the states and particularly the attorneys general (US1-6, US2-7, US3-8), touches upon the topic of state regulatory power. Many state officials interviewed for this study were concerned that their legislative achievements, based on local political, economic and social conditions and voter preferences, could be challenged too easily outside of the U.S. legal system (US1-4, US1-6, US1-7, US1-12, US1-22, US1-24, US2-2, US2-9, US3-8). While my interviews show state executive officials are aware of potential issues associated with the ISDS mechanism, Governor Inslee's letter nevertheless stands out because it is more often state legislators and not state executives who speak out in opposition to the ISDS system, a matter detailed in the following paragraphs.

³² The U.S. has settled cases, though, and has also incurred large litigation costs (Weiss, Akhtar, Murrill, & Shedd, 2015, p. 24).

Legislators' Letters and Policy Positions

State legislators, despite having no constitutional position in trade negotiations, have built up some expertise on international trade topics, both within nationwide associations and in individual state consultative bodies. Organizations such as the NCSL or the Maine Trade Policy Commission tend to use their letters to address trade policy issues and thus have different priorities than governors' letters, which were found to stress trade promotion topics.

The NCSL's Policy Positions

The premier association bringing together state legislatures is the National Conference of State Legislatures. The NCSL has taken a more detailed and stronger public stance on free trade agreements than the NGA, as was pointed out by multiple respondents, most of them state legislators (US1-6, US1-12, US2-1.2, US3-8). While the NCSL states its support for trade agreements, the policy resolution on trade is mainly a collection of demands for improving U.S. trade policy making. It includes calls for better collaboration between the USTR and state legislators and more resources for the USTR as well as opinions on specific trade policy issues such as the ISDS mechanism:

NCSL will not support Bilateral Investment Treaties (BITs) or Free Trade Agreements (FTAs) with investment chapters that provide greater substantive or procedural rights to foreign companies than U.S. companies enjoy under the U.S. Constitution. Specifically, NCSL will not support any BIT or FTA that provides for investor/state dispute resolution. (National Conference of State Legislatures, 2016c)

For a policy position to become an official resolution of the NCSL, it has to be approved by three-quarters of the committee members present (in the case of trade, the Labor and Economic Development Committee) and then, additionally, three-quarters of the full body (National Conference of State Legislatures, 2016a; also US2-1.2). Therefore, state legislators are sending a strong message of rejection to the federal government on the issue of the ISDS mechanism in trade agreements to the federal government. They can also use this general message as a tool in their communication with federal actors on specific issues. For example, in 2012, 125 state legislators signed an open letter opposing the ISDS mechanism in the TPP, which directly quoted from the NCSL resolution (Public Citizen, 2012).

Interviewees recognized and in several cases echoed this judgment with regards to transatlantic trade policy, considering the ISDS mechanism as a key subject for states in the TTIP. As detailed above, the proposed agreement envisions a system for companies to sue central governments over alleged discrimination by central or noncentral government regulation. The U.S. federal government is generally in favor of the ISDS system and has put it in numerous free trade agreements, including the TPP. For many state legislators interviewed, this posed serious threats to their work. They were concerned about potential challenges to state regulation on "hypothetically any issue" (US1-12) that corporations deem as trade barriers because companies might want to set precedents. One respondent said, "We jealously guard our state prerogatives to regulate within our communities. This is all about regulation and how we regulate within our communities" (US1-23). Having read a number of previous ISDS cases, one interviewee did see the danger that the same reasoning might be used against states one day (US1-24).

The establishment of extrajudicial panels is seen as a way to circumvent all three branches of state and federal government, especially the judiciary branch (US1-6). With such arbitration panels ruling on ISDS challenges, two issues arise: If a case is lost, state legislators face the prospect of having their own labor or environmental standards overridden by an outside judicial body (US1-22). Even though the U.S. has never lost a case (Office of the U.S.

Trade Representative, 2015b), litigation costs are high and the U.S. has settled cases before (Weiss et al., 2015, p. 24). So, even if an ISDS case is not lost, state officials worry that the federal government might ask states to reimburse them for the legal costs of the case (US1-6, US3-8; see also Hamilton, 2015, p. 10).

Especially the latter point shows that the discussion surrounding the ISDS mechanism is based on speculation so far, as the parameters of the specific mechanism in the TTIP have not been set. Nevertheless, it becomes clear that state legislators are strongly opposed to the ISDS system on the grounds of even *potentially* losing state sovereignty. Not all respondents were comfortable using the term sovereignty, while others were or even volunteered it when discussing the regulatory challenges perceived by the TTIP (US1-13, US2-5). One respondent put the issue in the broader context of safeguarding the democratic division of powers (US1-6), others used the term of fighting preemption (US3-4), keeping states' legal purview (US1-14) or protecting states' constitutionally guaranteed powers (US1-12).

No matter what term was used, state legislators have been concerned about specific transatlantic trade policy interests which are not directly related to trade promotion. This has led them to represent their interests towards the federal administration. Apart from the NCSL policy position, state legislators have become active and written letters to the federal government. Three groupings of state legislators will be highlighted in the following because of their engagement with the TTIP: The Maine Citizen Trade Policy Commission, the National Caucus of Environmental Legislators (NCEL) and the National Conference of Insurance Legislators (NCOIL).

Letters by the State Trade Policy Commissions

An institutionalized way for states to analyze and influence trade agreements is to set up dedicated commissions to deal with this issue. Only a very small number of states has done so: Maine, Massachusetts (not active), New Hampshire (terminated), Utah, Vermont and Washington. The Massachusetts trade commission was introduced by law but never sprang into action. A respondent familiar with the situation attributed this to the gubernatorial failure to nominate any staff for the commission (US1-7). In New Hampshire, a trade policy commission was in existence until 2011, before the TTIP was on the agenda. Therefore, only four states – Maine, Utah, Vermont and Washington – have legislative bodies explicitly designed to work on international trade topics. The focus of analysis will be on Maine, as it is the most active one regarding written statements to the federal level. The commission in Vermont has been involved in facilitating meetings with European lawmakers (see pages 140-142), while the committee in Washington is a good example of the use of state resolutions (see pages 124-131). In Utah, the commission does have the goal of monitoring trade policy initiatives at the federal level, but it is strongly focused on trade promotion. Also, it meets rather infrequently and currently lacks staff (US1-17), so there have been no public statements on the TTIP.

A look at the membership of the commissions reveals two groupings: In Utah and Washington, the commissions dealing with trade policy are made up solely of state representatives, state senators and state executive officials. In Maine and Vermont, there are additional members representing state business, environmental or labor groups. The commissions work in similar fashions but have different names:

- Maine: Citizen Trade Policy Commission
- Utah: International Relations and Trade Commission
- Vermont: Commission on International Trade and State Sovereignty
- Washington: Joint Legislative Oversight Committee on Trade Policy

As the names suggest, these are bodies designed to primarily deal with trade policy, not trade promotion. In reality, this might not always be the case, but the respective bodies were created by statute with the tasks to monitor and track international trade policy with a particular view to examine the potential effects on the respective states (Maine Legislature, 2004; Utah State Legislature, 2006; Vermont General Assembly, 2006; Washington State Legislature, 2003).

In Maine (Maine Legislature, 2009), Utah (Utah State Legislature, 2006) and Vermont (Vermont General Assembly, 2009b), the commissions have to be consulted before the governor binds the state to any international trade agreement. These provisions are largely symbolic because state governments have no say in approving or rejecting free trade agreements such as the TTIP in their entirety. They are, however, important for certain elements of international trade agreements, mostly pertaining to public procurement: “Today, procurement is really the only area where the U.S. has said, ‘We will go to the states and ask. It’s an opt-in. We’ll ask them if they would like to be part of this.’” (US1-6)

The procurement opt-in was a topic of state legislatures’ concerns in the early 2000s before the TTIP talks, when the U.S. was negotiating and signing multiple bilateral free trade agreements after the NAFTA. All across the country, states tried to pass requirements for the governor to consult with the legislature: Bills to this effect were introduced in California, Colorado, Iowa, Nevada, New York and Pennsylvania (cf. Hendrick, 2010) but were either not passed or vetoed by the governor. Along with Maine, Utah and Vermont, the states of Hawaii (Hawaii State Legislature, 2007), Maryland (General Assembly of Maryland, 2005), New Jersey (New Jersey State Legislature, 2009) and Rhode Island (State of Rhode Island General Assembly, 2007) passed bills requiring legislative consent before binding the states to international trade agreements. For the TTIP, these laws have not been a means of interest representation yet, as the deal has not been finalized. I will return to these provisions later (see page 153).

Apart from having to be consulted by the governor, the commissions’ mandates translate to public hearings, state resolutions and letters on international trade policy. At times, the commissions work together amongst each other or with the IGPAC. In its first annual report from 2008, before the TTIP was being negotiated, the commission in Vermont described the “Northeast Trade Policy Working Group” (Vermont Commission on International Trade and State Sovereignty, 2008, pp. 7-8) with members from Maine, New Hampshire (the now-defunct commission) and Vermont. The “group pledged to review options for improving federal-state communication” (Vermont Commission on International Trade and State Sovereignty, 2008, p. 7) and wanted to coordinate its outreach to the IGPAC and the USTR. As will be seen later, such coordinated outreach also happened on TTIP topics (see pages 140-142).

The commission in Maine has been highly engaged in transatlantic trade policy interest representation and specifically on the TTIP. It has fostered research on the TTIP, held a public hearing on the proposed agreement, testified at USTR stakeholder events and sent multiple letters to the USTR. The commission focuses on the effects that trade agreements might have on the regulatory powers of the state and only tangentially considers economic effects on the state. In Maine, the three most prominent issues brought up regarding the TTIP are the ISDS mechanism, public procurement and regulatory cooperation.

On the ISDS system, the Maine Citizen Trade Policy Commission has repeatedly represented state interests directly at the federal government. It urged the USTR in a 2014 letter to have an open public consultation on the ISDS mechanism (Maine Citizen Trade Policy Commission, 2014e) because of its flaws in the TTIP: The commission holds that ISDS panels are not democratically selected, do not take into account the public interest when judging on investors’ rights and are costly for U.S. taxpayers. These concerns were repeated in a letter to

the Ways and Means Committee of the U.S. House of Representatives (Maine Citizen Trade Policy Commission, 2014d), which is the committee responsible for international trade negotiations.

The Vermont Commission on International Trade and State Sovereignty also addressed a letter to the USTR on the ISDS system, voicing state-specific concerns. Commission members pointed out that Vermont was set to introduce a “publicly-financed single-payer health care system” (Vermont Commission on International Trade and State Sovereignty, 2014a), which could potentially be challenged under international trade rules such as the GATS or the TTIP because it might negatively affect private insurance companies.³³ They expressed their concern over potential challenges by multinational corporations and called for more consideration of public health issues in the TTIP negotiations. The ISDS system has been a longstanding issue of the trade policy commission in Vermont, given that its very first annual report already mentioned possible negative effects (Vermont Commission on International Trade and State Sovereignty, 2008, pp. 11-12).

Every two years, the commission in Maine has a report prepared by outside researchers that analyzes a particular international trade policy issue from the state’s perspective. In 2014, the study was conducted on the TTIP, titled “Maine Agriculture and Food Systems in the Transatlantic Trade and Investment Partnership” and written by Karen Hansen-Kuhn of the Institute for Agriculture and Trade Policy and John Piotti of the Maine Farmland Trust. This study, too, warned of the dangers of the ISDS mechanism but then emphasized the topics of public procurement and GIs.

With the EU’s goal of opening up all state and federal procurement markets in the U.S, the report argues that there is the chance “that bidding criteria designed to favor local foods or local jobs could be deemed illegal under the trade deal” (Hansen-Kuhn & Piotti, 2014, p. 12). Since local farm-to-school programs, for example, are a major topic for the Maine agriculture industry, this issue resonated with state legislators. In a letter to the USTR, the Maine Citizen Trade Policy Commission specifically asks whether farm-to-school programs would be covered in the TTIP agreement (Maine Citizen Trade Policy Commission, 2014g).

Another issue raised in the report and subsequently with the USTR is the issue of geographical indications. Maine’s policy assessment was inconclusive on the effects of GIs on Maine’s regulatory and economic environment. While the authors expressed understanding for some protections of artisan agricultural products, there were concerns about what names could still be considered generic. Therefore, the report recommended a public debate on GIs to gain more information on what the potential effects might be (Hansen-Kuhn & Piotti, 2014, p. 22). The members of the Maine Citizen Trade Policy Commission promptly asked the USTR for a list of GIs in their letter (Maine Citizen Trade Policy Commission, 2014g).

Touching upon the controversial issue of regulatory cooperation, the Maine report furthermore addressed food safety and GMO labeling (Hansen-Kuhn & Piotti, 2014, pp. 7-11). The authors refer to the discussion of a downward shift in food safety standards resulting from regulatory cooperation. Some standards are higher in the U.S., some are higher in the EU and there is concern that “the proposed chapter on regulatory coherence could drive regulatory standards down to the lowest common denominator” (Hansen-Kuhn & Piotti, 2014, p. 9). For Maine, this could mean a potential challenge to its pesticides regulation, which is higher than at the U.S. federal level. Similarly, GMO labeling in Maine is stricter than the U.S. federal government and industry groups would prefer. While this specific GMO labeling

³³ The single-payer universal health care plan was abandoned by Vermont’s governor about five months after the letter to the USTR because the necessary related tax increases were deemed to be too high (Gram, 2014; Shumlin, 2014).

debate has been nullified by the federal government stepping in³⁴, the general concern remains that a regulatory downward shift in food safety standards endangers Maine's ability to regulate in the local public interest.

The 2014 report thus addresses complex and highly technical policy issues related to the TTIP's regulatory effects specific to Maine that are not directly related to trade promotional topics. The Maine Citizen Trade Policy Commission's push for such a detailed assessment and its later engagement with federal-level actors shows the involvement of the commission in transatlantic trade policy. State legislators got informed about the TTIP and in turn represented special interests at the USTR as the federal institution responsible for trade negotiations.

It has been argued that the Maine Citizen Trade Policy Commission has had only limited results (Burns, 2015). On a broader level, it has to be questioned whether such interest representation via legislative commissions and letters is effective. As stated at the outset of this discussion, the importance of letters is recognized and valued by most respondents. More specifically, however, a distinction has to be made on what addressing the federal level via written statements can achieve. Based on my empirical research, the informational and agenda setting aspect of letters seems to be stronger than the actual policy impacts.

Interviewees, as has been mentioned, stressed their conviction that the USTR is well aware of the most crucial issues facing the states in international trade policy such as the ISDS mechanism and procurement. U.S. federal and EU officials have confirmed that they know about these issues being put forth through the IGPAC and repeated policy resolutions and letters by state legislators (EU2-3, US3-2, US3-3, US3-5). It is possible, then, for state officials to reach the federal level with their specific interests. However, there are difficulties at times: As an example from Maine, the 2014 letter to the USTR mentioned above only garnered a response from the USTR after Maine state legislators had asked the Maine congressional delegation to intervene (Maine Citizen Trade Policy Commission, 2014b, 2014h; Office of the U.S. Trade Representative, 2014b). Even then, the response from USTR was rather generic, not diving into the specific requests put forth by the commission members in Maine.

The occasional difficulties in reaching the USTR speak to the larger issue that some respondents pointed out, namely a lack of impact with federal officials. It is important to reiterate what was discussed in the analysis of the IGPAC's successes: States' positions have to align with other actors' positions in order to lead to actual changes in policy. Interviewees readily acknowledged that just because the USTR receives state legislators' letters about the problems of the ISDS system does not mean that the administration is going to scrap this mechanism from the TTIP. After all, the dominance of the federal level in trade policy making was well-known among respondents. If state officials want to represent their transatlantic trade policy interests, it is therefore not sufficient to write letters to the administration and to Congress, leading some state legislators and executive officials to seek direct personal contacts at the federal level (see pages 131-135).

The NCEL's Letters

Besides trade commissions in the legislatures and the all-encompassing NCSL, there are other bodies for state legislators to become voluntary members of and represent their interests. The National Caucus of Environmental Legislators (NCEL) and the American Legislative Exchange Council (ALEC) are two such institutions that have become active in transatlantic trade policy interest representation.

³⁴ A law requiring GMO labeling was signed by Maine's governor in 2014 but has not been put into effect yet (Wilson, 2014). Since the law was passed, the federal government has enacted its own GMO labeling law, which supersedes state laws (Blake, 2016; Charles, 2016; Wheeler & Carney, 2016).

The NCEL was founded in 1996, is made up of about a 1,000 state legislators or staff from all 50 states and works primarily in the field of environmental policy, such as climate, energy or chemical issues. It is bipartisan but considers itself a progressive organization in the field of environmental policies (National Caucus of Environmental Legislators, 2016a). As such, it has provided resources and fostered information exchange among state legislators on trade agreements (US2-2) because of the potential effects of the TTIP on states:

Progressive state environmental policies, and the very authority of states to adopt environmental regulations that go beyond the minimum standards of federal law, or provide protections and guidance where no federal standards exist, could be impacted by two pending international treaties [the TPP and the TTIP]. (National Caucus of Environmental Legislators, 2016b)

Based on this judgement, the NCEL has actively sought to represent state legislators' trade policy interests. NCEL members "want to know that there are going to be protections in place" (US2-2) in the TTIP for environmental policies. Thus, in a 2014 letter to the USTR, 50 NCEL members laid out their in-depth comments on environmental issues in the TTIP (National Caucus of Environmental Legislators, 2014). For example, they are worried the TTIP might inhibit state governmental policies designed to foster alternative energy sources and they offer concrete policy proposals to look for "options for using the TTIP to restrict fossil fuel subsidies" and, with a view to the ISDS mechanism, to "protect renewable energy programs from challenges under trade rules" (National Caucus of Environmental Legislators, 2014). Clearly, the state legislators use the platform of the NCEL and the means of a letter to the USTR to represent their transatlantic trade policy interests. Individual members of NCEL have also used media articles to further their positions (Garbe, 2015; Isenhardt, 2015; Provost, 2015).

Generally, letters to the USTR or to members of Congress can have an impact by giving federal officials a secure backing of their position from the states (US2-2): Especially if letters are signed by a large number of legislators, federal officials can point to strong state-level support when having to defend their position. However, on the specific topic of trade, the impact has not been felt. One respondent familiar with the NCEL's work thought their work was being ignored (US1-12). As an example, the interviewee described how the NCEL had scheduled a meeting with White House officials in late 2015 to discuss the topics of energy and trade. But for unknown reasons, the trade item was scratched from the agenda, leaving NCEL members unable to offer their views on the TTIP. This shows the limitations related to a lack of formal access to federal-level decision makers.

When reading the NCEL's goals and resolutions, it is helpful to remember those positions taken by the conservative legislators' group ALEC (see page 97). The ALEC's resolution focused on job creation, with the only policy-related item being the call for strong intellectual property rights. This could be a result of the corporate influence at the ALEC, as intellectual property rights are a major concern for pharmaceutical and technology companies in the U.S. While some ALEC members might have concerns about the ISDS mechanism, this was not considered a big issue within the federalism and international relations task force that drafted the policy position (US2-10). Its members are generally in favor of free trade and think that potential challenges to state regulatory powers can be resolved within the U.S. intergovernmental system.

The comparison of the NCEL's and ALEC's activities highlight the different approaches taken by progressive and conservative state officials, which will be explored in more detail later (see pages 178-179) and in the concluding chapter 8. The NCEL is less focused on trade promotion issues compared to the ALEC, whereas ALEC emphasizes economic development topics over trade policy issues. Both organizations use resolutions or letters addressed to

federal-level actors in order to make their voices heard on the TTIP. To underline their position, members from both organizations additionally seek personal contacts to these federal actors.

As was mentioned but not elaborated earlier, the NCSL policy position on trade called for better coordination between the USTR and state legislators. This demand is closely related to the prior discussion of states' push to maintain their regulatory authority: State legislators seek to alert the federal government that their laws and regulations are affected by international trade rules and that the administration needs to consider states' views on these effects. The NCSL's position reads:

NCSL urges the Office of the United States Trade Representative (USTR) to collaborate with state legislatures as well as governors about trade policy that may affect state practices and policy on procurement, investment, services, and any action that would remove a foreign entity from state authority. USTR should not bind a state to an international procurement agreement without formal consent from the state legislature. (National Conference of State Legislatures, 2016c)

This passage draws a connection between the national trade policy-making process and the effects of international trade negotiations: Because agreements such as the TTIP are deep FTAs that touch upon states' prerogatives, it is necessary for the federal government to account for the states' perspectives. The resolution furthermore underlines the notion that states do not primarily seek to bypass the federal government in trade policy but rather strive for coordinated interest representation with the administration.

The NCOIL's Letters

The National Conference of Insurance Legislators provides more detail on state sovereignty in a policy resolution specifically on the issue of state-federal consultation on trade policy. The organization's identity is partly rooted in the opposition to any preemption of state insurance authority (National Conference of Insurance Legislators, 2016a). The members, mostly from states' insurance committees, addressed international trade in a 2014 resolution, explicitly mentioning the ongoing TTIP negotiations. With regards to the ISDS mechanism, it stated that "conflict resolution provisions of international trade agreements have significant implications for state sovereignty" (National Conference of Insurance Legislators, 2014).

The NCOIL resolution, however, focused less on the specifics of the ISDS system than on the general issue of state sovereignty. The insurance legislators demanded better state-federal dialogue to safeguard their authority: They called for "expanded involvement" for the states in international trade negotiations and better information sharing on behalf of the USTR with "reasonable opportunity for meaningful input by the states" (National Conference of Insurance Legislators, 2014).

These demands for better state-federal consultations are based on the NCOIL's assessment that the current process has serious flaws: According to the resolution, "the voice of state legislators is largely unheard in the context of international trade despite the consequences borne by states as a result of previous international trade agreements" (National Conference of Insurance Legislators, 2014). Furthermore, the "NCOIL has, on a number of occasions, urged the USTR to expand state legislative participation on the Intergovernmental Policy Advisory Committee (IGPAC), but to date the USTR has not done so" (National Conference of Insurance Legislators, 2014). As an example of this, the NCOIL had already called for an expanded inclusion in the IGPAC two years earlier in a resolution addressed to the USTR (National Conference of Insurance Legislators, 2012).

The NCOIL thus takes the TTIP negotiations to highlight more broadly the "Principles of State Sovereignty in International Trade", as the resolution is titled. State legislators' wish

to be heard in the federally dominated trade policy-making procedure is also reflected in the NCSL's resolution and the work of the Maine Citizen Trade Policy Commission and the NCEL. By pointing out those areas in which they see the TTIP encroaching on state regulation, legislators in those bodies are representing their specific interests and thus inserting themselves into transatlantic trade policy making.

Overall, state letters and policy positions are, like the IGPAC consultations and reports, examples of states' multilayered interest representation in a coordinated setting (see table 5 on page 42). Governors and legislators specifically address actors at the federal level, thus establishing a state-federal communications process. These letters can be in harmony with federal negotiation goals such as governors' support for the administration's job creation efforts via trade agreements (see previous chapter 5). But letters can also be used to criticize the federal government, for example when legislators point to the potential negative effects of the ISDS mechanism or complain about the lack of state-federal coordination on trade policy.

State Resolutions

Like letters and state associations' policy positions, state resolutions contribute to a framework of coordinated multilayered interest representation. Unlike letters and policy positions, state resolutions are not considered to have a high impact (US1-24, EU2-2; see also Gollob & Leckrone, 2012). They are formal, nonbinding legislative tools typically declaring the position on a trade issue by one or both houses of a state legislature and addressed to different federal actors. They rarely prompt answers from the federal government and thus merely establish a one-way line of communication from states to the administration. Nevertheless, studying state resolutions on the TTIP is still important in answering the research questions because any engagement by state legislatures in the field of transatlantic trade policy is indicative of states' interest representation efforts in light of the constitutional dominance of the federal level. Originating from within a state's elected legislative body, they reflect a state legislature's wish to state their interests in the official legislative record and to thus shape the agenda (Gollob & Leckrone, 2012).

As already introduced in the previous chapter 5 (see pages 96-97), a number of the state resolutions on the TTIP used economic development issues to support the trade deal (see table 10 on the following page): Of the 17 state resolutions on the TTIP that I found, seven documents from five states (California, Florida, Georgia, Illinois and Washington) declared their support with the expectations of more exports and jobs. Ten resolutions from a total of six states (Arizona, Illinois, Maine, Michigan, Vermont and Washington) were rather critical of international trade deals. It is important to note that of those six states, three have active trade policy commissions (Maine, Vermont and Washington), whose members were involved in introducing the resolutions. This once again highlights the strong engagement of those commissions on transatlantic trade policy issues.

Table 10. State resolutions on the TTIP and/or U.S. international trade policy making

State chamber(s)	Bill no.	Introduced	Passed	Sponsorship	Position on the TTIP	Main concerns of the resolution
Maine legislature	H.P. 1392	March 15, 2012	March 19, 2012	Bipartisan (5 R, 3 D)	Call for transparency*	Lack of transparency of negotiations; lack of state consultation
Maine legislature	H.P. 1129	June 6, 2013	June 7, 2013	Bipartisan (5 D, 3 R)	Call for transparency	Lack of transparency of negotiations; lack of state consultation; weakness of IGPAC and SPOC system
California Senate	S.R. 20	September 11, 2013	September 12, 2013	Bipartisan (3 R, 4 D)	Pro	Trade promotion/positive economic effects of the TTIP
Georgia House	H.R. 1280	February 6, 2014	March 6, 2014	3 Republicans	Pro	Trade promotion/positive economic effects of the TTIP
Florida Senate	S.R. 1758	April 23, 2014	April 25, 2014	1 Republican	Pro	Trade promotion/positive economic effects of the TTIP
Vermont Senate	S.R. 12	April 30, 2014	n/a	1 Democrat	Call for transparency	Lack of transparency of negotiations; lack of state consultation
Vermont House	H.R. 23	May 2, 2014	n/a	Bipartisan (1 D, 1 P)	Call for transparency	Lack of transparency of negotiations; lack of state consultation
Illinois House	H.R. 11	January 14, 2015	May 13, 2015	Bipartisan (3 R, 2 D)	Pro	Trade promotion/positive economic effects of the TTIP
Washington Senate	S.J.M. 8001	January 19, 2015	n/a	5 Democrats	Contra*	ISDS mechanism
Washington Senate	S.J.M. 8003	January 20, 2015	n/a	5 Democrats	Call for transparency and better consultation with states*	Lack of transparency of negotiations; lack of state consultation; weakness of IGPAC and SPOC system
Washington legislature	H.J.M. 4007	February 9, 2015	n/a	Bipartisan (1 R, 1 D)	Pro	Trade promotion/positive economic effects of the TTIP
Florida Senate	S.R. 1640	April 14, 2015	April 22, 2015	1 Republican	Pro	Trade promotion/positive economic effects of the TTIP
Illinois House	H.R. 877	November 24, 2015	n/a	1 Democrat	Contra*	Loss of jobs; lack of transparency of negotiations; ISDS mechanism

Illinois Senate	S.R. 1224	December 4, 2015	n/a	1 Democrat	Contra*	Loss of jobs; lack of transparency of negotiations; ISDS mechanism
Michigan Senate	S.R. 127	December 16, 2015	n/a	Bipartisan (2 R, 8 D)	Contra*	Loss of jobs; lack of transparency of negotiations; ISDS mechanism
Florida Senate	S.R. 1776	February 23, 2016	March 4, 2016	1 Republican	Pro	Trade promotion/positive economic effects of the TTIP
Arizona House	H.M. 2001	May 5, 2016	n/a	5 Democrats	Contra*	Lack of transparency of negotiations; ISDS mechanism

Legend: Blue = Democratic majority; Red = Republican majority; D = Democrat(s); R = Republican(s); P = Progressive; * = These bills concern the TPP and similar trade deals (Arizona House of Representatives, 2016; Illinois House of Representatives, 2015b; Illinois Senate, 2015; Michigan Senate, 2015; Washington Senate, 2015b, 2015c) or, in one instance “significant foreign trade policy agreements such as the Trans-Pacific Partnership Agreement” (Maine House of Representatives, 2012), which is taken to include the TTIP.

Sources: State legislatures’ websites

In contrast to the rather positive export and jobs expectations raised in some states, there are also legislators whose rationale for state resolutions seems to be the wish to issue a warning. A group of Illinois senators, for instance, introduced a resolution painting a bleak picture of past U.S. trade deals: “The growing trade deficits, driven by the North American Free Trade Agreement (NAFTA), China’s accession to the World Trade Organization, and the U.S.-Korea Free Trade Agreement, have displaced 700,000 jobs, 3.2 million jobs, and 75,000 jobs respectively” (Illinois Senate, 2015). The resolution also links the loss of manufacturing jobs to free trade agreements. Similar language is used in a resolution introduced to the Michigan Senate (Michigan Senate, 2015), a text which also criticizes that trade deals might lead to weaker labor and environmental regulations and weaker governmental health care provisions and that there is a lack of interest representation for workers, farmers, small and medium-sized enterprises and families. Illinois’ resolution stresses the strength of EU-U.S. relations as well as EU-Illinois relations and acknowledges that the TTIP might provide better market access to the EU for Illinois. Nevertheless, the resolution then goes on to call for fast track authority that secures good health and work protections and ensures state powers in regulatory policies (Illinois House of Representatives, 2015a).

The latter point of ensuring state regulatory powers is the major point of concern in many of the state resolutions critical of international trade agreements. These resolutions barely mention any economic statistics but rather criticize that past trade negotiations “have failed to meaningfully consult with the state on the far-reaching effect of trade agreements on state and local laws” (Washington Senate, 2015c), that “federal trade negotiators from both political parties over the years have failed to operate in a transparent manner” (Maine House of Representatives, 2013) or that the TTIP “could override Vermont’s constitutionally guaranteed authority to pass laws and implement policies on a wide range of domestic issues” (Vermont Senate, 2014).

Overall, the topics addressed in all resolutions critical of the TTIP are similar and reflect long-standing issues that were also expressed via letters and state associations discussed earlier in this section. These issues are:

- The negotiation process lacks transparency.
- Negotiations documents are kept secret.
- Fast track authority does not allow for a constitutional review process.
- States are not included in any meaningful discussion with the USTR.
- States' rights and legislation could be undermined by the ISDS mechanism which gives too much power to (foreign) corporations.

State legislatures thus take a clear stance on international trade policy making in the U.S., point out specific flaws they perceive in the policy-making process and comment on current negotiation procedures. The ISDS mechanism with its perceived losses of regulatory authority for states is of particular concern. As one example, the Michigan Senate writes:

In NAFTA and all but two of the U.S. trade deals that followed, special legal rights for foreign investors, known as 'investor-to-state dispute settlement' or ISDS, were included that allow foreign firms to bypass state and federal courts and to challenge state and local laws, regulations, and administrative and judicial decisions in international tribunals. (Michigan Senate, 2015)

It has to be noted that many of the resolutions primarily address the TPP and "similar trade deals", which can encompass the TTIP. Ten resolutions specifically address the TTIP, seven of which are the pro-TTIP resolutions focused on trade promotion. The case of Maine is therefore an especially informative one because here, the state legislature has passed, and not only introduced, resolutions criticizing the current mode of state-federal consultations on international trade policy. It has done so on both major trade agreements of the Obama administration, the TTIP and the TPP.

Maine was early in touching upon international trade issues. In 2012, a resolution mentioned the TPP and in 2013 the TTIP. Even before this, the legislature passed a joint resolution criticizing the present form of state-federal consultation mechanism on international trade policy. In this resolution, the senators and representatives assert:

[U]nder current trade rules, states have not had channels for meaningful communication with the United States Trade Representative, as both the Intergovernmental Policy Advisory Committee on Trade and the state point of contact system have proven insufficient to allow input from states and states do not always seem to be considered as a partner in government. (Maine House of Representatives, 2011)

With its rebuttal of the existing measures of state-federal consultations, the resolution text is an updated confirmation of the weak assessments the IGPAC and the SPOC system have received in previous scientific and policy-based literature.

The 2011 Maine resolution is a highly detailed and policy-oriented document with concrete proposals for improvement, as legislators suggest creating a new state-federal commission for trade policy and call for Congress to fund a research center to improve state-level trade and FDI data provision. These proposals, however, did not lead to any policy action at the federal level and can therefore be found again in Maine's resolution of 2013. Two years later, the legislators still lament the lack of transparency and consultation with the federal government. However, instead of demanding a state-federal commission for trade policy, the resolution now talks of

a new middle ground approach to consultation that meets the constitutional requirements for treaty review and approval while at the same time allowing the United States Trade Representative adequate flexibility to negotiate the increasingly

complicated provisions of international trade treaties. (Maine House of Representatives, 2013)

Again, this study is not concerned with whether the claims on either economic or intergovernmental issues are right or wrong. What can be shown, though, from the qualitative content analysis of the state resolutions is a preoccupation with the state-federal relationship and specific transatlantic trade policy issues such as the ISDS mechanism. Those states with active trade policy commissions, namely Vermont, Washington and especially Maine, use state resolutions to represent their interests on the TTIP. Those states' legislatures clearly recognized potential areas where they would be affected, identified risks and demanded improvements to the intergovernmental consultations available in the U.S. federal system. A respondent with knowledge of the trade commission in Utah, the only other state with a trade commission, stressed that its members were also keen on monitoring international trade policy but acknowledged that the commission only meets on an ad-hoc basis and had focused on the TPP (US1-17).

The previous analysis has shown that intergovernmental issues are a key concern for legislators, which they voice not only in letters or via their associations but also in formal resolutions. However, it has to be noted that most of the resolutions critical of international trade deals did not pass the chambers. Only Maine passed resolutions touching upon the TTIP and its critical points. For those resolutions using trade promotion arguments to support the TTIP, six out of seven did pass the state chambers. So, what might explain why some states introduce resolutions on international trade deals and what might account for their passing?

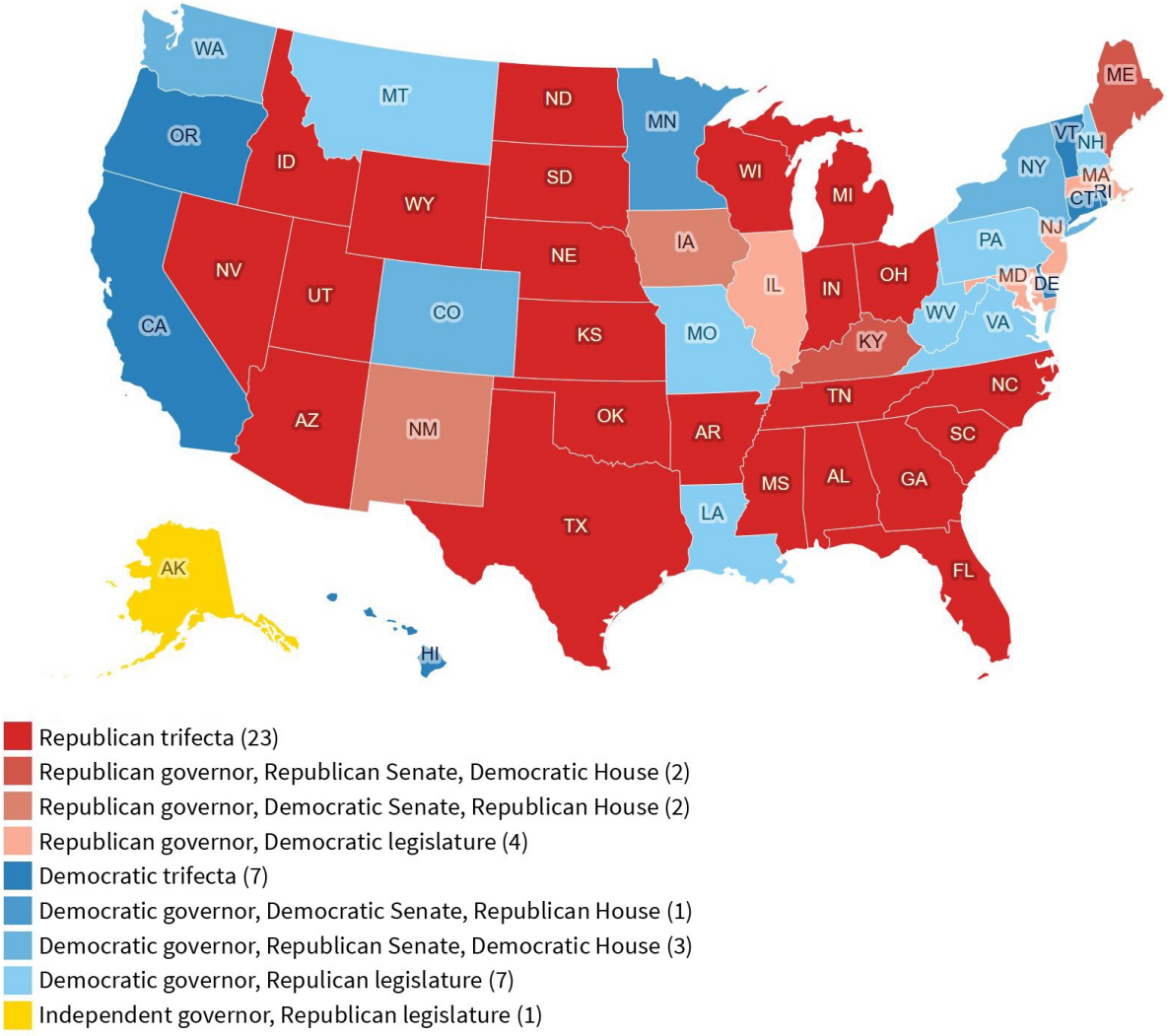
Ideology and partisan politics are one important explanation for the content and success of the state resolutions. The resolutions are indicative of the blurring of party political lines on trade policy, which has only occurred recently. There used to be a rather clear division: The Republican party has traditionally been a staunch defender of free trade (Ashbee & Waddan, 2010, p. 258), whereas Democrats have historically taken a protectionist stance, even though there are pro-free trade politicians within the Democratic party, led prominently in the past decades by Presidents Clinton and Obama (Destler, 2016). Today, this division no longer holds true (DiSalvo & Kucik, 2015; Helling, 2016; Lind, 2016): Many Republicans support protectionism in order to safeguard U.S. jobs, which has them in alignment with many left-leaning Democrats, who oppose free trade deals also because of social and environmental concerns. Yet, surveys have found that Democrats view the effects of free trade deals favorably, whereas Republicans view them unfavorably (Jones, 2017; Stokes, 2016). More specifically, Democrats support the TTIP more so than Republicans do (Pew Research Center, 2014b, p. 15), which is also true for the NAFTA (Stokes, 2017).

The historical party political division and its modern unraveling are both visible in the state resolutions. For one, supporters of free trade agreements, in this case the TTIP, have successfully won backing in their chambers: Only one pro-TTIP resolution did not pass and only one state passed critical resolutions. This confirms the continued overall U.S. posture of favoring free trade (Pew Research Center, 2014a; Stokes, 2015).

Looking at those resolutions using trade promotion arguments to speak out in support of the TTIP, in Florida and Georgia, the pro-TTIP bills were sponsored by Republicans in Republican dominated chambers in strongly Republican states (see map 5 on the following page; also map 6 on page 139). It seems as if the state resolutions in these two states hark back to the historical party stance of Republicans and Republican voters' focus on economic growth. The combination of conservative politicians in states relatively close to Europe can serve as an explanation for the state resolutions. Florida as one of the biggest economies in the U.S., with a strong agricultural sector and high exports to and imports from Europe (see

annex 1), has an additional incentive to use economic development as a reason to support the TTIP.

Map 5. State partisan composition before the 2016 elections



Source: National Conference of State Legislatures (2016d)

Economic considerations might also be the main reason for California and Illinois to pass resolutions favoring the TTIP. These states show the limitations of using only traditional party political explanations: Both resolutions were sponsored by a bipartisan group of legislators, indicating the blurring of party political alliances. Furthermore, the resolutions were passed in Democratic controlled chambers in Democratic states, which by historical accounts should lead to protectionist language, yet it did not (Illinois’ resolutions contained some reservations on trade deals, but its overall stance was informed by perceived economic benefits and resulted in a supportive message). Trade-related concerns must have overridden old party positions: California and Illinois are two of the five biggest state economies in the U.S. (ranking first and fifth in gross domestic product and labor force, for example) and have internationalized economies with deep transatlantic trading ties. There are high levels of exports to the EU as well as employment opportunities created by European FDI (see annex 1). These economic factors might help explain why the California Senate and Illinois House were able to pass the resolutions and why they were in support of the TTIP.

For California, it is also interesting to note that the bill in support of TTIP was borne out of the California-European trade select committee. This special committee, active from 2005 to 2013, had held a meeting with stakeholders from the state and abroad and came to the conclusion that an agreement between the U.S. and the EU would be beneficial for California. Among those stakeholders in support of the bill were the Bavarian State Department for Economic Affairs, the British American Business Council of Northern California, the Consul General of Belgium in California, the Consul General of Luxembourg and the Government of Catalonia/ACCIO in Silicon Valley, Trade and Investment Agency (California Senate, 2013b). A respondent with knowledge of the select committee's work named the passing of the pro-TTIP resolution as one of the committee's biggest accomplishments (US1-11). The interviewee emphasized that committee members had met repeatedly with consuls general from the EU as well as private sector representatives and, after these talks, were convinced of the economic benefits of the TTIP for the state. Thus, the California legislature was pushed to action by a meeting with European stakeholders from the national and regional governmental level and from the business side.

Turning to the states with resolutions critical of the TTIP, some of the past party political divisions also still hold: All the resolutions critical of the TTIP are sponsored by Democrats or bipartisan sponsorship groups that are dominated by Democrats and/or Progressives, with one bipartisan resolution evenly split with one Democratic and one Republican sponsor. They largely come from progressive-leaning states in which voters' preferences are likely inclined to be in opposition of free trade deals. These partisan factors alone do not explain a critical stance, however, as exemplified by the passed pro-TTIP resolutions in California and Illinois and by surveys showing Democrats' support for the TTIP.

There might be other reasons at play that add to partisan considerations. For example, Michigan with its manufacturing industry and legacy has been a major focal point for those criticizing free trade agreements for eliminating jobs. While an exact evaluation of free trade agreements such as the NAFTA is difficult to make (Cooper, 2004; Hufbauer & Schott, 1993), the political rhetoric in Michigan has been characterized by critical attitudes towards free trade (Selweski, 2016). Neighboring Illinois reflects on this trend, too, in its two pending TTIP resolutions, making the state a special case with one pro-TTIP resolution passed and two anti-TTIP resolutions introduced.

That leaves the question of why these resolutions criticizing parts of the TTIP or the surrounding negotiations did not pass. In Illinois, as mentioned before, there are competing factions within the legislature. The same goes for Washington: The legislature's pro-TTIP resolution was not passed but neither were the Senate's two anti-TTIP resolutions. In Arizona and Michigan, the proposed resolutions critical of the TTIP were introduced by Democrats into Republican-led chambers, so political reasons might explain the lack of support.

In Democratic Vermont, it would seem a resolution criticizing the TTIP would be able to pass, as it might align with most voters' preferences. But interviews with lawmakers familiar with the situation in Vermont revealed the difficulties in passing the resolution (US1-8, US1-25). The resolution was deemed to take too negative a stance towards trade, which led pro-business legislators to oppose the measure. The strong language was apparently pushed by a single member of the trade commission, which led to discussions over support for trade in general and not the specific trade policies of the TTIP. In the end, the economic development committee did not pass the resolution because it did not want to seem as if it was opposing international trade altogether.

Lastly, the timing of the resolutions is also to be noted: The passed resolutions tend to originate early on in the TTIP process, within roughly 15 months of the joint EU-U.S. announcement (the Florida Senate has since passed resolutions with similar language each year). Illinois, which has the most critical of the passed resolutions, passed their text only in

2015. The other resolutions in opposition to TTIP all came around or after 15 months of the start of the negotiations. Vermont's call for transparency was first among those in April 2014, at which point California, Florida and Georgia had recently passed their pro-TTIP resolutions. The timing gap is not enormous and should therefore not be overstated, yet it is important to keep in mind that opposition to the TTIP did not develop in the U.S. immediately after the start of the negotiations. Jack Ewing, a reporter for *The New York Times*, in fact, noted in late 2012 shortly before the official announcement of the negotiations that there was almost no political opposition to the proposed free trade agreement (Ewing, 2012).³⁵ Therefore, the longer state legislatures waited with resolutions on the TTIP, the more critical they seemed to have become, similar to surveys showing this shift in public opinion as well (Barkin, 2016; Bluth, 2016, p. 15; Pew Research Center, 2014a, p. 5).

Personal Contacts to the Administration and Congress

State officials do not only reach the administration in writing but also personally: Respondents reported that states have direct contacts to the administration and to Congress, with more interviewees stressing their relations to federal government than to Congress. These personal linkages are by far the most important access points for state officials to voice their interests on transatlantic trade policy issues. More specifically, respondents were connected to the USTR and the congressional delegation.

The formal and constitutionally mandated consultation between state officials and the USTR via the IGPAC has already been introduced above. In addition to this connection, some state officials seek and cultivate their own individual networks to USTR officials, which is another instance of coordinated multilayered interest representation (see table 5 on page 42). This is true for both state executive officials and elected state legislators. One respondent from the executive mentioned frequent exchanges with an official at the USTR, whom the interviewee has personally known for a long time and can call with questions or comments, including on trade negotiations (US1-16). Another official from a governor's office seconded this by describing a good working relationship with USTR attorneys outside of the IGPAC on international trade disputes (US1-24). State legislators have also testified at USTR stakeholder events (US1-6, US1-7; Office of the U.S. Trade Representative, 2013c; The Somerville News Weekly, 2015; Treat, 2014). Furthermore, a state legislator also reported discussions with USTR staff on chemicals regulation and regulatory cooperation in the TTIP (US1-6).

For confidentiality reasons, respondents did not provide details on specific policy issues raised with USTR officials. However, their engagement with federal actors outside of the IGPAC is testament to the active, coordinated interest representation state officials seek on transatlantic trade policy. Even though the constitution does not foresee a direct role for state officials in international trade negotiations, some of the states still try to put forth their state-level perspectives directly with federal governmental actors. The USTR is a prime target for this interest representation because this office oversees trade agreement negotiations such as the talks for the TTIP. Once a deal is brokered, however, it is the U.S. Congress which votes on the negotiated agreement. Therefore, state legislators address both actors and put different emphases on each actor depending on the negotiation stage (US1-12).

Individual State Officials' Federal Contacts

There were only few formal congressional debates that offered states a chance to make their voices heard on the TTIP. Between 2013 and 2016, the U.S. Senate and House of Representatives each held two hearings with a TTIP focus (see table 1 on page 27). Only one

³⁵ The author did mention quarrels about geographical indications, which have been addressed in this section as well.

contained testimony from a U.S. state, a written statement by Sharon Treat from the Maine Citizen Trade Policy Commission, which was submitted by a member of Congress but actually addressed a TPP negotiation round from two years ago, and not the TTIP (U.S. House of Representatives Committee on Energy and Commerce, 2013a; 2013b, pp. 166-171). Most witnesses at these hearings stemmed from national business associations and nongovernmental groups, which is not to say that these groups are closed to state interests. State officials and representatives from business and civil society groups exchange views on topics of national importance and shape each other's preferences. So, if someone from the National Pork Producers Council or from the Center for International Environmental Law testifies on the TTIP, some of their positions will be aligned with state officials' positions. However, for this research, I am more concerned with how state governmental actors represent their interests directly to other governments without going through private organizations. Only few respondents mentioned linking up with national or international lobby groups, whereas direct connections to Congress were seen as quintessential.

The congressional delegation was often named as the most crucial and influential link state officials, especially state legislators, have to the federal government (EU2-2, EU2-4, US1-25, EU2-7, US1-14, US1-20, US3-2, US1-6, US1-12, US3-6, US1-8, US2-3, US2-5, US2-10, US1-23, US1-26). These statements confirm earlier findings on the significance of the congressional delegation for states (Fry, 2009, p. 306; Gollob & Leckrone, 2012; Kincaid, 1999, p. 122; O'Neill, 1990, p. 188). Respondents from states with small congressional delegations were especially mindful of the relatively easy access to and potential impact on their members of Congress (US1-6, US-18, US1-25). One respondent said about the congressional delegation, "If we suggested that certain portions of a trade agreement might be modified, generally, they were supportive of that" (US1-8). Another legislator agreed by stating that members of the congressional delegation were aware of the issues raised by state legislators (US1-25).

There are several ways in which state officials can get in touch with congressional actors or the administration. One access point is the trade policy commissions analyzed above. As had been mentioned, they work closely with the congressional delegation and the USTR via letters and meetings based on those letters. The Maine Citizen Trade Policy Commission, for example, has not only addressed their congressional delegation in writing, but congressional staff has participated in the commission's meetings upon invitation (Maine Citizen Trade Policy Commission, 2015a, 2015b). An expert involved in one commission described the body as "a permanent gateway for information flow" (US1-17) between state officials, the congressional delegation and local industry. Official testimonies are another way in which states can offer their views, but, as stated above, opportunities to testify on the TTIP have been rare.

A different avenue are previously existing personal connections. While respondents did not go into detail describing their own networks, it became clear that personal, informal acquaintances are of high importance in states' interest representation at the federal level. Interviewees working in state government might know federal-level actors because they have worked together before in Washington, D.C., or started their careers together in the state capitol. They might have bonded over joint projects in certain policy areas or may know each other from a common membership in industry groups or nongovernmental organizations. Such linkages between state and federal officials enable frequent informal information exchanges, including on transatlantic trade policy, which cannot be measured by analyzing public, official statements or policy positions. The expert interviews show, however, that a number of state officials are willing and able to engage with federal actors based on their individual motivation and connections, outside of the IGPAC or any state association.

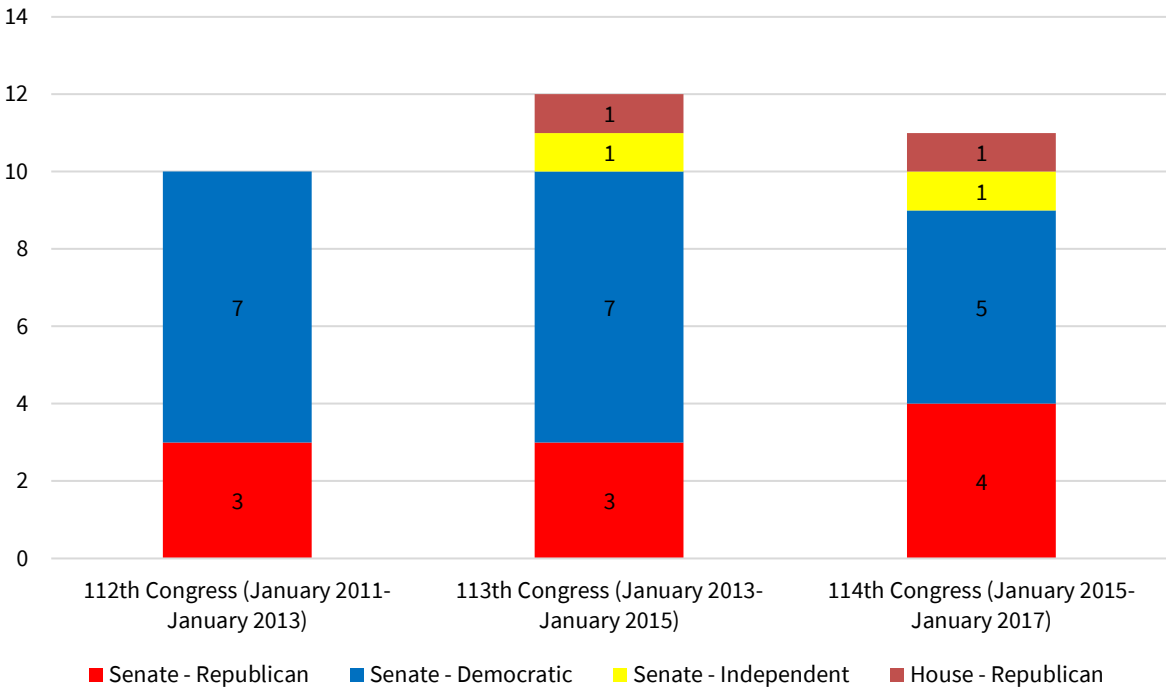
Nevertheless, the nationwide general-issue state associations are another way to foster state-federal linkages. The NCEL’s and ALEC’s efforts have already been mentioned, so the following paragraphs will emphasize the gubernatorial and legislative state associations.

Federal Contacts via the NGA

The National Governors Association’s conferences and staff are a major conduit for state-to-federal communication. Representatives from the White House’s Office of Intergovernmental Relations might attend the NGA’s two major events each year (one held in the summer, one in the winter). Sometimes, federal-level politicians address the governors at these meetings, for example Vice President Joe Biden in 2014 or Minority Leader of the U.S. House of Representatives Nancy Pelosi in 2016. For certain topics, there are also regular exchanges between the NGA and the federal government such as on energy policy with the U.S. Department of Energy. Lastly, each year, the president invites the governors to the White House after their winter meeting, but this is more of a social affair than a policy discussion, with the highlight of the gathering being the evening reception in a rather casual setting.

Apart from these interactions at conferences, the NGA is represented in Washington, D.C., with the express purpose of advocating on behalf of the governors toward the federal government (US2-6). The NGA staff views itself as consultants for the governors, knowing that the chief executives cannot deal with all federal-level issues due to a lack of resources and expertise (US2-6). To that end, contacts exist both to Congress, where there is a small but robust number of former governors (see figure 12), as well as to the White House and federal agencies. As mentioned before, the NGA focuses more strongly on trade promotion than trade policy, which is also reflected in the association’s contacts to the administration. For example, the office dealing with international trade and investment is often in touch with the departments of Agriculture, Commerce or the Treasury (US2-8). Nevertheless, the NGA is monitoring trade agreements including the TTIP, which helps governors stay abreast of international trade policy issues.

Figure 12. Number of former governors in the U.S. Congress



Source: Updated from Manning (2011, p. 3) and Schneider (2012, p. 183)

Federal Contacts via the NCSL

The NCSL is also active in the field of fostering state-to-federal contacts. For example, in addition to official policy resolutions, the NCSL offers state legislatures a chance to network and exchange knowledge with federal and international actors. The NCSL has provided several settings in which state legislators can form and advance their interests in transatlantic trade policy. Every legislative summit – one of the NCSL’s two big annual conferences – between 2011 and 2016 has featured a panel on international trade and on multiple occasions, the TTIP was specifically addressed. In 2013, the legislative summit convened a panel dedicated to the TTIP (National Conference of State Legislatures, 2013b). In 2016, the legislative summit agenda featured an “International Trade Panel & Discussion”, which was to talk about the ongoing trade agenda. Apart from the state legislators and a panelist representing the labor associations, an official from the USTR as well as a representative from the EU’s delegation in Washington, D.C., took part (National Conference of State Legislatures, 2016b; also US2-1.1).

The NCSL, while headquartered in Denver, Colorado, has a staff of about 20 to 25 people in Washington, D.C., and views itself as an advocate for state legislators towards Congress and the administration (US2-1.2). Not only considering that around half of the members of Congress are former state legislators, the NCSL staff feels comfortable in reaching the federal legislators with their requests and concerns. Another focus of the NCSL’s work in the national capital is the cooperation with the White House. NCSL staff builds up personal relationships to administration officials in various agencies, depending on the committee assignments. For instance, the NCSL’s labor and economic development committee has good working relations with the Departments of Commerce, Housing and Urban Development, Labor, and Veterans Affairs. Connections are mostly sought out with career officials at the federal agencies, as opposed to political appointments, because the former tend to offer a steadier, longer lasting relationship (US2-1.2). These connections are used to reinforce the NCSL’s formal policy resolutions such as the one on the ISDS mechanism in trade agreements. Furthermore, the state-federal linkages allow a continuous information exchange on trade policy issues, which in turn enables state officials to formulate and refine their positions on transatlantic trade policy.

Federal Contacts via the CSG

The Council of State Governments is another general-issues state association involved in fostering direct contacts between state and federal officials. The CSG describes itself as a research organization, yet it does actively engage with members of Congress and administration officials on matters of concern to the states. Such matters include the TTIP, even though this has not been a major focus of the organization so far. The CSG aims to provide governors with the resources necessary to understand the impacts of the TTIP on their states (US2-5). Thus, the council works to improve communication from local interests, such as businesses, to the governor and then from the governor to the USTR.

To support state-federal communication, the CSG is frequently in touch with both members of Congress and the administration. The CSG seeks contacts to different members of Congress depending on the issue at hand, which could mean reaching out to federal legislators based on their committee assignments, regional affiliation, leadership positions or personal passions. Within the administration, the CSG’s staff is mostly in touch with intergovernmental affairs offices at various federal agencies. As an example, although not related to trade policy, the CSG functioned as the intermediary in connecting federal officials

to state-level experts when the former asked to draw from states' experiences in developing the Clean Power Plan, an administration initiative to deal with climate change (US2-5)³⁶.

Overall, the preceding paragraphs have shown the importance of the intergovernmental communication mechanisms afforded to the federal states within the U.S. system. The congressional delegation is the most significant avenue that states have to voice their interests on U.S. priorities in international trade policy. State officials can and do address their members of Congress, as well as the administration, in formal letters and in personal meetings, which is proof that the modes of interest representation discussed in the introductory chapter are at play for the TTIP negotiations as well: States are heavily engaged with federal actors to aggregate and articulate their interests. The states focused on this agenda-setting behavior even when the negotiations were already underway, which amounts to a modification of Hocking's previous analysis (see table 4 on page 41). He saw noncentral governments moving from agenda-setting goals to a more sustained effort in support of the negotiation, which was not found in the TTIP negotiations. One cause for this might be the weakness of the IGPAC process, which along with other potential reasons will be explored later in this study.

Linkages to European Actors

In addition to engaging with federal actors, some state officials also seek direct linkages to EU officials on transatlantic trade policy. The primary reasons why governors and state legislators get in touch with European actors are trade missions, sister state relationships or state association-sponsored educational trips. In most cases, these contacts are with European businesses (see chapter 5) or deal with topics related to transatlantic export and investment promotion, for example the NGA's efforts to learn about European workforce development (US2-6, US3-1) or the CSG's idea of sending state officials on an educational mission to India (US2-5).

Only in rare circumstances are there direct contacts between state governments and European officials specifically on transatlantic trade policy. "Direct" in this case implies parallel interest representation, in that state officials are engaging with European parliamentarians or government officials in dialogues not established by the federal government (see table 5 on page 42).

About one fifth of the respondents reported that they know of direct relations between state governments and the European Parliament and the European Commission, respectively. Many state officials might indirectly be in touch with EU officials, for example via conferences at U.S. embassies in Europe or via the formal consultations with the office of the USTR. In the following, I will analyze those instances of direct state-EU contact, which comes in the form of personal meetings or letters addressed to European officials.

Governors Engaging in Transatlantic Trade Policy Dialogues

Governors have direct connections to officials and politicians in the European Union that are not part of a larger federal government framework. They might work together with the State Department or the U.S. embassies in Europe to organize trips overseas, yet they do seek their own relationships abroad. As has been explored in chapter 5, these relationships are mostly to European businesses: Governors are strongly focused on economic development, so when they visit European countries, it is almost exclusively done in the context of trade missions.

³⁶ Since being finalized and unveiled by President Obama (BBC, 2015), the Supreme Court has halted the implementation of the plan due to various legal challenges levied against it (Wolf, 2016).

They meet with existing and prospective investors and connect exporters from their state to potential buyers in Europe.

At the margins of such business meetings, a small number of governors have spoken out on the TTIP via interviews, speeches or press statements (see table 9 on page 93). Republicans Mike Pence of Indiana and Scott Walker of Wisconsin, for example, used their trips to Europe to voice support for the TTIP without diving into the specifics of outstanding policy issues. Republican New Jersey Governor Chris Christie advocated for an inclusion of Canada and Mexico in the TTIP in a keynote address delivered in Mexico (Arco, 2014). Rick Snyder, Michigan's Republican Governor, was quoted in a German newspaper emphasizing that states can decide about their public procurement obligations by themselves (Koch & Ludwig, 2016).

Yet, only an even smaller number of governors has addressed the TTIP in direct discussions with European political actors, thus engaging in parallel interest representation. This interest representation without state-federal interaction was usually not conflictual, as governors expressed support for the measure in their talks with politicians in Europe. The fact that some governors did publicly speak about their position on the TTIP is remarkable because many respondents did not see a strong impetus or potential benefit for governors in this field. One state official rhetorically asked, "What's in it for a governor?" (US1-4), pointing to political considerations. As governors do not vote on trade agreements and there are high political risks and low rewards involved, many governors do not engage publicly to stay out of controversy: "Politics will always trump policy" (US1-4).

With such political considerations in mind, there are, however, also reasons for governors to publicly speak out, for instance to highlight their state's exporting interests (US2-5, US1-20) or to raise their foreign policy profile (O'Donoghue, 2015). Through database research, I found a handful of occasions on which governors publicly addressed the TTIP after directly engaging with European actors abroad. Through the expert interviews, it was confirmed that policy issues, including those raised in the TTIP, are typically not discussed on trips to Europe, which, again, focus on economic development matters. The two cases of Utah and Nebraska provide counterexamples.

Governor Herbert of Utah traveled to Europe in 2015, primarily with the usual task of attracting FDI and promoting exports. His stops included Brussels, which is less a business destination than a political destination as a seat of many EU institutions. Respondents familiar with the 2015 trip emphasized strongly that the governor did not have a "foreign policy agenda" because this would go against constitutional and conventional provisions by entering the federal government's turf (US1-18, US1-19; for other states also US1-14, US1-16). Yet, the governor did meet with heads of cabinet from the three European Commissioners for trade, research and financial stability as well as the Commission Vice President Jyrki Katainen (Gochnour, 2015; Sullivan, 2015), whose schedule notes a meeting with the Utah governor on the Investment Plan for Europe, a Commission initiative to boost public-private investments (European Commission, 2015a). Because of the political contacts, it was a "unique" overseas mission (US1-20). Even if the transatlantic trade deal was not officially on the agenda, "[i]n the meetings, Governor Herbert expressed his support for the TTIP agreement in both of his leadership capacities, first the Governor of Utah and as the incoming Chairman of the National Governor's Association" (Sullivan, 2015).

The governor's double function as state executive official and NGA chair is noteworthy, especially considering my earlier analysis that the NGA publicly does not engage much in trade policy matters. Since there was broad bipartisan agreement within the NGA at the time, though, the governor could speak out as its chair, knowing nonetheless that his opinion was not representative of all governors' views (US1-19). The meetings with officials from the European Commission were about "giving the governor's perspective" (US1-19) on

trade promotion and trade agreements, not pushing for specific policy preferences: “We weren’t negotiating. I’ll just be absolutely clear on that. (...) governors and states can’t negotiate trade agreements, that’s outside the scope of their authority and that’s against the principles of the constitution” (US1-19).

The caveat that governors are cautious to not intrude on the federal government’s trade policy-making responsibilities shows the limits of state executives’ engagement in transatlantic trade policy. Bypassing the federal government is not seen as a viable option for state governments: They do not use personal contacts with EU officials to voice their policy preferences on the TTIP if they are not in harmony with the federal government. This is further cemented by the fact that none of Utah’s contacts in Brussels had any role in the TTIP negotiations and only one of them even worked for the European Commissioner in charge of the TTIP negotiations.

The case of Nebraska underlines the finding that states avoid bypassing the federal government in transatlantic trade policy interest representation. When Nebraska Governor Pete Ricketts embarked on a trade mission in June 2015, that partly overlapped with his colleague Governor Herbert’s stay in Europe, he also did not oppose the federal government on any TTIP issues and neither did he meet with EU negotiators. Nebraska officials were keen on ensuring that the state’s positions are consistent with federal priorities: “We don’t in any way, shape or form present any material that would erode their [the administration’s] position” (US1-16). Yet, Nebraska’s efforts in Brussels do illustrate a more strategic approach to discussing the TTIP.

The three-country tour of Europe was Ricketts’ first trip abroad after taking office earlier in 2015. The press release read, “Gov. Ricketts Announces European Union As First Trade Mission” (State of Nebraska Governor’s Office, 2015a), one of the rare instances of the EU being directly mentioned on any U.S. state’s governmental websites. In the release, Agriculture Director Greg Ibach is quoted:

Our stop in Brussels, Belgium, will focus on *both trade and trade policy*, as negotiations continue on the Transatlantic Trade and Investment Partnership (TTIP) agreement with the European Union. (...) TTIP has the interest of Nebraska’s farmers, ranchers, and agribusinesses as it stands to significantly improve market access through reducing trade barriers. Our goal is to help our EU partners better understand the practices and technologies Nebraska farmers and ranchers use to produce safe, quality, abundant agricultural goods. (State of Nebraska Governor’s Office, 2015a; italics added)

Based on this release and the expert interviews with people involved, it becomes clear that the Nebraska officials engaged in parallel interest representation at the EU level. No conflict with the federal government ensued, as Nebraska officials added specific trade policy topics to its usual agenda of FDI attraction and export promotion that were in line with federal goals. As a result, meetings with EU officials in Brussels, predominantly from the directorate-general for agriculture, were not solely aimed at trade promotional efforts but also had a strategic policy component to “talk about some of the trade relationships, to influence policy, maybe to promote, you know, a greater cooperative trade atmosphere between Europe and America in general” (US1-16). Topics discussed were mostly agricultural regulatory issues such as GMOs and hormone-treated beef, which the EU has banned. The official press release contained a quote from Governor Ricketts stressing the state’s wish to address such EU policies which are seen as a hindrance to exporting Nebraska agricultural products:

Beef and soybeans are already key agriculture exports to the EU (...) but there is a great opportunity to further develop that marketplace with policy changes. We feel that by opening discussions on such topics, we can come to reasonable and fair compromises

that benefit both sides of a trade partnership. (State of Nebraska Governor's Office, 2015b)

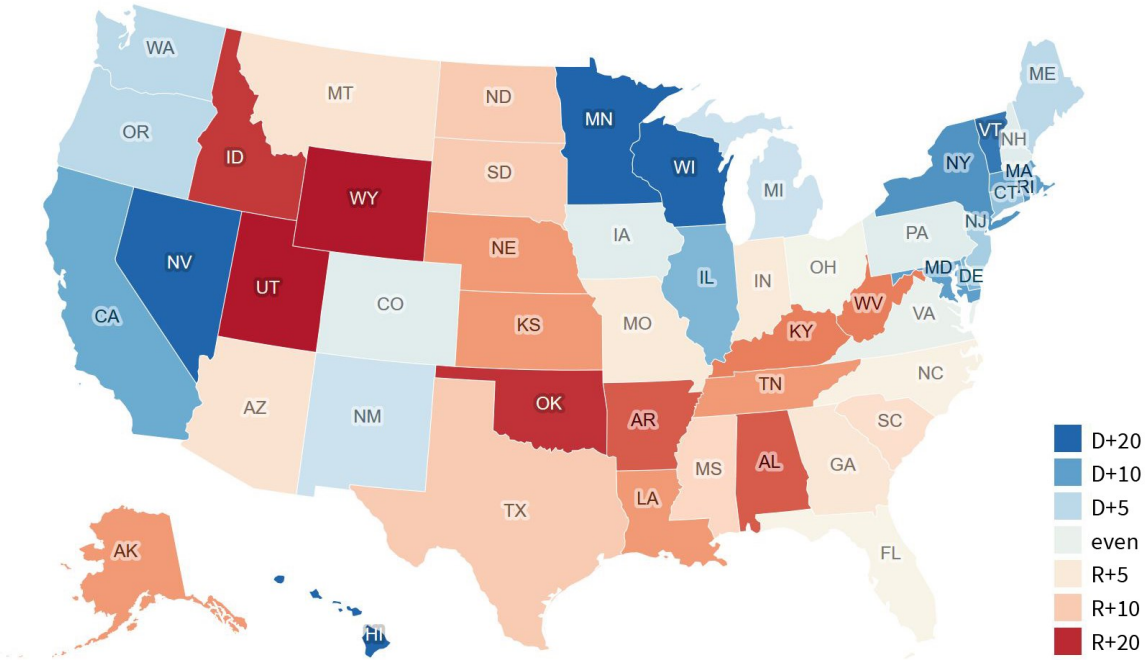
Agriculture features strongly in Nebraska's efforts abroad because the state has become one of the largest agricultural exporters in the nation and is now the biggest exporter of beef (Economic Research Service, 2016). This is partly due to the state administration's deliberate decision in 2005 to market Nebraska's agricultural products, for example coming up with an "agricultural story" of Nebraska beef (US1-16), which was used to increase exports to foreign markets. To generalize from Nebraska's case, agricultural concerns can be identified as a key driver for states' engagement in transatlantic trade policy, a finding that has been mentioned before (see pages 94-95): The 2013 letter in support of the TTIP was signed by many states with large agricultural industries such as Arkansas, Iowa or Nebraska. Additionally, the agricultural commissioners and their association, the National Association of State Departments of Agriculture, have spoken out in favor of trade agreements (Behsudi, 2016; Ibach, 2016) and agriculture was explicitly mentioned in the ALEC model policy on the TTIP.

In contrast to Nebraska and Utah, other governors with connections to regional, national or supranational European officials largely did not make the TTIP an agenda item, which speaks to the lack of urgency attached to the initiative in the U.S., to be addressed later in this section. Respondents working in European trade offices did report that the TTIP was of some interest during trade missions and had come up on the European trade missions (see pages 143-145), but contacts between governors and European politicians are still mostly used to boost economic development. For instance, Wisconsin Governor Scott Walker met Stephan Weil, Prime Minister of the German federal state of Lower Saxony, in 2015 "to discuss opportunities for economic development collaboration with Wisconsin" (Stein, 2015). The good personal relationship that Walker has established with Volker Bouffier, the Prime Minister of another German federal state, Hesse, is also largely based on the mutual wish to enhance trade cooperation (US1-10.1). Another example is New Jersey Governor Chris Christie's trip to the United Kingdom: It was speculated that he was going to address the TTIP when talking to British Prime Minister David Cameron in 2015 (Usborne & Morris, 2015), but in the end, little foreign policy matters were discussed at all and Christie publicly only used the TTIP to criticize President Obama's negotiation skills (Arco, 2015a, 2015b; Rucker, 2015; Wilkin, 2015).

Analyzing governors' engagement with European governmental actors on trade policy demonstrates variation among the states. Because of the rare instances of parallel interest representation by governors, it is not useful to generalize from just the cases of Nebraska and Utah especially because even between these two states, the approach to engaging political actors in Europe differed. Some possible explanations can be deducted nonetheless.

For one, it is noteworthy that both states are staunchly Republican, exhibiting Republican government trifectas (see map 5 on page 129) and high partisan voting indices (see map 6 on the following page). Following the traditional line of argument that Republicans are generally in favor of international trade agreements, it is therefore no surprise that governors Herbert and Ricketts would be interested in furthering a Republican cause. Since there are many other strongly Republican states, however, that have not taken the same parallel interest representation actions, the partisan logic by itself is insufficient as an explanation.

Map 6. State partisan voting index



Source: The Cook Political Report (2014)

Note: As an example, R+10 means that in an average year, “the Republican candidate for president will win 10 percent more of its vote there than he would in the country as a whole” (Silver, 2011).

Furthermore, both Utah and Nebraska have robust exporting industries. For Nebraska, as mentioned, this is mainly the field of agriculture, whereas Utah ranks near the bottom of state agricultural exports (Economic Research Service, 2016). Its export economy is mostly reliant on gold, integrated circuit memories and medical devices (U.S. Census Bureau, 2016). So even between these two states, industry clusters differ and a host of other states have a similar or bigger exporting prowess to boast about, rendering export strengths and industry clusters insufficient as possible explanations, too.

What seems to be the driving force for states’ parallel interest representation on trade policy is not partisanship, voters’ preferences or industry clusters in a state. Rather, it is the state executive’s conscious decision to become involved and build up their own relationships apart from the federal government. This could be done out of personal ambition or for pragmatic reasons. For Utah, interviews revealed that Governor Herbert’s economic development staff was keen on keeping his focus on business issues when traveling to Europe, but the governor personally pushed to visit Brussels and engage with European Commission officials (US1-18). Since he was chair of the NGA at the time, he may have had a heightened awareness of states’ stakes in transatlantic trade. Additionally, the head of the World Trade Center Utah, an organization helping Utah businesses expand globally, which is strongly involved in coordinating trade missions (US1-18, US1-20), had personal connections in Belgium, which might have played a role in choosing this site for the trade mission.

For Nebraska, the governor’s main aim was to link up with existing and potential businesses. Yet, one expert interviewed for this study pointed to a long history of Nebraska’s involvement in trade matters that has shaped the state’s view on the importance of forging personal relationship (US1-16): The state has been engaged in trade promotion for over three decades and has witnessed a strong increase in agricultural exports once it started marketing its products aggressively and strategically to foreign markets. In addition, the respondent reported that Nebraska has strong agricultural commodity groups and that Nebraskans take

membership and leadership roles in many national-level agricultural associations. Due to this strength of special interests in the state, officials have gained considerable knowledge in international agricultural and trade policy. Lastly, the impact of Clayton Yeutter, the U.S. Trade Representative under President Ronald Reagan and U.S. Secretary of Agriculture under President George H. W. Bush, was also mentioned. He was described as the “father of the change from old trade policy to what we consider the evolution of today’s trade policy” (US1-16) and his legacy of engagement with international trade policy seems to still reverberate in Nebraska, the state where he was born and raised.

These rather abstract reasons, brought to light by qualitative expert interviews, cannot offer the full motivation of states aspiring for parallel interest representation in Europe. However, quantifiable economic considerations, such as export strength, or partisan considerations, such as gubernatorial party affiliation, also do not suffice as possible answers. It has become clear once again that trade promotion efforts are the key driver for states to engage with European actors in the first place: For Nebraska, the importance of the European agricultural export market initiated the trade mission and a secondary goal was to find out “what they [the EU] see coming in Europe” regarding trade regulation (US1-15). For a state to engage European governmental actors directly on the TTIP, a certain baseline of historically established knowledge of international trade topics is necessary along with some interest in contemporary transatlantic trade policy and a personally involved or ambitious governor. If this combination is given and resources are available, states could engage in interest representation on their own without interacting with the federal government. For a variety of reasons to be explored in more detail in the concluding chapter, this mix seems to be rare in the U.S.

State Legislators Engaging in Transatlantic Trade Policy Dialogues

The NCSL is active in fostering an exchange between state legislators and European politicians, which has focused on the TTIP at times. For example, there was an exchange organized by the NCSL in 2015 that brought U.S. state legislators in touch with members of the European Parliament (US2-1.2). The topics of the roughly weeklong excursion to Brussels and Strasbourg, France included transatlantic trade policy. The NCSL members met with MEPs from various parties and regions, allowing them to hear both pro-TTIP and anti-TTIP stances from European legislators. The meetings between U.S. state legislators and MEPs was an information exchange similar to the regular, official visits that occur at the federal level as part of the Transatlantic Legislators Dialogue, which brings together U.S. members of Congress and MEPs (see section 2.2).

Outside of the NCSL framework, there have been isolated instances in which MEPs or national-level European legislators visit a U.S. state with the express purpose of discussing the TTIP with state legislators. One such meeting took place in May 2014, when German parliamentarian Klaus Ernst, from the Left Party, addressed the Vermont Commission on Trade and State Sovereignty on “The European Perspective on the Trans-Atlantic Partnership” (Vermont Commission on International Trade and State Sovereignty, 2014b). This transatlantic connection between an EU member state and a U.S. federal state was facilitated by informal, personal connections. The Institute for Agriculture and Trade Policy had been in touch with the political foundation affiliated with the Left Party in Germany, the Rosa Luxemburg Foundation (US3-7), and since it already had good connections with various Northeastern states, primarily Maine, a meeting was set up for the Vermont commission, the Institute for Agriculture and Trade Policy and Maine State Representative Treat, a member of the Maine Citizen Trade Policy Commission, to get together.

The 2014 gathering with the German politician had a rather broad focus on the TTIP as a whole and provided a forum for exchange. A year and half later, however, the NCEL and

the Maine and Vermont legislatures' trade policy commissions held another meeting dedicated to discussing the TTIP in depth (US1-6, US1-8, US1-25, US2-2, US3-7). This time, members of the European Parliament engaged with state legislators from five states. Personal contacts again had led to the invitation of the European legislators: Members of the Maine Citizen Trade Policy Commission had made acquaintances at the political foundation affiliated with the European Green party, the Heinrich Böll Foundation in Germany, and subsequently, two Green politicians were invited to Vermont (US1-6): Bart Staes and Reinhard Bütikofer, two members of the European Parliament group The Greens-European Free Alliance. The MEPs did not come to the U.S. specifically for this state-level meeting in Burlington, Vermont but were in Washington, D.C., for a separate event (US1-6, US3-7).

Members of the NCEL, the Vermont Commission on Trade and State Sovereignty and the Maine Citizen Trade Policy took part in the discussion, with five states (Iowa, Maine, Massachusetts, New Hampshire and Vermont) being represented by state legislators (US1-6, US1-7, US1-8, US1-12; McKeagney, 2015; Vermont Commission on International Trade and State Sovereignty, 2015b). The day-long meeting focused on renewable energy, climate issues, procurement, regulatory cooperation and GMO labeling (US1-6; Vermont Commission on International Trade and State Sovereignty, 2015a). In addition to diving into specific TTIP policy issues, the state legislators also considered broader, strategic points: They were trying to work out "what the best steps were, tactically, to forfend this agreement" (US1-7).

State legislators thus sought to address a variety of specific TTIP issues of concern to state policies with the MEPs. The MEPs seemed comparatively better informed (US1-25) about the details of the TTIP, which goes back to the complaints leveled within the IGPAC about a lack of access to negotiation documents. The topics discussed between state legislators and MEPs underline the general thrust of state officials' focus in transatlantic trade policy: They did not invite the MEPs to debate what policies could be implemented to promote exports, what tariffs need to be scrapped or what joint initiatives could be taken to boost job growth. Instead, their emphasis was solely on the TTIP's potential effects on state regulatory power. For instance, regulatory cooperation was criticized as potentially undermining state laws and causing regulatory chill, meaning that states might become cautious to implement new regulations due to potential pushback from corporate, federal or European actors. The dominance of corporations over state legislators in the TTIP negotiation was also named as an issue gnawing at state powers.

In fact, the headline on the discussions provided by the Greens on their blog, which is generally critical of the TTIP, was "US State legislators 'shocked' by EU trade deal implications: Rules envisioned under TTIP could give EU officials power to interfere in US State affairs" (McKeagney, 2015). The European Greens' article offered detailed examples of state legislation, from electronics waste to fracking to GMO labeling and procurement, that could potentially be challenged under TTIP provisions. Clearly, the European Green politicians and the environmentally progressive state legislators who gathered in Vermont shared similar views and expectations on the TTIP, emphasizing regulatory issues over trade promotion topics.

Regulatory issues were also discussed during a trip to Europe by a group of representatives from the U.S. labor group AFL-CIO, Public Citizen and Representative Treat, a member of the Maine Citizen Trade Policy Commission (Treat, 2015). At this point in the summer of 2015, Treat was not a state legislator anymore, having previously served in the Maine state legislature for 22 years. Yet, her membership in the trade policy commission and her efforts in Europe, mentioned by several respondents (US1-6, US1-8, US1-12, US3-7, US3-8), is still another instance in which state interests on the TTIP were directly related to European governmental actors. The speaking tour, with stops in Austria, Belgium, France,

Germany, Hungary and Spain, included meetings with civil society organizations, business representatives and also governmental officials from the EU state and national levels.

For example, Treat presented at a discussion in Brussels: “I spoke about the goal of TTIP to ‘harmonize’ standards, potentially wiping out consumer and environmental protections adopted by U.S. states that go beyond weak US federal laws on chemicals, pesticides and food safety” (Treat, 2015). The group also met with members of the German parliament where Treat offered findings from the report conducted for the Maine legislature (for more, see pages 120-121). Thus, the speaking tour was an opportunity for state interests to be articulated so that common preferences between European and U.S. actors could be found. None of these parliamentarians, from the U.S. state and the European regional and national level, play an active role in the TTIP negotiation, but this constraint also formed part of the underlying understanding between most of the discussants: They agree on the detriments of keeping trade negotiations secretive and failing to involve noncentral governments.

Despite the detailed policy discussions, strategic considerations and general agreement on the TTIP, a permanent dialogue between states and European legislators was not established. The discussions in Vermont remained isolated incidents of global paradiplomatic activities by state governments. The implications of this bypassing are minute because neither the state legislators nor the Green MEPs are capable of immediately changing their respective negotiation leader’s positions. Furthermore, other states apart from the five mentioned do not seem to engage in this sort of bypassing multilayered interest representation on transatlantic trade policy at all. Nevertheless, they are an example of a form of bypassing: State legislators engaged with EU-level politicians directly, without coordination with or interference from the federal government, and discussed their interests in transatlantic trade policy with them, especially on those issues where state concerns run counter to the federal governments’ positions.

The only other contact with members of the European Parliament that was mentioned by the interviewed experts was within the context of the ALEC. Its members have had events with MEPs, yet without a specific transatlantic trade policy focus (US2-10). Here, too, connections were spun because of already existing personal contacts between ALEC officials and politicians in Europe, for example due to relationships established in previous jobs or via private sector acquaintances. What has become abundantly clear, so far, is the importance of personal engagement of state legislators, outside of their own legislative bodies and outside of the big general-purpose state associations. The NCEL and ALEC are examples for groupings of state legislators with a respective common cause and political ideology, which seem to be able to foster great engagement because its members are passionate about a specific set of topics.

The EU Delegation as a Transatlantic Link in Washington, D.C.

Through their Washington, D.C., offices, the big state associations like the CSG, NCSL or NGA have connections to European embassies and the EU delegation, which was pointed out by respondents familiar with the state associations as well as those familiar with the EU delegation (US2-5, US3-2). The TTIP has not featured prominently in meetings between state officials and the EU delegation, as the EU delegation has found it difficult to engage with states directly, sensing objection from the U.S. administration (US3-2).

The EU delegation nevertheless seeks contact to U.S. states in promoting the TTIP in general. Especially the former head of the EU delegation, João Vale de Almeida, in office between 2010 and 2014, was known for traveling to the states and looking to engage governors on the TTIP and other transatlantic issues (EU2-3, US2-3, US3-6; Cook, 2014). The Maine Citizen Trade Policy Commission sent a letter to the EU delegation in 2014, copied to the

European Commissioner for Trade and the USTR, in which they requested specific information on geographical indications (Maine Citizen Trade Policy Commission, 2014c). Even though in this case, the Maine legislators did not receive a response (US1-6), such contacts are typically used to exchange information and keep each other updated on policy positions. Some state officials also mentioned direct contact to European embassies to discuss potential economic development deals (US1-4, US1-10.1, US1-26), referring again to the strong emphasis of trade promotion topics (see chapter 5).

Allegedly, there were efforts by the EU delegation and the European Commission to convince U.S. states to open up their procurement markets, which supposedly involved EU officials directly contacting state governments. In a 2014 letter to the Maine governor, the Maine Citizen Trade Policy Commission wrote:

[I]t came to the attention of Commission members that EU officials, or representatives of EU member countries, may be directly contacting states seeking commitments to be bound by the procurement provisions in TTIP before these provisions have even been decided upon or made public. If this activity is in fact taking place, it would be highly inappropriate; such requests should come from our own federal government after informing the Intergovernmental Policy Advisory Committee (IGPAC), which advises the U.S. Trade Representative on issues affecting state governments. (Maine Citizen Trade Policy Commission, 2014a)

Such claims were denied in the talks I had with EU officials and other states have not publicly spoken out on this. Yet, Maine legislators' concern about a potential circumvention of formalized U.S. trade policy-making bodies reiterates the broader issue with state sovereignty discussed before.

The fact that communication besides the official routes exists, however, was acknowledged by state, federal and EU officials (US1-6, US3-2, US3-5; also US3-6, US3-7, US3-8), even though formally, it is the U.S. administration and the European Commission which negotiate the TTIP. For example, the USTR is engaging with EU member states "all the time" on the TTIP, according to a federal official (US3-5): While recognizing the leadership role of the European Commission, the USTR does not "always want to rely on the Commission to explain to member states what the U.S. position is on something. So, [USTR officials] go directly to member states all the time" (US3-5). This statement, once again, underscores the existence of multiple layers of official and unofficial communications in the TTIP debates, which speaks to the intricate nature of transatlantic trade policy making.

States' European Trade Offices

States' EU trade offices are, as described in section 5.2, permanent representations of states' transatlantic linkages. These state executive agencies have become important transatlantic actors (Oneal, 1993) and could theoretically be used for bypassing interest representation on the TTIP, since there is no federal oversight of the offices. However, their roles should not be exaggerated beyond a strict economic and investment perspective, as my research shows little activity on TTIP policy issues.

Some researchers' expectations of offices being states' policy-making outposts have not come to fruition. Kincaid in 1993 said that U.S. states were concerned about the EU's economic policies and "[h]ence, about twenty-eight states have offices or representatives in EC member-states, thirteen of which are in Brussels" (Kincaid, 1993, p. 35). International studies scholar Frances Oneal in 1993 suggested that state development agencies, especially via their European offices, might serve critical policy-making roles in transatlantic economic policy as mini-embassies on the continent (Oneal, 1993, p. 176).

Jumping from states opening representative offices to states being interested in EU policies was probably not even accurate in the early 1990s, but it certainly is not today. A while later, Hocking and Smith presented the results of their study on states' overseas offices and concluded that "all the available evidence suggests that their policy role is negligible and that a direct EC-state linkage has not formed a significant element in the interactions generated by the [European single market]" (Hocking & Smith, 1997, p. 115). This assessment is confirmed by my research. The state offices, as various interviews and conversations at a conference for these offices revealed (EU1-7.1, EU2-1, EU2-5, EU2-6), do not have policy-making responsibilities or capabilities. They are meant solely as economic development outposts. Furthermore, there is only one office left in Brussels, the seat of many of the EU's institutions, whereas most trade offices are now in Germany (21 offices), the EU's biggest economy.

One interviewee, a state official in Europe, stressed that they are not even allowed to talk to European politicians (EU1-7.1). The workload was described as 60 percent FDI attraction and 40 percent export promotion (EU1-7.1; this number went as high as 95 percent FDI attraction for another respondent in Europe (EU1-4)). Requests from European politicians to the state's office in Europe must be sent to the state-side government liaison office, according to a prescribed protocol (EU1-7.1). Such contact requests, however, are very rare (EU1-7.1). Even if U.S. state politicians do approach the European outpost, this contact is always conducted under the official umbrella of the state-side agency.

A strict nonpolitical role for the European offices is not every state's strategy. Another interviewee, also working for a U.S. state in Europe, explained how the office is sometimes occupied with helping to coordinate gubernatorial visits to Europe. The EU-based state office is in charge of organizing appointments with politicians. Typically, the respondent reported, these appointments are with national governmental actors and national business associations, not EU officials or noncentral governmental actors. For instance, the interviewee recalled a European trade mission the governor embarked on for which the representative office arranged meetings in the German national-level ministries, with members of the German national parliament and representatives of German national business associations (EU1-1.1). In this way, the state development agencies and their Europe-based colleagues do at least facilitate transatlantic policy making, even though they are not actively engaged in it. Another respondent also described organizing a gubernatorial delegation to Europe but stressed that it was entirely focused on meeting potential investors (EU1-4): No politicians were met and no photo-ops granted, the agenda only saw the governor meeting with business leaders.

Monitoring of EU, European national-level or European regional-level politics is not part of the offices' work description. Upon request, the Europe-based staff might provide some commentary on European political affairs, for example in the regularly scheduled phone calls with the state-side base. In these cases, political intelligence is put into a business and investment perspective. Only if political issues touch upon potential investors, officials in Europe see a responsibility to relay such information. One example given was the topic of double taxation (EU1-4). A Spanish company's subsidiary in the U.S. was taxed both in Spain and the U.S. The company did not like this arrangement and argued that it could invest more in the state if it paid less taxes, so the governor of the state, where the subsidiary was located, brought this issue to the attention of the state's congressional delegation.

The core topic of this study, the TTIP, is another politically important issue that European state representatives might inform their contacts in the U.S. about occasionally, but it does not feature prominently in their work. The proposed agreement is known amongst state officials working in Europe and recognized as a high-priority transatlantic policy issue. The interviewees from the European offices stressed the significance of transatlantic trade

relations (EU1-1, EU1-4, EU1-7.1, EU1-7.2) but with a view towards their core business, FDI and exports: The transatlantic trade and investment relationship is crucial for the states maintaining offices in Europe, often outnumbering trade ties to other regions of the world by a longshot. For many states, the EU is the top destination for state exports and top source for FDI (see annex 1). As an example, respondents working for a state in Europe recounted how in 2015, 58 companies from the state visited Europe for trade shows to increase their exports and how no other region in the world created nearly as much interest (EU1-7.1).

Against this backdrop, the impact of the proposed TTIP on states' transatlantic relations in general is acknowledged (EU1-1, EU1-4, EU1-7.1, EU1-7.2). The impact on the state officials' daily work, however, is negligible: The states' European offices do not deal with the TTIP as part of their core agenda. Again, the representative offices are tasked with FDI attraction and not with providing political analysis or policy-making support and certainly not with directly or indirectly engaging in the negotiations.

Yet, the importance of the proposed agreement reverberates in the states' offices abroad, too. Similar to the earlier example of double taxation, state offices abroad view the TTIP from European companies' perspectives and how it might affect their investment decision. Whatever affects or drives a potential investor's decision-making process matters to the state officials abroad. One official in Europe explained this circumstance:

I sense how important it [the TTIP] is for German small and medium-sized enterprises, what a big topic it is for them. (...) And, of course, the Americans need to know that it's such a big topic for German companies. (EU1-4)

This state official therefore informed contacts in the U.S. state of the importance of the public and political debate surrounding the TTIP in Germany, so that the economic development team would be prepared if this topic ever came up. The Europe-based state official thus functions as an antenna, which can detect important issues on one side of the Atlantic and transmit it to the other. One concrete instance of this information transmission came in 2015, when the head of the Federation of German Food and Drink Industries publicly declared that he "didn't want original 'Nürnberger Rostbratwurst' [Nuremberg bratwurst, a special type of sausage from Germany] from Kentucky" (fdi/AFP/dpa, 2015; Fischer, 2015; Sarmadi, 2015). He reacted to a statement by Christian Schmidt, Federal German Minister for Agriculture, who said that some geographical indications (GIs) might not be valid under the TTIP, essentially suggesting that anyone could claim to make original Nuremberg bratwursts. While the debate itself was a media spectacle more than an actual policy discussion, the larger issue of the treatment of GIs has been a matter of high concern for the U.S. and the EU in the negotiations.

Kentucky's economic development department, with support from the European office, subsequently got in touch with the Federation of German Food and Drink Industries to point out that the TTIP also holds advantages for German food and drink producers by expanding access to the big U.S. market. What came of this intervention was a country profile of the U.S. market in Germany's biggest industry news magazine for food and drinks (*Lebensmittel Zeitung*) and an interview with the Kentucky governor in a nation-wide German publication (Dierig, 2015).

The example from Kentucky does not reflect the usual tasks and goals of states' EU offices. As described in section 5.1, they are dedicated to carrying out states' economic development strategies with minimal regard for transatlantic trade policy issues. Nevertheless, the anecdote from Kentucky does show that state offices abroad can at times function as antennas for their economic development agencies and include current policy debates in their work.

6.3 Chapter Conclusion

States' interests in transatlantic trade and investment relations go beyond finding business partners in the EU and other trade promotion efforts, which have been at the center of previous studies of states as international actors. To be sure, trade and investment promotion is by far the most important interest states pursue when engaging with European governments and businesses. In chapter 5, my study confirmed as much and moreover illuminated how states link their trade promotion interests to the TTIP. The official documents and the original expert interviews analyzed in this chapter, however, provided empirical evidence for state activities that are removed from promoting trade, attracting investment and using the TTIP as a vehicle for both of those tasks. It showed that some states also have deeply rooted policy interests to preserve their regulatory authority in light of a proposed trade deal that is more wide-ranging and deeper than previous agreements.

To represent these transatlantic trade policy interests, state officials have several means at their disposal: They wrote letters to Congress and the administration, they passed resolutions, they engaged in discussions with federal and EU officials and used the IGPAC as an intergovernmental consultative body. From these different avenues, which all underline the multilayered interest representation states engage in, two stand out as simultaneously powerful and perilous for states, namely direct exchanges with EU actors and consultations within the IGPAC. This chapter reviewed instances of bypassing parallel interest representation, the most conflictual mode of noncentral interest representation: State legislators had meetings with members of the European Parliament and European national parliaments, which were not coordinated with the U.S. federal government and covered topics of controversial state-federal divergence (more on this will follow in the next chapter). Especially on public procurement, the ISDS mechanism and regulatory cooperation, state officials criticized that state authority could be overridden by the proposed transatlantic trade deal. Maintaining regulatory authority is therefore a key concern for state officials in their transatlantic trade policy interest representation.

Moreover, states put criticism of the potential regulatory effects of the TTIP in a broader context by calling for an improved state-federal consultation mechanism on international trade policy. The current procedures are widely not seen as sufficient in dealing with deep FTAs that touch upon state regulation and not just tariffs, which is a rejection of the way international trade policy making is handled in the U.S. federal system. The IGPAC has for years been pushing for better state-federal coordination but has so far not succeeded in bringing about change. This committee is assessed differently by different experts, but even supporters agree that some weaknesses need to be addressed for the IGPAC to function better, for example more timely information exchanges and a more diverse and dedicated membership.

This chapter on transatlantic trade policy topics related to the TTIP reveals a markedly different approach to states' multilayered interest representation compared to their efforts on trade promotion. While some of the means are similar, for instance alerting federal actors of state interests via letters and resolutions, other avenues are much more controversial, for example the instances of bypassing discussed above or the IGPAC reports dissenting with the federal government. Moreover, the impetus for state interest representation on transatlantic trade policy is fundamentally different from the trade promotion area. Whereas governors concerned about trade promotion ask how the TTIP might impact their states' economic and job growth, other state officials ask how the TTIP might challenge state regulatory authority. In the latter case, the proposed deal is not viewed in economic development terms but in terms of state sovereignty. The expert interviews clearly showed that questions on federalism and state sovereignty are part of the debates surrounding international trade policy.

Based on the empirical data in this chapter, I argued that it is largely state officials from progressive-leaning states, some from the executive but mostly from the legislature, pushing the issue of state sovereignty in transatlantic trade talks. A small but vocal group of progressive state legislators, either individually or organized in state trade policy commissions and nationwide organizations, is speaking out towards the federal government and contacting elected European officials as well. Their engagement is rooted in their personal motivation to become informed about and active in international trade topics. Since there are few institutionalized fora for state officials to educate themselves on trade issues and discuss them, I maintained that state officials' individual-level, personal dispositions are crucial in explaining interest representation on trade policy.

Progressive-leaning states, where interest representation on TTIP policy issues is prevalent, are not necessarily states with a Democratic legislative majority or governor, even though this party is typically associated with progressive causes. Additionally, it is important to note the historical involvement of politicians and civil society with international trade in a state. Some states have a traditionally strong base of nongovernmental organizations that have long been raising concerns on the lack of transparency of trade negotiations and the ISDS mechanism, for example. Additionally, five states have trade policy commissions in place. These are not established specifically to advance progressive causes, but they do allow state legislators to dive deeper into complicated policy issues related to trade agreements such as the TTIP. In such progressive-leaning states, with an active civil society and trade policy commissions supporting individual legislators' enthusiasm for international trade topics, state officials represent transatlantic trade policy interests related to state sovereignty issues without a primary focus on economic development.

7. Intergovernmental Conflicts in the TTIP

This chapter offers answers to the second research question. Conflicts in transatlantic trade relations involving the states largely result from differing views on the intergovernmental competencies in U.S. federalism. Promotion efforts are typically harmonious, whereas states' interests on regulatory issues and the policy-making process in trade relations might clash with federal and EU positions.

After the qualitative empirical analysis of states' means and motivations for representing their interests on the TTIP, this chapter explores conflicts with other governments related to this interest representation. Scholars have already pointed out that noncentral governments' international engagement does not necessarily lead to conflict and this can be confirmed for the research at hand as well: Coordinated interest representation dominates and even the trade promotion efforts state executives carry out in Europe in parallel to the federal government are harmonious. Nevertheless, deep divides do open up on several issues concerning the TTIP's policy-making process and regulatory effects, as respondents acknowledged in the interviewees.

In this chapter, I put forth the argument that state-federal divergences over competencies in U.S. trade policy are the key driver of conflict. Trade promotion matters, which have been emphasized in the literature before, are not as conflictual: It is not disputed by the federal government that states are capable and allowed to promote trade and investment in the EU. It is disputed, however, how states should be included in transatlantic trade negotiations and their implementation. While some states clamor for a transparent negotiating process that recognizes state officials as elected leaders different from private interest groups, neither the EU nor the U.S. has shown signs that it deems such reform necessary. Thus, the TTIP talks reveal an intergovernmental divide between some state officials and the administration, which is indicative of the complicated nature of international policy-making in the U.S. federal system.

Furthermore, there are also specific regulatory proposals from the TTIP that some state officials criticize and oppose. Since the TTIP negotiations are handled by the European Commission and the U.S. administration, divergent negotiating positions are tabled strictly in this setting. States do still attempt to bring in their interests on public procurement, the ISDS mechanism and regulatory cooperation in federal and transatlantic settings.

In the remaining part of this chapter, I will survey minor conflicts in transatlantic trade promotion in the following section 7.1 before going on to examine the more pertinent conflicts in transatlantic trade policy on the TTIP in section 7.2. These are largely intergovernmental issues within the U.S. federal system and not between the states and the EU.

7.1 Intergovernmental Conflicts in Transatlantic Trade and Investment Promotion

When discussing states' trade promotion efforts, several respondents mentioned interstate conflicts and competition for FDI but stated also that these had not led to major fallout (EU1-1.1, EU2-1, US1-3, US1-13, US2-8). Even though states engage heavily in parallel interest representation by seeking direct contacts to European actors without any federal coordination, this parallel interest representation is done in harmony with federal-level efforts (see table 5 on page 42): Generally, trade promotion is an area of shared goals, both among states as well as between states and the federal government. These results concur with earlier findings on the lack of state-federal conflict in international trade promotion (Sager, 2002, pp. 86-87; 157).

Yet, my findings did uncover an overlap in state and federal interests and activities in trade promotion that has only sprung up recently and has, at times, led to some friction. While the issues should not be overstated because they have largely been solved and were minor, they do highlight potential areas of diverging state-federal interests in transatlantic trade promotion.

The general goal to attract FDI from Europe to the U.S. is shared among all 50 states and the federal government. Issues arise over how this goal is achieved and who is responsible for coordinating related activities. States have gained expertise in this field due to their long-standing engagement in FDI attraction, which has only recently been subject to overlapping federal activities. This is a peculiar feature of today's intergovernmental relations due to a recent development in federal-level engagement in FDI attraction.

Up until the Obama presidency, the federal government had no part to play in foreign direct investment: There was no program in place dealing with this issue and the federal government was supposed to maintain complete neutrality in FDI attraction (Kline, 1983, p. 72; 1993, p. 108; Laney, 1991, pp. 145-146), leaving the field entirely to the U.S. states. The neutrality mandate for the administration continues to be in place, but there is now a federal-level FDI attraction program.

SelectUSA, as the program is called, was established in 2011 by an executive order by President Obama (White House, 2011). The president himself recalls that the idea was brought to him by the chief executives officers on the President's Council on Jobs and Competitiveness, the so-called jobs council that the president instituted between 2009 and 2012 (Obama, 2016). SelectUSA has the mission to facilitate foreign direct investment in the U.S. (SelectUSA, 2016), which is congruent with the missions the state offices in Europe have. Before SelectUSA, President George W. Bush had started "Invest in U.S.A.", the first federal-level investment initiative in a generation (U.S. Department of Commerce, 2008). This initiative, however, had minimal resources and effects. One interviewee with long-time European FDI experience said "Invest in U.S.A." had one full-time official, who looked to the CASE members for expertise on the European market (EU1-7.1).

The SelectUSA program is a much bigger project. The White House decided to establish this initiative, house it in the Department of Commerce and have it run as an interagency process (White House, 2011). The U.S. embassies abroad play a crucial role in moderating this interagency process, which involves a total of 24 departments and agencies.³⁷

³⁷ The executive order establishes a "Federal Interagency Investment Working Group" to consist of senior officials from the following departments and agencies: Departments of State, the Treasury, Defense, Justice, the Interior, Agriculture, Commerce, Labor, Veterans Affairs, Health and Human Services, Housing and Urban Development, Transportation, Energy, Education, and Homeland Security, the Environmental Protection Agency, the Small Business Administration, the Export Import Bank of the United States, the Office of the United States Trade Representative, the Domestic Policy Council, the National Economic Council, the National Security Staff, the Office of Management and Budget and the Council of Economic Advisers "as well as such

The embassies' Foreign Commercial Service, which was previously focused on helping U.S. companies export to Europe, is now also involved in FDI attraction. Dedicated embassy staff can help potential investors with general questions on investing in the U.S. but also with specific questions they might have on regulations or laws. A strict division of labor with the U.S. states is implemented, according to an administration official with knowledge of SelectUSA (EU2-1): The states continue to be responsible for generating their own FDI leads, which means identifying and contacting potential investors. SelectUSA, via their embassy officials, never actively seeks out investment proposals from businesses but performs a coordinating function and reacts to investors' requests. The federal government and the states therefore provide different services to potential investors (EU2-1).

SelectUSA's neutrality has to be maintained: The expert on SelectUSA stressed that federal officials will never promote one state over another or purposefully direct investments to a specific state (EU2-1). Rather, SelectUSA officials will talk to potential investors, learn about their needs and preferences for building factories or other sites and then help the investor narrow the choices of states down. SelectUSA brings investors in touch with the state economic development agencies and the final decision on whether and where to invest rests with the business alone. Thus, the federal government takes a macro-view by initially considering all 50 states in their work, whereas each state economic development agency is solely focused on their own state's industries.

The division of labor between state and federal governments and the federal government's requirement for neutrality seem to be working in practice. States are still the dominating force in European FDI attraction and the White House initiative can be seen as a welcome complementing support system (EU1-1.1). In fact, one interviewed administration official pointed out that before SelectUSA, the U.S. was an anomaly in not having a federally run investment attraction initiative (EU2-1): China and many European countries have had big budgets for such engagements for years, a sentiment that was seconded by state officials in Europe (EU1-1, EU1-7.1).

But while state-federal relations over SelectUSA have not led to major intergovernmental conflict, there are points of friction and potentially problematic overlaps. One state official in a European representative office might have exaggerated when saying that SelectUSA had "knocked us off the shelves" (EU1-7.1). Especially for this official, whose state has been engaged in Europe for decades because there had been no federal support for FDI attraction, SelectUSA is not only perceived as a partner but also a threat. The advantages of having a federal-level investment initiative were clearly recognized, but the interviewee also said that because the federal government has more clout among international business, it takes focus away from states (EU1-7.1). Therefore, a dialogue between the states and the federal level is ongoing on how to improve the cooperation in the field of investment attraction. Most state officials in Europe realized after a while that cooperation is the sensible option, as both the states and SelectUSA pursue the same goal of attracting European FDI (EU1-4).

Nonetheless, the federal government's involvement in FDI attraction incentivizes competition among the states. As one respondent from the federal level stated, competition among the states for FDI results in the development of innovative FDI strategies and the most successful ones can be identified rather easily (EU2-1). That states compete for FDI is readily acknowledged in European state offices as well (EU1-1, EU1-4, EU1-7.1). For example, an annual conference in Germany on transatlantic business opportunities features booths from U.S. states and each state highlighted the specific advantages businesses could expect there,

additional executive departments, agencies, and offices as the Secretary of Commerce may designate" (White House, 2011).

should they decide to invest (Transatlantisches Wirtschaftsforum, 2016). The accompanying brochures and websites are full of rankings showcasing a state's favorable framework for foreign business, ranging from the workforce to tax incentives to location advantages. Interstate competition for FDI is a reality of U.S. federalism today and it has existed long before SelectUSA.

Interstate FDI competition does, however, also face criticism. Especially the common practice for states to devise incentive packages with which to lure foreign investors to a state is regarded as potentially damaging by some scholars and practitioners (Brace, 2014, pp. 661-662; Fry, 1993, p. 132; Kline, 1993, pp. 109-110; Whatley, 2003, p. 7; Zimmerman, 2011). Offering companies tax breaks or sometimes cash considerations is defended as creating jobs and, over the long term, increasing tax returns. Yet, for critics, it is an inefficient waste of taxpayer money, as companies would seek out U.S. states for investment even without incentives (Fry, 1998, pp. 80-81) and the money should rather be spent on improving education and infrastructure (Advisory Commission on Intergovernmental Relations, 1993/1994, p. 35) or on solving joint state problems (Gordon, 2001, p. 80).

The intergovernmental system of the U.S. has, for decades, been able to cope with tough competition and bidding wars between the federal states. SelectUSA in certain ways reinforces this competition and in other ways softens it: Overall, the national government's program is rooted in the awareness that states compete for FDI and it does not aim to change this. The initiative might still benefit states in general, though, by contributing to a further professionalization of economic development strategies and by improving interstate and intergovernmental communications. States are encouraged to provide information on FDI topics, such as foreign companies in the state or FDI statistics, to SelectUSA, so that potential investors are aided in their decision-making processes (EU2-1). While this federal-state coordination still needs improvement, it is nevertheless enhanced and deepened compared to pre-SelectUSA times.

Clearly, states have for decades seized the opportunities afforded to them under the ambiguous U.S. constitutional and legal framework in order to establish a presence in Europe. The offices are outposts to attract FDI and the federal government has not sought to limit these activities, for example by trying to place restrictions on overseas offices. Therefore, little conflict in the field of FDI attraction had arisen until the implementation of SelectUSA. Even with SelectUSA, state-federal conflict did not develop because of diverging goals of the national and the state governments: Both the central as well as the noncentral levels in U.S. federalism aim to aggressively court European businesses to invest in the U.S. Rather, conflictual intergovernmental relations occur because the federal government encroaches on a field that states have occupied for a long time.

It thus becomes clear that state-federal conflict emerges for two reasons: Firstly, the federal government engages in an area, FDI attraction, that used to be under states' purview. Secondly, there is a disconnect between the federal government's macro-view on increasing FDI throughout the entire U.S. versus each states' micro-view on their localized, specific industry concerns. These conflicts have led to some friction but have not resulted in open intergovernmental hostilities and severe limitations to states' transatlantic interest representation in FDI attraction. The deliberate decision for a division of labor has helped to mitigate negative effects of the federal government's efforts: The federal government will coordinate activities, thus serving the states in a way, while the states' previous activities are not curtailed. Having a common goal and working to improve intergovernmental communication benefits the current setup in FDI attraction. As was pointed out before, however, the federal government has the clout and means to overpower the states on the international scene. The underlying issue of what role each government plays in transatlantic trade relations will come to the fore when discussing trade policy topics.

7.2 Intergovernmental Conflicts in Transatlantic Trade and Investment Policy

In this section, I will argue that the main conflicts on transatlantic trade relations between the states and the federal government do not concern trade promotional activities but touch upon a few specific policy areas and, most crucially, struggles over competency within the U.S. intergovernmental system. This contrasts with the findings from the previous section, which showed that diverging interests and strategies in FDI attraction had not led to major conflicts.

Conflicts over Public Procurement

Ostensibly, public procurement is the top issue for states because the EU has made the opening of the U.S. public procurement market at all governmental levels one of their key offensive interests and this is an area in which states enjoy regulatory authority. Annex 4 provides an overview of the TTIP negotiations with regards to procurement illustrating the hotly contested nature of this topic. From the very beginning of the discussions, the EU has strongly voiced their demand for improving access to state-level procurement, but these demands have not been met. Many respondents repeatedly pointed out procurement as an important issue with direct effects on the states, whereas other experts dismissed the issue. To understand these viewpoints on the procurement negotiations in the TTIP, they have to be put into the context of U.S. federalism.

As a short preface to the discussion of procurement, it must be noted that the controversy surrounding this topic stems from different judgements on behalf of the EU and the U.S. on each other's procurement market. In their respective reports on trade barriers, each side argues that the other's public procurement market is closed and discriminatory (European Commission, 2015h, p. 8; 2016g, p. 16; Office of the U.S. Trade Representative, 2015a, pp. 144-146; 2016a, pp. 171-173). In addition, vastly different calculations about the size and openness of the EU and U.S. procurement markets are floated (Cernat & Kutlina-Dimitrova, 2016; Messerlin, 2016; Messerlin & Miroudot, 2012; Vincenti, 2016; Woolcock & Grier, 2015). I am not concerned with which side is right and what the methodological flaws of each of the measurements are. For the purpose of my study, I acknowledge that bargaining interests diverge starkly between the EU on the one side and the U.S. and its federal states on the other side. To complicate matters, there is also some tension between the U.S. administration and the states.

The U.S. states, generally, would like to maintain discretion over their own procurement decisions, which is their legally guaranteed right: The U.S. federal government cannot force the states to change the way they use their own revenues in the area of procurement. State governments can voluntarily open their procurement markets under international free trade agreements such as the WTO's General Procurement Agreement (see map 4 on page 104) or bilateral free trade agreements. In practice, this means that the USTR approaches each state individually and asks whether it wants to be included in the procurement agreement or not. The USTR typically addresses the governor as the person to sign a state on to international procurement rules, as letters from the administration to the states reveal (Sheffler, 2015).

Despite the USTR's focus on governors, though, the debate on who within the state government gets to decide on the sign-up for procurement rules garnered some attention among the states in the early 2000s (Taylor, 2004). The Massachusetts Burma law (see pages 46-47) is another indicator of states' preoccupation with international aspects of procurement at the time. In some states, the governor has the sole responsibility to sign a state up for international procurement rules. In other states, the legislatures have claimed a say in

making these decisions. The trade policy commissions are a prime example of this, as already analyzed above.

In Maine, the trade policy commission has to review a trade agreement and the legislature has to authorize the governor to bind the state to international rules of free trade agreements. Otherwise “an official of the State, including the Governor, is prohibited from binding the State, or giving consent to the Federal Government to bind the State, to a trade agreement” (Maine Legislature, 2009). Similar language exists in laws in Hawaii, Maryland, New Jersey, Rhode Island and Utah. In effect, these statutes apply mainly to procurement rules: This is the one area of the TTIP in which state officials have full discretion.

Thus, again, the administration will push for states to be covered under international procurement rules, but it has to rely on convincing and persuading them (US3-5), it cannot force them. Only if the U.S. Congress passed a law requiring all states to adhere to international procurement rules could the administration oblige states. While this is legally and theoretically possible, this option was rejected as politically unlikely (EU2-2, EU2-8, US1-4, US1-24, US2-1.1, US3-6, US3-8) due to the expected enormous political pushback from state officials and members of Congress themselves. Even the faint possibility of preemption is nevertheless a concern for the states, as many respondents named procurement an important topic for states. Therefore, the administration, according to their own officials, is “very, very cautious about how we deal with the states on these issues” (US3-5) and will, “as a general matter”, protect “state equities and state interests in our free trade agreements” (US3-3). The federal government will stick to pointing out the benefits of opening procurement markets, arguing that this would bring economic gains.

In earlier negotiations, critics of the administration’s approach have called into question whether the federal government really does stick to only pointing out the benefits of opening procurement markets (Inside U.S. Trade, 2012): For example, a report by civil society group Public Citizen alleged that the USTR was pressuring governors into procurement agreements by saying that other countries’ noncentral procurement markets could be closed off for states that do not adhere to international rules (Public Citizen, 2005). For the TTIP, such issues have not been raised so far. The USTR has been keen on involving states on procurement issues within the transatlantic trade talks (US1-6, US3-5).³⁸

Overall, state-federal tensions on procurement in the TTIP are muted because both the states and the administration know that for political reasons, no agreement on procurement can be made without the states. While the federal government would certainly favor overseeing procurement rules throughout the U.S. and while businesses would favor a complete opening of noncentral procurement in the U.S. (EU2-5, EU2-6, US3-1; American Chamber of Commerce to the European Union, 2014, p. 34; Trans-Atlantic Business Council, 2013, p. 9), they acknowledge that this is an area in which states have full discretion. Thus, an earlier quote bears repeating, calling procurement a sideshow to states’ bigger issues of the ISDS system and regulatory cooperation (US1-24; also US1-4). Still, there is anxiety that the USTR might switch to a more forceful approach with the states or that the EU might succeed in putting pressure on the USTR to change U.S. legislation (US1-6). These concerns are exacerbated by the lack of transparency of the negotiations.

The federal government’s acknowledgement of state interests in the negotiations is an instance of Putnam’s two-level game at play. Contrary to most discussions of the two-level

³⁸ For the TPP, some Democratic members of Congress had asked the president to completely exclude procurement provisions from the agreement (Inside U.S. Trade, 2012), but procurement was ultimately covered in the TPP, albeit with exclusions for certain Buy American provisions and no initial inclusion of the states (Office of the U.S. Trade Representative, 2015c, 2015d). Yet, the U.S. has procurement agreements with most TPP nations in place already.

game, however, the domestic constraint on the federal government does not emanate from national-level veto players, such as Congress or corporations, but from state-level actors. While legislative changes to require open state procurement markets are an unlikely scenario, individual states or groups of states nevertheless speak out on procurement. This interest representation acts as a limit on what U.S. negotiators can offer the EU because states have legislative authority over their public procurement.

One of the most formal ways to make state opinions on procurement known are the IGPAC reports, which have for years stressed the importance of procurement to states. In its most recent report on the TPP, IGPAC members are split on whether opening their procurement markets is economically beneficial or not, but they do agree that this decision should be left to the states: “IGPAC would object to any expansion of state-level coverage whether in the form of removing any exceptions, lowering procurement thresholds or coverage of state procurement entities without explicit state consent” (Hamilton, 2015, p. 8).

Examples of such state-level procurement rules were explained in a letter by the Maine Citizen Trade Policy Commission to the USTR. The commission members described that “Maine has specific procurement administrative rules (...) for textiles and footwear prohibiting purchasing of goods that do not comply with certain fair labor, equal rights, and health and safety standards” (Maine Citizen Trade Policy Commission, 2014f). The commission further states:

[T]he State of Maine and many local governments have proactively promoted Buy local and Maine Made programs including Farm to School, Farm to Hospital and other initiatives aimed at sourcing healthy, local and regional foods into institutions as a way of enhancing nutritional and other health outcomes for consumers, supporting local economies, and improving farm profitability. We oppose any provisions in the TTIP that would limit preferences in public procurement programs for healthy, locally grown foods. (Maine Citizen Trade Policy Commission, 2014f)

Any direct contact or pressure by the EU towards state governments on procurement issues is deemed unacceptable by the commission (Maine Citizen Trade Policy Commission, 2014f).

Procurement was also featured prominently in state officials’ meeting with MEPs in Vermont (see pages 140-142). At the November 2015 gathering facilitated by the Vermont Commission on Trade and State Sovereignty and the NCEL, there was a morning panel on procurement as well as a later breakout session on the topic (Vermont Commission on International Trade and State Sovereignty, 2015a), which allowed for an exchange of views and mutual learning. Experts with knowledge of the meeting highlighted the importance of procurement for the states, especially for maintaining farm to school programs, which favor local agricultural producers (US1-6, US3-7). After talking to EU officials as well as U.S. administration officials, the experts realized, though, that the EU was likely more focused on bigger procurement items, such as transportation equipment or dredging (US3-7).

Even if states’ decisions on how to use their own revenues for procurement is not touched by the TTIP, several respondents pointed out that some federal-level rules might still apply to them (US1-24, US3-1, US3-6, US3-7). This is related to the issue of flow-down funds, meaning funds the federal government gives to the states for public procurement purposes. In essence, states use federal money for part of their state-level procurement projects. If these flow-down funds were covered under the TTIP, states’ choices in how to procure could be constrained when using such funds. Flow-down funds have been a specific target of the EU (see annex 4), yet the first 15 negotiation rounds have not yielded an agreement on the issue.

To sum up, public procurement remains a controversial topic that is being fought over in the negotiations, but it is more of a theoretical than a practical concern for the states. There is a discrepancy, partly fueled by the lack of access to negotiation texts, between what some

state officials see as potential negative effects from the TTIP and what is politically feasible in the negotiations. For states, the attention paid to procurement derives largely from the fact that it is one of the few issues they care about *and* have jurisdiction over.

Based on the current legal and political situation in the U.S., it is still unlikely that state-level procurement rules face serious changes due to the TTIP. The USTR seems conscious of the high salience states attach to the issue and, in turn, also seems to use this as a bargaining chip to justify their hardline position towards the EU: The U.S. has repeatedly shunned the EU's requests to open state-level procurement markets in the TTIP negotiations (see annex 4). In a leaked document describing the state of play of the TTIP negotiations in March 2016, the paragraphs on procurement mention that the EU sought and received answers on a variety of federal-level procurement issues. Yet, "the US was not able to provide any further answers or comments with regard to sub-Federal procurement and again underlined its difficulties and sensitivities in this area" (doc16 in Greenpeace, 2016, p. 5).

The USTR's rejection of EU procurement demands with reference to states' concerns could merely be a negotiating ploy and not be done out of genuine care for states' interests. Either way, it clearly speaks to the administration's awareness of states' interest in transatlantic trade policy and once again highlights the two-level game nature of public procurement negotiations. Evidently, "domestic politicking is central to international negotiation" (Evans, 1993, p. 397): Not only did states represent their interests by maintaining the status quo of noncentral public procurement despite outside pressure, they also advocated in favor of this status quo at the federal level and educated EU legislators about it in dedicated meetings.

Conflicts over the ISDS Mechanism

The TTIP negotiations surrounding the ISDS mechanism are complex and controversial on multiple levels. The dimension that this study is concerned with is the diverging interests between the U.S. administration and the U.S. states and if and how these differences are dealt with. A host of other aspects of related debates will not be covered. For example, I will not discuss in depth the political debate in Europe, driven by governmental and business support of the ISDS system and broad-based public and civil society opposition against it. Key to understanding the states' perspectives and activities on the ISDS mechanism is again the U.S. federal system with its intricate overlapping competencies.

State-federal conflict on the ISDS mechanism in transatlantic trade policy results from the fact that the U.S. administration wants to include the provisions in the TTIP, whereas the states do not. The USTR has incorporated the ISDS system in most of its free trade agreements³⁹ including the Transpacific Partnership as the most recent one and the administration has not shown any signs of abandoning the ISDS mechanism in the TTIP, either. In fact, the administration did not react favorably to an EU proposal to overhaul the ISDS system. In a news report, USTR Froman argued against ISDS reform, saying that "[b]ecause of the high standards and safeguards in our agreements, there have been very few cases against the U.S." (Hughes & Blenkinsop, 2015).

Despite the need for caution when generalizing, it is fair to say that overall, the U.S. states do not want to see the ISDS mechanism included in free trade agreements. The 2004 Australia-U.S. FTA did not include the ISDS system, but since then, all IGPAC reports on free trade agreements have opposed the mechanism. The NCSL has spoken out strongly against the ISDS mechanism as well (see page 117) and the NGA, too, calls for the respect of

³⁹ Along with the Australia-U.S. FTA exception already mentioned (see pages 154-155), the 2001 Jordan-U.S. FTA does not contain the ISDS mechanism (Gantz, 2016, p. 2; Office of the U.S. Trade Representative, 2000).

nondiscriminatory state laws in its policy position on trade (see page 115). Clearly, the states and the federal government do not see eye to eye on the ISDS system.

In the absence of an IGPAC report on the TTIP, the committee's report on the Transpacific Partnership can be informative regarding the specific objections. The committee first notes:

Despite some welcome modifications to the TPP investment text, the investment chapter of free trade agreements continues to concern IGPAC, due to the inclusion of the investor state dispute settlement (ISDS) mechanism. IGPAC strongly urges that the mechanism be eliminated from the agreement. (Hamilton, 2015, p. 9)

In more detail, the report highlights states' criticisms (Hamilton, 2015, pp. 9-10):

- Concerns about ISDS cases that can be brought against the U.S.
- Abuse of the ISDS mechanism by investors from well-developed nations against central and noncentral governments in less developed nations
- Granting of "greater procedural rights for foreign investors by establishing a mechanism that is not available to domestic companies and is free from the procedural and other rulings of domestic courts" (Hamilton, 2015, p. 9)
- Expansive definition of investment covering more than the types of property covered under the Constitution, allowing for a broad interpretation of what fair and equitable treatment is
- Potential conflicts of interest for arbitrators on the ISDS panels who are allowed to work as arbitrators in one case and represent investors in another
- Costs to states because state resources are drained during disputes, even considering that the federal government is responsible for defending ISDS cases
- Forum shopping as investors might use older ISDS clauses more favorable to them, for example from the NAFTA

The IGPAC thus roundly rejects the ISDS mechanism, even though the committee supports various other provisions of the TPP's investment chapter. The report's comments on the ISDS mechanism show that states claim a stake and a say in trade policy and make a differentiated effort to voice their opinions. For example, the IGPAC addresses potential pushbacks to their demands head-on:

IGPAC is aware that ISDS challenges cannot directly or automatically overturn local, state, or federal laws, regulations, or court decisions. Still, the possibility that state or local laws may be challenged (by way of an action against the United States) is itself a chilling factor for those governments considering legislative and regulatory action. While the federal government is responsible for defending investor challenges that are lodged against state and local measures, state resources are heavily taxed during the course of such disputes. (Hamilton, 2015, p. 9)

Proponents of the ISDS mechanism argue that the mechanism does not change any laws, but the IGPAC points to potential regulatory chill, which was seconded by several respondents (US1-7, US3-7, US3-8). Supporters of the ISDS system would also say that noncentral governments do not have to pay for ISDS cases because only central governments can be sued. Here, the IGPAC provides the example of an ISDS case under NAFTA rules in which the U.S. was sued over a state policy in California (U.S. vs. Methanex; for more see Dougherty, 2007; Hall, 2013; Mann, 2005; U.S. Department of State, 2005): In the end, "the federal government was awarded full payment of the millions of dollars in fees and costs that

it incurred while defending the case, however California was not similarly compensated” (Hamilton, 2015, p. 10).

The opposition that the IGPAC levels against the ISDS mechanism is not specific to the TPP. Similar criticism was voiced before in reports on each of the U.S. free trade agreements with several Central American countries, Morocco, Colombia, Peru, Panama and Korea. For the transatlantic trade deal, too, state officials have expressed well-known charges. As has been described above, the governor of Washington has addressed the USTR on this matter and various state legislators, apart from the official forum of the NCSL, have spoken out in letters or in state resolutions (even if these were not passed in all cases). Some states are thus actively representing their interests on transatlantic trade policy, which do not align with the federal government’s interests. They address the federal government directly, alert their congressional delegation or, in isolated instances, engage directly with EU officials.

The impact of states’ engagement regarding the ISDS mechanism cannot be fully measured because the TTIP negotiations are not finalized. Based on previous experience, it is unlikely that states’ warnings about the ISDS mechanism will be heard, as the USTR has included the system in most U.S. free trade agreements and has not indicated a shift in the TTIP negotiations. States have historically not been able to act as a domestic constraint on the federal government in the two-level game of international negotiations regarding the ISDS system. Their opposition to the mechanism has only once, in the case of the Australia-U.S. free trade agreement, affected change in the U.S.’ negotiation stance.

However, the exceptional case of the Australia-U.S. free trade agreement (see pages 112-113) does serve as a reminder of the “domestic politicking” (Evans, 1993, p. 397) involved in two-level games: An impasse in the negotiations along with an alignment of interests of the states, various federal agencies and the negotiation partner resulted in an exclusion of the ISDS mechanism. Considering that the strong rejection of the ISDS mechanism among a vocal part of European civil society has led the European Commission to revise its proposal on the ISDS mechanism, there is a chance that states’ demands to reform or exclude the system are heeded in the late stages of the TTIP, when the most controversial parts are discussed.

The European Commission’s proposal, with the ISDS mechanism being renamed the “Investment Court System” (European Commission, 2015b), does address some of the issues that states have criticized about the ISDS mechanism in the TPP. For example, the EU wants to ban forum shopping and have judges on the panel that are publicly selected and cannot work on multiple cases at once. Likely, these proposals were not the direct result of U.S. states repeatedly voicing their opposition against the ISDS mechanism and, again, the U.S. administration was not interested in them. Yet, as with the Australia-U.S. FTA, various circumstances might come together to change the trajectory of the ISDS negotiations: The U.S. administration is facing a negotiating partner with a reform proposal already fleshed out and long-held criticism from the states and civil society on both sides of the Atlantic that have succeeded in staging highly publicized opposition, especially in some bigger EU member states.

For the most part, state governments in the U.S. have not detected or exploited this situation, for example by supporting the EU’s push for reform or by directly fostering a permanent dialogue with EU negotiators on this issue. In short, there has been no parallel interest representation with instances of bypassing on behalf of the states. Some possible reasons for this have been touched upon: Individual state officials might find it hard to gain access to negotiators, they might lack knowledge and resources or simply might not care enough because the issue has not become an urgent matter with immediate consequences for their constituents. Because the vast majority of states seem to rely on the IGPAC for their criticism and the committee has not published a report on the TTIP yet, the state-federal

differences in interests on the ISDS mechanism have not led to a major conflict between the state governments and the administration.

Conflicts over Regulatory Cooperation

On regulatory cooperation, the situation is similar in some ways to the ISDS issue: A minority of state officials have used state letters and meetings with MEPs to voice opposition to some aspects of regulatory cooperation, which is in direct conflict with the U.S. administration's goal of having regulatory cooperation covered in the TTIP. No parallel interest representation and bypassing has occurred. The difference with this case of regulatory cooperation is that it is even more clouded because there is no precedent for regulatory cooperation of this magnitude in any other free trade agreement.

Regulatory cooperation aims at “reducing costs associated with unnecessary regulatory differences” (Office of the U.S. Trade Representative, 2013a, p. 3). In practice, this could mean that the U.S. and the EU notify each other of pending regulations and agree to mutual recognition or harmonization of standards. It is unclear what exactly the extent and measures of regulatory cooperation in the TTIP could be: Published documents by the Commission (European Commission, 2016j) do not line up completely with unofficial leaked documents of roughly the same time frame before the 13th round of negotiations (doc9 in Greenpeace, 2016), so there are no reliable, publicly available documents to gauge the depth and breadth of planned regulatory cooperation.

Without knowing the full scope of the regulatory cooperation measures for sure, some state officials are expecting the worst possible outcome for them, which is an undermining of their own regulatory powers: Along with various civil society organizations, they are concerned that regulatory harmonization in effect means deregulation or a downward shift of regulation, particularly environmental regulation. Further, they see their regulatory authority to set their own, potentially stricter, environmental standards endangered. It was, however, also pointed out in the interviews that a race to the bottom might not have to be the default result of the proposed agreement because there is the chance that the federal government decides to set its own high standards. This was exemplified with the issue of GMO labeling (US1-24), when the federal government developed legislation to prevent a patchwork of various state regulation.

Based on scarce knowledge and differing expectations regarding the concrete elements of regulatory cooperation, the issue has attracted less activity from U.S. states than the ISDS mechanism. No public statements by governors are recorded and state resolutions do not mention this topic widely. The only state officials active on this is the NCEL-affiliated group, which conducted meetings with MEPs in Vermont, and the Maine Citizen Trade Policy Commission, which has criticized regulatory cooperation provisions in a 2014 letter to the U.S. House Ways and Means Committee (Maine Citizen Trade Policy Commission, 2014d, p. 5). The NCSL's resolution on trade also broadly speaks of preserving states' regulatory authority: “The National Conference of State Legislatures (NCSL) supports expanding U.S. net exports through well-crafted international trade agreements that are consistent with traditional American values of constitutional federalism, and protect state legislative, judicial and regulatory authority” (National Conference of State Legislatures, 2016c).

These activities have so far not led to a change or an abandonment of regulatory cooperation provisions: After the 15th TTIP negotiation round, the U.S. lead negotiator said that “we're close to agreement on a range of steps to make our regulatory systems and customs controls more compatible, reducing unnecessary and costly burdens on trade and increasing efficiencies for our regulators – all to the ultimate benefit of consumers” (Office of the U.S. Trade Representative, 2016f). Regardless of the outcome of the TTIP negotiations, it can be said that there is a divergence of interests between some state officials and the U.S.

federal position. Contrary to the ISDS debate, a long-standing established opposition by the states is not detectable on regulatory cooperation, which is likely the main reason why there has been no open public quarrel between state governments and the U.S. administration. Thus, on regulatory cooperation, the two-level game is feeble: States do speak out, creating the basic setup of the two-level game, yet state interests are no domestic constraint on the federal negotiators in this area.

On the surface, the states clash with the federal government on regulatory cooperation, the ISDS mechanism and also public procurement because they oppose including these items in free trade agreements, whereas the administration wants them covered. But at the core of this opposition is the states' wish to maintain their authority within U.S. federalism: The ISDS or procurement discussions are only a symptom of the underlying cause for state-federal conflicts, which is the intergovernmental struggle for competencies in the U.S. federal system.

Conflicts over Competencies in U.S. Federalism

The TTIP negotiations, like other free trade negotiations before, have become the scene for a struggle about competencies within U.S. federalism that go beyond specific regulatory questions like public procurement or the ISDS mechanism. Those debates have revealed that states generally want to safeguard their own regulatory powers in trade policy, even though only a few states have actively spoken out on the TTIP. While all states want to maintain their regulatory discretion, I will argue that a minority of progressive state officials is using the TTIP discussions to push for a stronger state role in shaping U.S. trade policy in general, independent of specific policy items in any trade agreement. The importance of partisan politics in the U.S. is a predictable finding, but what is noteworthy is that the progressive criticism of the TTIP might be the biggest driver of conflict on U.S. transatlantic trade policy, within and among states as well as with the federal government.

All states want their opinions to be heard in transatlantic trade policy and want their regulatory authority maintained under a transatlantic trade deal. There were, unsurprisingly, no objections to these views among the state officials interviewed. The states' quest to be included in trade policy making is rooted in the recognition of interdependent global markets and, more specifically, in the advent of deep free trade negotiations such as the Uruguay Round, the NAFTA and subsequent bilateral FTAs. These deep FTAs have the potential to affect all states' regulatory authority much more than agreements that would only tackle tariffs. However, constitutionally, the states have nothing to fight for: Trade negotiations are a federal responsibility, a fact that has been confirmed repeatedly by the Supreme Court (see section 3.2).

Yet, the preceding analyses have demonstrated the many ways in which some state officials have been vying for a role in trade policy making nonetheless. They write letters, they contact their congressional delegation, they even get in touch with European legislators and, most formally, they use the IGPAC as their only institutionalized mechanism to represent their interests towards the federal government. The IGPAC has for decades demanded improved state-federal consultation procedures that would pay more attention to states' positions. The federal government, however, does not appear to be willing or able to make any changes to the IGPAC system, which has been in place since 1974, long before the GATT, NAFTA or the TTIP. This is a clear indication of U.S. state interests on this topic diverging from federal interests.

Despite the IGPAC's repeated calls for changes, the state-federal consultation system has remained static and, furthermore, there is no debate about possible improvements. Administration officials interviewed for this study seemed unaware of the need for reform, which is understandable, considering that the majority of state officials in the U.S. likely does

not care much about trade policy making and thus also not about reforming it. It was even mentioned that only a big problem or conflict such as a lost ISDS case or an international trade dispute could push trade policy onto states' agendas (US1-12, US2-3) and could potentially lead to changes to the IGPAC. While trade disputes are frequent, there have been none in recent years attracting sustained nationwide attention beyond trade policy specialists.

Against this backdrop of general apathy regarding state involvement in transatlantic trade policy, the actions of a group of progressive state officials becomes all the more noteworthy. Many of the interest representation activities analyzed in this section derived from a small number of legislatures, organizations and trade policy commissions. While all states care about their status as federal entities within the U.S., it has mostly been those from the progressive corner that have addressed federalism as an issue in trade policy.

I use the term progressive because this is the terminology employed by several interviewees (US1-6, US1-8, US1-24, US2-3) and because a clear delineation between Democrats and Republicans on trade policy is not possible anymore. Partisan politics on trade policy have become murky over the past couple of years (see page 128), especially during the 2016 presidential election cycle. The traditional view of pro-trade Republicans and protectionist Democrats is no longer the case in the U.S., as opinions on trade policy cross party lines now. For example, surveys on the TTIP and the TPP show that Democrats are more supportive of the free trade agreements (Pew Research Center, 2014a, p. 15), yet there is also a large faction of Democratic members of Congress publicly opposing parts of the TPP (DeLauro, 2013). With this in mind, progressives here are understood to be left-leaning state officials, still typically Democrats, who tend to be critical of free trade agreements that they view as undermining state authority, particularly in the fields of public health and the environment, and benefitting corporations instead of citizens.

It would be plausible that such left-leaning state officials would find common ground with traditionally conservative, Republican supporters of federalism and "states' rights" (in this context without any of the racial undertones of earlier debates). In fact, one respondent did mention that progressives and conservatives might have to come together on the issue of federalism in trade policy (US1-6), despite their many differences in other areas: While conservative, classically Republican state legislators might not be worried about corporate dominance in trade negotiations and might not be in favor of strict environmental regulation, they could agree with left-wing Democrats that states need to secure a stronger role against the federal government in trade policy. In addition, neither side would speak out against international trade per se, as the recognition of interdependent global markets has seeped into all politicians' consciousness.

Yet, the intergovernmental question about who is in control of setting the rules for transatlantic free trade is mostly addressed by progressive Democrats and not by right-wing Democrats or Republicans. The partisan activism by progressive state officials in opposition to the TTIP emerged from the qualitative content analyses of both official documents and the interviews, and it touches a number of areas.

The IGPAC

The clash between progressive state legislators and the federal executive is most clearly visible when studying the IGPAC. State-federal conflict in this field should not be overstated because there has been no big public confrontation and the TTIP is not finalized. The static system of state-federal consultation has been prone to resist both reform attempts and open hostilities and, as mentioned before, the administration has not deemed changes necessary. Furthermore, the lack of knowledge and engagement by many state legislators has so far left those progressive voices clamoring for change in the minority. Yet, the progressive push for

stronger state inclusion is an indicator of state-federal conflict in transatlantic trade policy, which does have ramifications for the U.S. intergovernmental system by highlighting the weaknesses of the IGPAC. The expert interviews helped shine a light on this ideological divide.

Respondents were at odds over the impact of the IGPAC: Some had a rather negative view on the committee, these were mostly progressive state legislators or think tank officials. Others had a more positive view, coming largely from the state and national executives. The latter group was fine with the state-federal communication provided by the IGPAC. For one, U.S. administration officials with knowledge of the IGPAC viewed their outreach as sufficient, stressing that even outside of the committee, state officials are always welcome to ask for meetings or material (US3-3, US3-5). This notion of an open-door policy was reflected by some state officials as well: “Even outside the advisory panel, if you want to engage with USTR, if you want to engage with [the administration] and put forward your opinion or your priorities, I think they are always very open to listen”, one respondent said (US1-16), and another seconded that the USTR “keeps you informed the entire time” (US2-1.2). Several interviewees, who are not part of the administration, applauded the USTR for being open towards scheduling meetings and providing material, also outside of the IGPAC (US1-4, US1-6, US1-7, US1-8, US1-16, US2-1.2, US2-7, US3-7), and this even includes some IGPAC critics.

Three respondents from the state level agreed that the IGPAC is what the members make of it (US1-24, US2-1.2, US2-3): Those state officials who have an interest in building up knowledge and engaging with the USTR will have the opportunity to do so. For the majority of state legislators and state executive staff, international trade policy is not an important enough topic to invest resources in, leading to a lack of knowledge on issues such as the TTIP that then prohibits them to play a part in the state-federal consultation process. One respondent explained that the IGPAC needed members representing “a variety of industries and sectors and interests but also have the time and willingness to dive down and study these WTO and FTA rules and really understand it” (US1-24). Some respondents also acknowledged that the USTR was understaffed (US1-24, US2-1.2) and had to balance a lot of different interests (US2-1.2, US2-3, US2-7).

These rather moderate views show that even state officials were willing to share some of the blame for perceived shortcomings of the IGPAC on behalf of the USTR. The fact that there is a number of people on the IGPAC that view the cooperation with the USTR favorable might be an important contributing factor for the absence of a major overhaul of the committee.

Some progressive voices on the IGPAC, however, argued that an overhaul is necessary. One critic called the IGPAC “completely inadequate” (US1-6) because it lacks a representative membership, satisfactory funding and significant informational briefings from the USTR. Because not all of the states’ interests are represented and because IGPAC members cannot comment on all issues of state interest, the committee is not able to provide substantial advice to the USTR. Someone with long-standing knowledge of the committee did not see considerable changes since the 2004 memo calling for better state-federal coordination (US1-4). USTR outreach had been constant and, indeed, briefings became more frequent for a while, but this does not seem to be the case anymore.

Critics would also argue that states should not bear the burden of the shortcomings in staffing at the federal level and that the reason why the USTR has to listen to so many different opinions is because the administration gives corporate interests extensive access to the USTR. They pointed out the lack of outreach and/or information dissemination on behalf of the USTR (US1-12, US1-17, US2-3), which could be seen as discouraging state involvement. The function of the committee was thus fundamentally questioned by some progressive respondents, not all of whom are members of the committee.

The criticism of the IGPAC does not emanate entirely from the progressive side. There is broad consensus among members that some improvements are necessary. One expert called the IGPAC the “main mechanism” for states to become involved, but that “we need more” (US2-5). Cataloging state concerns was not enough and the process was simply not in tune with state capabilities: “A lot of times, IGPAC will say, ‘Here, we’re going to meet on Tuesday, we need the report by Thursday. It doesn’t work” (US2-5).

The limited amount of time that states have to comment on negotiation texts was criticized even by those who are generally in favor of the committee’s structure. For example, the final TPP draft was made available to the IGPAC a month before the legally mandated deadline to turn in the report (US1-24). Considering the complex and comprehensive nature of the TPP deal, which runs over 30 chapters, five annexes and dozens of letter exchanges, along with IGPAC members’ standing as voluntary, unpaid state officials, the opportunity for the IGPAC to read, understand and write commentary on the international trade agreement is limited: “Having to go for years without seeing the text is a problem. I think that the USTR can do a better job saying, ‘OK, every [pause] year, we’re going to put out a bracketed text to cleared advisors.” (US1-24).

Because of these short notices and further allegations that USTR is not forthcoming with sensitive information, some respondents questioned whether the administration is even sincerely interested in receiving and reading reports from the IGPAC or whether the USTR merely checks the IGPAC report as a legal requirement they have to fulfill (US1-4, US1-6, US2-5). They were wondering if consulting with the states and asking for reform recommendations was but a chance for the USTR to affirm that their office had actually engaged with state officials, even when no substantive dialogue was held.

Whether respondents blamed the IGPAC’s weaknesses mostly on the USTR or saw multiple factors at work, including a lack of state engagement, the discussions surrounding the IGPAC show the dissatisfaction among many state officials with the only institutionalized state-federal consultation body on trade policy. In this instance, state-federal conflicts in transatlantic trade policy are not carried out regarding specific policy fields but concern the overall place of the states in the U.S. federal system. Progressive voices have called this out more frequently and forcefully than other state officials have, using not only the IGPAC’s own reports and meetings as an outlet but also other avenues such as state organizations, state resolutions and trade policy commissions.

State Organizations

A renewed look at some of the state organizations discussed in this section further highlights progressives’ activism on trade policy. The ALEC, a bipartisan but conservative dominated state legislators’ organization, passed a resolution in favor of the TTIP that did not dive into the issue of state regulatory authority being potentially eroded. A person familiar with the ALEC’s work acknowledged that there is possible tension between the two ALEC principles of “federalism” and “free markets” but said that issues with the ISDS mechanism or other rules potentially overriding state rules could be resolved (US2-10). This respondent also personally did not deem it problematic that states lack access to the negotiations and the negotiation texts because international negotiations need to be conducted in privacy for the parties to “put all cards on the table” (US2-10). Overall, ALEC members seem to be proof that the classic pro-trade Republican does still exist: They are strongly convinced that free trade is good and should be supported almost unconditionally (US2-10).

Contrasting the ALEC’s positions with those of the NCEL and the Forum on Democracy and Trade, it becomes obvious that progressive state legislators take a different approach. NCEL members have been actively seeking personal contacts with the administration, the USTR and even European officials, in addition to writing letters. They are not merely

addressing environmental effects of the TTIP but also the broader topic of states' authority being potentially undermined by the proposed agreement. The NCEL-facilitated dialogues with MEPs are evidence of this, as the progressive environmentalists put states' regulatory authority front and center in the meetings. For instance, the procurement debate mentioned above (see pages 152-155) was largely driven by progressive state leaders from the Northeast in cooperation with environmental and agricultural nongovernmental organizations in Europe and the U.S.

It also must be noted that the NCEL and its members develop contacts not only to governmental actors but also to U.S. and European nongovernmental organizations from civil society that share their views. The cooperation between the Institute for Agriculture and Trade Policy and the Maine Citizen Trade Policy Commission is a prominent case of such linkages, but NCEL members have also been in touch with the U.S. consumer organization Public Citizen or Europe-based environmentalist groups such as the Agricultural and Rural Convention ARC2020 or Friends of the Earth Europe. Progressive state legislators working in international trade policy thus do not only attempt to establish a network in the U.S. but in Europe as well.

The now defunct Forum on Democracy and Trade is another example of progressives pushing issues of intergovernmental competencies. While the forum was in existence in the early 2000s, a time of active international trade negotiations, progressive state officials had the means to engage with the federal government beyond the IGPAC, which led, more often than not, to contrary views on what level of government was best suited to deal with a specific problem. The forum was not a partisan forum by design, but its members were keenly aware of the potential deregulatory effects that international trade agreements could have on states and the issues the forum pushed aligned with progressive causes. The forum clashed with the federal government at times because its members felt their analyses and reports fell on deaf ears within the administration. Active obstruction of the forum on behalf of the federal government was also alleged.

State Resolutions

State resolutions offer another glimpse into the rift between states and the federal government on progressive issues. State legislatures in some cases openly criticize their lack of participation and publicize their concern of being passed over in the federal system, but in their resolutions, they have to resort to "respectfully praying" for the federal government to act or "urging" federal actors to become active. So far, it appears that this rift has not led to any serious public state-federal dispute: State resolutions are limited in their efficacy (if they are even passed) and neither states nor organizations calling for more state participation (such as Public Citizen, 2016) have succeeded in putting this topic on the national agenda.

The analysis of state resolutions addressing the TTIP is a prime example of the ideological and partisan politics underlying transatlantic trade policy interest representation. This division runs the danger of generalization but serves to illustrate an intrastate divide between progressive and moderate legislators and an interstate divide between those legislatures supporting the TTIP and those criticizing it. All the resolutions that made it through a state chamber advocated for the TTIP and were passed in states with large transatlantic economies (California and Illinois) or with a traditionally strong conservative leadership (Georgia) or both (Florida). The TTIP resolutions critical of the proposed agreement came overwhelmingly from progressive Democratic states but were often not passed, possibly due to a Republican legislature (Michigan) or because of insecurities regarding the passage (Vermont).

Those resolutions critical of the TTIP stressed issues of state regulatory power related to the ISDS mechanism or environmental regulations, which are progressive causes.

Progressive state legislators, sometimes in cooperation with nonprofits with like-minded stances on trade or the environment such as the Institute for Agriculture and Trade Policy or Public Citizen, emphasized the importance of state sovereignty and the need to push these issues against a perceived overpowering by U.S. and foreign corporations (US1-6, US1-8, US1-12, US1-23, US1-25).

Without repeating the earlier, in-depth analysis of state resolutions, it still becomes clear that questions on states' positions in U.S. federalism are one of the major fault lines visible in these texts. Even though they are largely symbolic, resolutions are one means by which states can voice their opinions towards the administration and publicly criticize their lack of involvement in U.S. trade policy making.

Trade Policy Commissions

The fact that the state resolutions criticizing parts of the TTIP were borne out of dedicated trade policy commissions within the state legislatures underlines the work of progressive state legislators. With the exception of the Utah International Relations and Trade Commission, which has not become active on transatlantic trade policy and tends to focus on trade promotional issues as well, the remaining three policy-focused trade commissions are all in overwhelmingly Democratic and progressive states, Maine, Vermont and Washington. Even with a Republican controlled executive such as in Maine, the trade policy commissions were able to push progressive causes. They are not specifically designed to be opposed to free trade agreements and in the cases of Maine and Vermont do include various citizen representatives as well. But the very fact of their establishment, meant to monitor and comment on international trade negotiations, speaks to the notion that certain elements of such talks need to be kept in check.

In Maine, the purpose of the trade policy commission, enshrined in legislation, is “to provide a mechanism for citizens and Legislators to voice their *concerns* and recommendations; and to make policy recommendations designed to protect Maine’s jobs, business environment and laws from any *negative* impact of trade agreements” (Maine Legislature, 2004; italics added; see also Bentley & Dube, 2005, p. 1). The emphasis that I added demonstrate the skeptical undertone of the legislation. The Vermont statute is almost identical, in that the commission there is supposed to be a

mechanism for citizens and legislators to voice their concerns, which it shall use to make policy recommendations to the General Assembly, to the Governor, to Vermont’s congressional delegation, or to the trade representatives of the United States government. Recommendations shall be designed to protect Vermont’s job and business environment, and State sovereignty from any negative impacts of trade agreements. (Vermont General Assembly, 2009a)

The statutes in Utah and Washington are neutral, speaking of providing opinions on or studying trade agreements, and in Utah, trade promotion is also mentioned as a goal. Part of the reason why the commissions in Maine and Vermont have been most vocal on the ISDS system and sovereignty issues can therefore be found in their explicit task to raise potential issues and in their progressive membership: The motivation for state legislators to become involved in the TTIP discussions is a mixture of their mandate and their personal passion for the topic (US1-6, US1-8, US1-12).

The personal engagement of individual progressive legislators has so far not led to immediate changes in U.S. trade policy making, even though it has been one of the most prominent signs of states' engagement. Apart from the trade promotional connections state executives have to Europe, the direct linkages to European governmental actors were mostly sought by progressive state bodies such as the NCEL or the Maine Citizen Trade Policy

Commission. The European speaking tour by NCEL member and former Maine state legislator Treat might be an isolated incident of parallel interest representation, but it clearly shows a progressive network being spun in the U.S. and Europe. The meetings in Europe featured progressive as well as conservative politicians and civil society groups as well as business representatives, but the baseline of the meetings and of the state-focused presentations were on those TTIP issues of concern to progressive state leaders (US1-6, US1-8, US3-7, US3-8). In essence, the European tour expressed an eagerness to learn more about the TTIP and be involved in the negotiation process.

State legislators' ideological or partisan criticism may lead to a clash with state executive officials. As was evidenced by the governors' statements and actions, state executives tend to be in favor of the TTIP and free trade agreements in general. If they have concerns about preempting state regulatory power at all, they typically think that issues regarding the ISDS mechanism or regulatory cooperation can be resolved within the negotiations, which is contrary to progressives' points of view. This intrastate ideological difference has, however, not resulted in open disagreements, partly due to the lack of public concern with the TTIP, but also because the progressive critics are in the minority in the states.

In sum, I argue that issues of U.S. federalism, touching on states' roles in trade negotiations, are the most significant source of conflict between the states and the federal government. Progressive state legislators represent their interests actively in some states, using both cooperative means in the IGPAC and parallel interest representation, sometimes even bypassing interest representation when talking to EU officials. While trade promotion is the dominating impetus for states to become engaged in international affairs, it is the intricate overlap of the domestic and foreign spheres in trade policy that causes the most strains on state-federal relations.

7.3 Chapter Conclusion

Transatlantic trade policy making is the most contentious issue between states, the administration and the EU, whereas interests on trade promotion rarely clash. This chapter reviewed the contentious introduction of SelectUSA, which some state officials viewed as the federal government encroaching on their turf of FDI attraction in the EU. Major public spats were avoided, largely due to a will on both sides to improve communication and coordination on this topic. In a larger context, however, these diverging state-federal interests point to the key fault line leading to conflicts in transatlantic trade policy making in the U.S. That is the question of if, how and when states can and should be included in international affairs. Existing scholarship has already pointed out this tension in federal systems resulting from strong noncentral governments claiming a role in matters that are typically reserved for the federal government but from which states are not constitutionally barred from. This tension is much more pronounced in trade policy matters than trade promotion matters.

On trade policy matters, state-federal conflicts were clearly discernible, as the empirical evidence in this chapter demonstrated. State and federal interests diverge on crucial TTIP items such as public procurement, the ISDS mechanism and regulatory cooperation. States have multiple avenues to make their voices heard on these topics, mainly relying on consultations within the IGPAC and written statements and contacts to the federal government, mostly the USTR and the congressional delegation. Instances of bypassing interest representation occurred as well, in the form of state officials discussing selected controversial TTIP regulatory issues with elected officials from European parliaments, even though these were minor encounters without policy-changing consequences.

The issues of the ISDS mechanism and regulatory cooperation are contentious in and of themselves for some states, but they are also viewed more generally in light of the topic of state sovereignty. The TTIP is but one of many modern deep free trade agreements that some, mainly progressive, state officials see as threatening their rule-making authority. In order to cope with potential losses of their regulatory competencies and with possible legal challenges to their legislation, state officials address the administration to amend the TTIP and to amend the U.S. trade policy-making process. These goals are related because the states constitutionally do not have any way to alter the TTIP. State officials have to rely on representing their interests within the IGPAC and towards the administration and their congressional delegation. For this to be successful, the process of U.S. trade policy making has to offer opportunities for state input to be taken into account. Therefore, the states seek to safeguard their sovereignty: States want to ensure that foreign actors cannot impose rules or sanctions on them. And they also want to ensure that the U.S. government hears them when they point out that foreign actors might impose rules or sanctions on them.

The U.S. federal system is particularly prone to harboring these types of intergovernmental conflicts. The bypassing interest representation, which I mentioned earlier as lacking policy consequences, nevertheless underlines two important findings on the multilayered interest representation in U.S. trade policy making: Firstly, some states are able and willing to scan the TTIP chapters for specific content potentially detrimental to the states, both based on EU and U.S. federal proposals. No state-EU conflict emerged from this because the federal and supranational officials dominate the negotiation process and there are little points of access for states. But, secondly, states are still able and willing to make their positions known outside of the existing institutionalized fora in the U.S. by engaging with EU actors. These findings accentuate the openings the complex interdependent trade policy environment and the constitutional ambiguity within the U.S. afford states in their multilayered interest representation.

8. Conclusion

After providing brief answers to my research questions, I will present some in-depth findings from my empirical analysis. These will show the importance of states' economic structures, ideological preferences within states and state officials' personal backgrounds as reasons to become involved in transatlantic trade and investment policy, which has not garnered much state attention overall. I will then offer implications for policy and for future research.

8.1 Answers to the Research Questions

My first research question was: Considering their constitutional limitations in this field, what means do states have to represent their transatlantic trade and investment policy interests and why do some states use them, while others do not? I differentiated between states' trade promotion interest representation (focused on economic development) and trade policy interest representation (focused on state regulatory authority) and found that states have a variety of reasons and ways to make their interests known towards the federal government and European actors.

For their trade promotional efforts, they engage in parallel interest representation, of which gubernatorial trade missions to and representative offices in Europe are a part. Both the missions and the offices serve the purpose of finding businesses that could invest in the state or buy products from businesses in the state. Furthermore, some states connected the TTIP to their trade promotion interests. I argued that this type of interest representation is driven by the state executive, particularly by personally engaged governors, and seen especially in states focused on agricultural exports.

Regarding transatlantic trade policy interest representation, I discovered several means for states to speak out such as consultations with the USTR within the IGPAC, letters and other contacts to the administration or to Congress, policy positions issued by state associations or state resolutions from state legislative chambers. The empirical data demonstrated that only a minor fraction of U.S. states makes use of these options to become involved in interest representation on transatlantic trade policy. Most policy-related activity on the TTIP was generated by a small number of progressive state officials on topics such as public procurement, the ISDS mechanism and environmental regulations. These topics were contextualized in the broader framework of state sovereignty and not with regards to economic development. Officials drew their motivation to become engaged from past experiences with trade agreements, an active progressive civil society in their states and personal interest in trade policy issues.

I also tackled the following question in my research: Why and in what ways do some state executives, state legislatures or other state governmental bodies engage with U.S.

federal actors and European actors to represent their transatlantic trade and investment policy interests, particularly when these conflict with federal and European interests? States' engagement with European governmental actors was negligible. In light of only isolated meetings between progressive state legislators and European parliamentarians, there cannot be talk of systematic bypassing interest representation on behalf of the states. State-EU policy conflicts mostly concern procurement and are dealt with in talks between the federal government and the EU, which does not involve the states. I argued that states are not able or willing to use connections to EU actors for their interest representation or do not view it as necessary or appropriate.

I showed that states' trade promotional interest representation runs parallel to the federal government but largely in harmony, without major conflict. On policy issues, however, there is conflict between the states and the federal government on what roles the states can and should play in trade negotiations. State officials mostly use coordinated interest representation within the IGPAC to push state-specific policy issues and to claim a stake in trade policy making in the U.S. federal system. Beyond that, some progressive state legislators contact the administration and Congress to criticize potential encroachments on states' regulatory authority by the TTIP.

8.2 Synthesis of Findings

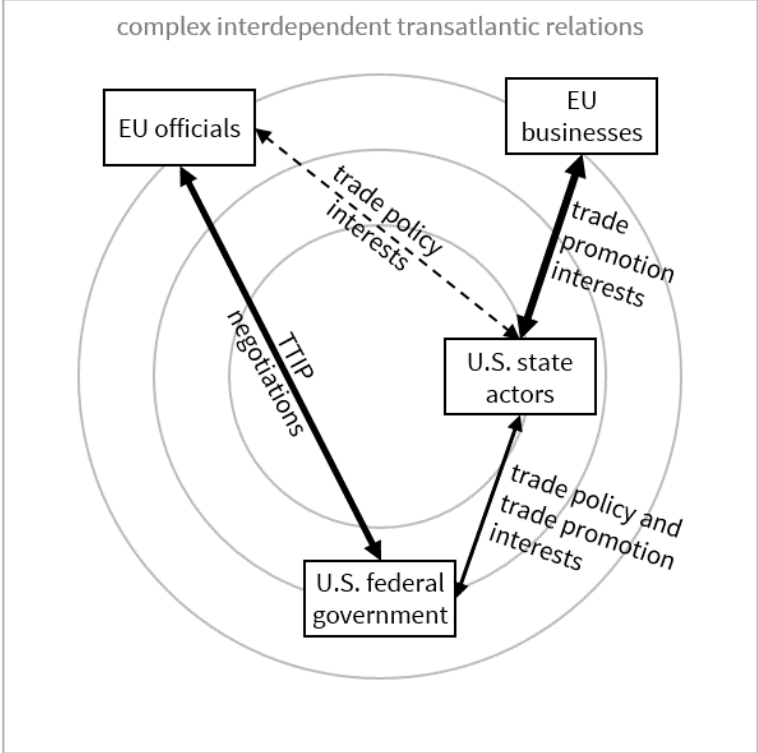
U.S. states' activities in transatlantic trade and investment relations are an example of multilayered interest representation. The two distinct topics within transatlantic trade and investment relations covered in this research reveal different aspirations states have and different means and motivations among states to become active: On trade *promotion* issues, states have for decades maintained direct contacts with European businesses via their offices and their trade missions to foster exports and investments. On trade *policy* issues, states strive to defend their consultative position in trade negotiations within the U.S. federal system and have at times linked up with European actors on this matter of state regulatory authority. The TTIP talks highlight the multiple layers of state interest representation, as the proposed deal can be put into the context of economic development as well as deregulation. It also provokes contacts to U.S. federal and EU decision makers.

In this section, I will provide more details on how states arrive at and represent their interests, weaving parts from different sections of this study together and referring back to the initial theoretical considerations to answer my research questions. I will focus stronger on the trade policy rather than the trade promotion aspects because in this area, my study offers more original empirical insights.

Means of State Interest Representation on the TTIP

This study reveals the multilayered nature of interest representation by U.S. states on transatlantic trade promotion and trade policy issues. State actors, be they legislative, executive or association officials, have multiple access points in the national capital and, to a lesser degree, also in the EU to make their voices heard. Figure 13 depicts a simplified overview of the multilayered connections between state, federal and European actors, all occurring in an international system characterized by complex interdependence. It underscores the division between trade promotion and trade policy interests for states: Trade promotion is the most important aspect of transatlantic trade relations for states, while trade policy matters take a backseat.

Figure 13. U.S. states' multilayered interest representation in transatlantic trade relations



Note: Loosely based on Hocking (1986, p. 492)

In figure 13, the thickness of the arrow represents the intensity of connections between the various actors. The thick arrow between states and European businesses indicates that almost all states link up with companies in the EU to promote exports and to attract FDI. The experts interviewed overall confirmed that trade promotion is the most important aspect of states' transatlantic affairs, a sentiment also reflected in governors' state of the state speeches: These addresses rarely featured trade policy topics but did touch upon international exports and investments. To promote trade, states use global economic development strategies, created and steered by the executive branch, which can include gubernatorial visits to European businesses and maintaining a representative office in the EU. Such interest representation might be facilitated by U.S. embassies or the Foreign Commercial Service in the EU. In addition, some state executives are actively connecting the TTIP to their economic development efforts, favoring the deal due to trade promotional considerations and speaking out towards the administration and Congress (symbolized by the arrow between the states and the federal government in figure 13). Governors have written letters to the USTR, the president or members of Congress or they have sought informal contacts to federal actors to represent their trade promotion interests on the TTIP.

Despite some connections to the TTIP, transatlantic trade promotion is not generally linked to international trade negotiations. Governors seek out European business contacts independently of the EU-U.S. talks. Such contacts are the most common transatlantic connections U.S. states have and more prevalent than states' linkages with governmental actors in the EU: Only few respondents reported contacts to officials from regional, national or EU administrations, while business-related trade missions can overall be regarded as a prime point of contact with the EU. These findings on the specific case of transatlantic trade relations confirm previous studies that, more generally, found states to be global economic actors prioritizing trade promotion as by far their most important international activity.

States' engagement on transatlantic trade policy is different in scope and approach from transatlantic trade promotion. States do not connect with EU businesses to discuss trade

policy, as those meetings are reserved for solely transactional matters concerning FDI and exports. Rather, the debate on transatlantic trade policy is dominated by the European Commission and the U.S. federal government, which lead the formal TTIP negotiations (represented by the thick arrow between the two in figure 13), without involvement of the states. If states want to represent their interests on trade policy, they largely opt for intergovernmental options available to them. I discovered the following means for states to speak out within the U.S. federal system, in order of importance:

- Consultations with the USTR within the IGPAC
- Letters to the administration or to Congress, sent by individual state legislators/governors or topical groupings of legislators/governors
- Personal discussions with the administration or Congress by governors and state legislators
- Policy resolutions by state associations
- State resolutions

The IGPAC is the only institutionalized framework for state interest representation on trade policy. As an instance of coordinated interest representation, meaning that the states and the federal level engaged in a dialogue, the consultations in this body do grant states the chance to offer their voices on the administration's handling of the TTIP negotiations. The IGPAC's shortcomings, however, call into question whether this is a suitable avenue for states' interest representation, which might explain why several state officials sought out additional ways to make their opinions known. Apart from the IGPAC, informal contacts to the federal level were the most important means for states to articulate TTIP policy interests. congressional testimony on the TTIP did not occur, so state officials relied on letters to and meetings with members of Congress as well as the administration to articulate their interests. Letters can be seen as an important way to engage in transatlantic trade policy. The interviews also showed that state associations can act as a conduit between states and federal and international actors. These organizations can facilitate meetings and host conferences, but most importantly, their policy resolutions are aggregated state interests that tend to carry more weight than single states' opinions.

In addition, some state legislators reached out to their European counterparts, either at the national or EU level, but this type of direct engagement was rare (as the dotted arrow in figure 13 indicates). In a few personal encounters between state and EU legislators absent of any U.S. federal actors, the TTIP's trade policy issues were the center of attention. Still, there is neither an institutionalized mechanism of exchange (similar to the IGPAC) nor frequent, high-level visits with European policymakers (similar to gubernatorial trade missions).

Altogether, the U.S. federal system is flexible enough to allow states to become engaged on transatlantic trade relations, a responsibility legally reserved to the federal government. Yet, only a few state officials used this flexibility to speak out on transatlantic trade policy issues, especially compared to transatlantic trade promotion interest representation, which has become commonplace among governors in recent decades. Most states did not develop or articulate either trade promotion or trade policy positions: U.S. states remained rather silent in the TTIP talks. This finding of muted state activity runs counter to Hocking's expectations, as he foresaw a host of potential roles for noncentral governments in trade negotiations. Table 11 summarizes these findings in relation to Hocking's analysis (for the original table, see table 4 on page 41).

Table 11. States’ multilayered interest representation in the TTIP negotiations

Stage in policy cycle	U.S. states’ roles	Patterns of interaction	Federal government tasks and strategies towards states
Prenegotiation	<ul style="list-style-type: none"> No activity specifically on the TTIP; minimal agenda setting on overall U.S. trade policy making 	<ul style="list-style-type: none"> State ↔ federal government (state resolutions) 	<ul style="list-style-type: none"> No involvement of the states on behalf of the federal government
Negotiation	<ul style="list-style-type: none"> Aggregating and articulating state interests diverging from federal preferences, particularly on the ISDS mechanism and regulatory cooperation Sustaining support for federal government goals on economic development issues and partly on GIs States as targets for EU’s goals in public procurement 	<ul style="list-style-type: none"> State ↔ state (personal contacts, joint letters) States ↔ federal government (mostly via the IGPA; letters, resolutions and personal contacts) State ↔ EU legislators (rare) 	<ul style="list-style-type: none"> Internally: Brief states on negotiations (mostly via the IGPA) Externally: Stress problems of maintaining domestic support for tactical reasons on procurement

Note: Update of table by Hocking (1993b, p. 38)

As analyzed in chapter 6, states did try to set the agenda and insert themselves into international trade negotiations. But contrary to Hocking’s matrix, direct contacts between states and EU governmental actors at all levels were almost nonexistent: With two exceptions found in this study, there were no meetings between states and the European Commission, the European Parliament or EU member states and their regions to voice state interests. Thus, U.S. states barely attempted to bypass the federal government, avoiding this conflicting mode of parallel interest representation (see table 12 on the following page). Instead, the states relied on coordinated interest representation within the IGPA, which exhibited conflicts on policy-related TTIP issues. On transatlantic trade promotion, there are strong links between states and EU businesses that do not involve the federal government, but this type of parallel interest representation is still in harmony with the federal government and only seldom has links to ongoing trade talks. Beyond the different ways in which states can make their voices heard, table 12 shows variation among states on what means of interest representation are used. The reasons for this variance will be explored in the following pages and reasons for states’ inactivity will also be analyzed (see pages 177-182).

Table 12. Means and modes of U.S. states' interest representation in transatlantic trade and investment relations

	Coordinated state interest representation (= state-federal interaction)	Parallel state interest representation (= no state-federal interaction)
In harmony with the federal government	No conflict <ul style="list-style-type: none"> • State resolutions (on trade promotion) • Letters and contacts to federal actors (on trade promotion) 	No conflict <ul style="list-style-type: none"> • State representative offices in EU • Gubernatorial visits to EU • Governors' emphasis on economic development in an EU context
Conflicting with the federal government	Conflict <ul style="list-style-type: none"> • <i>IGPAC</i> • <i>Contacts to congressional delegation (on trade policy)</i> • <i>Letters and state resolutions on public procurement, the ISDS mechanism and other regulatory issues, on the inclusion of states in the negotiation process and on the transparency of the negotiations</i> 	Conflict and bypassing <ul style="list-style-type: none"> • <i>Meetings between state and EU legislators</i>

Sources: Table based on Soldatos (1990, p. 38) and Tatham (2010, pp. 77-78, 90)

Notes: The items in italics refer to topics of transatlantic trade policy. The lines between the modes are not distinct: For instance, state representative offices might at times be in touch with U.S. embassies or other federal overseas actors, but they generally do not rely on interaction with the federal government.

Variation in State Interest Representation on the TTIP

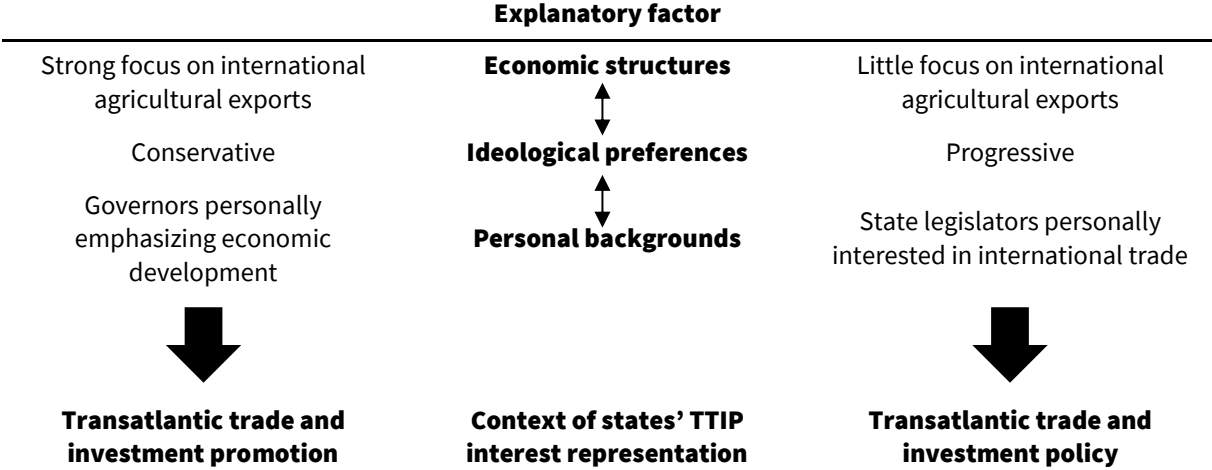
There is variation in how U.S. states approach interest representation on the TTIP and the major fault line appears between states focusing on transatlantic trade promotion and states focusing on transatlantic trade policy. By grouping my study into trade promotion and trade policy interest representation on the TTIP, I meant to expose different means, actors and motivations for state engagement. Apart from that, however, the distinction also revealed the two separate clusters of states actively engaged on the TTIP: One is a small group of state officials putting the TTIP in the context of potential economic benefits for their state. Another is a small group of state officials critical of the TTIP regarding state sovereignty issues. There is little overlap between these groups, which begs not only the question why some states become active in transatlantic trade interest representation but also why they become active in a specific field. I argue that the variance among states occurs due to the combination of three factors: State economic structures, ideological preferences within a state and state officials' individual, personal backgrounds.

Factors Contributing to States' Interest Representation on the TTIP

The qualitative empirical evidence gathered for this study suggests that states' economic structures, ideological preferences within states and state officials' individual, personal backgrounds explain their interest representation in transatlantic trade and investment matters (see figure 14 on the following page). Trade promotion issues are pushed by the state executives in states with advanced economic development strategies focused on agricultural exports, with a conservative pedigree and a governor emphasizing job creation and economic growth. Meanwhile, trade policy issues are championed by state legislatures in states with

dedicated trade policy commissions instituted during previous trade negotiations, with a progressive base and state legislators personally interested in international trade topics. In the following, I will highlight the differences between states using the TTIP to speak out on transatlantic trade promotion and states using the TTIP to speak out on transatlantic trade policy, based on these three interconnected factors.

Figure 14. Interconnected explanatory factors for states’ interest representation in transatlantic trade and investment relations



States’ economic structures. States relying heavily on international exports of agricultural goods tend to publicly speak out in support of the TTIP, as more open EU markets would facilitate their trade promotion efforts. The prime example of interest representation in this field is the joint letter to the federal government on the TTIP in 2013 (see table 9 page 93), in which 14 governors, mostly from agricultural states, touted the economic benefits of the proposed deal. Agriculturally dominated state economies are especially reliant on exports if they achieve overproduction that cannot be consumed – or easily stored – domestically, so producers and politicians in such states typically push for open markets with low tariffs (cf. Behsudi, 2017). To repeat a quote on agricultural trade, “if we’re not growing our export markets, I mean, we’re dying as a state then” (US1-15). Trade deals can therefore be a “lifeline” (Behsudi, 2017) for agricultural states, not only by lowering tariffs but also by addressing nontariff barriers: Agricultural exports are subject to many international trade rules such as the WTO’s Agreement on the Application of Sanitary and Phytosanitary Measures, raising exporting states’ interest in opening markets and having a common regulatory framework. The EU has additional strict rules following the precautionary principle to consumer risk management and stemming from European reservations against, for instance, GMOs and hormone-treated beef. In-state exporters could profit from gaining access to the EU if a joint approach to risk evaluations was found. One of the biggest farm organizations in the U.S., in fact, called for the TTIP to change EU policies on biotechnology and GIs (American Farm Bureau Federation, 2017).

The private sector pushing for their trade promotional interests is another important facet of states’ economic structures. The state executive is closely in touch with state businesses and business associations, which bring in expertise and might stress trade promotion topics in international negotiations. These connections are indicated by governors traveling abroad with business representatives (see pages 89-90) or establishing public-private partnership to foster economic development. For instance, Florida was the first state to create a public-private partnership solely dedicated to economic development (Enterprise Florida, 2017), including international export promotion and FDI attraction. This

organization, situated within the state executive, has trade representative offices in 13 countries all over the world, five of which are in the EU.

Like Florida, most of the 14 states from the 2013 letter have substantial economic development agencies, for example Indiana, Iowa, Nebraska, Pennsylvania and Utah. Six of the signatory states have offices in the EU (Arkansas, Florida, Indiana, Iowa, Pennsylvania and Utah). States that historically view international trade as a necessity to achieve economic growth tend to build up well-staffed economic development agencies and create trade promotion strategies, for example focusing on specific industries or specific regions of the world. When such economic development institutions exist, in turn, knowledge and resources on trade promotional topics are available to connect ongoing trade negotiations to a state's international export efforts. The case of Nebraska highlights how economic priorities shape states' international trade endeavors. As one respondent put it, "Nebraska probably has had a three-decade tradition of wanting to be engaged in the world market place and promoting trade because [the state is] such a large agricultural producer" (US1-16). Based on this, the state developed an economic development strategy strongly focused on agricultural exports and has governmental agencies and officials in place emphasizing international connections.

Yet, the economy is not an explanatory factor by itself. If that were the case, all traditional exporting states, especially those with large agricultural sectors, would make their voices heard to support transatlantic trade promotion via the TTIP. But they do not: California has the biggest economy in the U.S., including the largest agricultural sector (U.S. Department of Agriculture, 2017), and has sizable trade and investment ties to the EU (see annex 1), but its state officials have barely spoken out on the TTIP. Of the ten biggest agricultural states in the U.S. (U.S. Department of Agriculture, 2017), four signed the gubernatorial letter mentioned above. Of the remaining six, even in those states with strong economic development agencies such as Illinois, North Carolina or Texas, trade promotion interest representation on the TTIP could not be detected. Connecticut, Delaware and Massachusetts rank highest in exports to the EU, yet do not stand out in interest representation on transatlantic trade promotion.

In sum, agricultural states with advanced economic development strategies seem to be keen on opening the EU market and thus urge the federal government to support the TTIP. They expect their economic development strategies, which include trade promotion efforts, to benefit from the trade deal. Still, just because a state is a large agricultural exporter does not mean that it will speak out on the TTIP for trade promotion purposes. I argue that ideology and state officials' personality also need to be taken into account.

States' ideological preferences. To generalize from my findings, those states supporting the TTIP based on state trade promotion interests tend to be conservative, whereas those states criticizing parts of the proposed deal on state sovereignty grounds tend to be progressive. The traditional division between conservative free traders and progressive free trade critics seems to hold in the case of the TTIP, which is noteworthy because the partisan preferences have shifted considerably in recent years (see page 128). While surveys show that Democrats support the TTIP more so than Republicans, both parties today have large factions that oppose free trade agreements, albeit for different reasons. Therefore, I refrain from introducing party politics as an explanatory factor and instead examine the ideological leanings of a state.

The most prominent examples of progressive-leaning states criticizing the TTIP are Maine, Vermont and Washington. Maine is a fitting case to show why looking at party politics alone obscures the analysis: The state has had a Republican governor for the entirety of the TTIP negotiations and a Republican-controlled state Senate for most of the time. But the

states' voters and legislators lean left. For instance, the partisan voting index in Maine is D+5 (see map 6 on page 139; Vermont and Washington have indices of D+16 and D+5, respectively). Furthermore, a well-developed progressive civil society exists in Maine that has been pushing economic and social issues in the state. This progressive attitude shapes the state's interest representation more so than the Republican-led executive does, as Maine has been outspoken on procurement issues, the ISDS mechanism and environmental and health regulations, which are not typically pushed by conservatives.

There is an institutional angle to these three states' progressive leanings as well: Maine, Vermont and Washington are the only states with active trade policy commissions, disregarding Utah's International Trade Commission due its lack of activity on the TTIP. Because of these institutions in place, state legislators have acquired expertise on international trade policy and on the intergovernmental mechanisms in the U.S. offering them opportunities to represent their trade policy interests. Moreover, the commissions offer an opportunity for interstate cooperation, as the Northeastern commissions demonstrate: Since the inception of the trade policy commissions in Maine and Vermont, there have been exchanges to formulate joint positions. This was also the case for the TTIP talks, when state legislators from the Northeast organized meetings with European legislators.

Trade policy commissions were found to be one way to become engaged in transatlantic trade relations. State legislatures created trade policy commissions long before the TTIP in the wake of previous trade agreements that some legislators, constituents and civil society organizations perceived to threaten state sovereignty and to entail negative economic effects. On past and current trade negotiations, many state legislators were shaped by listening to constituents linking global free trade to some of the economic hardships they had to endure on the local level. This was on display, for instance, in the public hearing of the Maine Citizen Trade Policy Commission I attended.

In contrast, the examples from exporting agricultural states show conservative state executives taking a markedly different historic perspective: Especially through their economic development agencies, they are often in touch with businesses from their state, which rely on exports for economic stability and growth. Because of this, conservative state officials tend to view the TTIP as a potential engine for job creation. The gubernatorial letter, for instance, supporting the trade deal for trade promotion reasons was signed by twelve Republican and only two Democratic governors. Without mentioning the trade policies that progressives tend to put front and center, the conservative state leaders focused on job creation and export growth, which are of high importance to their constituents. Clearly, state governors and legislators know their voting base and the preferences of their citizens and businesses and try to work on their behalf.

However, the ideological preferences in the states cannot be taken as the single explanatory factor for their interest representation. If that were the case, many more conservative states should promote the TTIP on trade promotional grounds and many more progressive states should represent their trade policy interests. This is not the case, as staunchly conservative states such as Alabama, Texas or Wyoming were not found to engage in transatlantic trade promotional interest representation on the trade deal. Similarly, progressive states such as Colorado, Minnesota or New York have not openly addressed regulatory questions in the TTIP, even though they could expect voters to be supportive of such talking points. In fact, environmentalist California passed a resolution on the TTIP not mentioning regulatory issues at all. And even in those progressive states that do have trade policy commissions and thus focus on international trade deals, there are different levels of activity.

Overall, the empirical evidence provided in this study shows that progressive states with active trade policy commissions tend to represent their interests on the TTIP by arguing

on state sovereignty grounds. Concerned about possible deregulation, progressive state legislators address the federal government to ensure continued state regulatory authority in the proposed trade deal. Conservatives, in contrast, tend to favor the TTIP based on trade promotion considerations. But ideology in a state is only a part of the explanation for the variety of state interest representation on the TTIP. Another explanatory factor is officials' personal motivation and background, which together with economic and ideological considerations illuminates states' reasons to engage in the TTIP.

State officials' personal backgrounds. Looking solely at state-level economic or ideological structures ignores individual-level motivations and therefore does not suffice in explaining states' transatlantic trade interest representation. So far, I have argued that economic structures and ideological preferences lead state officials to speak out on the TTIP either because they want to ensure positive economic benefits for their state or because they want to ensure continued regulatory authority over state issues. In theory, these two priorities are not mutually exclusive: All states are keen on maintaining state sovereignty *and* creating jobs. Yet, there are few overlaps between states focused on trade promotion and states focused on trade policy, and the emphasis placed on either one of these issues shows crucial divides. One divide already discussed is between agricultural-minded economic development topics and state sovereignty topics. Another fault line is the ideological division between conservatives and progressives. On top of that, these breaks might be exacerbated by the rift between state executive officials, who take a view to the state economy as a whole and are keen on marketing the state, and state legislators, who are responsible for law-making in the state and tend to take a narrower view based on their districts. I will refer to these potential intrastate tensions later (see page 185). Underlying all of these macro-level views of economic, ideological and institutional structures, however, is state officials' own personal background and interests.

The expert interviews uncovered how state officials' individual enthusiasm drives their engagement on trade promotion or trade policy issues. I argue that this number does not do justice to the importance of officials' intrinsic motivation to speak out on international trade topics: It is not their political mandate, the volume of states' transatlantic exports or voters' preferences alone that pushes state officials to write letters and engage with Congress but rather their personal priorities in their jobs. This finding is in line with previous research on the importance of personal leadership in states' foreign affairs (Conlan & Sager, 2001, p. 24; McMillan, 2008, pp. 242-244).

The gubernatorial letter, for example, was initiated by Iowa Governor Branstad, who has made economic development a focal point of his administration, and it was signed by a variety of state governors with long-standing engagement in Europe, evidenced by having trade offices in the EU or traveling there on trade missions. On trade agreements, Governor Branstad states that "[t]rade helps drive economic growth through high-paying jobs for American workers and increased opportunities for American businesses and agricultural producers" (Branstad, 2013) and Iowa's lieutenant governor is quoted as saying that "Governor Branstad and I understand the importance of these trade agreements to Iowa businesses" (Branstad, 2013). This personal conviction has to be seen as a primary motivation for the governor to urge the federal government to break down trade barriers.

In the same state whose governor so strongly emphasizes agricultural exports and open overseas markets, there is also room for committed state legislators to engage on trade policy issues: Iowa State Representative Charles Isenhardt has repeatedly stressed TTIP issues related to investor rights and environmental regulations (Garbe, 2015; Isenhardt, 2015; also mentioned by US1-6, US1-12). Considering the state executive's dominant focus on economic development and in the absence of a trade policy commission in Iowa, this speaks to

Isenhardt's personal motivation to engage in international trade topics. As another example, the NCEL's meeting with MEPs was organized by legislators from states with an active progressive civil society and with personal ties to U.S. and European nongovernmental organizations. Many interviews revealed state officials' passion for international trade topics that was rooted in personal experiences as or with citizen activists. One respondent spoke of the conviction that "[r]egulations shouldn't be designed to protect trade if their primary purpose is protecting public health and the environment. It should be the other way around (...): Trade should support those rules and regulations that we've adopted (...) in our democratic process" (US1-16). Such individual, personal motivations are a key driver for involvement in international trade policy issues.

When considering state officials' personal backgrounds, it becomes clear that quantitative measures can only be a snapshot of a state and are, by themselves, not convincing explanatory factors: Maine's interests are represented towards the USTR and even European legislators not because 23 percent of its exports in 2015 went to the EU (rank 13 in the U.S.) or because it boasted 388 global affiliates with assets bigger than \$20 million (rank 36 in the U.S.). Maine's interests are represented because, in line with the progressive leanings in the state, one state legislator has decided to work in the field of trade policy and identify potential effects of the TTIP for Maine. Similarly, the Nebraska executive does not represent its TTIP interests because it happens to have large agricultural exporting businesses but because the administration has placed a deliberate, strategic emphasis on marketing Nebraska agricultural products globally and engaging foreign actors on all policies relating to these products.

In sum, individuals' personal backgrounds and motivations are key drivers for why some states represent their interests on the TTIP and others do not. These personal motivations are likely shaped by ideological and economic considerations and are likely influenced by outside private actors, such as business associations or environmental activists, which speaks to the interconnected nature of the explanatory factors. But the argument developed in this study is that an individual's determination to connect the TTIP to their state, either on trade promotion or trade policy, is important in forming that state's interest representation. The latter topic, surrounding the TTIP's potential effects on state regulatory authority and U.S. federalism, has evoked strong reactions among some state officials and state associations and they were also found to be the major sources of state-federal friction, which will be discussed shortly.

Factors Contributing to States' Inactivity Regarding the TTIP

Economic structures, ideological preferences and officials' personal backgrounds have led states to speak out on the TTIP. Yet, overall, states have shown little interest in the proposed trade deal. Therefore, overall interest representation efforts were also minimal. Only a small fraction of governors, state legislators and state associations have voiced their opinions on the proposed trade agreement. Why have not more governors, for example, stressed the TTIP, considering they are generally keen on creating jobs and economic growth after the economic downturn? Why have many state legislators, whose own bills and laws might be affected by the TTIP, not voiced their opinions? In looking for state activity on transatlantic trade policy, I heard and found several arguments *against* such activity.

Timing. At the end of 2016, the TTIP negotiations were at a serious impasse three and half years after their official start in the summer of 2013. In contrast, the NAFTA negotiations were completed in less than four years total. While other modern trade agreements, particularly the Transpacific Partnership, also took much longer to negotiate than the NAFTA, the transatlantic talks faced multiple hurdles that prolonged the process (see section 2.2). For this

reason, the TTIP had not become a pressing matter for the time frame under consideration in this study.

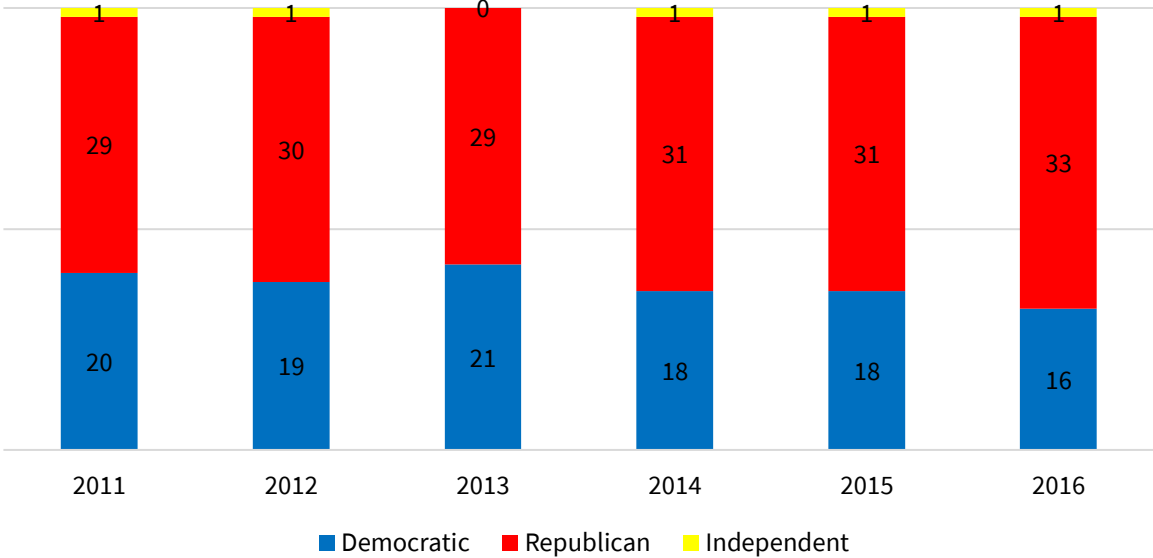
For the years 2011 to 2013, without the explicit commitment by the U.S. president, who is in charge of the negotiations and made the announcement to start negotiations only in June 2013, state officials had no formal indication if, when and how the TTIP would come about. This explains the early lack of interest representation for those years. The fact that some state legislators already drafted resolutions on international trade policy at this stage speaks to their personal motivation to secure a stake in the federally dominated negotiation process.

For the years 2013 to 2016, the TTIP in the U.S. took a backseat to the TPP talks, a circumstance specifically pointed out in the expert interviews as well. Interviewees also noted that in the U.S., the European trade deal seemed less controversial than the Pacific one due to higher labor standards and higher wages in Europe compared to some parts of Asia. The proposed deal thus failed to create a sense of urgency among state officials on par with that of the TPP or the renegotiation of the NAFTA in 2017, for that matter (Quinton, 2017).

Throughout 2016, the long-anticipated break caused by the U.S. presidential election in the fall of that year slowed progress on and interest in the TTIP. International trade deals did feature in the presidential campaigns but again with a focus on the Pacific region and not the EU. The actors involved foresaw that the election was going to be a cut in the TTIP negotiation process. Yet, Trump's electoral victory further complicated the matter because little was known about his willingness and ability to follow through on his campaign rhetoric, which had been decidedly against the TPP and trade deals like it. All but one of the expert interviews were conducted before the presidential election, but even at that time, a few respondents explicitly mentioned the national debate surrounding U.S. trade policy as shaping the states' views.

Partisan politics. One possible reason for state legislators, and specifically governors, refraining from taking a stance on the TTIP is that they were concerned their own position might clash with the views of federal officials or interest groups. For example, Democratic governors in support of the TTIP could decide not to voice their opinions because they are concerned of backlash from congressional Democrats, many of whom oppose the deal. Republican governors might not want to speak out in support of the TTIP, worried they might be seen as supporting the Democratic president's agenda. If this latter point were the case, it would explain the silence by many state officials because throughout the TTIP negotiations, the majority of states had a Republican governor (see figure 15 on the following page) and, in fact, most state governments exhibited a Republican trifecta (see map 5 on page 129 for the years 2015-2017).

Figure 15. Partisan make-up of state governorships during the TTIP negotiations



Source: National Governors Association (2015a)
 Note: The governorships are counted after the gubernatorial elections of each year.

Two respondents (US1-4, US2-9) specifically referenced political issues as an impediment to TTIP interest representation. Because governors are not directly involved in negotiations and cannot vote on them, they have little to gain from becoming publicly engaged. To repeat a comment from one respondent, “politics will always trump policy” (US1-4): Governors have to make complex political decisions when speaking out on an issue and since trade policy is more politicized than trade promotion, they focus on the latter to avoid the pitfalls of a partisan trade policy debate (US2-9).

Yet, this political explanation might not apply to the TTIP because it simply had not gained wide-spread political or public interest by 2016. Compared to some European countries, particularly Austria and Germany, public opposition to the TTIP in the U.S. was muted and Congress was focused much more on the Transpacific Partnership, for which political considerations did play a role.⁴⁰ Furthermore, governors are expected to take controversial stands if they have concluded that this might benefit their state. Looking at the state of the state speeches, for instance, despite the vast majority of addresses including promises to cut or at least not raise taxes and fees, some governors did speak out in favor of raising some taxes, which is an unpopular stance in all states.

Deference to the federal government and formal U.S. intergovernmental processes. Most state experts, from the executive, the legislature and associations, acknowledged or even specifically stressed that trade policy is under federal purview. This shows a clear understanding of the constitutional limitations of states in international affairs (see section 3.2). It is thus possible that the lack of engagement from state officials is based on their assessment that negotiations are a federal issue, in which they do not need to or are not welcome to engage.

⁴⁰ For the TPP, there was some partisan controversy in 2016: Democratic Governor McAuliffe of Virginia, a supporter of Democratic presidential candidate Hillary Clinton, had spoken out in favor of the TPP, which did not sit well with the candidate’s team (Karni, 2016). On the other side of the aisle, Republican Governor John Kasich of Ohio braced for opposition from his own party, as he supported President Obama’s push for the TPP (Kasich, 2016).

There are, however, many federally dominated issues that state officials readily speak out on. In their state of the state speeches, for example, some governors vowed to oppose the Affordable Health Care and Patient Protection Act at the federal level, even though the Supreme Court had already ruled it constitutional. More to the topic of this study, three governors mentioned their support for opening up trade relations with Cuba, immediately after the Obama administration had reignited contacts with the close-by nation, even though it is not up to them to decide on the formal relations with a foreign country.

Still, the constitutional setup in which the USTR negotiates and Congress votes on international trade deals is a considerable deterrent for state officials to become involved. One respondent said that if constituents called their state representatives about the TTIP, they would probably be deferred to the member of Congress (US2-1.2). Another asked, “What can [a governor] do other than say, ‘I’m for it.’?” (US1-18). State officials, especially those with experience in the state executives’ workings, underlined that any overseas trade efforts are specifically not meant to add a voice to the negotiations (US1-16, US1-19, US1-22, US2-9), clearly showing that governors are keen to avoid bypassing the federal government.

In acknowledging federal dominance and avoiding bypassing, states support the formal intergovernmental process for trade policy making in the U.S. The IGPAC is seen as the primary, if only, way for states to shape U.S. trade policy. As an example, the Maine Citizen Trade Policy Commission, despite its repeated criticism of the IGPAC, also asked the USTR to

insure that any outreach to states and local governments concerning the procurement chapter will be conducted between the federal government and sub-central governments and involve notification of and consultation with IGPAC, and will not involve direct EU to state government contacts. (Maine Citizen Trade Policy Commission, 2014f)

Clearly, the commission favors even the flawed intergovernmental consultation processes to being addressed directly by the EU. This rejection of state-EU contacts has to be qualified, though, because while Maine will not tolerate the EU contacting states, the other way around seems to be fine: Maine state officials did reach out to EU actors to discuss the TTIP, thus not deferring trade policy making completely to U.S. intergovernmental processes and leaving the door open for parallel interest representation and even bypassing.

Lack of knowledge and resources. Two other, related reasons for the neglect of the TTIP among state officials have to be considered: the lack of knowledge and resources, even at the later stages of the negotiations. Many of the experts interviewed for this study said that only a small number of state officials even care and know about transatlantic trade policy and that these officials are constrained by minimal staff and financial resources to become engaged.

The TTIP was never high enough on state gubernatorial or legislative agendas to warrant massive action if it was on the agenda at all. One respondent’s statement sums up the sentiment: “The filter for me is always, you know, how does it relate to my state? And the TTIP is not, I mean, I’m aware it’s being negotiated, [but] it’s not on my radar screen, we had been doing far more work on the Transpacific Partnership” (US1-12). Public interest regarding the TTIP was perceived to be low in the U.S. by the respondents, saying that “[p]eople don’t know about TTIP” (US1-6) or that “9 out of 10 people in the U.S. have never heard about TTIP” (EU2-8). Public opinion surveys back this sentiment with slightly different numbers, showing that about a third of the U.S. population was interested in the TTIP and about a tenth saying they were actively engaged (Bluth, 2016, p. 17). It was repeatedly pointed out that local constituent concerns about economic and political issues are a key driver in determining if and how state officials become engaged in a topic. Most states either do not have a highly involved civil

society such as the one that fueled the founding of the Maine Citizen Trade Policy Commission or the nongovernmental organizations in the states have not made the TTIP a priority for citizen engagement. If state legislators do not perceive interest from or impact on their constituents, the incentive to learn more about an issue and become involved is low, especially when that issue concerns an area, in which states do not have constitutionally guaranteed powers such as international trade, compared to education (US1-4). Affording a trade policy expert is thus not anything that most states view as a reasonable expense, explaining why only New York and Washington have such positions.

The question of resources is a crucial hindrance to deeper involvement on international trade policy. One respondent with experience in citizen outreach on the TTIP reported that many participants at TTIP information events were curious about the proposed trade deal but had not heard of it before (US3-6). This included citizens as well as their elected officials. Considering state legislators in particular, this group is constrained by a lack of resources: In the majority of states, senators and representatives do not work full-time in the legislature (see map 1 on page 50), meaning they have only limited opportunities to researching legislative topics to follow. Thus, large numbers of state legislators do not have the financial or staff resources to develop in-depth knowledge on highly complex trade policy matters that touch upon legislative, regulatory and intergovernmental topics. This circumstance confirms previous findings: Many state legislatures lag behind most executive bureaucracies and even some individual legislators in their professionalization, thereby curtailing legislators' motivation to educate themselves and become involved in discussions surrounding the TTIP.

Difficulty of access to the federal government and/or the EU. Even if state officials did not voluntarily take a backseat to let the federal government shape transatlantic policy and even if they did have the knowledge and the money to engage more in this field, there are high barriers for them to pass. This concerns not only the bureaucratic barriers of receiving a security clearance to become a member of the IGPAC, for example, or the informational barriers of having to find leaked information if one is not a member of the IGPAC. It also means that state officials must create their own access points to negotiators on both sides of the Atlantic. Apart from the IGPAC and official EU and USTR stakeholder dialogues, there are no open flanks for states to become engaged. The European Commission and the USTR could argue that their TTIP stakeholder outreach has created unprecedented transparency regarding the negotiation process and states need to become active themselves, but the fact remains that states are treated the same way that interest groups such as business or environmental associations are at these stakeholder dialogues, even though they are elected governments and not private groups.⁴¹

The lack of engagement with EU and U.S. officials could therefore also stem from the minimal openings that exist to become part of the negotiations. Only three respondents from state governments reported that they had been in touch with TTIP negotiators and two of them were members of the IGPAC. The European Commission and the USTR, which, to be sure, are constitutionally and legally obligated and authorized to conduct the TTIP

⁴¹ On a brief comparative note, regions in Europe are for the most part also shut out of trade negotiation processes, relying on their own interest representation during the talks and only in some cases having a say in the ratification (a highly publicized recent example being Wallonia's opposition to the Canada-EU trade deal; *The Economist*, 2016). In contrast, Canada includes all provinces in a consultative and information-sharing forum (Kukucha, 2015b; Weston, 2005, pp. 16-19; Wilkie, 2004, p. 4), which is more formalized and stringent than its U.S. counterpart, the IGPAC. One respondent familiar with EU trade negotiations even said that provincial representative sometimes take active part in the negotiations (EU2-3), contradicting earlier findings (Fafard & Leblond, 2012, p. 6).

negotiations, do not offer special access to noncentral governments. Those state officials who do want to be heard in the negotiations, then, have to build up their own network and access points, which could be too tedious and strenuous an aspiration for many state officials.

While my study was specifically designed to offer perspectives on why and how state officials become engaged in transatlantic trade policy, it has to be noted that, overall, they are not involved. This is true not only for the TTIP but international trade policy in general. The combination of constitutional limitations, lack of resources and lack of urgency resulted in transatlantic trade policy interest representation that was sporadic, not permanent, and conducted by a highly specialized minority, not a broad coalition of state officials. These are not surprising findings generally: It was to be expected that international affairs take a backseat to domestic state issues and that state governments are reluctant to add to federal policy-making tasks if it is not required of them or necessary for them. This is in line with an argument put forth by political scientist Christopher Kukucha, who found that states' impact on foreign trade policy outcomes is limited and usually most states do not become engaged in this field (Kukucha, 2015b, pp. 114-118, 125).

However, for the TTIP specifically, the absence of state activities is a somewhat surprising finding for various reasons: From a theoretical perspective, it has become harder to discern domestic from foreign affairs. The reasoning that state officials focus more on domestic than on international issues might thus not hold anymore because the proposed trade deal is a telling case of the entanglement of the two spheres. And from an empirical point of view, states' minimal engagement stands in contrast to the magnitude of the TTIP and its potential effects on the states. Therefore, state officials' limited activities must oftentimes be explained by a lack of motivation and/or capabilities in the executive and legislative branches.

Conflict in State Interest Representation on the TTIP

The interest representation efforts of U.S. states should not be overstated and neither should the conflict between state and federal levels of government. Yet, I did find areas in which state and federal interests diverge quite clearly. Respondents recognized some state-federal tensions in the realm of international trade promotion, namely over power struggles in FDI attraction after the establishment of SelectUSA. More important, however, is the struggle over intergovernmental competencies on U.S. trade policy making.

By virtue of their positions, state officials from both the executives and the legislatures are keen on maintaining states' legislative and regulatory powers. The IGPAC as the institutionalized voice representing all states has made this point over and over in its reports. Still, state executive officials of all parties and state legislators from the Republican party tend to emphasize economic development issues over regulatory concerns. This was exemplified by outspoken support of the TTIP on trade promotional grounds on the part of governors and in Republican-dominated state resolutions. By contrast, the progressive side, fostered by individual state legislators and groupings such as the NCEL and the various trade policy commissions, has taken up the cause of criticizing the TTIP due to its perceived deregulatory effects. This has created tensions with the federal government, whose goal it is to push the TTIP through. Thus, I argue that the struggle within U.S. federalism related to the proposed transatlantic trade deal is mostly driven by progressive state legislators.

Not only did progressive state legislators use the institutionalized intergovernmental way of voicing their opposition, but they also opposed federal preferences for the ISDS mechanism and regulatory cooperation in meetings with European parliamentarians. These meetings, while not specifically seeking out contacts to EU negotiators, aimed at finding allies among regional and national parliaments as well as European civil society. One way for states

to represent their transatlantic trade policy interests, especially if they diverge from the federal government's, is thus to seek coalition partners that share similar outlooks on the TTIP. As the proposed deal is not finalized, the impact of such conflictual parallel interest representation cannot be measured in this study. Yet, contacts such as the MEPs visiting Vermont or an active member of the Maine Citizen Trade Policy Commission traveling to Europe to engage other stakeholders on the TTIP do indicate that some state officials deemed it necessary and valuable to voice interests that are not in line with the administration towards actors outside of the U.S. The European speaking tour, for example, was meant to educate European legislators on the view from the U.S. states, explicitly as a counterpoint to the official negotiation goals established by the U.S. national level.

The struggle over state authority goes beyond the TTIP as a particular contemporary case and also relates to U.S. trade policy making on agreements *like* the TTIP. The progressive state legislators active in this field pursue the twin goals of enhancing states' role in the negotiation process and of generally ensuring that state regulatory authority is not undermined by international trade agreements once enacted. Both goals, however, have the common denominator of stressing state authority issues over trade promotional issues.

Regarding the TTIP as a single case, this research has shown that state officials had specific areas in which they sought changes to the proposed transatlantic trade deal, namely the ISDS mechanism, regulatory cooperation and public procurement. The states aspired to represent their interests towards the administration and members of Congress so that these federal actors would feed their positions into the TTIP negotiations.

With a broader view on U.S. federalism, states have been pushing for a bigger role in trade negotiations for decades now, whereas the federal government does not seem to view this as a pressing issue. States thus do not only call for changes in the TTIP but for changes in the way in which trade policy in the U.S. is made: States want a seat at the negotiation table. Progressive state legislators most openly drove this issue. State officials are worried about losing some of their legislative and regulatory purview over policy fields such as food safety, environmental standards or consumer protection. The regulatory cooperation and the ISDS mechanism provisions are taken as proxies for the potential loss of decision-making capabilities in the states under the TTIP. Evidence that state sovereignty issues are the most dominant concerns for state officials, even with differing party political backgrounds, can be found in the IGPAC's work: This bipartisan body with members from all branches of state government has historically been opposed to any encroachment of states' authorities, a position they have reiterated in their latest report on the proposed transatlantic trade deal.

So, when some state officials today argue against the TTIP, they do so not because they necessarily oppose open transatlantic trade per se, but because they see the potential dangers outweighing the potential trade and investment benefits. They want to ensure that their views will be taken into account by the federal government especially because of the prevalence of deep FTAs that go beyond tariffs and potentially touch upon state regulation. This seeming paradox of supporting free trade but opposing free trade deals has been addressed by Robert Stumberg, a Georgetown law professor and adviser to state officials in the now defunct Forum on Democracy and Trade. He explains that states might decide to let federal rules take precedence over state rules but – crucially – only after serious and open debates in which states had a say. He cites the 14th constitutional amendment regarding post-Civil War citizenship rights as a historical example, which the majority of states agreed to after long congressional discussions, and juxtaposes it with the NAFTA negotiations, during which states lacked meaningful participatory mechanisms (Mooney, 2001).

In this vein, the IGPAC has called for improved state participation in U.S. trade policy making since the 1990s. The administration, however, negotiates the TTIP mostly under the premise of fostering economic growth. Regulatory cooperation and the ISDS system are

viewed in the context of breaking down trade barriers and establishing a secure investment environment. Potential effects on the U.S. federal system and its states are not the primary issue of the federal negotiators. The 2015 law authorizing President Obama to negotiate the TTIP and other trade deals names twelve overall trade negotiating objectives, most of which cover economic issues (U.S. Congress, 2015c, pp. 3-5). Only the very last objective vaguely addresses intergovernmental concerns, saying that any trade agreement needs “to take into account other legitimate United States domestic objectives, including but not limited to the protection of legitimate health or safety, essential security, and consumer interests and the law and regulations related thereto” (U.S. Congress, 2015c, p. 5), without specifically noting the states or the concept of federalism in general. Thus, the IGPAC’s long-standing aspirations of rethinking state-federal consultations are not met by the administration, which seems satisfied with the status quo. Some respondents might say this shows that the IGPAC reports are filed away without being seriously considered. Others might contend that the system is working well enough to not warrant a major overhaul. Either way, states’ recognition of the tensions between federalism and free trade agreements are not mirrored in the transatlantic negotiations.

This latter point, I argue, is the larger issue underlying the diverging interests between the states and the administration on the TTIP: the question of how U.S. federalism relates to transatlantic trade policy making. Federal states are not just another stakeholder in policy making, they are elected legislators or civil servants, representing their constituents and not private business, environmental or social interests. The general question is therefore if and how to engage noncentral governments in federal systems’ foreign policy.

On the one hand, scholars of foreign policy in federalism have pointed out that international trade agreements rules can potentially shape state regulation (Ehrenzeller, Hrbek, Malinverni, & Thürer, 2003, p. 62; Katz, 2005, p. 35; Khan, 2003, p. 156), which is precisely what some state officials are worried about and provokes them to become engaged. To repeat a finding from Habegger, “federated entities are reinforcing their role within the federal framework in order to compensate for loss of powers due to globalisation and internationalisation of law making” (Habegger, 2003, p. 167). On the other hand, it has also been found that the U.S. intergovernmental system has been successful in accommodating “international concerns of state and local governments” (Kincaid, 2003, p. 80), which explains why there “has been no pressure to amend the United States constitution to strengthen or dilute the US states’ constituent diplomacy” (Kincaid, 2003, p. 80). This study demonstrates that both findings are at play for international trade topics, showcasing the ambiguous nature of state-federal relations: Some state officials clearly epitomize the aspiration to reinforce states’ roles in U.S. trade policy making, while others are not pushing for changes due to the generally accommodating federal system.

The empirical evidence from this study thus underscores findings that international trade policy making poses challenges particular to federal systems. For example, the ISDS mechanism might be criticized as too business-friendly in centralized countries as well, but in federal systems, the potential effects on noncentral governments add a complex dimension to the discussion. Public procurement is not as big an issue when there is only national-level procurement to consider. In centralized countries, trade negotiators do not have to worry about political backlash in the form of elected noncentral officials writing letters or passing resolutions.

For the TTIP, the diverging interests over states’ roles in the negotiations remain an open challenge. This is only partly due to the unfinished nature of the transatlantic trade talks, which has not led to a sense of urgency among state and federal officials to tackle the issue. Considering that past free trade negotiations and the other big contemporary trade deal in the works during the TTIP talks, the Transpacific Partnership, have also not created

pressure for reform, it seems that most actors within the U.S. intergovernmental system are content with the current consultation mechanism. This has kept state-federal conflicts on trade policy making subdued and reforms out of reach.

Lastly, intrastate conflict also has to be considered. The quest for economic growth, typically promoted by executive officials, and the quest for state sovereignty, typically championed by legislators, could clash in some cases. In the agricultural field, for instance, less regulation of GMOs or hormones might boost economic growth as governors want but might undermine some state legislators' push for strong oversight. However, neither the existing literature nor the analyzed official documents nor the interviews revealed noteworthy fights between the executives and the legislatures. A potential executive-legislature divide was not mentioned by respondents and some interviewees explicitly said that it is normal for different interests to exist within a state government and that these have not led to major conflicts. These claims must be seen in connection with state officials' wish to portray a functioning government with little internal confrontation. Yet, it does seem that state officials in all branches of government are aware that it is necessary to strike a balance between economic and regulatory goals. They appear to be keen on ensuring that discussions on international topics do not divide a state government: It is a practical division of labor with executives focusing more on economic development and legislatures more on regulatory sovereignty in transatlantic trade relations.

Rather than exhibiting an intrastate divide between executive and legislature, it is more often the case that one branch of government dominates interest representation on the TTIP, which relates back to the explanatory factors for interest representation discussed earlier: In some states, personally motivated Republican state executives dominate interest representation on the TTIP, while in other states, individual progressive state legislators do. Either way, the federal government, and not any state branch of government, becomes the target of interest representation for better economic opportunities or for stronger state involvement in the negotiations, respectively. The more pertinent intergovernmental conflict therefore remains the state-federal divide.

States' Success in Interest Representation on the TTIP

This section has disclosed the aspirations states have in promoting transatlantic trade and safeguarding their regulatory authority in light of the TTIP. It has not explored whether state interest representation in transatlantic trade policy has been successful because the research questions at the center of this study do not attempt to evaluate the results of states' efforts. Nevertheless, a short discussion of the potential consequences of U.S. states' activities is warranted, addressing the question of why it is even important to consider their varying interest representation on the TTIP.

It is difficult to measure if states' interest representation on transatlantic trade policy is consequential at all and if it is, what consequences there could be. For this research in particular, the difficulty stems from the fact that the TTIP has not been ratified or implemented yet: It is therefore not possible to compare the states' demands, for example regarding procurement or the ISDS mechanism, with the outcomes of the agreement. In the following, I will draw from historical precedence with the NAFTA, from comparative discussions regarding the TPP and from respondents' own assessments to briefly evaluate consequences of states' actions on the TTIP. I will argue that we should care about states' engagement as it has the potential to successfully shape the framework of transatlantic trade policy.

Historical Precedence

An analysis of the NAFTA has been presented earlier (see section 2.1), in part to show that states are capable of articulating their policy preferences towards the federal government and securing concessions. While the federal government remained the unquestioned driver of the talks, the voice of the states had to be taken into account for the deal to succeed. For example, they achieved the grandfathering of some state laws and enhanced the state-federal consultation mechanism. These achievements have not been ignored in subsequent negotiations. In fact, the public consultation mechanisms have been further expanded in the most recent TPP and TTIP talks, even though this did not pertain only to states but also to private organizations.

Gubernatorial support for the NAFTA was crucial in the late stages of the negotiations and it might well be that the USTR will again depend on governors' public approval, should the TTIP be concluded. If implementing legislation were to be discussed in Congress, it is likely that a sizeable portion of senators and representatives would be opposed to the deal or parts thereof. Having state executives back the TTIP would boost its public standing and allow members of Congress to point to state experts who expect positive outcomes for their constituents: Public gubernatorial support for a trade deal would create "broader public momentum and pressure in favor of passage" (US3-3), as one respondent said regarding the TPP.

Overall, historical precedence has pointed out the political need to include states in trade negotiations, even if there is no constitutional or formal requirement to do so. The U.S. is unlikely to sign an agreement that goes against states' positions, out of unwillingness to risk domestic political turmoil. That is because the two-level game at play in international negotiations requires administration officials to consider noncentral concerns if they are to succeed in pushing any deal through Congress.

Comparative Look at the TPP

After the TPP negotiations had been concluded, the U.S. later withdrew from the deal. Yet, because the final text of the trade agreement is available and states' goals for the TTIP and the TPP were largely congruent, a look at the transpacific trade pact nevertheless offers some clues as to how states fared with their demands. On the crucial issue of the ISDS mechanism, states succeeded in securing a carve-out for manufactured tobacco products within the ISDS mechanism (see pages 111-112). While the U.S. opted to include the ISDS system in general, which was met with strong criticism from the IGPAC (see pages 155-159), state governments' long-standing opposition to including tobacco in trade talks, especially visible in the attorneys' general stances, came to fruition in the TPP. This is proof that state interest representation can have effects on international trade negotiations.

Regarding procurement, the corresponding TPP chapter aligns squarely with states' interests: Noncentral government procurement is not included (Office of the U.S. Trade Representative, 2015d, p. 7) and the officially posted statement by the USTR is that "we are making no commitments to cover state or local government procurement at this time" (Office of the U.S. Trade Representative, 2015c). This might not be so much a direct result of states' specific TPP interest representation but a testament to the general political sensitivity of the topic, which is in and of itself a success for states.

The federal government would be legally allowed to bind the states to the TPP's procurement rules, but it is not a politically viable option because of the expected backlash from state governments. Federal negotiators thus take into account and even anticipate states' interests on certain issues and shift their negotiation preferences accordingly. This alone shows how consequential it can be for states to continuously speak out on an issue: The

federal government is well aware of states' wishes to maintain discretion over their procurement and does not deem it politically possible to override these wishes.

Respondents' Evaluations

In the interviews, some specific successes states had achieved in earlier trade negotiations were mentioned (see pages 111-113). For the case of the TTIP, respondents were not able to evaluate states' successes or failures because the agreement had not been concluded. To gauge the effects of their interest representation, it is therefore necessary to revisit their statements on the general process of state-federal consultation.

There was one faction of respondents that deemed the state-federal consultation process to be working and said the federal government is open to listening to the states. To repeat a quote as an example, a federal official stated that the administration has to be "very, very cautious about how we deal with the states on these issues [of concern to the states]" (US3-5), confirming the need to anticipate and acknowledge states' interest. A state executive official was confident that the governor was "absolutely being heard" (US1-14) on the federal level. Considering these results from the interviews, it can be learned that some state officials do have the expectation that representing their interests has consequences for U.S. trade policy making.

Another faction of respondents did not share the opinion that states can significantly affect change in U.S. trade policy, instead viewing the intergovernmental consultation process unfavorably and mentioning the lack of a true state-federal dialogue. Especially in matters where state and federal interests diverge, one respondent working for a state said that "I don't think that we have hardly any... can expect to have any influence really" (US1-6). Beyond the IGPAC process, another respondent noted, there was not much for states to do (US-14). This rather bleak outlook, from states' perspectives, provides the necessary balancing caveat to the analysis above: Despite historical evidence of states' influence, including in the most recent transpacific trade deal, states have to scramble to be heard in trade policy making. Not many state officials care enough to be engaged and those that do might find it hard to convince federal policy makers of the importance of state interests for international trade policy.

Even with the limited state engagement in mind, I argue that state interest representation is consequential for U.S. trade policy making. Federal officials cannot push through a trade deal without taking into account state views. However weak the IGPAC process or other formalized consultation mechanisms are, the U.S. federal system makes it politically infeasible to ignore the states. As a case in point, it is especially those state officials criticizing the lack of opportunities afforded to states within the IGPAC, who continue to push for reform, make their voices heard and use any other angle they can to represent their interests and also make it legally infeasible to ignore the states. State officials and legislators are not likely to go through this hassle without expecting some results: They know that there is a considerable chance for them to affect change, be it via Congress, via state associations or via transatlantic cooperation.

Overall, measuring the consequences of state actions was made difficult due to the unfinished nature of the TTIP, and it was also not the goal of this research. By examining states' preferences and motivations in transatlantic trade policy and by shining a light on the intricate intergovernmental process to relay states' interests, this study already showed how vital U.S. states are in international trade policy making. But even if the question were posed, "Why care about the process if it does not have any consequences?", the preceding brief discussion offered empirical proof that states can influence international trade negotiations,

albeit on a limited set of issues and mostly subject to the federally-dominated consultation process.

8.3 Policy Implications and Recommendations

Based on the analysis in this study with particular regard to the results from the expert interviews, several possibilities emerge to improve the existing mechanism of transatlantic trade policy making in the U.S. Those actors negotiating the TTIP, namely the U.S. government and the European Commission, might argue that the process of including various stakeholders in the negotiations is already sufficient, but the widespread notion among all other populations interviewed was that the policy-making process regarding international trade has flaws that can be addressed.

Transparency and Participation

Trade negotiations, like many other international negotiations, have long been kept secret, so as to ensure that each side is as forthcoming about their demands and offers as possible. Many state officials seem to be fine with this status quo. But some civil society organizations and politicians, including some experts interviewed, have called for complete openness regarding the texts of the negotiations. Lifting the veil of secrecy would allow state officials to gauge the potential impact of the TTIP immediately from official sources, instead of having to rely on leaked documents or intermittent briefings from the USTR that might be incomplete at times. States could argue that they need to see the texts of modern trade agreements because unlike the rather technical tariff-related documents of past decades, agreements such as the TTIP include provisions with direct effect on the states. The information from the negotiation texts is the basis on which states can participate in the negotiation process, as they are unable to develop their own positions without having full information.

It is unlikely that the administration agrees to complete transparency regarding international trade negotiations. However deep modern trade agreements might be, it is still the prerogative of the federal government to set international trade policy. The expertise in this field lies mostly with the administration, and foreign trade partners are likely to be opposed to having their own trade objectives being passed around to more actors than necessary. Still, the TTIP negotiators, especially the European Commission, have taken steps to publish negotiation texts and include more stakeholders in the process, showing some willingness to be transparent.

A compromise between the current system and full disclosure of the negotiation texts could be more frequent and substantial briefings by the USTR within the IGPAC. It is hard for state officials to gain security clearance to see the texts and even if they do become cleared advisors on the IGPAC, access to the text is often delayed and with short notice for comments. State officials do understand that updates on every topic after every round is not feasible and might not be necessary. But a system could be devised in which states provide a list of priority issues that the IGPAC needs to be immediately advised on by the federal government whenever there are changes in the negotiations. This runs the danger of some state-related policy issues falling through the cracks, yet would guarantee state input on the most crucial issues.

This proposed compromise shows how the topic of transparency is linked with the question of participation: If states had better access to the negotiation and its documents, they would be put in a better situation to gauge if and how they can represent their interests. With this combined knowledge, there could be more formal and institutionalized ways for states to voice their opinions. As of now, the IGPAC report is the only official forum for states to

speak out, but other forms of commentary could be envisioned: For example, there could be multiple IGPAC reports at various times of the negotiations to reflect the dynamic nature of the trade talks. Another option would be to set up a dedicated state-federal body that is in place specifically for a certain trade agreement under negotiation instead of or in addition to having the permanent, yet fluctuating, IGPAC. Lastly, a further opening would be to include states in the actual negotiations.

Again, it is unlikely that any of these participatory options will be implemented. States will, by the nature of international trade agreements, not be of equal standing with the federal government. Furthermore, with Congress already foregoing its regular legislative powers to amend trade agreements due to fast track authority, states would be hard-pressed to argue for their allowance to modify the negotiation talks. Yet, to find a middle ground from these potential solutions would not only benefit the states but also the federal government. As was visible by some states openly supporting the TTIP, state officials might be willing to abdicate some state responsibilities if they view it as beneficial to their state. These individual states' decisions could gain a firmer standing among other states, federal actors and international partners if they were the product of a deliberative consultation process.

Training and Education

In order for international trade negotiations to be understood, particularly if more substantial access to negotiation texts is granted, state officials need to be better informed about the negotiation process and the potential impacts on their states. So far, learning about international trade policy depends largely on the personal motivation of the state officials involved. State organizations like the CSG or the National Association of State Procurement Officials, along with the ALEC or NCEL and the various state trade policy commissions, are vital in educating legislators about international trade policy. Building on their ideas and offers to create a more systematic nation-wide effort would be beneficial. For example, education and training could include webinars or in-state briefings on trade policy making, newsletters on pending trade legislation, web portals on specific policy issues (one is already offered on procurement by the corresponding state association, see National Association of State Procurement Officials, 2016a) or regular briefings with federal officials outside of the immediate negotiation issues discussed in the IGPAC.

The Forum on Democracy and Trade somewhat fulfilled this role in the early 2000s as a permanent institutionalized information exchange solely focused on trade policy. Having a similar consultative body again has been suggested by state leaders in the 2004 IGPAC memo and again in a 2009 testimony before the U.S. House of Representatives Committee on Ways and Means, Subcommittee on Trade (U.S. House of Representatives Committee on Ways and Means, 2009, pp. 117, 135). It would be helpful for state officials to understand the magnitude of trade policy for their states. As discussed, every state already has a dedicated single point of contact on trade issues, yet these officials' expertise lies mostly in trade promotional efforts. It would therefore be necessary to stress trade policy over trade promotion, since state officials already have a great deal of expertise in the latter field. The IGPAC has already suggested a commission to conduct research and also facilitate state-federal dialogue on trade policy (Wilkie, 2004, pp. 7-8).

Financing any institution or any offerings that educate state officials on the TTIP and similar agreements would be the biggest hurdle. The Forum on Democracy and Trade is an example of how a lack of funding can upend an otherwise functioning system: It was made possible only by private endowments, yet, when those ended, the forum had no other funds available. Neither the states nor the federal level wanted to jump in at the time, but a joint state-federal financing scheme would be ideal to guarantee long-term funding independent of private donors.

IGPAC Membership

If the IGPAC is to be kept as the major state-federal consultation mechanism, not only does the information dissemination have to change for it to be more effective but also the membership. A 2008 survey by Public Citizen showed that some state legislators favored a consultation body with one representative from each state, while other state legislators deemed this unrealistic (Bottari & Wallach, 2009, pp. 51-52). It does seem impractical to have the committee be wholly representative of all the states: Working with 50 or more state officials would hinder decision making within the body and the goal is to focus on broader state issues anyways. To aggregate and articulate these issues, though, IGPAC membership has to become more representative. States of all sizes, regions, economic backgrounds and political color have to be represented as well as the biggest state organizations. Furthermore, vacancies must be filled promptly to ensure continuous dialogue.

More important than the make-up of the IGPAC is the level of engagement of its members. It is not enough to have various state interests represented on the committee, but it is crucial that those officials involved are knowledgeable and have the resources available to participate in the IGPAC's consultation. A compensation for committee members could be an incentive because unlike the professional lawyers and industry lobbyists working on most of the other USTR advisory committees, the committee work is not state officials' primary task. It could also be instituted that every negotiation text has to be commented on by at least half or three quarters of the IGPAC instead of relying on a handful of active members. This, in turn, refers back to the previous point of well-educated state officials who are capable and willing to submit their comments and ideas.

From a logistical, financial and environmental point of view, it is understandable that the IGPAC does not always meet in person because its members are spread all over the U.S. Yet, infrequent conference calls, combined with the heterogeneous membership, might not serve the body well. In order to develop a better rapport between the members and foster cooperation and dialogue, an annual IGPAC meeting could be established. This would be a place to discuss overarching trade policy issues apart from a singular negotiation, identify commonalities and divergences between the IGPAC members and then relay these insights to the federal government. Financing and scheduling issues would have to be resolved between the states and the federal government, so that IGPAC members would not have to pay for their participation.

Intergovernmental Dispute Resolution Mechanism and Federalism Council

For those instances when state and federal interests diverge, there is no mechanism to solve potential conflicts. States and the administration rely on the IGPAC to dissolve disputes, but this body is designed solely as a consultative body and has been criticized as not fostering dialogue. Using Congress as an intermediary is a working method employed by state officials when the administration is hard to reach or unresponsive. A more direct line of communication between the USTR and state officials would be valuable, however.

Based on the IGPAC's work, a rather simple method of direct communication would be to establish a state-federal working group for every issue that has appeared in, say, three IGPAC reports in a row. This would guarantee that a topic such as the ISDS mechanism or procurement would be discussed in depth between the USTR and state officials. Respondents were sure that the USTR knows of the most important state positions already, but corporate interests still dominate the USTR's work. In order to balance out private actors' access, a special state-federal working group could deal with potential areas of conflict, as also suggested by the IGPAC with the above-mentioned commission to improve state-federal dialogue on trade policy (Wilkie, 2004, pp. 7-8). Apart from appeasing those critics who lament too big a role for businesses at the USTR, it would help prevent all-out conflict.

Besides such mechanisms for specific topics, the key expertise that the IGPAC can provide should be taken advantage of more. The IGPAC members, as state legislators or officials, as representatives of attorneys general or executive agencies, are primed to offer insights on the overall framework of U.S. federalism. Contrary to industry or other single-issue organizations, states neither are able to nor want to push specific offensive or defensive trade interests in their consultations with the USTR. Instead, they are heavily invested in ensuring their regulatory authority within the intergovernmental system in the U.S. is respected.

States' perspectives and expertise could be channeled more systematically in a body that researches and advises on states' roles in U.S. federalism. This would add to state associations, which tend to be rather policy-focused (such as the NGA or NCSL) or have a partisan view towards federalism (such as the ALEC or NCEL), to the judicial system, which is always available to dissolve federalism disputes in highly conflictual circumstances, and to the Office of Intergovernmental Affairs in the White House, which is both policy-focused and under partisan control of the president. It would also be different from the Forum on Democracy and Trade, which was entirely focused on trade policy, and from a proposed National Laboratory on Federalism and Competitiveness, which was suggested to tackle only economic questions (Katz, 2012, p. 12). States can offer perspectives on federalism going beyond a single issue.

An institution with such a broad focus was in existence for a period of time: The U.S. Advisory Commission on Intergovernmental Relations between 1959 and 1996 served to "strengthen the American federal system and improve the ability of federal, state, and local governments to work together cooperatively, efficiently, and effectively" (U.S. Congress, 1959). Individual state advisory commissions on intergovernmental relations used to be in place as well, but their number has declined (Cole, 2011), contributing to a "demise of intergovernmental institutions" (Kincaid, 2011a, p. 26). Without offering a thorough investigation of the Advisory Commission on Intergovernmental Relations with its benefits and criticisms (for overviews, see Brooks, 1961, pp. 105-108; Kincaid, 2011b; McDowell, 1997; Wright, 1982, pp. 158-161), it did, overall, serve as an institutionalized forum to research and consult on federalism issues. It was defunded in the late 1990s and while some authors have brought it up, they conclude a resurrection in its old or even narrower forms seems unlikely because of today's high party polarization (Kincaid, 2011b, pp. 184-187; Walters, 2012 [2005]). Therefore, the basic idea of having a council or advisory body that could bring together state, federal and even international actors to cooperate and solve potential conflicts in U.S. federalism is politically not feasible at the moment but could be pursued at a later point.⁴²

Transatlantic Ties

Even without challenging the administration's responsibility to shape foreign policy and negotiate trade deals, states can benefit from establishing deeper and more permanent linkages with European governmental actors. This includes members of regional and national parliaments, members of the European Parliament and executive officials at all governmental levels. Exchanging perspectives on the TTIP informs each side of their most important issues and of the strategies for interest representation. Building alliances across the Atlantic can also help in underlining state associations' positions: Connections based on

⁴² A sign that some bipartisan interest in discussing U.S. federalism can be discerned is the formation of the Speaker's Task Force on Intergovernmental Affairs in May 2017, consisting of representatives from both parties. One of its tasks is to "[p]rovide a forum for states, cities, and counties to showcase their innovation and creativity in solving public policy problems" (Speaker Ryan Press Office, 2017). The NGA and the CSG are on the advisory council.

common party political preferences, for example linking Republicans with the European People's Party in the European Parliament, or based on common interests, for instance environmental issues, would foster a transatlantic dialogue and understanding that goes beyond trade and investment.

In essence, a combination of existing sister state relationships and trade missions is required that somewhat resembles the federal-level Transatlantic Legislators Dialogue. Sister state relationships focus on people-to-people exchanges, whereas trade missions follow the gubernatorial aim for more exports and investment. A government-to-government exchange is needed in trade policy that allows state officials to engage in regular discussions with their counterparts in Europe. Various state associations have taken a lead on organizing similar exchanges, an educational offer that should be expanded. Again, financing such transatlantic ties would likely prove difficult.

8.4 Options for Future Research

From the outset, this research had many shortcomings in the form of omissions, and the findings have opened opportunities for future research. The further study of U.S. states in transatlantic relations or transatlantic trade relations could benefit in the following three key areas.

Comparative Dimensions

Studies could compare states' engagement in Europe with their engagement in Asia. The Pacific rim marketplace is growing faster than European economies are and many economic state powerhouses are on the West coast and thus closer to Asia than Europe. It could therefore be interesting to examine if states are more active in representing their trade promotional and trade policy interests in Asia than in the EU.

Another comparison would be between states' interest representation on the TTIP versus the TPP. The transpacific free trade negotiations elicited stronger public interest in the U.S. than the European talks did, so researchers could look for more reasons than the ones presented in this study as to why states seemed more mindful of the TPP than the TTIP.

A different twist would be to compare U.S. states' activities on the TTIP or the TPP with those of other noncentral governments in Europe or in Asia. This would offer the chance to contrast the experience of German federal states, Japanese prefectures and U.S. federal states, for instance.

Broadening the Scope

An omission in this study results from its focus on those states actively representing their interests on the TTIP. Specifically asking state officials why their state has been silent on transatlantic matters would be an option to crosscheck the argument put forth in my work explaining the reasons for and variation in states' TTIP interest representation.

The most comprehensive study would include a detailed look at every state's transatlantic relations from a cultural, economic and political perspective. Such a study could deliver more evidence for the claim of interdependent, globalized markets and societies, and would go far beyond the view taken in this work.

In addition to looking at the 50 states, future analyses of noncentral governments' foreign affairs could include Washington, D.C., and the territories. Their special constitutional status differentiates them from other states and thus might add new insight on how institutional settings shape interest representation capabilities. The local level in the U.S. and their activities with international businesses and international trade topics could be another addition to the literature.

Narrowing the Scope

Instead of focusing on a comparative view, it could also be valuable to examine one or just a few states' international affairs in depth and in a historical context. The development and potentially the growth of transatlantic relations within a single state could be highlighted, including the various actors involved and issues discussed. A similar angle would be zooming in on a specific set of states based on certain characteristics, for instance agricultural states in the South or strongly progressive states.

A longitudinal study of change on a specific international topic would also be helpful. For instance, an analysis of states' engagement within the IGPAC from the NAFTA to the TTIP will reveal continuity and breaks in their interests and the global trade environment they act within.

Another option is singling out a specific policy field of transatlantic proportions to investigate, regardless of a connection to ongoing trade negotiations. Financial services, specifically insurance policy, comes to mind here. In my study, I did not focus heavily on this, as it was not part of the TTIP talks. Yet, there has been a continuous, deep and recently institutionalized transatlantic dialogue between the states, the federal government and the EU on insurance issues, involving legislators, regulators and industry associations on both sides of the ocean (see page 107 and the accompanying footnote). The National Association of Insurance Commissioners and the NCOIL are active in reaching out to European actors and dealing with European political topics, for example discussing the repercussions of the vote in the United Kingdom to leave the EU (National Conference of Insurance Legislators, 2016b). The discussions for creating a covered agreement in insurance would lend itself to a closer scrutiny of states' international interest representation. Climate change policies could also be analyzed, as noncentral governments in the EU and the U.S. have taken a lead in this field, for example with a memorandum on greenhouse gas emissions (see page 24).

Lastly, I have deliberately not taken sides on the TTIP and what its impact on the states might or should be, and whether states should or should not address the negotiations, as I was chiefly concerned with establishing if and how some U.S. states represent their interests. An in-depth study of the TTIP that combines an evaluation of potential export and investment effects with an analysis of potential state-level regulatory effects could shed light on the degree to which U.S. states are impacted by international trade agreements, no matter the historical precedents or partisan preferences.

Annexes

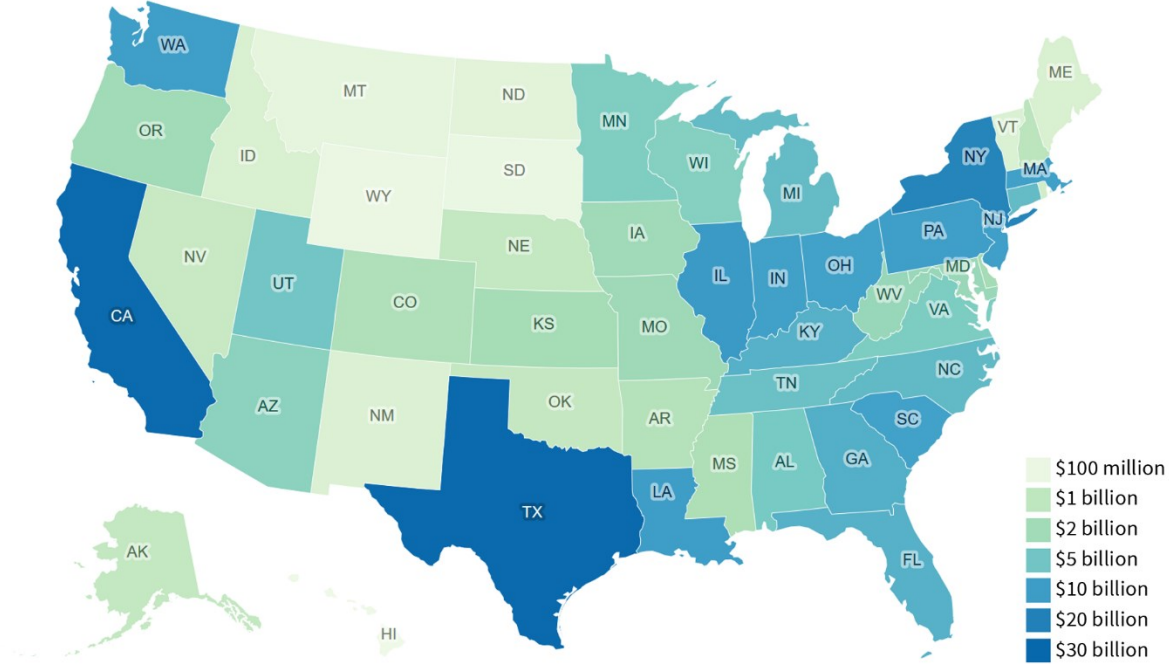
Annex 1: State Transatlantic Trade and Investment Statistics

This annex on EU-state trade and investment data demonstrates the deep economic ties between U.S. states and the EU as an indicator of interdependent transatlantic economies. A selected range of statistics from transatlantic trade is presented via maps in absolute and relative terms to visualize the data. The numbers used for the creation of the maps are then presented as figures.

For trade statistics, I gathered data on the states' exports to and imports from the EU. The visualizations refer to the annual average of exports and imports for the years 2011 to 2016. As mentioned throughout the study, the graphs overall show the variety of economic strength and focal points among the states but also that all states are economically engaged with Europe. For example, the maps clearly confirm the exporting might of large populous states, such as California, Texas and Washington. However, the discrepancy between absolute and relative numbers needs to be taken into account because the aforementioned economic powerhouses are not always intimately linked to the EU: Texas has the largest amount of exports to the EU, but since it exports even more to Mexico, Canada and China, the transatlantic connection is relatively more important in many other states.

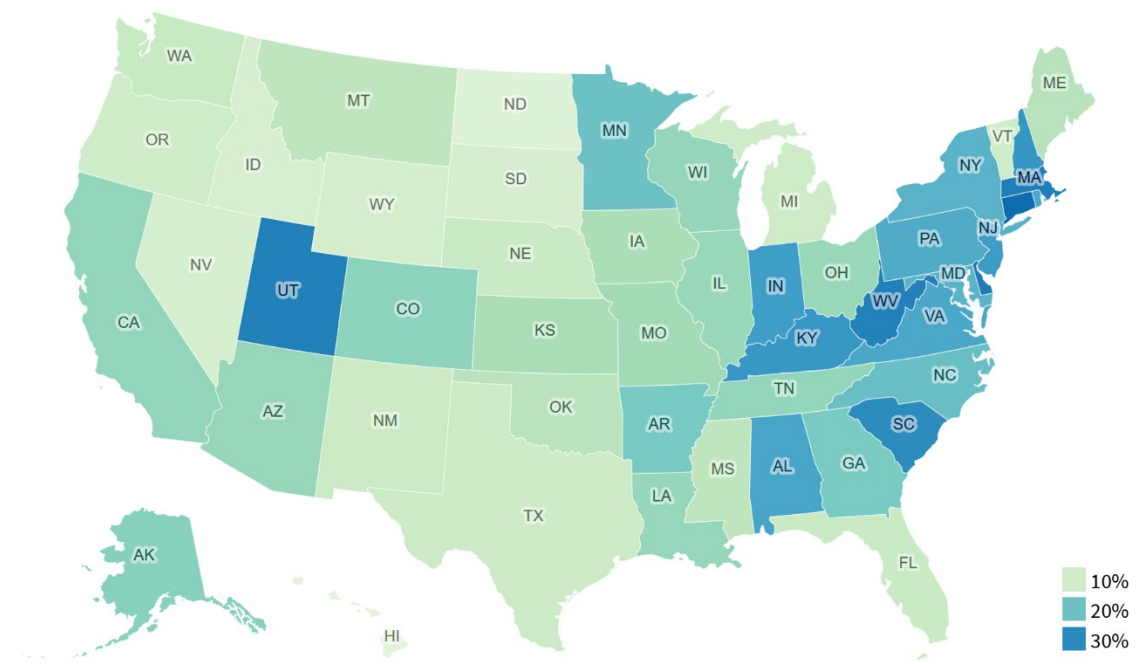
State-level data is harder to find for investment statistics than for trade numbers. The U.S. Bureau of Economic Analysis does provide an array of numbers on FDI in the U.S. but only few data tables relate to the states. If they do so, there are discrepancies between covering the EU or Europe for some years and for other years, there is no data on FDI from the EU or Europe at all. So, to approximate the importance of FDI from Europe for the states, I offer data regarding the number of jobs from European (not EU) companies in each state. Similar to the import and export data, it is crucial to note the difference between absolute and relative data. California, for instance, boasts the most jobs from European FDI. Due to the overall high number of employment from global FDI in that state, though, smaller states, such as Idaho or Vermont, show higher percentages of European companies.

Map 7. State exports to the EU



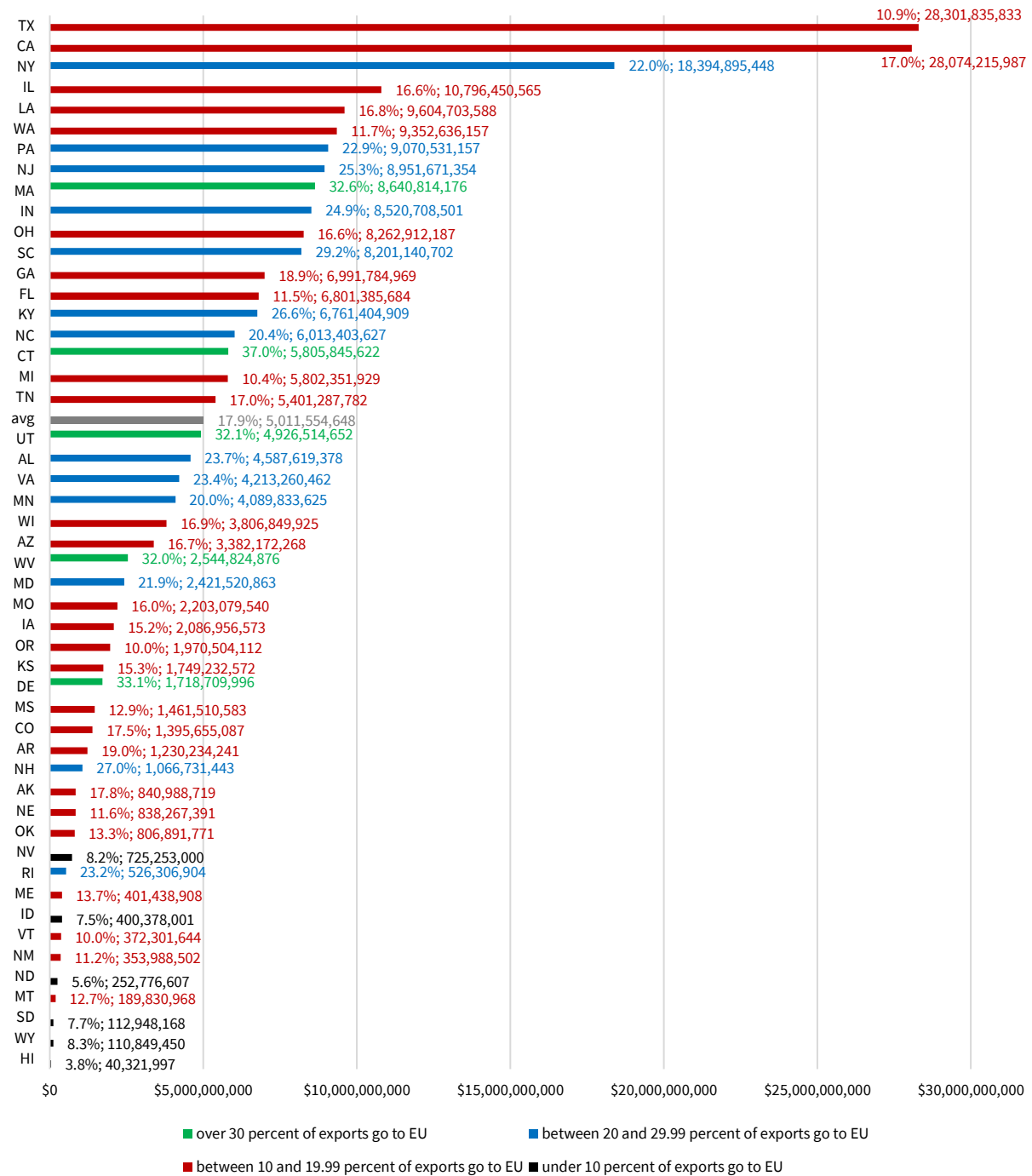
Source: Foreign Trade Division, U.S. Census Bureau (2017a)
 Note: This data relates to the annual average of all merchandise exports to the 28 EU member states for the years 2011 to 2016.

Map 8. State exports to the EU as percentage of all exports



Sources: Foreign Trade Division, U.S. Census Bureau (2017a, 2017c)
 Note: This data relates to the annual average of all merchandise exports to the 28 EU member states for the years 2011 to 2016.

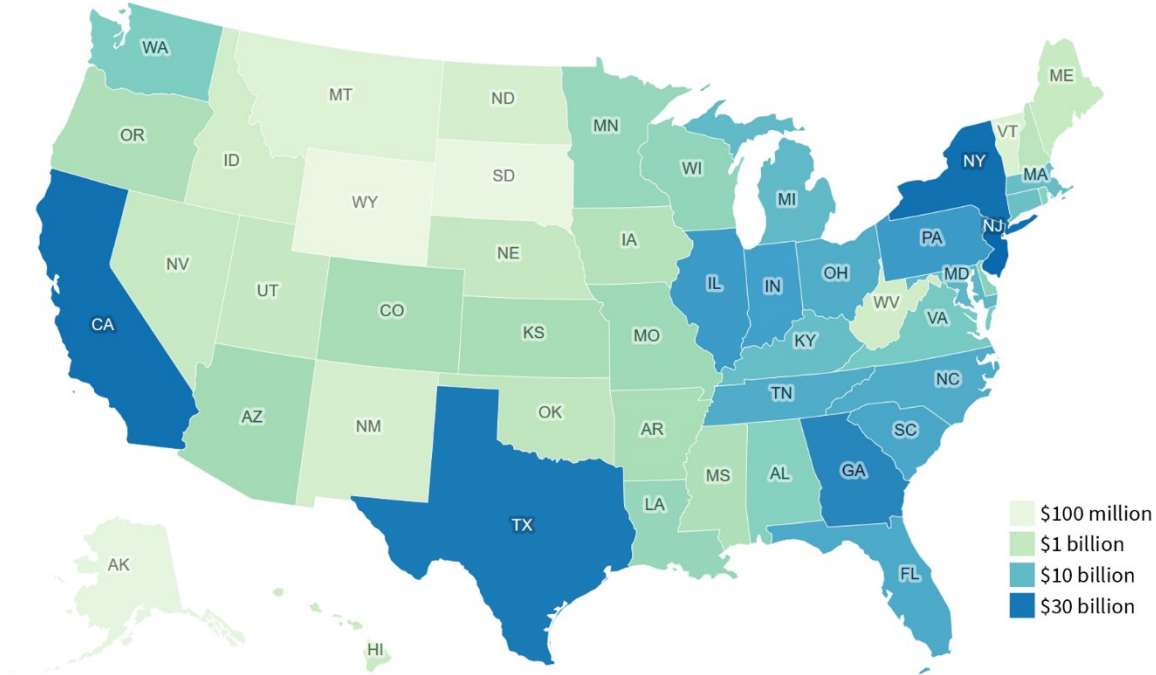
Figure 16. State exports to the EU



Sources: Foreign Trade Division, U.S. Census Bureau (2017a, 2017c)

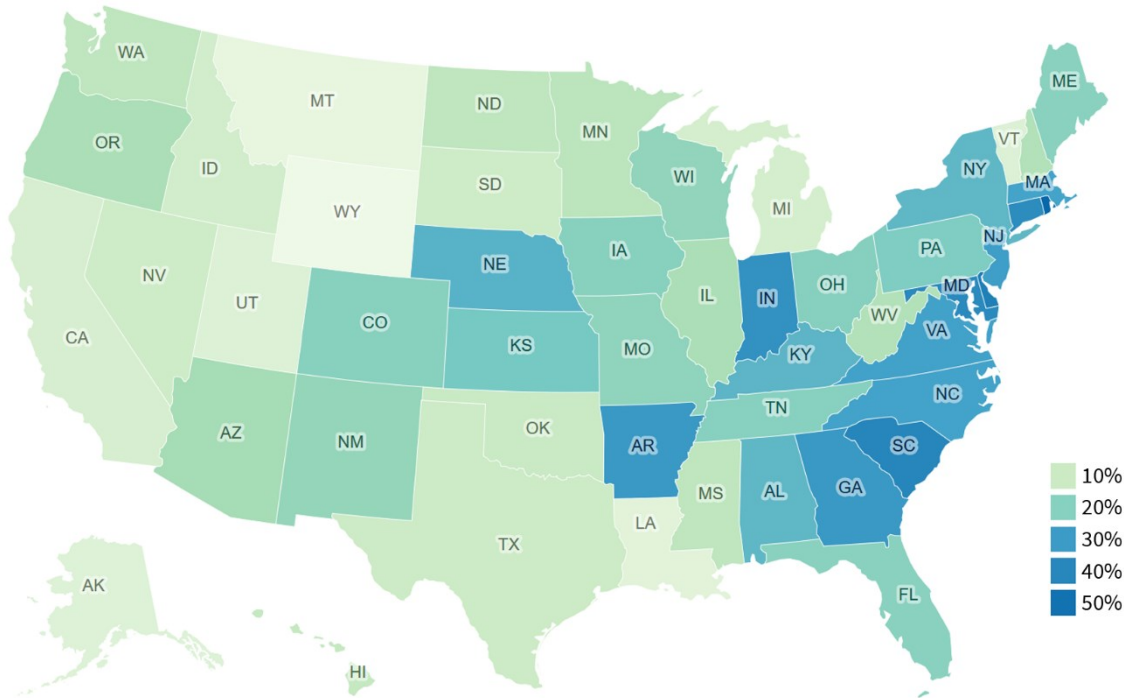
Note: This data relates to the annual average of all merchandise exports to the 28 EU member states for the years 2011 to 2016.

Map 9. State imports from the EU



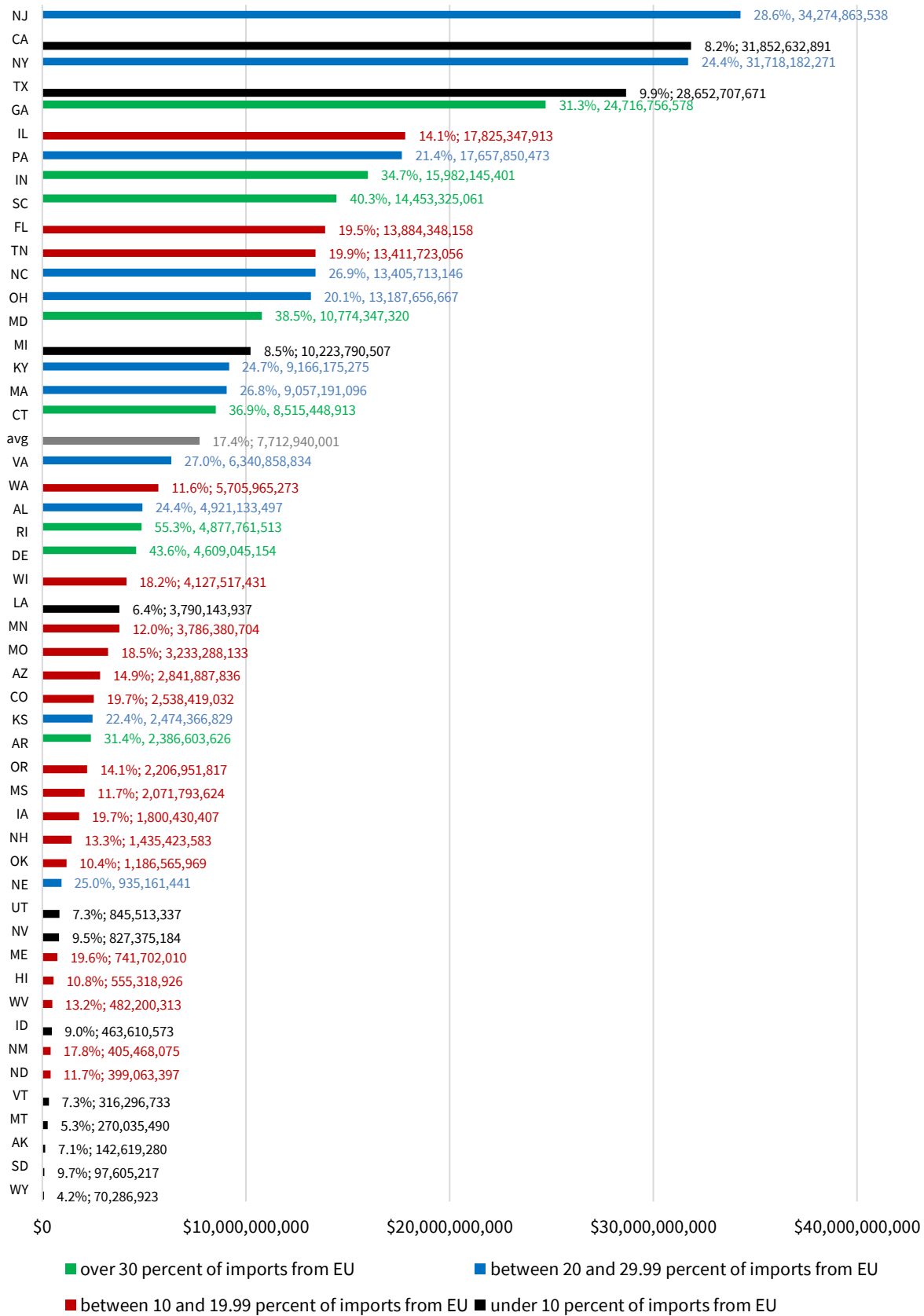
Source: Foreign Trade Division, U.S. Census Bureau (2017b)
 Note: This data relates to the annual average of all merchandise imports to the 28 EU member states for the years 2011 to 2016.

Map 10. State imports from the EU as percentage of all imports



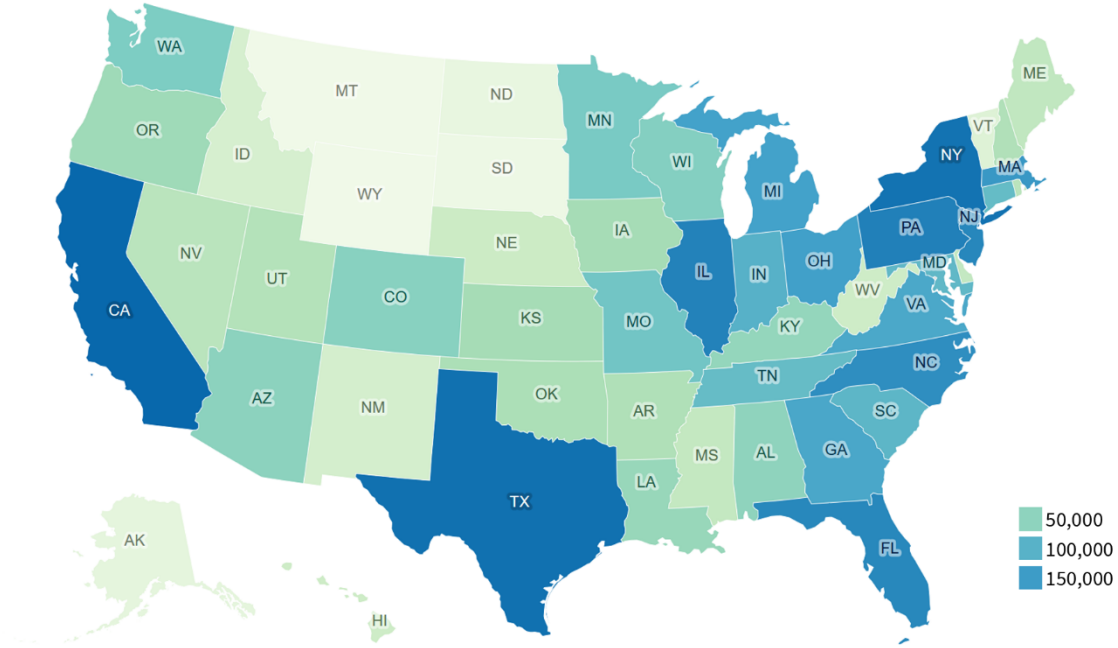
Sources: Foreign Trade Division, U.S. Census Bureau (2017b, 2017d)
 Note: This data relates to the annual average of all merchandise imports to the 28 EU member states for the years 2011 to 2016.

Figure 17. State imports from the EU



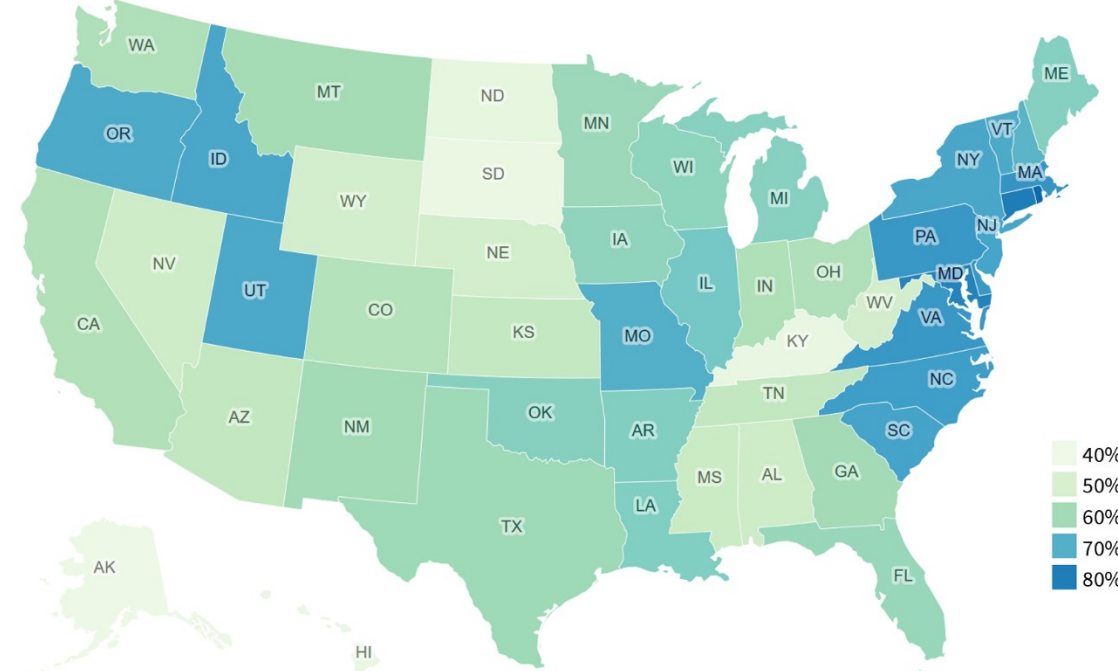
Sources: Foreign Trade Division, U.S. Census Bureau (2017b, 2017d)
 Note: This data relates to the annual average of all merchandise imports to the 28 EU member states for the years 2011 to 2016.

Map 11. State jobs from European FDI



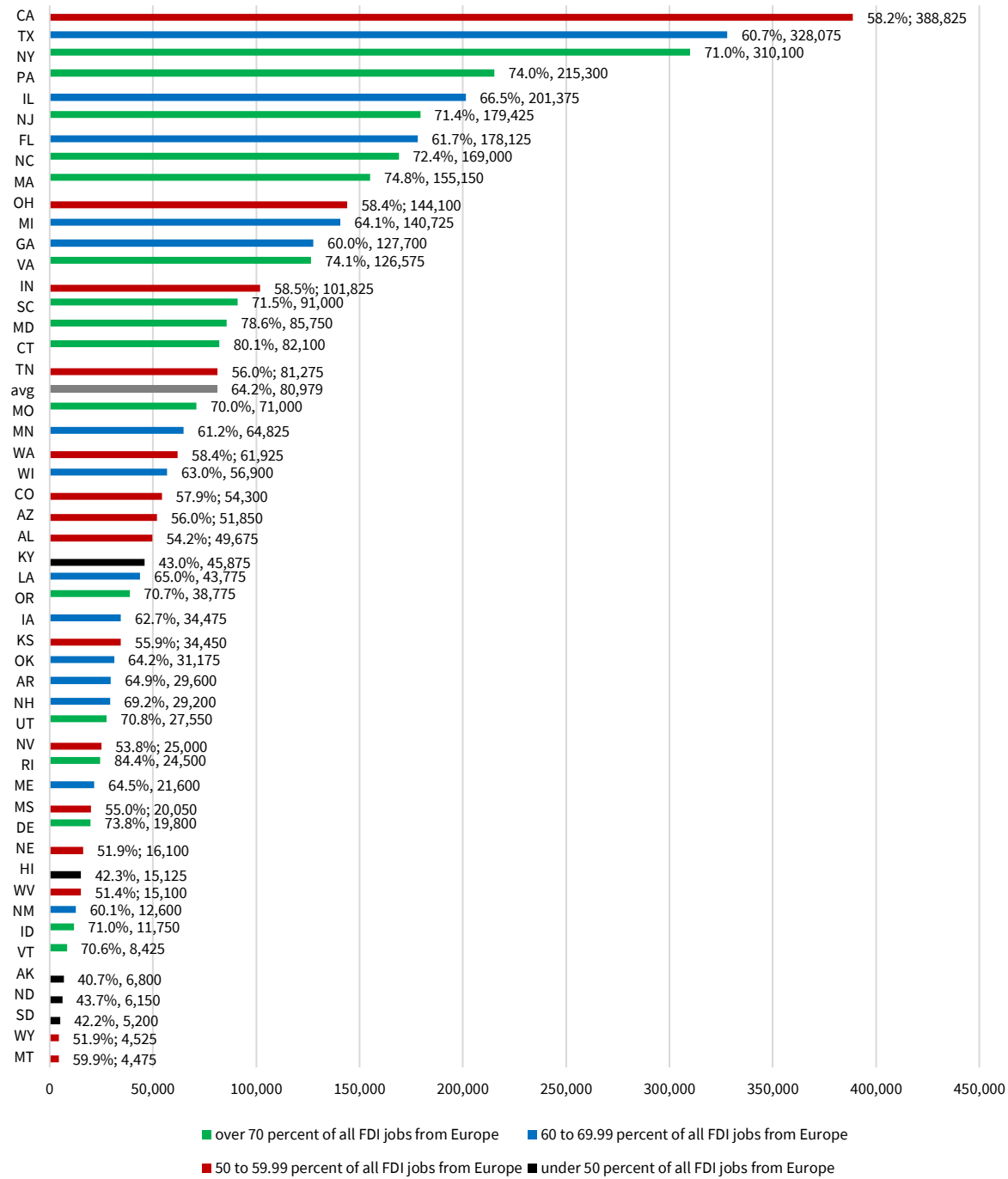
Source: U.S. Bureau of Economic Analysis (2017d)
 Note: This data relates to the annual average number of employees of majority-owned European (not EU) affiliates for the years 2012 to 2015.

Map 12. State jobs from European FDI as percentage of all FDI jobs



Source: U.S. Bureau of Economic Analysis (2017d)
 Note: This data relates to the annual average number of employees of majority-owned European (not EU) affiliates for the years 2012 to 2015.

Figure 18. State jobs from European FDI



Source: U.S. Bureau of Economic Analysis (2017d)

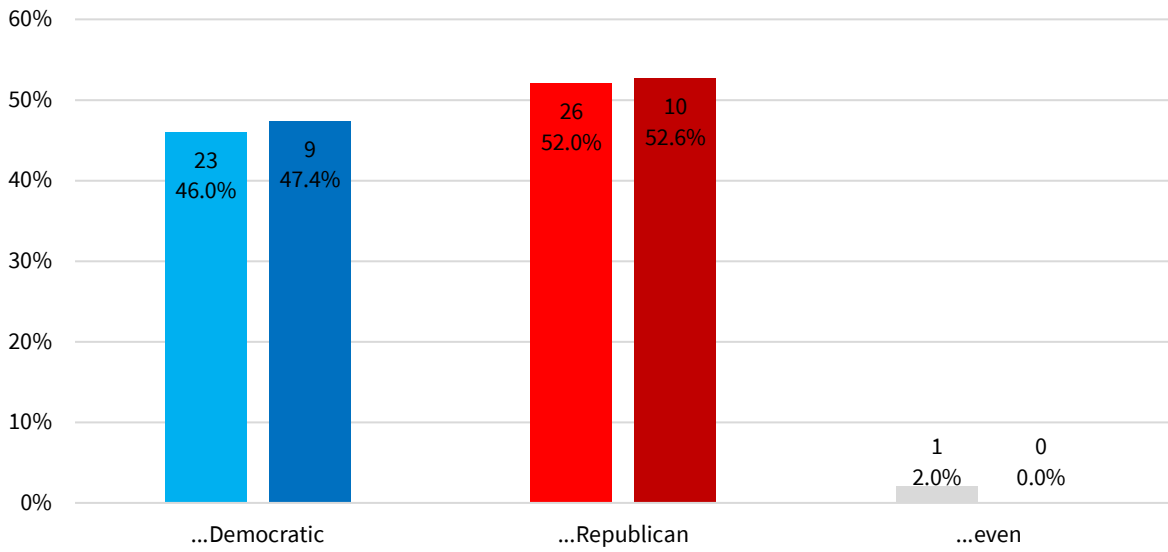
Note: This data relates to the annual average number of employees of majority-owned European (not EU) affiliates for the years 2012 to 2015.

Annex 2: Sample Coverage Regarding Socio-Economic Statistics

Putting the study's sample in relation to selected socio-economic data for the entire U.S., this annex provides background on the representativeness of the sample. I interviewed state officials in the EU and the U.S. from 19 different states, a coverage of 38 percent of all states. As described in section 4.2, I did not aim to achieve representativeness by statistically covering all socio-economic facets of states' transatlantic relations but instead needed a snapshot of those states actively engaged in transatlantic interest representation regarding the TTIP. Nevertheless, as the following comparisons show, my sample is close to the overall U.S. distribution in many aspects such as partisanship, population or European FDI.

Figure 19. State partisanship covered in the sample

Left bar: Percentage of U.S. states leaning...
 Right bar: Percentage of U.S. states in the sample leaning...

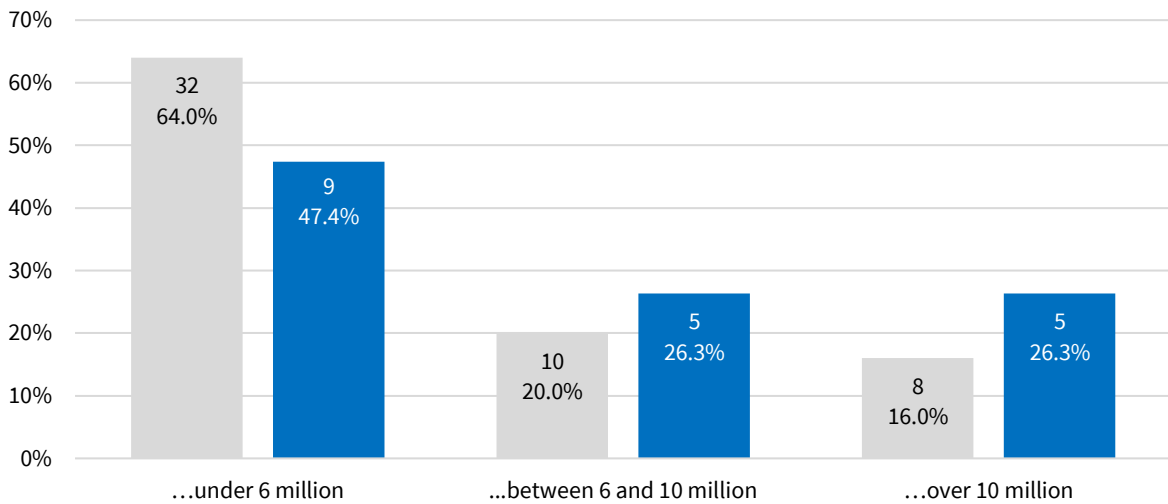


Source: Cook Political Report (2014)

Note on labels based on Cook Partisan Voting Index: All states with a D+ rating were counted as leaning Democratic, all those with an R+ rating were counted as leaning Republican; for details, see note to map 5 on page 139.

Figure 20. State population sizes covered in the sample

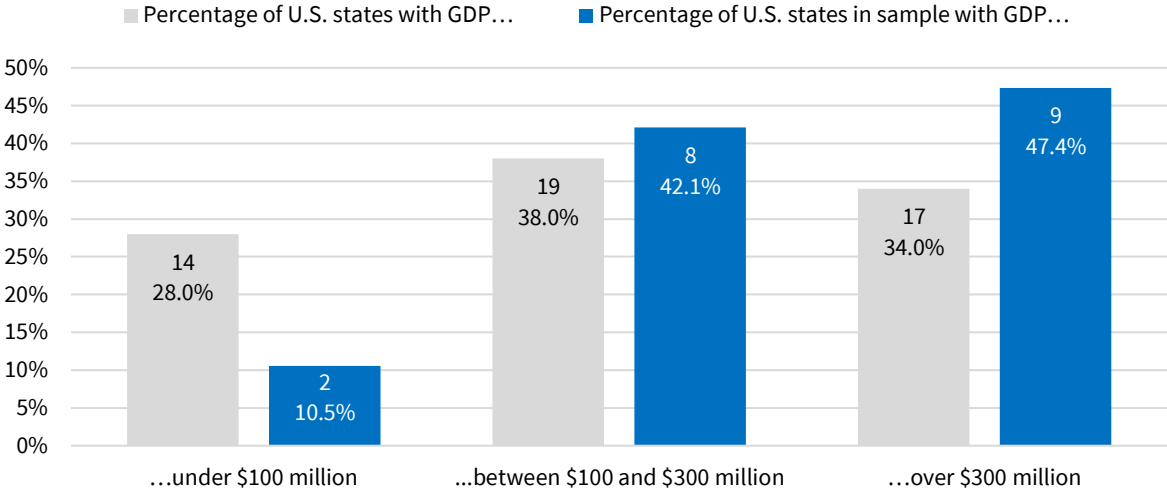
■ Percentage of U.S. states with population... ■ Percentage of U.S. states in sample with population...



Source: U.S. Census Bureau (2017)

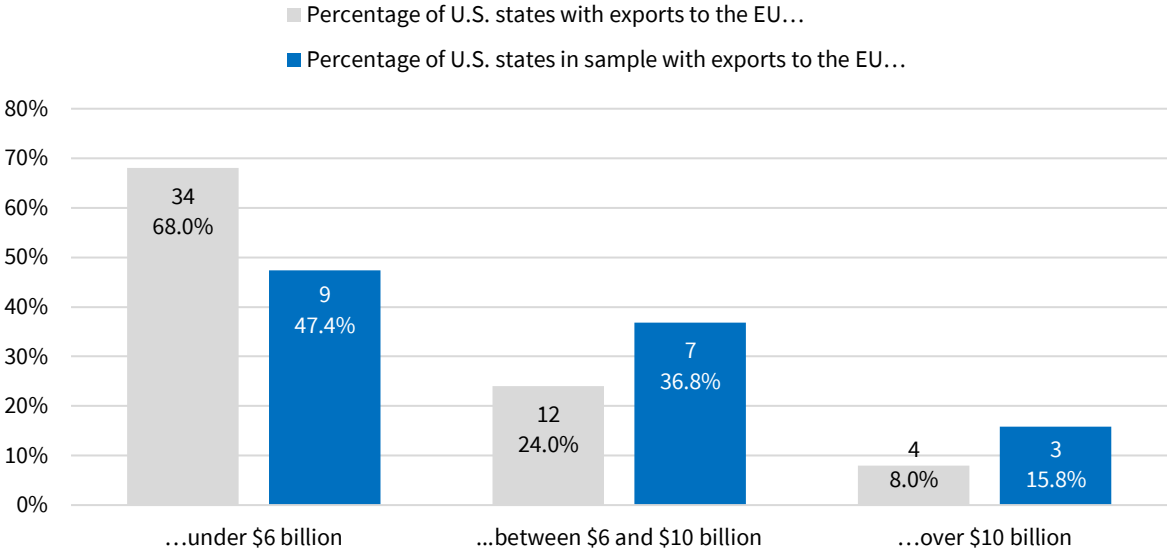
Note: This data relates to the annual average population for the years 2011 to 2016.

Figure 21. State economic sizes covered in the sample



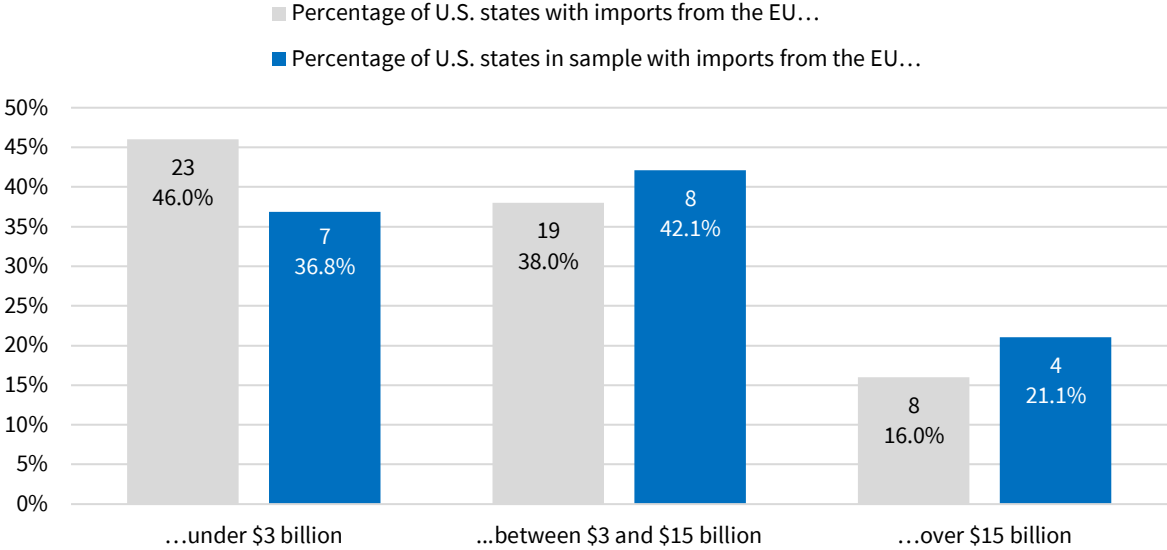
Source: U.S. Bureau of Economic Analysis (2017a)
 Note: This data relates to the annual average gross domestic product (GDP) for the years 2011 to 2016.

Figure 22. State EU exports covered in the sample



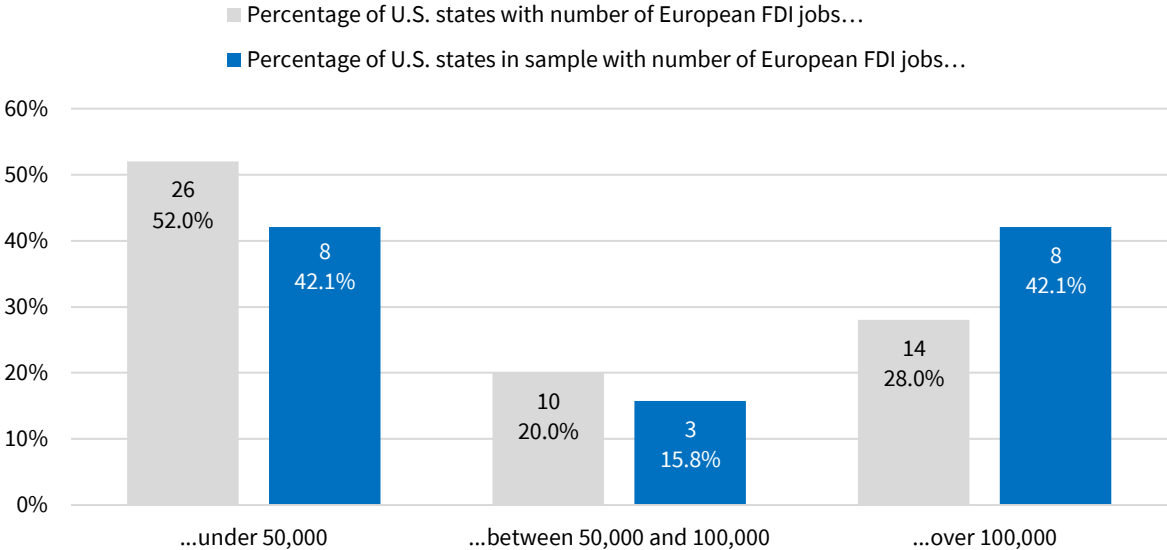
Source: U.S. Census Bureau (2017a)
 Note: This data relates to the annual average of all merchandise exports to the 28 EU member states for the years 2011 to 2016.

Figure 23. State EU imports covered in the sample



Source: U.S. Census Bureau (2017b)
 Note: This data relates to the annual average of all merchandise imports to the 28 EU member states for the years 2011 to 2016.

Figure 24. State jobs from European FDI covered in the sample



Source: U.S. Bureau of Economic Analysis (2017d)
 Note: This data relates to the annual average number of employees of majority-owned European (not EU) affiliates for the years 2012 to 2015.

Annex 3: President Obama's Efforts to Receive Fast Track Authority

The U.S. states play virtually no role in deciding the parameters for the administration's international trade negotiations. To better understand the political and partisan nature of trade policy making in the U.S., this annex nevertheless provides some background on how the framework for negotiating trade deals came about during the second Obama administration.

The regular procedure for trade agreements laid out in the constitution is that the U.S. federal government negotiates with foreign countries and once a deal is reached, the U.S. Senate needs to ratify the treaty with a two-thirds majority. This fairly centralized process envisions a lead role for the executive branch and a secondary role for the U.S. Senate.

In the late 20th century, the process for reaching trade agreements grew even more centralized and nationalized with a procedure known as fast track authority or, rebranded in the TTIP negotiations, Trade Promotion Authority (TPA). Under fast track authority, the White House still leads the trade negotiations with foreign nations, but Congress can only vote the negotiated agreement up or down: No amendments are possible, either the legislators vote for the entire trade deal or they reject it in its entirety. Fast track authority was first introduced in 1974 and has been used by presidents of both parties ever since. TPA is granted to the president by Congress for a certain number of years, at which point it has to be renewed. In 2012, the current fast track legislation expired, which President Obama had inherited from his predecessor. The president now had to work hard to convince Congress to grant him a new TPA.

Already in 2012, the USTR made it known that President Obama was seeking fast track authority for his free trade deals (Palmer, 2012)⁴³, but not until three years later, in his seventh state of the union address, did Obama make the formal request to Congress to grant him trade promotion authority (Obama, 2015). His appeal was made not to Congress as a whole or either chamber but to both political parties, as at that point it was already clear that the backlash would be driven along party political lines: Many members of his own party opposed Obama on free trade issues and particularly fast track authority. In late 2013, for example, 151 House Democrats had signed a letter opposing fast track authority for the TPP (DeLauro, 2013). Republicans, on the contrary, were in rare agreement with the White House in supporting TPA and free trade agreements in general. Getting fast track authority would prove to be a difficult political endeavor for the president. Obama finally signed the bill granting himself – and his successors because the measure lasts six years – fast track authority in June 2015 but only after a long battle with and within Congress and among the states.

In April 2015, the Senate tabled the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (U.S. Congress, 2015c, 2015d), legislation designed to give the president fast track authority. It was considered together with the Trade Adjustment Assistance Reauthorization Act of 2015 (U.S. Congress, 2015a, 2015e), as TPA and Trade Adjustment Assistance (TAA) are usually done in a package deal (Berman, 2015). TAA is a long-standing federal program created to help workers and farmers who have lost or might lose their jobs due to the pressures of globalization, namely growing imports and outsourcing jobs (Pearson, 2004, pp. 87-88). Like fast track authority, it is not a permanent program but needs to be renewed and reauthorized by Congress. Congressional Democrats from all states, especially left-wing Democrats, have traditionally been in favor of this type of assistance (Bradner & Walsh, 2015), which the Democrats themselves were instrumental in setting up in the 1970s (Fox, 2015). At the same time, many Democrats were highly critical of TPA, as was

⁴³ No official statements were made at this point. In fact, in 2013, "Ambassador Froman declined at the July 18 House Committee on Ways and Means hearing to state when the administration would request TPA" (Sutton, 2013).

exemplified in the letter by 151 House Democrats opposing the measure. The idea therefore was for the package bill to pass because Republicans would want TPA and Democrats would want TAA.

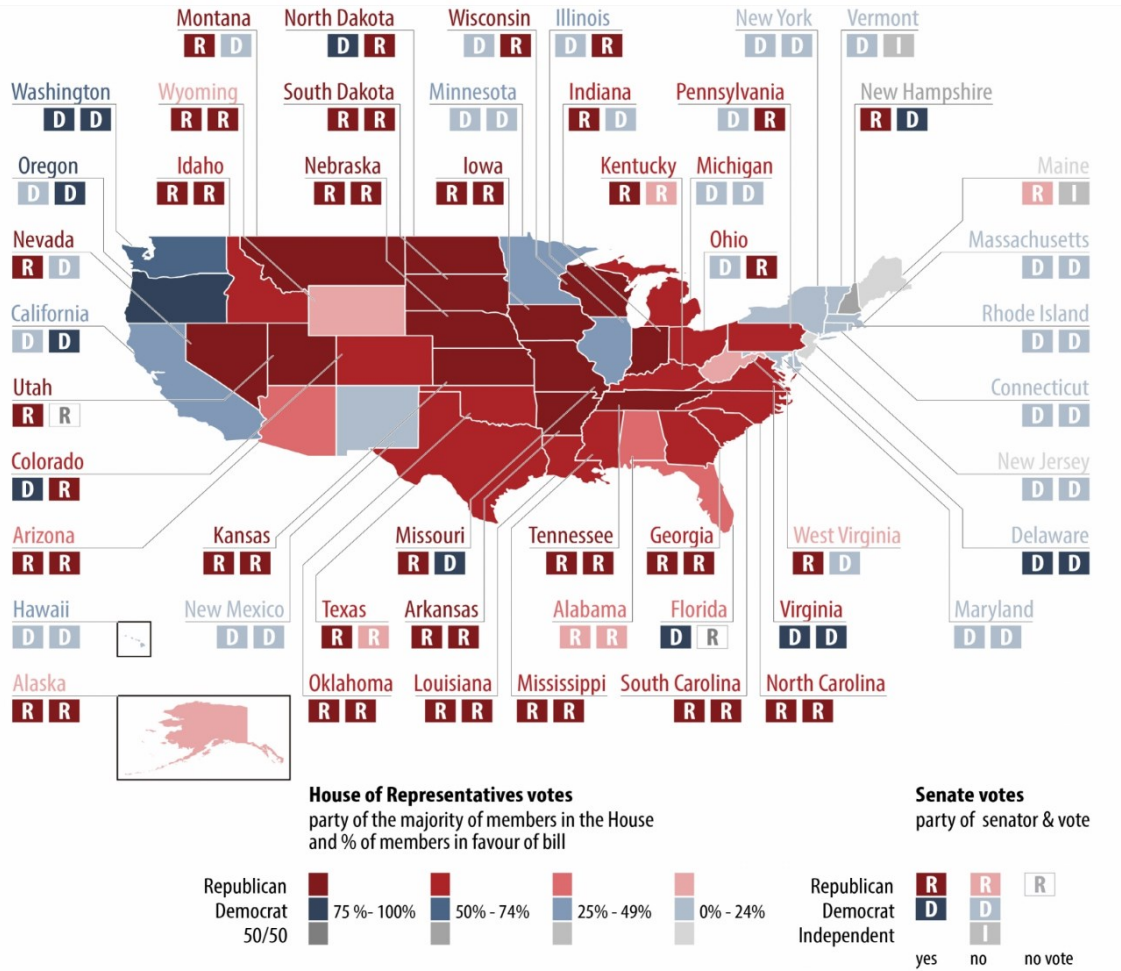
In May 2015, the Senate did just that by passing the combined trade bill 62-37⁴⁴, with only 14 Senate Democrats supporting it. The next vote was in the House, but here, the chamber leadership had decided to put TPA and TAA on separate votes. Still, crucially, both bills would have to pass in order to reach President Obama's desk for his signature (Bradner & Walsh, 2015). The Republican House leadership knew many Republicans were against TAA and thus preferred to offer their colleagues an option to vote on TAA separately. With House Democrats assumed to continue supporting TAA, the House would still pass both TAA and TPA: Democrats would vote for TAA, Republicans would vote for TPA and both bills reach the president.

Yet, the Democratic opposition to TPA had grown so strong that many House Democrats were willing to vote against TAA to derail TPA. This is exactly what happened: In June 2015, a vast majority of Democrats in the House of Representatives voted against TAA and the TAA part of the bill was rejected 126-302. The subsequent 219-211 passing of the TPA part of the bill did not matter and was only symbolic because both TAA and TPA had to be passed together (Flores, 2015).

President Obama's administration brushed the rejection off as a "snafu" (Bradner & Walsh, 2015; Sherman, Bresnahan, & French, 2015), but congressional Republicans were highly concerned that the president was unable to convince his fellow party members to pass TPA (Marcos, 2015). The solution that the White House supported in the end was to separate the TAA and TPA bills completely: One vote to pass TAA, one vote to pass TPA. The connection between congressional Republicans and the White House infuriated many Democrats because they did not believe that Republicans would vote for TAA, once they had already signed off on TPA (Fleming, 2015; Raju, French, & Sherman, 2015). But this did, finally, happen: The House and the Senate each first passed TPA and then passed TAA. TPA was approved with a vote of 60-38-2 in the Senate and with a vote of 218-208-8 in the House (see map 13 on the following page). Obama signed both bills on June 29, 2015 (Marcos & Needham, 2015; Nelson, 2015).

⁴⁴ The bills were combined under H.R. 1314, the Bipartisan Budget Act of 2011, and passed under vote record 193 on May 22, 2015 (U.S. Senate, 2015). Before, the Senate had actually rejected the motion for cloture a week earlier (voter record 176) but then moved for cloture on May 21 (voter record 192) (Kaplan, 2015a, 2015b).

Map 13. Congressional votes on the 2015 TPA legislation



Source: Del Monte & Puccio (2016, p. 7)

Annex 4: Noncentral Government Procurement in the First 15 TTIP Rounds

Table 13 provides an overview of one of the most contentious items of the TTIP negotiations, public procurement. The EU and the U.S. do not see eye to eye on this matter, resulting in few substantial agreements being reached in the negotiations rounds between 2013 and 2016.

Due to the scarcity of official records, when gathering information, it was necessary to also look at leaked and secondary sources, such as the negotiation summaries provided by the Trans-Atlantic Relations Project, a research project by the Bertelsmann Foundation (Bertelsmann Foundation, 2016), even though this means relying on the authenticity checks by the respective institutions.

Table 13. Noncentral Government Procurement in the First 15 TTIP Rounds

Year	Date	Negotiation round or publication	Negotiations on procurement
2013		Prenegotiation	<ul style="list-style-type: none"> EU goals: “agree on rules which will ensure that EU or US companies are not discriminated against when tendering for public contracts on each other’s market”; “maximise the opportunities for EU and US firms to participate in public tenders at all government levels, whether central/subcentral, federal or sub-federal, without being discriminated against” (European Commission, 2016b, p. 1)
	July 7-12	First round of negotiations (Washington, D.C.)	<ul style="list-style-type: none"> EU is “more interested in having access to public procurement in the US than the US towards the European public procurement market. In addition, it was monitoring closely federal level exclusions such as ‘Buy American’ and departments with certain exclusions. Moreover, the flow of funds from government to federal states was being examined in the run up to the preparation of an offer on public procurement.” (European Commission, 2013d, p. 5)
	November 11-15	Second round of negotiations (Brussels)	<ul style="list-style-type: none"> Separate meetings on public procurement (European Commission, 2013b, p. 2)
	December 16-21	Third round of negotiations (Washington, D.C.)	<ul style="list-style-type: none"> “Discussions on procurement led negotiators to conclude that achieving significant results, including on the US state-level, is possible. Dan Mullaney said that the US Trade Representative (USTR) will coordinate with the individual states on their procurement issues.” (Sutton, 2014a, p. 1)
2014	March 10-14	Fourth round of negotiations (Brussels)	<ul style="list-style-type: none"> Negotiators as well as stakeholders want to move forward on public procurement (European Commission, 2014d, pp. 2, 3) “The US expressed interest in exchanging tariff, services and procurement offers by the end of the sixth negotiating round.” (Sutton, 2014d, p. 1)
	May 19-23	Fifth round of negotiations (Arlington, Virginia)	<ul style="list-style-type: none"> Procurement discussed with joint understanding of “high ambitions for additional market access” (Office of the U.S. Trade Representative, 2014c)
	July 13-18	Sixth round of negotiations (Brussels)	<ul style="list-style-type: none"> Preparation of consolidated text proposal (European Commission, 2014c, p. 1)

			<ul style="list-style-type: none"> • “This round ended with no agreement on procurement. The EU is keen to obtain greater access to procurement at the US-state level. As of now, US states have not been approached about opening their procurement markets to EU countries.” (Sutton, 2014b, p. 2)
	September 29-October 3	Seventh round of negotiations (Chevy Chase, Maryland)	<ul style="list-style-type: none"> • No negotiations on procurement (European Commission, 2014b, p. 1) • “The EU hopes that TTIP will create opportunities for EU businesses to break into US subfederal procurement markets. This level of market access will require engagement with US states as Washington lacks the authority to grant it.” (Sutton, 2014c, p. 2)
2015	February 2-6	Eighth round of negotiations (Brussels)	<ul style="list-style-type: none"> • Discussions on public-private partnerships (European Commission, 2015d, p. 3) • “Negotiators discussed public procurement during the round but did not reach agreement on the scope of such a chapter. The EU would like access at the US state and local levels.” (Sutton, 2015a, p. 2)
	April 20-24	Ninth round of negotiations (New York, New York)	<ul style="list-style-type: none"> • Technical discussions on the text of the chapter (European Commission, 2015f, p. 2) • “Discussions on increased market access for public procurement continued but have not made considerable progress.” (Sutton & Peters, 2015, p. 2)
	July 13-17	Tenth round of negotiations (Brussels)	<ul style="list-style-type: none"> • “No discussions took place on tariffs or procurement during this round.” (European Commission, 2015g, p. 1) • “Negotiators did not discuss public procurement during this round. The EU would like to create a ‘framework’ for exchanging offers that include access at every level of government.” (Sutton, 2015b)
	October 19-23	Eleventh round of negotiations (Miami, Florida)	<ul style="list-style-type: none"> • EU discussed “expansion of market access commitments, at both federal and state level” and “underlined the need to improve access to procurement contracts within States” (European Commission, 2015e, p. 6); technical discussion before text exchanges in February 2016 (European Commission, 2015e, p. 3) • “The parties began serious discussions on public procurement, with the exchange of initial offers expected in February 2016. The EU signaled that it would focus on gaining public procurement market access in three specific sectors – transportation, energy and environmental services – and that it would not seek to undo U.S. purchasing preferences for small- and minority-owned businesses. The EU is pushing for the U.S. to expand coverage of sub-federal entities beyond its commitments in the World Trade Organization Government Procurement Agreement (GPA). Thirteen U.S. states have not signed on to the GPA; the EU hopes to gain purchasing access to those states, but the U.S. federal government cannot bind the states to the agreement.” (McKeon, 2015, pp. 1-2)
2016	February 22-26	Twelfth round of negotiations (Brussels)	<ul style="list-style-type: none"> • “The EU continued to underline the need to improve access to procurement contracts within States.” (European Commission, 2016k, p. 5)

		<ul style="list-style-type: none"> • “Negotiators discussed government procurement, marking the first time that both parties put forward text on the issue. Greater access to the U.S. procurement market remains a major offensive interest of the EU, even though the European Commission has modest expectations of what the United States is willing or able to offer. European Commission officials have acknowledged that the United States cannot offer public procurement concessions at the state level without the consent of local authorities. The EU is pressing for the expansion of market access through the removal of flow-down restrictions, which require state projects that use federal funds to work with domestic bidders. Relatively little progress was made in the first exchange, but negotiators are expected to continue discussions in the coming months.” (McKeon, 2016e, p. 1)
March	Leaked document on tactical state of play	<ul style="list-style-type: none"> • “[T]he US was not able to provide any further answers or comments with regard to sub-Federal procurement and again underlined its difficulties and sensitivities in this area” (doc16 in Greenpeace, 2016, p. 5)
April 25-29	Thirteenth round of negotiations (New York, New York)	<ul style="list-style-type: none"> • Consolidation of texts, but for the EU, “it is clear that we need to reach a similar level of progress in access to procurement markets as in tariffs and services in order to move the negotiations to the end game.” (European Commission, 2016a, p. 2) • “Commission is preparing some factual information on comparative openness in both markets” (European Commission, 2016i, p. 7) • “[T]he EU is seeking access to contracts for the Federal Aviation Administration and rail and urban transportation, as well as state projects that utilize federal ‘flow-down’ funds, or money provided by the U.S. government to states for local projects. The United States claims that member state government procurement regimes are not consistent throughout the EU, and that some are corrupt or fail to factor legitimate metrics beyond product cost into contracting decisions. U.S. officials have dismissed calls for a revised procurement offer and insist that the parties work off of currently tabled texts.” (McKeon, 2016a, p. 2) • “U.S. negotiators are reluctant to table an offer that might prompt Pacific trading partners to seek a better deal on procurement and other issues” (McKeon, 2016a, p. 2)
July 11-15	Fourteenth round of negotiations (Brussels)	<ul style="list-style-type: none"> • First procurement proposal by U.S.: U.S. presents it as most far-reaching and ambitious ever (Office of the U.S. Trade Representative, 2016h); EU says it is insufficient, “as it provides little, if any, access to purchases covered by Buy America provisions, maritime services, federal aviation and ground transportation, or state-level contracts” (McKeon, 2016c, p. 2) • “[D]eadlocked on (...) government procurement” (McKeon, 2016b, p. 1): No movement; EU wants access to all governmental levels, the Federal Aviation

			<p>Administration and flow-down funds; EU wants waiver of Buy America legislation (McKeon, 2016b, p. 3)</p> <ul style="list-style-type: none"> • EU wants single point of access to information for public procurement opportunities at all government levels (European Commission, 2016d, p. 4) • “[S]ubstantial improvements in market access at all levels of government continue to be a key objective of these negotiations. And we are still very far from achieving that goal. Indeed the gap between the level of ambition on tariffs and procurement remains a serious cause for concern” (European Commission, 2016f)
	October 2-7	Fifteenth round of negotiations (New York City, New York)	<ul style="list-style-type: none"> • Discussions on which public entities could be included (European Commission, 2016e, p. 4) • EU reiterates wish for electronic access point for central and noncentral procurement tenders and general wish for opening all levels of government procurement but no concessions by U.S. (European Commission, 2016e, p. 4; McKeon, 2016d, p. 1)
2017	January 17	U.S.-EU Joint Report on TTIP Progress to Date	<ul style="list-style-type: none"> • Procurement named as one of the remaining open questions (European Commission, 2017, p. 3)

Annex 5: List of Interview Codes

- 100_Formal position in state-federal consultation system
 - 101_(Former) IGPAC member
 - 102_State SPOC

- 200_Nonstate organizations' network
 - 201_Administration
 - 202_Congress
 - 203_EU
 - 204_State officials
 - 205_Nongovernmental organizations

- 300_States' or state organizations' network to administration
 - 301_Administration in general
 - 302_U.S. federal departments or agencies other than USTR
 - 303_USTR
 - 304_Contact mainly to IGR offices
 - 305_Governors' Washington, D.C., representatives
 - 306_SelectUSA

- 400_States' or state organizations' network to Congress
 - 401_Congress in general
 - 402_Issue-based and geography-based contact to Congress
 - 403_Congressional delegation

- 500_States' or state organizations' European network
 - 501_EU in general
 - 502_European Commission
 - 503_European Parliament
 - 504_Reference to New England meetings with MEPs
 - 505_EU delegation in Washington, D.C.
 - 506_EU embassies in Washington, D.C.
 - 507_U.S. embassies in Europe
 - 508_EU member state governments
 - 509_EU regional governments
 - 510_EU member state legislators
 - 511_EU member state regulators
 - 512_EU regulators
 - 513_EU associations or nongovernmental organizations
 - 514_States lead educational missions to Europe
 - 515_States lead trade missions to Europe

- 600_State governments' engagement with transatlantic trade policy
 - 601_Involvement in international affairs work in general
 - 602_Involvement in international affairs work mostly in trade promotion realm
 - 603_State official has testified at USTR meetings
 - 604_State officials have to justify their international engagement
 - 605_Lack of interest and resources on international affairs among majority of state officials
 - 606_Lack of interest in the TTIP among majority of state officials
 - 607_Lack of knowledge of the TTIP among majority of state officials
 - 608_Specific TTIP activities by/with some state officials
 - 609_Personal gubernatorial contacts
 - 610_State letters
 - 611_Work with (planned) state trade commission to monitor trade policy

- 612_State trade commission to monitor trade policy has had limited success
 - 613_State cooperation with nongovernmental organization
 - 614_State organization as conduit between states and federal government
 - 615_State organization resolutions
 - 616_States can have influence on members of Congress
 - 617_Congress as most important conduit for state interest representation
 - 618_Importance of attorneys general in trade policy
- 700_Potential issues for states in international trade policy, especially the TTIP
 - 701_Procurement
 - 702_Differentiation between types of procurement or thresholds
 - 703_Regulatory cooperation
 - 704_Problems with regulatory cooperation can be worked out
 - 705_ISDS mechanism
 - 706_Reference to ISDS cases
 - 707_Danger of chilling effect of the ISDS mechanism, regulatory cooperation
 - 708_Economic/job concerns
 - 709_Labor standards
 - 710_GMOs, hormone beef
 - 711_GIs
 - 712_Chemical regulation
 - 713_Visa
 - 714_Geopolitical considerations
 - 715_Insurance/financial services
 - 716_Professional qualifications
 - 717_Data protection/intellectual property rights
 - 718_Issue of sovereignty/federalism is part of trade policy debate
- 800_Motivation of engagement in transatlantic trade policy
 - 801_Personal background/interests as driver for state officials' engagement
 - 802_Political mandate as driver for state officials' engagement
 - 803_Grassroots and academic activism as driver for state officials' engagement
 - 804_Local economic outlook as reasons for or against state officials' engagement
 - 805_Local political/constituents' concerns as reasons for or against state officials' engagement
 - 806_Trade promotion as driver for states' international trade engagement
 - 807_Trade promotion takes precedence over trade policy in state executives
 - 808_Trade promotion takes precedence over trade policy in state legislatures
 - 809_Federal level dominates trade policy making; little role for states in negotiations
 - 810_Trade policy is private sector-driven; states do not have expertise/interests
 - 811_Complexity of trade issues; also as hindrance to state engagement
 - 812_State legislature's view on trade policy is narrower, executive's wider
- 900_State-federal consultation mechanism, especially the IGPAC
 - 901_Reference to, description of IGPAC consultations
 - 902_Assessment of state-federal consultation, esp. via the IGPAC, more negative than positive
 - 903_Assessment of state-federal consultation, esp. via the IGPAC, more positive than negative
 - 904_Frequent and substantive briefings lacking
 - 905_Resources lacking
 - 906_Active membership lacking
 - 907_USTR expertise lacking
 - 908_Communication within the IGPAC happens
 - 909_Communication within the IGPAC doesn't happen
 - 910_Lack of access to negotiation texts and liberty to share texts
 - 911_Some successes of states in trade negotiations
 - 912_USTR understands major states' concerns, especially on the ISDS mechanism

- 913_ Consultation is not a true dialogue
- 914_ Consultation is a true dialogue
- 915_ Acknowledgement of USTR efforts to engage states
- 916_ USTR advisory system better than EU advisory system
- 917_ Commission consultations more open than USTR consultations
- 918_ Dominance of corporate interests in trade negotiations, especially at the USTR
- 919_ Secrecy of trade negotiations is an issue
- 920_ Secrecy of trade negotiations is not an issue
- 921_ Reliance on leaked texts
- 922_ Lack of state-level trade data

- 1000_ State-federal tensions in transatlantic trade policy
 - 1001_ State-federal tensions exist
 - 1002_ State-federal tensions are normal and have not led to major issues
 - 1003_ Different interests among states exists but have not led to major conflicts
 - 1004_ Intergovernmental trade policy issues to be resolved domestically
 - 1005_ States have narrower view on trade, USTR has wider view

- 1100_ Trade promotion efforts, especially with view to European representative trade offices
 - 1101_ Focus on FDI over exports
 - 1102_ Focus of exports over FDI
 - 1103_ Focus mixed between FDI and exports
 - 1104_ European office in organizing trade missions
 - 1105_ European office involved in limited economic/political monitoring
 - 1106_ European office has reporting structure with state government
 - 1107_ European office mostly connected to economic development department or governor
 - 1108_ European office as consultant
 - 1109_ European office as part of government or private-public partnership
 - 1110_ European office more in touch with businesses than governmental actors
 - 1111_ High interstate competition as driver for state trade activity
 - 1112_ Adequate budget for European office
 - 1113_ More resources for European offices necessary
 - 1114_ Need to convince states of CASE membership
 - 1115_ SelectUSA had some redundant structures with states at the beginning
 - 1116_ State cooperation with SelectUSA has gotten better but still has difficulties
 - 1117_ Importance of incentives for site selection
 - 1118_ Importance of State Trade and Export Promotion (STEP) program for states
 - 1119_ Impetus for SelectUSA due to lack of federal engagement in FDI
 - 1120_ Importance of informal, personal networks in Europe for trade promotion
 - 1121_ Importance of building on sister state relationship

- 1200_ General trade policy background
 - 1201_ TEC as only structured form of transatlantic dialogue
 - 1202_ Impetus for the TTIP in economic crisis, U.S. pivot to Asia, new FTAs
 - 1203_ Controversial TTIP debate in Europe
 - 1204_ National-level controversial trade debate in U.S. presidential election
 - 1205_ TPP more pertinent than the TTIP in the U.S. at the moment
 - 1206_ Reference to deep FTAs
 - 1207_ Comparison of EU member states to U.S. federal states

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