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**The EU v the EU at al.**

**The Negotiations of The Transatlantic Trade and Investment Partnership (TTIP)**

Valentina Amuso

*Thesis submitted in fulfilment of the Requirements for the Degree of Doctor of Philosophy*

*School of Government and International Affairs*

*Durham University*

2018

**The EU v the EU et al.**  
**The Negotiations of the Transatlantic Trade and Investment Partnership (TTIP)**  
**Valentina Amuso**

**Abstract**

The thesis analyses the launch of the Transatlantic Trade and Investment Partnership (TTIP) negotiations between the EU and the US, focusing primarily on the former. The leading question for the analysis is: *How was consensus reached in the EU for the launch of the TAFTA/TTIP negotiations and what affected the EU negotiating position during the TTIP bargaining process?* The analysis, which belongs to the realm of Economic Diplomacy, will rely on a theoretical framework based on Putnam's Two Level Games, enriched by Multilevel Governance theory, and literature focused on the role of the frames. The original contributions offered by this thesis to existing knowledge consists, first, of adding to the literature on TTIP negotiations and Economic Diplomacy by exploring the interactions among the different actors involved in the TAFTA/TTIP negotiations and how they used competing arguments (based on fresh empirical data) to build coalitions. Secondly, the analysis considers why certain frames became more salient than others and how this affected the negotiation process that has been ongoing since the 1990s (an aspect which has not been systematically explored in the TTIP literature hitherto). Thirdly, it analyses how and why several issues within various sectors were affected differently during the negotiation process. The analysis goes beyond the most widely-studied case of ISDS to explore seven empirical cases. These mechanisms have only been addressed in a limited fashion in the literature to date and under different theoretical premises. Finally, by adopting a framework based on domestic and institutional-based approaches and the use of frames, the thesis also develops a useful basis for the further analysis of the EU trade policy and negotiation process.

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## Abbreviations

ACTA	Anti-Counterfeiting Trade Agreement
ACP	African Caribbean Pacific
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AGRI	Agriculture and Rural Development
AmCham	American Chamber of Commerce
AWR	Animal Welfare Rules
BATNA	Best alternative to no agreement
CAP	Common Agricultural Policy
CARIFORUM	Caribbean Forum
CDU	Christian Democratic Union
CEPI	Confédération Européenne des Syndicats Indépendants Confederation of European Paper Industry
CEPS	Center for European Policy Studies
CESI	European Confederation of
CETA	Comprehensive Economic Trade Agreement
CGE	Computable General Equilibrium
CCP	Common Commercial Policy
CSR	Corporate Social Responsibility
DG	Directorate General
EC	European Community
ECR	European Conservative and Reformists
ED	Economic Diplomacy
EDC	European Documentary Centre
EFD	Europe of Freedom and Democracy
EFDD	Europe of Freedom and Direct Democracy
EFSA	European Food Safety Authority
EP	European Parliament
EPHA	European Public Health Alliance
EPP	European People's Party
ERI	European Roundtable Industrialist
ESGI	Economic Services of General Interest
ETUC	European Trade Union Confederation
EU	European Union
FtF	Farm to Fork
FDI	Foreign Direct Investment
FSC	Foreign Sales Corporation
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCE	Gastro-Cultural Heritage
GDP	Gross Domestic Product
GIs	Geographical Indications
GMO	Genetically Modified Organism
Green/EFA	Green/European Free Alliance
GTAP	Global Trade Analysis Project
GUE/NGL	European United Left-Nordic Green Left

GVC	Global Value Chain
HLWG	High Level Working Group
IA	Impact Assessment
ICS	Investment Court System
ICTSD	International Centre for Trade and Sustainable Development
ILO	International Labour Organisation
ILSA	Iran-Libya Sanctions
IMG	Interactive Multidirectional Games
INTA	International Trade
IPE	International political Economy
IPRs	Intellectual Property Rights
ISDS	Investor-State Dispute System
ITC	Information and Communication Technologies
MDC	Maximum Divergence Criterion
MEP	Member of European Parliament
MFN	Most Favoured Nation
MLG	Multi-level Governance
MOU	Memorandum of Understanding
MRA	Mutual Recognition Agreement
NAFTA	North Atlantic Free Trade Agreement
NGOs	Non Governmental Organisations
NHS	National Health Service
NR	Negotiation Round
NSA	National Security Agency
NTA	New Transatlantic Agenda
NTBs	Non-Tariff Barriers
NTM	New Transatlantic Marketplace
OECD	Organisation for Economic Co-operation and Development
PC	Public Consultation
PES	Party of European Socialists
PGs	Parliamentary Groups
PP	Precautionary Principle
PRTs	Pathogen Reduction Treatments
PTA	Preferential Trade Agreement
RCEP	Regional Comprehensive Economic Partnership
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals
S&D	Socialist and Democrats
SCO	Shanghai Cooperation Organisation
SEGI	Services of Economic General Interest
SIA	Sustainable Impact Assessment
SMEs	Small and Medium Enterprises
SNP	Scottish National Party
SPS	Sanitary and Phytosanitary
SSGI	Service of Social General Interest
TABD	Transatlantic Business Dialogue
TACD	Transatlantic Consumer Dialogue
TAFTA	Trans-Atlantic Free Trade Area
TEC	Transatlantic Economic Council
TFEU	Treaty on the Functioning of the European Union



TiSA	Trade in Service Agreement
TM	Trade Mark
TPA	Transatlantic Partnership Agreement
TPC	Trade Policy Committee
TPP	Trans-Pacific Partnership
TRIPs	Agreement on Trade-Related Aspects of Intellectual Property Rights
TSCA	Toxic Substances Control Act
TSIA	Trade Sustainable Impact Assessment
TTIP	Transatlantic Trade and Investment Partnership
UNESCO	United Nations Educational, Scientific and Cultural Organisation
USTR	US Trade Representative
WTO	World Trade Organisation
ZA	Zone of Agreement
ZPA	Zone of Possible Agreement

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## Introduction

*Diplomacy is the art of letting someone else have your way*

*Daniele Varè  
Italian Diplomat*

This thesis explores the launch of negotiations regarding a Transatlantic Trade and Investment Partnership (TTIP) in 2013 and the development of trade talks from July 2013 to the end of 2016. The focus of the analysis will be on understanding what facilitated the launch of negotiations in 2013 after decades of failed attempts, as well as how, and with what outcomes, the EU's initial positions and preferences were altered during the negotiation process. Given the economic, social, and geopolitical relevance of the TTIP bargaining process (see below), the negotiation of the agreement can be considered a unique stress test for the study of EU Economic Diplomacy (ED) and trade policy. The present introduction will firstly illustrate the study's claim to originality, then explain the relevance of TTIP as a case study, introduce the research puzzle, and finally present an overview of the structure of the thesis.

The originality of the study can be found in the following areas. First, it lies in the employment and analysis of data that have not been used before (e.g. 700 parliamentary speeches, 32 interviews, etc.), offering novel evidence of the actors' interactions and the use of competing arguments to achieve a given end. Secondly, the thesis adds to the existing TAFTA<sup>1</sup>/TTIP literature by developing an analysis that is not simply focused on the recent events of 2013-16 but also centred on the process of launching transatlantic trade negotiations, which started in the 1990s. This makes it possible to explore how the salience of the frames (i.e. persuasive capacity) was affected over time. Frames can be described as 'conscious strategic efforts by groups of people to fashion shared understanding of the world (...) that legitimate and motivate collective action' (McAdam et al., 1996, p.6). The basic guiding element of the analysis is that 'ideas do matter' since they provide 'interpretative frameworks that [...] make political and economic interest actionable' (Carstensen & Schmidt, 2016, p.318).

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<sup>1</sup> Transatlantic Free Trade Area

Third, originality is also achieved by exploring why, given the similarities between the discourses, certain sectors were affected differently by the negotiation process and which elements have been conducive to certain outcomes. Finally, it develops a framework of analysis which, by combining insights from Two-Level Game theory and framing processes, might contribute to the study of negotiation processes and Economic Diplomacy.

As mentioned earlier, the launch of TTIP negotiations represented a watershed in EU trade policy for a number of reasons. First, the negotiations for the agreement could be only launched in 2013, after decades of failed attempts, thereby making it necessary to assess the previous obstacles and significant changes that occurred that might explain the successful launch (although not the conclusion) of trade talks. Secondly, up until the start of the TTIP negotiations, the Commission had been able to conduct its trade talks mostly without overwhelming civil society's concerns. If one excludes civil society mobilisation with regard to WTO negotiations (Strange, 2016), the Commission had only experienced the significant involvement of civil society organisations during the negotiations for the Cotonou agreement. However, the premises and extent of civil society mobilisation were different. In the Cotonou agreement, civil society concerns were not focused on a possible threat to an EU way of life, as in TTIP. NGOs lamented that the negotiations with African, Caribbean and Pacific (ACP) countries were not beneficial for the developing countries involved (Dür and De Bievre, 2007). Moreover, public engagement with regard to TTIP was far more pronounced than in other negotiations, as protests and demonstrations around the EU have shown.

Thirdly, the significance of the agreement, which was been greeted as the biggest bilateral trade agreement ever negotiated (De Ville & Siles-Brügge, 2015a), makes it a valuable case study for analysing EU trade policy and recent trends in global trade governance and geopolitics. As argued by Eliasson and García-Duran '[n]ever before has bilateralism offered such a "best alternative to no agreement" (BATNA) to members of the core decision-making body of the WTO negotiating arm, making TTIP an unprecedented geopolitical game-changer' (2017, p.1522). Fourthly, with the Lisbon Treaty, while the European Parliament assumed veto powers, the EU acquired exclusive competence

regarding Foreign Direct Investment (FDI). These elements changed the traditional balance of forces within the EU and were reflected during the TTIP negotiations, given the significance of the agreement, and thus require further analysis.

Recent development in the EU-US relationship cast doubts on the prospect that transatlantic talks will resume any time soon. However, although negotiations were halted with the election of US President Trump, conflicts and complications had emerged long before 2016 and thus deserve specific attention. The study of TTIP appears, then, significant for the analysis of EU Economic Diplomacy and EU Trade Policy.

The starting point of this thesis is that attempts to launch negotiations for a TAFTA emerged for the first time in the 1990s. Moreover, the analysis shows that frames in support or against the launch of negotiations have been consistently used to support or oppose the launching of negotiations since the 1900s, when the first attempt to launch negotiations took place. What, then, affected the persuasive capacity of certain frames vis-à-vis others? Moreover, if the frames adopted were consistently used throughout the negotiations process, why were certain sectors affected differently than others? The considerations mentioned above present us with the following conundrum: *How was consensus reached in the EU for the launch of the TAFTA/TTIP negotiations and what affected the EU negotiating position during the TTIP bargaining process?* In other words: 1.) what allowed a consensus to be built around the idea of a TAFTA/TTIP in 2013 after decades of failed attempts? and 2.) what affected the EU's negotiating position once the negotiations had been launched? Here the notion of negotiating position refers to the position assumed by the EU negotiators, which appeared acceptable to domestic actors.

This thesis focuses primarily on the EU.<sup>2</sup> The public attention and complexity generated by the TTIP negotiations within the EU make the negotiation of the agreement a valuable case study for the analysis of EU trade policy, together with the EU's evolving role and dynamics. It follows that

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<sup>2</sup> The involvement of civil society has been more pronounced in the EU than in the US (Buonanno and Dudeck, 2015), where the main focus of the protests has been on the negotiation of the Trans-Pacific Partnership (TPP). This also justifies why using TTIP as a case study is significant for the study of EU trade policy in particular.

attention will be placed on both the Community Level (i.e. interactions between the institutions and institutional players and interactions between the EU institutions and their components) and the domestic level (i.e. negotiations between transatlantic, transnational and domestic stakeholders on the one side and EU institutions and their components on the other). That said, this thesis does not underestimate the role of the US in affecting the EU position in negotiations. Negotiations are ‘simultaneously, profoundly, and inseparably both domestic and international’ (Manning 1977, p.309). The concept is best explained by Robert Putnam (1988), who argues that negotiators are involved in numerous bargaining games with the other negotiating party on one side and with their own constituencies on the other. The necessity of obtaining the agreement of the other party is, in fact, understood to play a role in the EU’s viable choices, and so will be examined throughout the thesis. It is, nevertheless, necessary to stress that this thesis does not intend to shed light on the determinist relationship between cause and effect, but to uncover, where possible, the mechanisms and patterns that appeared to have an impact on the EU negotiating position. Answering the research question will require a number of steps. Accordingly, it is necessary to address briefly the content of the chapters and the main findings.

With regard to the structure of the thesis, Chapters 1-3 set out the theoretical basis for the analysis, while Chapters 4-6 present the analysis of the case study. Chapter 1 offers a review of the literature. The existing scholarship on TTIP can be broadly grouped under three main themes: 1.) the economic (critical) discourse; 2.) the strategic considerations; and 3.) the analysis of the actors within TTIP and their preferences. The outcome of the review leads to the following considerations. First, it is necessary to explore further how the frames affected the launch and negotiations of TTIP and under what conditions the salience (i.e. the persuasive capacity) of certain arguments might have been altered. Secondly, the literature review has revealed the necessity of analysing how different actors have used frames to shape the EU negotiating position without attributing to the Commission alone the role of “manager of fictional expectations” (see De Ville & Siles-Brügge, 2015a; 2015b). The thesis avoids dichotomous divisions which portray NGOs in a positive light and the Commission in



a less flattering one. Finally, the analysis of the literature reveals that greater attention should be focused on the role of NGOs (beyond the most studied case of the Investor State Dispute Settlement, ISDS),<sup>3</sup> the European Parliament and the interaction between the EU institutions in affecting the EU negotiating position, together with how the Commission has responded to requests and with which outcomes.

Chapter 2 develops the theoretical framework for the analysis located in the realm of Economic Diplomacy. The framework, entitled Interconnected Multidirectional Games (IMG), is based on the scholarship stemming from Putnam's Two-Level Game, enriched by Multilevel Governance (MLG), to capture the complexity of the EU's function, and the literature focused on the role of frames during the negotiation process. The theoretical model, in fact, covers three main levels: Level I, comprising the negotiation between the EU and the US; Level II, the Community Level; and Level III, including the negotiations taking place within Member States and between civil society, business groups and EU institutions.

The existing scholarship, adopting a game theoretical approach stemming from Putnam, prioritises the analysis of strategies, side-payments, and issue-linkages to understand and study how a win-set can be altered (see Evans 1993; Moravcsik, 1993). This study, instead, focuses on the role of the frames and how shifts in their salience (i.e. the likelihood of generating an impact) might affect the likelihood of different actors influencing the EU negotiating position. Since the analysis shows the consistent use of frames in favour or against the launch of negotiations, attention is placed on what affected their salience over time. Although the combination of Putnam's approach and frames is not new, the chapter adds a number of considerations stemming from the combination of Chorev (2007), Busby (2007), and Snow and Benford's (1998; 2000) work, with additional adaptations, to develop the theoretical framework.

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<sup>3</sup> Literature has also paid attention to the case of GMOs and data protection (see Aggarwal & Evernett, 2017)

Chapter 3 explores the methodology and the research methods adopted. The thesis adopts the classification developed by Grix (2010) and Moses and Knutsen (2007), according to whom it is possible to identify three main methodological traditions: Positivism, Constructivism and Critical Realism. Given the purpose and aims of this thesis (i.e. to explore the factors that affected the EU negotiating position and thus uncover the mechanism leading to it), Critical Realism appears to be the most suitable research paradigm to employ, as it engages with generative causality, where attention is placed on ‘systematic knowledge about the underlying mechanisms that generate concrete events and outcomes’ (Reed, 2009, p.432). With regard to the research methods, the thesis relies on documentary analysis, interviews, discourse analysis, and descriptive statistical analysis. Employing these methods will allow the analysis of the preferences, the frames adopted, their recurrence and relevance, and how they were employed during the TAFTA/TTIP negotiations.

A number of limitations exist; first of all, the bias within the pool of respondents. Employing the snow-balling technique, while, on the one hand, allowing an increase in the number of respondents, on the other, led to the over-representation of left-wing parties in the interviews. Employing multiple methods, however, will allow the triangulation of the findings and so limit the bias of the analysis. Finally, the degree of secrecy with regard to negotiations and the problem of bounded rationality, which characterises all of the players in the game, makes it impossible to capture all of the elements that might have impacted on the EU negotiating position. The vast amount of official documents made available by the Commission, however, combined with the other methods, means that sufficient data are available to perform a meaningful analysis.

Chapter 4 considers the path leading up to the launch of negotiations in 2013. The analysis of the existent literature suggests that insufficient attention has been paid to the analysis of the stumbling blocks to a transatlantic trade agreement that existed from the 1990s up until 2013. Understanding how it was possible to achieve a consensus regarding the launch of negotiations in 2013 involves exploring the development of the EU negotiating position became possible in the first place. The analysis of the European Parliament’s resolutions since the 1990s, EU official documents, 700

parliamentary speeches from 2006 to 2015 and the existing literature makes it possible to identify six main frames from 1995 to 2013 that either supported or opposed the launch of negotiations.

If the frames employed with regard to the launch of negotiations appear to have been consistent since the 1990s, the focus should be placed on what made them salient and with what results for the launch of negotiations. The literature on TTIP, in fact, tends to pay attention to current events characterising the TTIP negotiations rather than systematically exploring the past initiatives. This chapter will analyse the shift in the salience of the frames and why consensus building became possible in 2013. The argument is that a number of elements (e.g. a permissive international context, structural changes in the economy, the situational position of certain groups, and focusing events) allowed these concerns to recede momentarily in 2011-13 and so facilitated the collation building process.

Chapters 5 and 6 explore the controversial issues within the TAFTA/TTIP debate. The emphasis is placed on sensitive issues, given their likelihood of compromising the successful conclusion of negotiations. In particular, Chapter 5 explores the two traditional stumbling blocks to the launch of negotiations (i.e. audio-visuals and agriculture), which emerged as a source of complications before and during the launch of the TTIP talks. In both cases, the economic argument, supported mainly by the Commission, battled against frames concerned with EU standards and values that were deeply-rooted in the EU integration process. The level of the heterogeneity of preferences, structural adjustments in the economic, situational and structural position of certain pressure groups and focusing events help to explain the variation in the salience of the frames and the alteration of the EU negotiating position.

Chapter 6 considers issues which became controversial with the launch of negotiations and the immediate aftermath of this: chemicals, data protection, environmental protection, workers' rights and public services. The difference with respect to the case of agriculture and audio-visuals is that the Commission did not necessarily appear willing to negotiate on certain sectors, which nevertheless attracted attention. Despite the Commission's assurance that certain sectors were not subject to

negotiations (e.g. data protection) or were limited to the exchange of information and cooperation on new issues (e.g. chemicals), concerns remained. The chapter will explore why, given the controversy surrounding certain sectors, certain requests rather than others managed to affect the EU negotiating position and with what outcomes.

There are some relevant findings: in the case of agriculture and audio-visuals (i.e. the long-standing stumbling blocks to a TAFTA/TTIP), the degree of divergence in approach between the EU and the US and EU discourses rooted in the EU integration process (i.e. multi-functional discourse and cultural exceptionalism) appeared sufficient to ensure the credibility of the frames concerned with the protection of the EU model. Equally, in more recent controversies, the rootedness of certain values, as reflected in the EU regulation governing the sectors, that contributed to a perceived divergence in approach between the EU and the US, once again legitimised concerns.

The combination of the high reflectiveness of the frames (i.e. the extent to which they touch upon everyday life issues) and focusing events, by increasing the salience of certain frames, appeared to be the most consistent element that was capable of shedding light on the impact on the EU negotiating position. In the case of audio-visuals, however, rather than focusing events, the increase in salience is attributable to the high degree of homogeneity of the preferences within French Level III. Strong preferences, combined with the situational position of the cultural industry with regard to the Socialist Government, increased the salience of the frames associated with the protection of audio-visuals in TTIP at Level II. The salience of a frame or arguments reduced the Commission's room for manoeuvre and usually lead to an adjustment of the EU negotiating position. Any adjustments appeared to be cautiously implemented while also considering the US red lines in the negotiations.

This thesis will proceed as follows: Chapter 1 will present an analysis of the existing literature; Chapter 2 will develop the theoretical framework; Chapter 3 will analyse the methodology and research methods adopted; Chapter 4 will focus on analysing the attempts to launch negotiations regarding a TAFTA/TTIP since the 1990s; Chapter 5 will consider the case of audio-visuals and

agriculture; and Chapter 6 will identify and explore the more recent controversies that have emerged with regard to TTIP.

## **1. Literature Review**

### **1.1 Introduction**

The launch of negotiations for the TTIP in 2013 has been welcomed (and criticised) with increasing attention and interest. The significance of the transatlantic deal which, would be the biggest bilateral trade and investment agreement to be ever negotiated (De Ville & Siles-Brügge, 2015a), has led a growing number of scholars to undertake research. However, despite the increasing amount of peer-reviewed scholarship, the literature that has been produced so far remains limited (recall that negotiations were only launched in 2013 and halting of talks in 2016 has slowed down the pace of research). Due to this consideration, the present chapter has also relied on grey literature (i.e. mainly conference papers produced by academics), which will likely constitute the skeleton of academic knowledge in the future. It is equally necessary to specify that the following analysis explores the literature conceived in the realm of political science and international relations. Given the focus on Economic Diplomacy (ED) that the present thesis has adopted, the chapter contains a systematic review of the literature relevant for the scope of the present research. Hence, it does not systematically include the detailed economic studies nor the exclusively legal contributions concerning TTIP, but rather reach to and feed from them when they inform (and sometimes ignite) the political science/international relations debate.

In the review of the scholarship so far developed what seems apparent – and will be highlighted in the chapter – is the emergence of specific trends in relation to TTIP literature which, can be grouped in three main thematic arches: 1.) the economic (critical) discourse; 2.) the strategic argument; and 3.) the actor-based analysis. Accordingly, the chapter will firstly analyse the economic discourse surrounding TTIP and, more specifically, consider 1.) the scholarship highlighting the growth benefits associated with the conclusion of the agreement; and, 2.) the literature expressing a more critical view of the job and growth “mantra” employed by the Commission. Secondly, the chapter will explore the strategic theme and lay out the broader implications (positive and negative)

that the conclusion of TTIP might deliver in the realm of geopolitics and global trade governance. Thirdly, the chapter will consider the scholarship focused on the actors' preferences and their role in the process of negotiating TTIP, and finally draw conclusions.

The analysis of the literature reveals that more attention should be paid to the frames adopted by the actors, their interactions, the elements affecting the salience of the competing arguments, and their ability to affect the EU's standing in the negotiations. The research will help to improve the analytical understanding of the negotiation processes and EU trade policy.

## **1.2 Economic (Critical) Discourse**

One of the main elements surrounding the debate about TTIP has to do with its (assumed) ability to be a growth booster, jobs enhancer, and increaser of competitiveness (see Orbie et al., 2015). The economic argument made in official speeches (see for instance G-8 Meeting, 2013) and by the Commission (see De Gucht, 2013a; House of Lords Report, 2014; European Commission, 2013a; 2013b) has spurred, however, mixed feelings. Part of the literature seems to implicitly acknowledge the ability of TTIP to deliver economic growth feeding from the following normative assumption: trade agreements = economic growth (see for example Hamilton, 2014a; 2014b; Hadfield & Fiott, 2013; 2014; Pomorska & Vanhoonacker, 2015; Schweinfurth, 2015). Thus, the economic benefits of the agreement appear to constitute the axiom upon which a broader geopolitical and domestic discourse then emerges. However, other scholars have criticised the growth predictions, labelled them as the Commission's management of fictional expectations aimed at forwarding a pro-liberalisation agenda (see De Ville & Siles-Brügge 2015a; 2015b), and accused the EU negotiator of ignoring the possible harm emerging from transatlantic regulatory cooperation (for some synonym of deregulation) (see Zeilinger, 2015; Lindstrom, 2016).

The section will firstly explore the literature regarding TTIP as a growth increaser and briefly assess the impact that might derive from TTIP-induced prosperity (see section 1.1.2 for a broader geopolitical analysis). Secondly, the section will consider the more critical view of the agreement and

economic models adopted in the making of the growth predictions for TTIP. The review of the literature leads to two main considerations: 1. the need to explore further negotiation framing as a powerful tool for shaping TTIP negotiation outcomes; and 2. the need to explore the role of other actors which, in addition to the Commission, can be assumed to be equally involved in framing activities

**1.2.1 Economic (and economic induced) Benefits.** A common argument in “the TTIP equals economic growth” literature is that the agreement will deliver prosperity and, thus, represent a better chance for the EU and the US to deal with the complexity rooted in today’s globalised and increasingly multipolar world (Hadfield & Fiott, 2013; 2014; Hamilton, 2014a; 2014b; Ries, 2014; Hormats, 2014; Kupchan, 2015; Pomorska & Vanhoonacker, 2014; Woolcock, et al., 2015; Woolcock & Grier, 2015). This section will firstly explore the growth claims and secondly the possible growth induced implications stemming from TTIP.

The reasons to believe that the agreement will lead to economic growth are twofold: 1.) even if existing tariffs between the EU and the US are low (i.e. 3-4 per cent on average), given the degree of interconnection between the two economies, even the smallest reduction would have a significant economic impact; 2.) deeper integration in terms of investment, services and regulation is expected to deliver jobs and growth (Hormats, 2014; Hamilton; 2014a; 2014b; Straubhaar, 2014; Woolcock, et al., 2015). Moreover, to reinforce further the growth claims a number of studies such as CEPR 2013, Ecorys 2009, and CEPII (2013) are also often cited to support the argument (see for instance Hamilton, 2014a; Ries, 2014; Straubhaar, 2014, Plummer, 2014; Josling & Tangermann, 2015). An additional key element in the economic discourse is the emphasis on the non-growth benefits stemming from increased welfare. More specifically, the economic argument usually represents the preamble to 1.) broader domestic considerations with transatlantic spill-overs, 2.) geopolitical elements; and 3.) ideological revival as illustrated below:



- *Domestic considerations with transatlantic spill-overs.* By increasing the welfare of EU and US citizens, more popular support can be gathered for a transatlantic partnership (Kupchan, 2014; Hamilton, 2014; Hormat, 2014; Hamilton & Pelkmans, 2015). Generating economic benefits could lead to ‘re-legitimize the EU in the eyes of European voters’ (Hamilton, 2014a, p.x). In particular, Ries argues that ‘a successful TTIP can counteract some of the malaise and hostility towards Brussels based institutions in Member States beset by slow growth and austerity’ (2014, p.8). Thus, economic growth is understood as having a positive impact domestically as well as transatlantically and being helpful in solving the conundrum of a weakening impact of transatlantic partnership.
- *Geopolitical elements.* The economic growth promised through TTIP might help the EU and the US to deal with the complexity of the current world and revive the strength of transatlantic bond for geopolitical intent (Hamilton, 2014a; 2014b; Ries, 2014). Renewed economic prosperity could contribute to reinforced popular support for transatlantic cooperation beyond the trade and investment domain and thus make the US and the EU better equipped to face current geopolitical challenges (e.g. Crimea) (Hormat, 2014; Hamilton & Blockmans, 2015) (see section 1.1.2 below for a broader analysis on geopolitical implications of TTIP).
- *Ideological revival.* There is also an underlying ideological component behind TTIP linked to the economic capacity of the agreement. In the aftermath of WWII, the US and Europe as rule setters shaped and erected the liberal intentional order, which now seems under “siege” (Kupchan, 2014; Straubhaar, 2014). Other possible models (e.g. the Chinese model) present increasing ideological challenges to the “way” proposed by the West (Kirişci, 2014). Thus, ‘economic revival promises to help foster political renewal, better enabling the West to remain a solid anchor of liberal values and practices’ (Straubhaar, 2014, p.32). If the EU and the US can satisfy the needs of their citizens and ensure economic progress, the so revitalised legitimacy in the Western democracy will allure other countries to follow.

It appears clear in the discourses highlighted above that the ability of the agreement to increase prosperity is not posed under scrutiny but simply follows a logic of consequentiality: if the agreement is achieved, there will be more prosperity and thus A, B and C can be overcome or satisfied. Although sometimes scholars belonging to this strand of the literature underline that some challenges might arise, those usually have to do with: 1.) difficulties in concluding an agreement that can be ambitious enough to generate the growth expected; or 2.) a possible limited global impact of TTIP because the agreement may set entry barriers that are too high for third countries (see Hamilton, 2014). Thus, even when stumbling blocks are recognised (i.e. the question of the NSA affair and fear of subversion of EU standards) (see Straubhaar, 2014), there is an underlying conviction regarding the ability of TTIP to deliver growth. More attention should, however, be paid to how growth-related arguments are perceived and to what extent they are valued in the process of launching negotiations or negotiating an agreement. In other words, what effect do economic arguments have in comparison to other frames attached to the launch of negotiations and their development.

**1.2.2 Delivering economic benefits. Is the Devil in the details?** The previous section has introduced the main arguments supporting the economic discourse surrounding TTIP and its implications. However, part of the literature on TTIP has criticised vastly the economic argument presented above (see Capaldo, 2015; Zeilinger 2015; DeVille & Siles-Brügge, 2015a; 2015b, etc.). Criticism towards the economic discourse can be grouped in two main strands: firstly, the critical literature labelling the Commission's focus on economic growth as part of the neoliberal logic and/or detrimental to social protection (Crouch, 2014; Lindstrom, 2016; Zeilinger 2015), secondly, the questioning of the soundness of the models employed in the growth predictions (Capaldo, 2015; DeVille & Siles-Brügge, 2015a; 2015b; Raza et al., 2014). Both arguments will be explored in this section.

The critical literature has scrutinised the economic argument and its implications in relation to TTIP. Some scholars (Crouch, 2014; Lindstrom, 2016; Zeilinger 2015) have explored what, according to them, is hidden behind the treasure-hunt for economic growth and the process of

concluding mega-regional deals. For instance, Crouch argues that TTIP is about ‘corporations using their lobbying power and a “threat to jobs” mantra to whittle down social standards previously built up during a period when democracy was more vibrant’ (2014, p.180). Similarly, Zeilinger argues that TTIP can be classified as a manifestation of ‘paternalistic constitutionalisation of trade politics’ (2015, p.1). The concept borrows from Gill’s New Constitutionalism ‘refers to a widespread institutionalisation and juridification of international trade relations, whereas competences are shifted to technocratic circles which are supposed to act on behalf of the common good’ (Ibid. p. 2). TTIP (with Comprehensive Economic Trade Agreement, CETA and Trans-Pacific Partnership, TPP) is then seen as a manifestation of a third wave of neoliberalism aimed at reducing state power to regulate and shifting power under the control of technocrats to favour multinationals (Ibid.).

The critical literature argues that the emphasis on the economic growth and job creation to be delivered through TTIP can be understood as representing smoke and mirrors. The negative effects of market forces on social regulation, if not mitigated, could cause a ‘plunge into utter destruction’ (Polanyi, 2002, p.163 in Lindstrom, 2016). Thus, the backlash against the EU could, according to Lindstrom, be even reinforced given that ‘those most adversely affected by market liberalization direct their ire against the EU (a target that national politicians are happy to nurture) and/or mainstream parties’ (2016, p.4). Hence, in contrast with the economic discourse reported above (section 1.2.1), the literature flips the argument and highlights how the agreement with its consequent effects on social standards might be detrimental for EU legitimacy. That said, the consideration according to which TTIP is a threat for EU standards and state sovereignty is not unanimously accepted in the overall TTIP literature. Woolcock, Holzer and Kusmu, for instance, argue that ‘[m]aking regulations more compatible does not mean going for the lowest common denominator’ and that, in contrast with common fears, what emerged from the TTIP EU Textual Proposal and ‘the existing EU and US approaches to regulatory cooperation in other PTAs does not suggest much of a challenge to the present regulatory sovereignty’ (Ibid., 2015, pp. 213-233). Although the arguments emerging from critical literature are instrumental to specific normative considerations with which not

all the scholarship agrees, this strand of the literature remains helpful in order to identify common frames associated with the negotiation of TTIP.

Part of the broader scholarship on TTIP dealing with the economic discourse has also focused on the soundness of the economic predictions often sponsored by the Commission. There are a number of reasons, emphasised in this strand of the literature, to suggest that the magnitude of economic benefits is less realistic than what the Commission has predicted: 1.) because the content and ambitiousness of the agreement will affect the impact of the agreement (Novak, 2014) and the different level of development within the EU (Hossó, 2016; Ballera, 2015) will determine who gets what;<sup>4</sup> and, 2.) because the predictions in terms of economic boost made in several studies (e.g. CEPR 2013; CEPII, 2013; Ecorys, 2009) are unrealistic (according to Capaldo, 2015 possible negative) since the models adopted are inherently flawed (DeVille & Siles-Brügge, 2015a; 2015b). This last argument (i.e. the criticism of the Computable General Equilibrium, CGE model), given its salience and significance in the relevant literature, will be of particular focus in the analysis that follows. Before exploring this side of the scholarship, it is necessary, however, to make sense of the premise on which this literature has based its claim.

The CEPR study has been used in the TTIP Sustainable Impact Assessment (SIA) by the Commission and uploaded on the Commission's TTIP website to sponsor the economic positive impact of the agreement (see European Commission, 2013b). The study, as mentioned above, is based on a GCE model, uses GTAP8 database and relies on the Non Tariff Barriers (NTBs) estimates as reported in the 2009 Ecorys study (CEPR, 2013). According to the results of the study, the so-called "ambitious" scenario (i.e. reduction of NTBs by 25 per cent; reduction by 50 per cent of NTBs on public procurement, and complete removal of tariffs) will lead to a gain of 119.2 billion in euros for the EU and of 94.9 billion in euros for the US. A less ambitious scenario (NTBs reduction by 10 per cent, NTBs reduction on public procurement by 25 per cent; removal of 98 per cent of tariffs) will

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<sup>4</sup> Novak (2014) presents overall a positive understanding of TTIP, others scholars such as Hossó (2016) and Ballera (2015) have expressed major criticisms against the deterministic approach usually emerging in relation to TTIP (i.e. TTIP equals economic growth).

lead to 68.2 billion for the EU and 49.5 for the US (Ibid.). According to the European Commission, '[t]he CGE model used by CEPR is state-of-the-art. It needs to make assumptions about the economy in order to work but these are as reasonable as possible to make it as close to the real world as possible' (European Commission, 2013c, p.16). However, De Ville and Siles-Brügge (2015a; 2015b), Capaldo (2015), George (2016), Raza et al. (2014) and Ballera (2015) among others question the CGE models used in the studies usually cited by the Commission. In some cases, the CGE model is determined to be deeply flawed. In addition to the CEPR analysis, other studies often cited by supporters of TTIP (e.g. Ecorys, 2009; CEPPII, 2013, etc.) equally rely on World Bank-style CGE (Capaldo, 2015). Thus, a closer examination of the CGE models has been carried out by scholars and might be helpful to recall for the purpose of the section.

The CGE consists of a 'set of simultaneous equations that calculate the differences between two supposed equilibrium states. One is the current situation, while the other incorporates the proposed change' (George, 2016, p.1). But why is the CGE model so problematic? The final results of a CGE model illustrate what might be the economic impact of the agreement 'in the long run when the imagined equilibrium conditions have been restored. John Maynard Keynes famously pointed out that in the long run we are all dead' (Ibid.). The CGE models follow neoclassic economic theory and assume that, for instance, 'for every market, all that is produced is consumed and there is no unemployment, as all supply for labour is met with appropriate demand' (De Ville & Siles-Brügge, 2015a, p.22). The better off sectors of the economy are assumed to absorb the excess of labour of worse-off sectors but 'this "full employment" mechanism has rarely operated' as history has taught us (Capaldo, 2015, p.6; Ballera, 2015). Furthermore, actors are perceived performing in a rational manner and thus acting as utility-maximisers, which is never the case given that individuals tend to be affected by a vast amount of irrational and emotional circumstances (De Ville & Siles-Brügge, 2015a). Thus, the problem with the models is that, in addition to relying on unrealistic and simplified assumptions, they do not take into account any structural factors (e.g. policy factors) or the social costs related to regulatory convergence that might occur in the process (George, 2016; Raza et al.

2014). Hence, the predictions associated to the employment of CGE model to the TTIP case are less reliable than what is assumed in the general economic (positive/supportive) discourse about TTIP (Ballera, 2015).

Given the reasons above, the CGE modelling is considered, according to De Ville and Siles-Brügge (2015a; 2015b), as an exercise of management of fictional expectations behind which the Commission is understood to push for its pro-liberalisation agenda. The reliance on unrealistic predictions allows the Commission to down play the potential costs of the deal (e.g. deregulation and job loss) and thus enable policy-makers to develop a narrative about the agreement (De Ville & Siles-Brügge, 2015a). Fictional expectations represent ‘future events as if they were true, making actors capable of acting purposefully’ but such expectations are ‘necessarily wrong because the future cannot be foreseen’ (Beckert, 2013, p.222 in De Ville & Siles-Brügge, 2015a, p.20). De Ville and Siles-Brügge argue that TTIP ‘is driven by both a philosophy and a discourse that idealise the efficient operation of the market and seek to minimise the constraints imposed by democratic decision-making in public policy’ (Ibid. p. 131). Thus, the act of managing fictional expectations would shed light on how ideas can be presented and “sold” to the public (Ibid.).

Despite the considerations above, one could equally argue that the limited validity of CGE models goes also in the opposite direction. Other scholars have argued that the models might undermine the size of gains to be expected (see Nilsson & Sousa, 2015; Messerling, 2015). For instance, Plummer argues that ‘it is essential to not take the estimation of CGE models too seriously [...] as they tend to be seriously down-biased’ since aspects like ‘behind-the-border trade costs’ are difficult to capture (2014, p.108). The overview of the literature has shown that the validity and predictive capacity of the CGE models remain contested.

The main point here is that a plurality of arguments has emerged, with different views on the capacity of TTIP to generate growth and welfare. Therefore, in recalling the Commission’s management of fictional expectation, as analysed by De Ville and Siles-Brügge (2015a; 2015b), one is left with the following question: is the Commission the only “villain” in town? The concept of

“managing fictional expectation” implies that ‘actors have different interests regarding prevailing expectations and will therefore try to influence them’ (Ibid. p.326). Thus, researchers should also consider whether the Commission might not be the only one to have been “caught with their hand in the cookie jar”. In other words, it is also necessary to consider how other actors, such as NGOs, perform (if they have) the same management of fictional expectation.

For instance, Eliasson points out that civil society organisations have equally engaged in a persuasion strategy through, for instance, ‘case selectivity’ (2015, p.14). While, for instance, the fear of the often mentioned US chlorinated chicken on EU dinner tables takes the stage in debates and mass media, the very same EU practice regarding the use chlorine for lettuce (although more diluted) goes unmentioned (Ibid.). According to the scholar, civil society organisations tend to rely on ‘the interpretation of legal proposals [...] often peppered with potentialities (could, might, possibly etc.) making their outcome not more or less uncertain than the EU growth predictions’ (Ibid. p.14). Moreover, Pelkmans at al. suggest that increasing criticism of the agreement ‘is the consequence of highly exaggerated and often misplaced social media accusations’ (2015, p.313). Thus, exploring the role of other actors in constructing discourses became essential in gathering a more comprehensive understanding of the elements affecting the negotiation process and the EU position during the TTIP negotiations. Whilst the importance of the actors and a comprehensive consideration of the stakeholders is made apparent by such literature, a more tailored analysis of the impact on the EU position has not been undertaken as part of the studies presented to date.

**1.2.3 Conclusions.** This section has highlighted the complexity surrounding the economic discourse about TTIP. A strand of the literature stands confident in the economic benefits of TTIP and in consequent positive geopolitical and ideological spill-over effects stemming from the economic benefits of the concluded deal. However, this scholarship seems to consider economic growth to be delivered through TTIP as a certainty from which, for instance, more legitimacy in the EU might derive. The argument here is that these analyses appear to downplay the role of frames and how they

might impact the negotiations process and the perception of TTIP. Another strand of the TTIP-related scholarship (i.e. the critical approach) has instead explored the negative consequences on social standards associated with the push for further liberalisation. Although not all the literature agrees on the negative consequences for social standards, the critical literature remains helpful in understanding the elements adopted in shaping the argument regarding TTIP. Finally, other scholars have scrutinised the model employed in the studies usually cited by supporters of TTIP and labelled the Commission's use of the CGE models as an exercise of a management of fictional expectations. These analyses have led to questions about the relevance of other actors in the negotiation process equally capable of attempting to manage fictional expectations. Thus, further research is needed with regard to this last consideration.

### **1.3 The Strategic Implications of TTIP**

The second main theme that emerges in the nascent pool of literature on TTIP is concerned with the geopolitical and strategic implications that the agreement may have. Accordingly, it is necessary to take account of the dimensions in this debate. TTIP has been, somewhat ubiquitously, pictured as a response to an increasing global complexity where the “rise of the rest” and the Financial Crisis have diminished the influence of the “West” (see Duchesne & Ouellet, 2016; Ponjaert, 2016; Mavroidis, 2016; Ries, 2014; Plummer, 2014; Pomorska & Vanhoonacker, 2015; Hadfield & Fiot, 2013; Hamilton, 2014a; 2014b; Kupchan, 2014; Hamilton & Pelkmans, 2015; Gamble, 2016; Peterson, 2016). Although part of this argument has been highlighted above, here the point is to assess its substance and implications rather than considering the economic premises on which part of the scholarship rests. For this purpose, it is useful to recall briefly some geopolitical elements mentioned above although from a different analytical angle. The analysis of this scholarship reveals that little attention has been paid to how those strategic considerations have reverberated into the negotiation process and what impact (if any) they might have had in the process of launching and negotiating the deal. Such an analytical angle thus requires further research.



This section will first illustrate the geopolitical and security discourse (context and positive/negative implications) that comes out of TTIP debates and subsequently consider the literature that focuses on the capacity for TTIP to be a gold standard for future agreements and to generate an impact on stalled multilateral trade talks.

**1.3.1 The Geopolitical Context.** This strand of the literature, which partially overlaps with the scholarship mentioned above (see section 1.1.1), tends to consider TTIP as a way to reinforce the transatlantic alliance in a context defined by the emergence of a multipolar world (see Telò, 2016; Hamilton & Pelkmans, 2015; Gamble 2016; Egan & Pelkmans, 2015). After all, the problems experienced with the Doha Round, the difficult road to the Bali agreement and the Financial Crisis with its disastrous consequences are all reminders and evidence of a “rising” sunset for the West (Hale et al., 2013). Thus, the following section will first consider the need to revive the transatlantic bond as a mean to deal with the complexity of the current international arena. Secondly, it will consider the implications for the EU energy policy which feature prominently in the geopolitical focus on TTIP, and finally consider the negative geopolitical consequences that may be related to the conclusion of TTIP.

The need to reaffirm the commitment of one side of the Atlantic to the other is made even more compelling, according to part of the literature, when considering the EU fears of US increasing “disinvestment” in Europe motivated by the so called Asia Pivot and the US military disengagement in Europe (Hadfield & Fiott, 2013; Hormats, 2014; Kirişci, 2014; Lucas, 2014; Hamilton & Blockmans, 2015). The fear of an increasing US focus on Asia, in particular, became even more predominant when rumours on a transpacific deal became louder in 2008 and bolstered when, in 2009, Washington announced that the US was going to participate in the TPP negotiations (Ries, 2014). To this, other concerns were added.

The European fears of US disengagement in Europe were also reinforced by the US’s decision to reduce its military presence in Europe. Those sentiments were, however, also confronted with the

US dissatisfaction with European allies and reinforced by military budget reductions in some European countries, which led the Americans to question the European commitment to NATO (Ibid.). It is against this background that TTIP is called to balance the transatlantic alliance and stand by NATO to build stronger transatlantic ties (especially in light of Russian occupation of Crimea and the rise of China) and make the transatlantic ties a functioning liaison more equipped to deal with the complex geopolitical challenges: from the Middle East to Asia (Hormats, 2014; Pomorska & Vanhoonacker, 2014; Peterson, 2016; Hilary, 2016). According to Gamble (2016), for instance, TTIP would seem an attempt for the US and the EU to “fight back” and maintain a privileged position at the international level. In other words, ‘[t]he stronger the bonds among core democratic market economies, the better their chances of being able to include rising partners as responsible stakeholders in the international system’ (Hamilton & Blockmans, 2015, p.244). Then, TTIP, as argued by former state secretary Hilary Clinton, could be a second anchor in the transatlantic partnership and support the project of a reinforced transatlantic cooperation (Ibid.).

In addition to reviving the transatlantic bond (see also section 1.1.1 above), reducing EU energy dependence on Russian gas and oil might qualify as a geopolitical intent that TTIP might help achieve (Natali et al., 2015; Hilary, 2016). After all, it has been said that ‘TTIP is about more than trade’ (Hamilton, 2014, p.xi). It should not come as a surprise that TTIP will include an energy chapter aimed at facilitating trade of US shale gas with the consequent hope to reduce the Russian energy monopoly in Europe (Novák, 2014). Moreover, the strategic game against Russia is also affected by the “soft power card”. The transatlantic deal is negotiated on a reciprocal and transparent basis (something that Russia cannot offer), which in turn can be a more ideologically attractive alternative than Russia’s offers for some non-EU countries (Lucas, 2014). In other words, economic benefits and closer EU links with the US might end up exercising some influence on non-EU countries like Moldova and Belarus (Ibid.). If TTIP is concluded more US investments are to be expected in Central Europe making less likely a complete US military disengagement from the region, given that there will be US interest to protect (Ibid.). In short, TTIP is expected to have some geopolitical spill-over

effects: with Russia because the agreement might reduce the European energy dependence on Moscow by facilitating the access to the US shale gas, and secondly because it offers, especially to Eastern European countries, a transparent and mutually shaped alternative to the less transparent and less mutually shaped option (i.e. Eurasian Economic Union) proposed by Russia (Hamilton, 2014a). It does not come as a surprise then that Russia ‘is reported to be conducting active measures in Eastern Partnership countries and in the EU itself to foment opposition to the TTIP’ (Hamilton & Blockmans, 2015, p. 247).

In addition to positive geopolitical implications, the literature highlights the possible negative geopolitical outcomes stemming from the negotiations and potential conclusion of the agreement. Nair points out that TTIP might have negative consequences on the EU capacity to engage in a relation with emerging countries that ‘may not be under the regulatory control of America’ (Nair, 2014 in Ballera, 2015, p.44). The argument seems to echo the concerns over EU’s loss of soft power put forward by Gamble (2016) when arguing that TTIP might represent a halt to the idea of an EU as a truly independent pole in the global system. Moreover, the US strategy (i.e. building regional blocks in Asia with TPP and Europe with the TTIP), could result in a further fragmentation at the global level where fostering the US position could mean doing so ‘against those states not willing to participate fully in the rule-based order’ chosen by the US (Ries, 2014, p.15). In other words, agreements like TTIP and TPP might lead to a wider ‘geopolitical breach’ (Ballera, 2015, p.44). Other negative implications can be linked to the decision to exclude other countries (e.g. Turkey), given their geopolitical relevance, from the negotiations.

The literature analysed so far explores the possible geopolitical implications attached to the conclusion of TTIP. What is missing in the literature addressing the geopolitical consequences of TTIP is a broader analysis of the impact of the geopolitical discourse on the launch of TTIP negotiations themselves. Moreover, this hole in the literature requires taking into account domestic actors and institutions involved in the process and the extent to which the geopolitical themes that

have emerged in the TTIP debate have reverberated (if they have) in the negotiation process to affect a negotiation outcome.

**1.3.2 Global Trade Governance.** TTIP has to be understood in relation to a complex international context. The emergence of new powers has made the achievement of multilateral deals more difficult and the prospect for the EU and the US to become standard takers rather than standard makers more likely to manifest (Hamilton, 2014; Hamilton & Pelkmans, 2015; Messerling, 2015). An agreement concluded by the US and the EU might grant an opportunity, ‘to maintain high labor, consumer, health, safety and environmental standards and to advance key norms of the liberal rules-based order’ (Hamilton, 2014, p.ix). In this scenario, TTIP has been often pictured as 1.) a possible gold standard for future negotiations (Hamilton, 2015; Kupchan, 2014; Woolcock, et al., 2015; Hilary, 2016); and 2.) a way to revive (or find an alternative to) multilateral talks (Hormats, 2014; Plummer, 2014; Kirişci, 2014). Around these two major considerations, a number of scholars have advanced diverging interpretations.

Whilst some have questioned the ability of TTIP to be a standard setter (DeVille & Siles-Brügge, 2015a); others have scrutinised the ability of TTIP to be a stepping stone for multilateralism because the entry barriers could be too high for other countries (Kupchan, 2014), because “competitive liberalisation” might not always take place (see Aggarwal & Evenett, 2016), and because other countries (e.g. China) could respond with similar strategies (Xiaotong, 2016). Thus, this section will firstly consider the literature exploring the potential of TTIP as a standard setter, and secondly as facilitator of multilateral negotiations. What emerges from the analysis of the literature is a complex scenario with different and contradictory responses. The fact that there is no consensus on this issues signals the high degree of uncertainty that characterises this issue, further demonstrating the need for more in depth research on TTIP negotiations.

The transatlantic agreement is often understood (if concluded) as a ground breaking agreement and a possible gold standard for future negotiations. It is a three pillar agreement and it

will deal with 1.) market access (e.g. tariffs, investment, etc.); 2.) regulatory issues and Non Tariff Barriers (NTBs) 3.) shared global trade challenges (and miscellaneous) such as Intellectual Property Rights (IPRs), sustainable development (e.g. labour and environmental aspects of trade), trade in energy etc. (European Commission, 2015a; House of Lords, 2014). TTIP, according to the classification established by Horn et al. (2010) (and endorsed by the WTO), will deal with WTO plus (subjects that are somewhat covered by the WTO but are focused on in greater depth in PTAs) and WTO-x (i.e. not covered by the WTO) issues (Mavroidis, 2016). TTIP is, to put it simply, concerned with ‘deep integration’ (Ibid., p.153).

According to part of the literature, given the scope and content of the agreement and the size of the negotiating partners, ‘the standards negotiated EU and the US can quickly become the benchmark globally for future negotiations’ (Hamilton & Pelkmans, 2015, p.3). Moreover, as Woolcock, Holzer and Kusmu have argued, the EU and the US ‘are the most active and advanced actors when it comes to addressing regulatory issues in trade and investment’ (2015, p.232). Thus, ‘agreeing to common approaches through regulatory cooperation offers the opportunity of setting international norms’ (Ibid.). It is not the case then that according to Xiatong, China is increasingly worried about the standard-setting potential of TTIP so much so that Beijing is perceived to increase ‘the pace of its own FTA negotiations’ (Ibid. pp.121;124). However, as pointed out by Aggarwal and Evenett (2016), there are no indications to date regarding how the standards set in TTIP will spread to other countries. The argument remains, in fact, unexplored even by EU officials (Ibid.).

The possibility to set global standards is linked to the type of regulatory cooperation achieved where harmonisation has the highest chances to lead to the establishment of global standards (DeVille & Siles-Brügge, 2015a). If the EU and the US establish a new set of transatlantic standards through *erga omnes* harmonisation, third countries will have to comply with those new rules in order to trade in the transatlantic market. Thus, this would facilitate (although not determine) the emergence of “gold standards” (Ibid.). On the other hand, *erga omnes* mutual recognition, when preferred to harmonisation, will simply imply that companies in the US and in the EU have to abide by only one

set of standards (either EU or US) to trade in both markets. In this last case, a company from a third country might decide either to comply with the EU standards to trade in the US or vice versa. As a result, when mutual recognition prevails, there will be no unified set of standards (with the potential to become global) to comply with and thus the prospect for TTIP to become a standard setter would be drastically reduced (Ibid.). Moreover, harmonisation is notoriously difficult to achieve politically because it usually implies re-writing rules and legislation (Ibid.). In addition, in the case of the US, regulatory matters concern autonomous regulatory agencies and state legislatures making the prospect of agreement exponentially more difficult to pursue and achieve (see Pollack & Shaffer, 2001; Chase & Pelkmans, 2015). Mutual recognition (or simply information exchange) will be then the most likely outcome in several sectors (De Ville & Siles-Brügge, 2015a).

There is an additional issue: both harmonisation and mutual recognition can be either *erga omnes* or simply bilateral. In the latter case, mutual recognition or harmonisation will be applied only to the EU and US with no effect for third countries. This last option will further reduce the prospect for TTIP to set global standards (Ibid.). Moreover, this idea of TTIP as standard setter might be problematic internationally and economically: internationally because the idea that powerful emerging economies will simply accept the transatlantic model is naïve and economically because other countries might simply not have the same ‘regulatory capacity’ as the EU and the US (Messerling, 2015, p.365).

Despite these considerations, the question of how to export a standard might be more complex than simply putting it in terms of mutual recognition versus harmonisation. In other words, TTIP could represent the *mould* for other negotiations in a number of ways. For instance, Hamilton argues that mutual recognition (with no mention of harmonisation) might serve the purpose of establishing a global benchmark (2014b). Although no further explanation is given in the text on how, one could argue that even in the absence (or limited reliance on) harmonisation, the US and the EU through mutual recognition will define the level of protection (rather than the specific rule) that should be granted to consumers, abided by firms, and potentially adopted by other countries. Thus, although

the letter of the rule might be different, the outcome might be considered equal in the effect produced (i.e. a benchmark in substance rather than in form).

The literature has also explored the capacity for TTIP to revive multilateral trade talks. The mentioned aspiration to revive multilateral talks rests on the consideration explored above in relation to the capacity of TTIP to be a standard setter: the US and the EU represent together almost 50 per cent of global GDP, an agreement signed by the two powers is not easily ignored by others and might have the ability to push others to reopen conversations at the multilateral level (Hamilton, 2014; Pauwelyn, 2016). There are precedents in history to support the claim. Woolcock, Holzer and Kusmu (2015) point out that a leadership role has been played by the EU and the US in shaping TiSA talks and the WTO agreement on public procurement confirming the potential of the transatlantic partnership in shaping multilateral outcomes. Moreover, the EU-US deal on Information Technology has become the basis for the multilateral agreement in the area (Hamilton & Pelkmans, 2015). Thus, since an area not previously covered by the WTO and only approached by the EU and the US has become a matter discussed at the multilateral level, 'TTIP can be a pioneering effort to extend the multilateral system to new areas and new members' (Ibid. p.4). TTIP could have the same effect as NAFTA had on the launch of the Uruguay Round and, thus, unblock conversations for multilateral negotiations (Ibid.). That said, whereas for Hamilton and Pelkmans the potential for TTIP to represent a stepping stone to multilateral talks is based on historical precedents, for others it might stem from other considerations. For example, R. O. Keohane and J.C. Morse (2016) explore the concept of *counter-multilateralism* to explain under which circumstances the transatlantic deal might generate a wider impact.

Counter-multilateralism emerges 'when states, and sometimes also non state-actors, are dissatisfied with an existing institution [...] decide to shift their focus to other institutions or to create a new one' (Keohane & Morse, 2016, p. 19). Competitive regime creation qualifies as a form of counter-multilateralism, where the regime challengers opt for the setting up of a new 'institution or establishes a new informal form of multilateral cooperation to challenge the existing status quo' (Ibid.

p.22).<sup>5</sup> The creation of a competitive regime through TTIP, however, is subordinated to the comprehensiveness of the agreement itself (Telò, 2016). A transatlantic agreement merely including tariff reduction and some minimal compromise on NTBs will make TTIP as a simple exercise of ‘contingent minilateralism’ (i.e. ‘getting together the smallest possible number of countries to have the largest possible impact on solving particular problems’) (Naim in Telò, 2016, p.38). If, however, TTIP will qualify as a comprehensive agreement a number of scenarios might emerge. The most significant could lead to almost *erga omnes* gains, where not only the two transatlantic powers but also the majority of countries will benefit.

For the more optimistic scenario to be realised three conditions, according to Telò, have to be satisfied: 1.) TTIP should be an open agreement where openness means a commitment to defeat the understanding of TTIP as ‘a Western defensive approach to trade governance’ (Ibid., p. 39); 2.) TTIP should be portrayed as a driver for ‘fair and global regulation’ (Ibid.); 3.) TTIP should not be understood as ‘an alliance of like-minded democracies against authoritarian regimes’ (Kagan in Telò, 2016, p.39). This form of contested multilateralism is described by the scholar as a “piece by piece” strategy, where improved integration might allow for a revival of multilateralism (Telò, 2016). Other scholars have, however, disagreed with the capacity for TTIP to induce multilateral talks.

Some scepticism about the celebrated possible outcomes of TTIP for the multilateral system emerge in Aggarwal and Evenett (2016), who argue that TTIP might lead to further fragmentation in the multilateral trade system. The scholars apply the logic of “competitive liberalisation” arguing that third countries’ behaviour will depend on the incentives that they face and thus the logic of the domino effect (see Baldwin, 2006) may not necessarily work (Aggarwal & Evenett, 2016). For instance, the cost of joining could be higher than the cost of been left out (Kupchan, 2014). Moreover, even if countries decide to join, more options might emerge ranging from negotiating with just one partner

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<sup>5</sup> One could ask to what extent TTIP could qualify as a form of *competitive regime creation* given that in the very definition, the cooperation among actors that challenge the status quo is described as multilateral. That said, as pointed out by Telò (2016), TTIP presents a particular form of *competitive regime creation* when one part negotiates with a grouping of country.



(either the EU or the US) or negotiating an agreement on a limited number of issues and sectors (Aggarwal & Evenett, 2016). Thus, a much more complex puzzle rather than a silence and global acceptance of the TTIP might manifest.

Fragmentation could also emerge because other countries (read China above all) may decide to respond to the transatlantic project (and transpacific one thorough TPP) with a similar strategy rather than feeling compelled to join. After all, the idea that ‘TTIP will make China yield’ is, according to part of the literature, simply wrong (see Defraigne, 2014 in Ballera, 2015, p.45). Some, in fact, argue that as a result of TPP and TTIP negotiations, China decided to engage further in bilateral and plurilateral trade talks (Plummer, 2014; Ravenhill, 2016; Xiatong, 2016;). However, others have suggested that the outcome of the US and EU strategy might not be so flatly wrong. The request by China to join the Trade in Services Agreement (TiSA) under negotiation might be a signal that something is changing in China’s attitude towards the West and that new initiatives coordinated by the US and the EU could have an impact on Beijing (i.e. making China a demander) (Hamilton & Pelkmans, 2015).

The outcomes stemming from the conclusion of TTIP finds multiple interpretations in the literature. What seems apparent in this strand of the literature is that attention is mainly placed on the international impact of TTIP without exploring in detail to what extent and if the discourse illustrated above has had any effect on the negotiation process itself.

**1.3.3 Conclusions.** This section has explored the strategic implications that are linked to the negotiations and conclusion of TTIP. The capacity for TTIP to be significant globally is often linked to the significance of the transatlantic economy, and political weight of the two parties involved in the negotiations (Hamilton, 2014, 2015; Pauwelyn, 2016; Keohane & Morse, 2016). In several respects, TTIP is seen as a way to reinforce the transatlantic partnership and make it more equipped to deal with current international challenges: ranging from Russia’s annexation of Crimea to China. The agreement is also seen, by many, as an opportunity for the EU and US to maintain their position

as standard setter in multilateral trade governance, a condition menaced by the emergence of new economic powers. Although the literature here briefly summarised offers a vast and comprehensive understanding of the broader strategic implications, what it is missing is an “inverse” analysis, which takes into account not what TTIP geopolitically and geo-economically may allow for, but how the geo-political and geo-economic discourses have had an impact (if any) on the launch on negotiations and negotiation process. Reversing the lenses of analysis in this fashion might contribute to a greater understanding of to what extent (if any) strategic implications (assumed or real) have had an impact on the decision to launch negotiations

#### **1.4 Actors and Dynamics**

The third theme that has been found through a systematic and focused review concerns the diverse actors and dynamics of their interaction that come to characterise the negotiations. The literature reveals a focus on the role and preferences of business groups (see Young, 2016; Dür & Lechener, 2016), the reasons behind increased engagement of civil society organisations and public in the negotiations (De Ville & Siles-Brüge, 2015a; Strange, 2016; Young, 2016; García-Duran & Eliasson, 2017) and the role of governing bodies in the decision-making process (see Novotná, 2016; Jančić, 2016). These three broad categories entail a significant range of the stakeholders involved in TTIP one way or another. The analyses that can be found in the literature have attempted to capture the novelties associated with the negotiations of TTIP, in relation to these actors. Accordingly, this section will firstly explore TTIP literature concerning business groups, secondly the scholarship exploring civil society organisations, and, finally, the EU governing bodies. The outcome of this review reveals that limited analysis has been carried out in relation to the process of interaction among and within governing bodies and between governing bodies and non-governmental stakeholders.

**1.4.1 Business Groups.** A great deal of TTIP literature on business groups analyses business preferences and associated lobbying efforts across the Atlantic (see Young, 2016; Dür & Lechener,

2016). While on one side, the scholarship has focused on the business preferences with regard to the agreement, another side has explored the influence that business groups are able to exert on the Commission and the US Trade Representative (USTR). Such literature has also considered to what extent regulatory convergence might take place in different sectors under negotiations in TTIP. This last aspect has been embedded in the analysis below (i.e. business preferences and business influence) and has proven to be helpful to highlight the gaps and the un-answered questions in the literature so far produced. This section will then begin by exploring the similarities and differences in the business positions with regard to the transatlantic deal, and will continue by considering to what extent business groups are influential in the TTIP debate.

The involvement of the business community in TTIP has been described as unusual in the literature (Young, 2016). According to Young (2016), the business community in TTIP cannot be analysed through the more traditional IPE accounts since it presents us with a complex and unexpected puzzle: i.e. limited cross border business clashes, which are usually the rule when negotiating a trade agreement. Why is that the case? The high level of reciprocal cross border FDI signifies that ‘firms are already established in both markets and [...] intra-firm trade and global value chains are particularly important in transatlantic trade’ (Ibid., p.352). Thus, finding a compromise on regulatory differences means increasing efficiency among highly integrated businesses (Ibid.). This explanation defies at least for the TTIP considerations stemming from the *New New Trade Theory*, which predicts the heterogeneity of firm preferences within the same sector, given the divergent characteristics of firms (Ibid.; Ravenhill, 2017).

Evidence suggests that transatlantic business alliances can be seen in sectors characterised by considerable levels of cross-border FDI (e.g. services and manufacturing industry), while such alliances have not manifested in sectors lacking significant transatlantic FDI flows (read agriculture) (Ibid.). In line with Young’s (2016) analysis, Josling and Tangermann (2015) argue that agriculture, characterised by low intra-firm trade, remains a complicated sector to agree upon. The high number

of sensitive sectors with consequent high tariffs (e.g. dairy sector) seems in fact to produce the more traditional distributional conflict (Ibid.).

It is necessary to acknowledge that Young's (2016) analysis focuses on the origin of preferences rather than on the process of bargaining leading to a negotiation outcome. The need to expand the research on business groups emerges from considerations expressed by other scholars. Elliott and Pelkmans (2015) suggest that a significant regulatory convergence might be arduous to achieve, for instance, in the chemical sector. This, however, has nothing to do with the emergence of a distributional conflict mentioned by Young (2016). Although, in fact, the business sector is favourable to significant regulatory convergence, mutual recognition and harmonisation have never reached the realm of possibilities on the negotiation table for chemicals (Ibid.). This leads one to consider that, in addition to unpacking business preferences and understanding their origin, the process through which an outcome became feasible and acceptable requires further analysis.

The literature also addresses the extent to which business groups might be influential in the decision making process. A vast part of the literature supports the claim that EU trade policy would be isolated from societal interests. The rules governing the EU decision-making process and the long chain of delegation, that runs from the aggregation of the stakeholders' preferences to the policy-makers (see Meunier, 2005), might in fact limit the extent to which business groups might be influential (see Woolcock, 2005; Zimmermann, 2007). However, not all of the scholarship agrees (see Dür & Lechener, 2016).

With regard to TTIP, Dür and Lechener (2016) identify two main entry points for the lobbying process at the Brussels level (i.e. the EP and the Commission) and two functions through which business groups exercise their influence (information either about constituencies' preferences or about highly technical issues). However, a number of questions remain unanswered. When are preferences taken into account by the negotiators and when are requests made by stakeholders more likely to succeed? More research is therefore needed to explore the case of TTIP negotiations and

how different stakeholders have interacted with the Commission and the EP and how the Commission has engaged with them and along which arguments.

**1.4.2 Civil Society.** The scholarship addressing civil society's engagement in TTIP seems to underline the exceptionality of their engagement. In fact, although civil society organisations have been mobilised at the multilateral level (e.g. Seattle Conference, Multilateral Agreement on Investment negotiations in the late 1990s) and regional level (e.g. NAFTA), they have not shown a strong record of engagement in PTAs (Strange, 2016) if one excludes civil society mobilisation for the Cotonou agreement. The level of engagement of civil society in TTIP, however, remains unprecedented (Stange, 2016). Thus, the following section will firstly explore the literature so far produced aimed at understanding the reasons behind this unprecedented level of civil society's involvement in TTIP. Secondly, it will briefly examine the arguments upon which civil society focused during the TTIP negotiations.

Although history has showed civil society as being mainly engaged at the multilateral level or at the regional level, their involvement in TTIP has been described as unprecedented for a bilateral trade deal. In the attempt to solve the puzzle, scholars have been engaging with the concept of salience and politicisation. For Young, for instance, the unprecedented level of engagement has to do with the "salience" of the negotiations (2016). However, one is left questioning why TTIP has attracted such a level of attention given that other agreements, which have been recently finalised (e.g. EU-Japan Economic Partnership Agreement), address NTBs as well. Young (2016) argues that the answer lays in two elements: the ambitiousness of the deal and the bargaining power of the US as negotiator (see also García-Duran & Eliasson, 2017). In particular, García-Duran and Eliasson (2017)'s paper considers the negotiation power of the US as the explanation for the rising concerns. Given the stronger negotiation power and different approach to regulations in the US, the EU standards would become under threat (Ibid.). The content of the agreement and size of negotiators seem to have been used as key to understanding the unprecedented level of civil society's involvement in the literature.

Gheyle (2016) uses the concept of salience as a first element in explaining the high “politicisation” of TTIP negotiations.

Politicisation can be defined as ‘the mobilization of mass public opinion with regard to EU policies and institutions’ and is understood by Gheyle as the triangular process where salience, audience expansion, and polarisation represent the key elements (Hooghe & Marks, 2009 in Gheyle, 2016, p.14). An increase in salience (i.e. ‘rise of importance of the EU or its policy’) takes place when interest groups manage to be effective in mobilising the public opinion (Ibid., p.14). This appears more likely when the frames employed in the process of persuasion, as pointed out by Dür and Mateo (2014), connect to pre-existing beliefs as it has been the case in TTIP negotiations (Ibid.). The increased salience among the public then tends to lead to more engagement by civil society because increased ‘attention’ and new ‘resources’ will allow civil society to mobilise further the public through a snowballing effect (i.e. audience expansion) (Gheyle, 2016, p.12; Eliasson, 2015, p.9). A third element in the process of politicisation is polarisation. The concept refers to the emergence of an opposite view to the commonly acknowledged “common good” (Gheyle, 2016). The process leading up to polarisation is also characterised by the proliferation of requests aimed at obtaining a change in the EU institutions’ modus operandi (Gheyle, 2016). Thus, salience, audience expansion, and polarisation can be used to explain the phenomenon of politicisation of TTIP negotiations. In addition to analysing the unprecedented level of engagement and offering a framework for analysis for said mobilisation, the existing TTIP literature has explored to what extent and how civil society has been effective in shaping outcomes.

The literature on TTIP lists the issues on which civil society groups have been most vocal about: transparency (De Ville & Siles-Brüge, 2015a; Gheyle, 2016; Strange, 2016; Ballera, 2015), ISDS (DeVille & Siles-Brüge, 2015; Gheyle, 2016; Strange, 2016; Chan & Crawford, 2017; Ballera, 2015; García-Duran & Eliasson, 2017; De Bièvre & Poletti, 2017) regulatory cooperation and liberalisation of public services (De Ville & Siles-Brüge, 2015a; Ballera, 2015) as well as the

perceived threat to consumer and environmental standards (Strange, 2016; Bellera, 2015; García-Duran & Eliasson, 2017).

A case in point to assess the impact of civil society was the ISDS. After a letter signed by almost 200 NGOs warning about the effects of ISDS, former trade Commissioner De Gucht decided to launch a consultation on the Investment Chapter to be inserted in TTIP (De Ville & Siles-Brügge, 2015a). The public consultation showed an overwhelmingly number of contributions criticising the approach of the Commission and the Commission's decision to replace the proposal for an ISDS with an Investment Court System (ICS) (Ibid.).<sup>6</sup> Leaving out of the debate to what extent the ICS represent a viable solution for civil society, what cannot go unnoticed is that, in a context of increased politicisation, public attention and growing interest of the public, are understood to have a restraining effect on business preferences (Dür & Lechner, 2016; Gheyle, 2016). Thus, as it has been shown in the case of the rejection of the Anti-Counterfeiting Trade Agreement (ACTA), NGOs and "complicit" public can affect both governments and Member of the European Parliament (MEPs) opinion and attitude (Dür & Mateo, 2014). Although the literature tends to focus on the effect of NGOs' activity, one is left with a number of questions. Elements such as the size of the negotiating partner and the perceived bargaining force might contribute towards explaining civil society's mobilisation in relation to TTIP, but it is necessary to explore further why the frames concerned with the EU standards, for instance, affected the negotiations of the TTIP chapters in a different way and so produced differentiated results. In other words, if, as argued by García-Duran and Eliasson (2017), the EU standards were perceived as being under threat, given the superior influence of the US, why were certain sectors affected more than others by such a discourse? In what ways have NGOs had an impact on the initial EU positions? Is the ISDS/ICS the only case? In brief, more attention should be directed towards how and to what extent NGOs have been able to affect the TTIP negotiations.

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<sup>6</sup> The ICS addresses several concerns which have regarded the ISDS, such as clearer procedural deadlines to avoid incurring excessive costs, special provisions for SMEs, and the more transparent selection of judges.

**1.4.3 Governing Institutions.** Despite growing research on TTIP negotiations, studies on the interaction among and within EU governing institutions remain very limited. The limited analysis on the interaction between and within EU institutions, their preferences, and how interaction between the US and the EU is shaping the negotiation process does not allow for a comprehensive understanding of the complex dynamics that characterise TTIP negotiations. However, despite these limitations, this section will examine the main themes emerged in relation to some Member States, the Commission and the European Parliament.

In order to understand the interactions taking place not only between institutions but also within them, the analysis of Member States' attitudes seem to be essential for a more comprehensive understanding of the TTIP talks. What seems apparent in analysing the literature surrounding TTIP is also that opposition has concentrated in a few countries, namely Germany, Austria and the UK (see DeVille & Siles-Brüge, 2015a; Eliasson, 2015; Peterson, 2016). The case of Germany, in particular, has gathered increasing attention in the literature given its historically positive attitude toward the establishment of a transatlantic free trade agreement (TAFTA). Germany has been, since the 1990s, a strong supporter of the idea of a TAFTA (Barfield, 1998). This attitude favourable to trade finds explanation in West Germany orientation towards exports, which has forged a special alliance between the government, industry and labour which have all benefited from policies promoting free trade (Chan & Crawford, 2017). Against this background, Germany has more recently been at the fulcrum (along with Austria) of an anti-TTIP campaign (see Mayer, 2016). Why has Germany a country overall in favour of trade and the transatlantic project suddenly changed its attitude? There are a number of reasons to take into account to find a possible solution to the puzzle:

1. TTIP is largely seen as a way for the US to lower EU standards (Mayer, 2016; Chan & Crawford, 2017). The opposition to the agreement had been focusing on food safety and the threat the agreement could pose to the German way of life (Chan & Crawford, 2017).
2. TTIP is seen as a threat to sovereignty (DeVille & Siles-Brüge, 2015a). The ISDS has been pictured as a way to undermine government control in favour of corporations affecting the



ability of governments to protect citizens. In particular, Vattenfall's decision to sue Germany through ISDS giving its decision to phase out nuclear power plants might have had an important impact on citizens' attitude towards ISDS in Germany (Chan & Crawford, 2017; Peterson, 2016). The very same concerns, although developed in relation to the NHS, caused the rise of opposition to TTIP in the UK.<sup>7</sup>

3. The TTIP debate had been accompanied by the emergence of an anti-globalisation attitude motivated by distrust toward the Anglo-Saxon model (Mayer, 2016). The National Security Agency (NSA) gate has a deteriorating effect on the US-German bond. Although Germany was caught spying on US Secretaries of State (Clinton and Kerry), one could not deny the negative impacts of those events on the German public (Ibid.).
4. The TTIP debate has been characterised by an anti-Brussels attitude fuelled by the lack of transparency in negotiations (Ibid.). The spread of perception of secretive negotiations conducted mainly by bureaucrats in Brussels further fuelled the fears mentioned above regarding TTIP negotiations.

Although Germany has represented a case in point in the opposition to TTIP negotiations (see Schweiger, 2018), it is just one example. This is not to argue that support for the agreement was non-existent, but that the opposition to TTIP was particularly significant and mainly supported by civil society and consumers organisations. Elsewhere in the literature scholars have (see Zürn, 2014; De Wilde, et al., 2016), conscious of the different degrees of politicisation in different countries, tried to find frameworks of analysis to approach this variety of attitudes in Member States. A possible solution according to Gheyle might be found in modified version of the “authority transfer hypothesis” (2016). An increase in ‘political authority means that, at some point, a level is reached where institutions can make collectively binding decisions on matters that were previously predominantly domestic jurisdiction’ (Cooper, et al., 2008 in Gheyle, p.17). Although it is reasonable

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<sup>7</sup> Although the literature has mainly focused on the case of Germany, some researchers have explored the case of the UK and the threat that TTIP might represent to the NHS (Regan & Ball, 2016; Limb, 2015). Concerns usually focus on the risk of privatization and the different approach to public services in the US.

to assume that all Member States will face an increase in authority transfer, politicisation manifests ‘when there are European elections, crises or transnational NGOs successfully campaigning on a certain issue and it will be affected by debate surrounding the EU’ (Gheyle, 2016, p. 17). A deeper analysis should then be conducted in relation to Member States and the issues to be investigated should be expanded. Thus, the transfer in authority remains one of the elements regarding which a vast array of country-specific factors must be taken into account to explain a given level of politicisation. It might be equally helpful to consider how a perceived transfer of authority might affect civil society mobilisation and thus generate an impact on the negotiation process. What is also relevant for the purpose of this thesis is to acknowledge the difference(s) in attitude among the Member States and the changes associated with the process of negotiating TTIP and with regard to which issues.

The TTIP literature has also briefly addressed the role played by different EU institutions. In the literature focusing on TTIP and the EU institutions, the Commission appears to be understood as a powerful actor rather than a mere executor of the will of the Member States (Novtnà, 2016). The Commission is described as non-unitary actor where different Directorate Generals (DGs) will push for different preferences (e.g. DG agriculture is well known for being more conservative in terms of liberalisation than DG trade) (Dür & Lechner, 2016). Thus, the Commission, according to the literature, is caught in a double exercise: performing on one side a consensus-seeking exercise with other DGs, and on the other, a balance exercise where it does not always follow the recommendations of Member States insofar the prospect of the Council's ratification is not compromised (Novotnà, 2016). Research should further explore the interplay between the Commission and other stakeholders in addition to Member States and examine how the EU negotiator has performed the double task mentioned above and with what results.

The role of the European Parliament (EP) in the TTIP negotiations remains mostly unexplored in the scholarship. Although several scholars recognise its influence in the process (see Elliott & Pelkmans, 2015; Gheyle, 2016), a comprehensive study is still missing. Dür and Lechner (2016)

consider as relevant the changes introduced with the Lisbon Treaty and the consequent veto power attributed to it. Jančić (2016) stresses how the EP remains involved in the negotiation process through various channels, for instance, through frequent meetings with EU negotiators and discussions in various EP's committees. Analysis of the divisions within the Parliament remain virtually absent if we exclude that De Ville and Siles-Brügge (2015a) briefly mention the struggle within the S&D groups with regard to the ISDS and the absence of a cohesive position on the issue. It is the argument here that more research should be conducted to explore which competing discourses emerged in the EP and what instruments the EP has used to affect the other EU institutions to support or obstruct the launch of negotiations and the process of negotiating TTIP.

What is clearly missing from the literature is a comprehensive analysis of the working of the institutions within TTIP. If this analysis appears, albeit only partially, in the news, the scholarship available to date has not sufficiently performed a consistent analysis of the EU institutions or the interactions between EU institutions and the US governing bodies that have an impact on the negotiation process for the EU.

**1.4.4 Conclusions.** This last section concerning the role of actors and the dynamics of their interaction(s) has analysed the literature focused on business groups, civil society organisations and public opinion, and finally, governing bodies with emphasis on the core EU institutions. The section has shown that more attention should be paid to how the negotiation process takes place and how negotiators mediate the preferences of different stakeholders. Dür and Lechener (2016) have argued that EU and US negotiators' preferences are in line with the business groups, but as Elliott and Pelkmans (2015) have shown, this does not appear to be a sufficient condition for the business groups to achieve their most preferred outcomes in the negotiation process. The role of civil society and their impact on the bargaining process and public opinion represent a relevant constraining factor as highlighted by DeVille and Siles-Brüge (2015a). However, more research should be conducted to explore the role of civil society and to what extent the inputs provided by civil society have affected

the process of negotiating TTIP. Finally, attention has been paid to the role of governing bodies and in particular to EU institutions. The very limited research that has been conducted on this field has highlighted the role of the Commission and the new veto-power role to be played by the European Parliament. However, more analysis should be produced on the role of institutions and their interplay in the process of negotiation TTIP.

## **1.5 Conclusion**

This chapter has attempted to present the main themes that emerge in the literature in relation to TTIP negotiations. Given that negotiations were launched in 2013 and halted in 2016, limited scholarship has so far been produced. For that reason, this literature review has also incorporated grey literature. Studies that were either exclusively economic or entirely legal in nature were not consulted, given the Economic Diplomacy approach of this thesis in general, and the theoretical basis upon which the thesis is based (see Chapter 2). That said, the scholarship that was available and consulted reveals three main themes relevant for this study: 1.) the economic discourse surrounding TTIP negotiations; 2.) the strategic implications linked to the conclusion of the agreement; and 3.) the analysis of the actors involved in the process of negotiating the deal.

The analysis of the economic discourse has revealed that more attention should be paid to the role of persuasion and negotiation framing. Rather than considering actors as rational, it is necessary to recognise that the problem of bounded rationality does not only extend to decision-makers. In other words, limited information, selective information, a priori beliefs and cognitive limitations might play an essential role in preference formation, preferences shaping and discourse in both the public sphere and for policy-makers (see Bayne and Woolcock, 2011). Thus, more attention should be paid to the tools employed in the process of shaping negotiations and how certain frames became more salient than others in affecting the bargaining process.

The second section concerning the strategic implication of TTIP considers the geopolitical aspects associated with TTIP and emphasises the potential of the agreement to reinvigorate the

transatlantic bonds in a context of increasing multi-polarisation of global power. However, the available analyses typically move in one direction: the international implications of TTIP. Further research should then be conducted with regard to how (and if) the geopolitical and overarching strategic implications affected the launch of negotiation for TTIP and influenced the negotiations of the deal.

The third section has explored the literature focusing on business groups, civil society organisations, and EU governing institutions. Both the literature on civil society and business groups only partially considers the way in which preferences are mediated and affect the decision-making process, how the mediation and the persuasion processes take place and what affects the persuasive capacity of certain arguments. Even if the existing scholarship (e.g. Eliasson, 2016; DeVille & Siles-Brügge, 2016) presents a more detailed analysis of the role of civil society in the process, the analysis should also focus on the process whereby these elements affect the decision-making process. Although some scholars (e.g. Aggarwal & Evernett, 2016) have addressed the changing position of the EU on issues like GMOs and data protection, attention should be expanded to include other sectors which the analysis will reveal is highly debated. In particular, the literature on the negotiation process has proven to be the most fragmented one to date with only a generic analysis of the interplay among decision-makers or veto players like the US Congress and the EP. The complexity of the decision-making process requires not only a focus on the interaction between the EU and the US at the negotiating table but an understanding of the interaction between and within EU institutions, between them and the stakeholders. Additional attention should be directed towards how and to what extent the diverging arguments affect the negotiation game.

In brief, the literature produced helps to identify the elements characterising the negotiation of TTIP, clarify the international relevance of the agreement, and the new elements shaping the involvement of civil society and businesses groups. However, it is the argument here that it falls short of generating a systematic analysis of the interplay between the different actors (i.e. between constituencies and decision-makers and between decision-makers and veto-players) and how the

different arguments supported by different actors generate different outcomes during the negotiations. Furthermore, literature in this area will also benefit from including TTIP in a broader geopolitical context that generates an inward impact towards the negotiations.

Given the complexity of the analysis, attention will be focused on the negotiation process within the EU without dismissing the relevance of the US in affecting the bargaining process. The next chapter will set out a theoretical framework to be adopted in the analysis of TTIP negotiations; one that is able to offer a systematic approach to the analysis of the gaps in the literature highlighted so far.

## 2. Theoretical Framework

### 2.1 Introduction

This chapter will present a theoretical framework to apply to the analysis of the TTIP negotiations. Before introducing the framework in more detail, it is necessary to recall the gaps that are evident in the current TTIP scholarship (see Chapter 1) as a guidance for the analysis. The previous chapter has shown that: 1.) little attention has been paid to the role of frames and their overall impact on the EU negotiating position without attributing a higher moral stand to certain actors vis-à-vis others; and also to the differentiated impact on the EU position in negotiations; 2.) limited interest has been directed toward how (and if) strategic elements reverberate and affect (if they do) the negotiation process; 3.) limited analysis has been carried out on the interactions among and between the actors and EU institutions involved in the TTIP negotiation process, what affects the salience of the opposing frames adopted by the actors.

In order to develop the theoretical approach to this study, it is necessary, first of all, to acknowledge the “intermestic” nature of negotiations and consider this the starting point to fill the gaps mentioned above (see Manning, 1977; Hale, et al., 2013). As argued by Robert Putnam, negotiations are part of a game that takes place at two tables: the international level (i.e. negotiations with the other negotiating party) and the domestic level (between negotiators and domestic constituencies) (1988). This awareness leads one to conceptualise negotiations as a “Janus-faced process”, where negotiations happen simultaneously at home and internationally (Moravcsik, 1993; Evans, 1993; Young, 2010). In light of the gaps in the literature discussed in Chapter 1, the thesis will attempt to answer the following question: *How was consensus reached in the EU for the launch of the TAFTA/TTIP negotiations and what affected the EU negotiating position during the TTIP bargaining process?*

In order to develop a theoretical framework to answer the question above, this research requires a theoretical framework that incorporates the Two-Level approaches manifest within

Economic Diplomacy (ED) (see Bayne & Woolcock, 2011; Moraviscck, 1993; Evans, 1993; Lisowski, 2002) and Multi-Level Governance (MLG) theory - a strand of the theory of European Integration.

Neither approach (a Two-Level Game within ED or MLG via European Integration theory, respectively) is sufficient on its own. The former, with an emphasis on domestic constituencies and the interplay with international level is necessary because of the international negotiation implicit in this process. The latter is relevant as the focus will be on the EU multi-layered system of governance, and MLG theory can help fill the gaps in terms of capturing the complexity of the EU. The result is a model which will be described as a complex web of Interconnected Multidirectional Games (IMG), where multiple games do not take place only within each level but are increasingly involved in games occurring at, and within, other levels and reflect the complexity of the EU decision making process. Attention in the IMG will be placed on the use of frames.

There are two starting points for the analysis: 1.) ideas render ‘interests actionable’ (Carstensen & Schmidt, 2016, p.318); and 2.) actors tend to persuade others on the basis of an argument. Therefore, it is necessary to explore what these arguments have been, how they have been constructed, what affected their salience (i.e. effectiveness), and why certain arguments have appeared to be diffused more easily than others. This is necessary in order to analyse what affected the EU position in TTIP negotiations.

This chapter will proceed as follows: firstly, it will briefly delineate the contours of ED in order to define the scholarship context in which this thesis is placed, review the three analytical tools (i.e. rationalist approaches, domestic-based approaches and constructivist approaches) applied to the study of ED and define to what extent they can offer valuable insights in the analysis of TTIP negotiations along the lines defined above. Secondly, the chapter will propose an updated version of Putnam’s model (within the domestic-based approaches in ED), placing it into a broader context of MLG theory, and introduce a number of conditions which are understood to be capable of affecting the EU negotiating position. It is worth noting that the type of research questions that the study aims to answer requires one to ground the chapter in most suitable theoretical scholarship in a manner that



applies theory to a real-world (massively significant) case study (i.e. TTIP). Therefore, this chapter proposes a composite formulation of existing theory that relies on revealed relevance, but corrects deficiencies and advances a theoretical framework for analysis. The present study, by focusing on TTIP negotiations from an EU perspective, seeks to offer additional insights to the TTIP scholarship, the literature exploring how the domestic and international dimensions are mutually shaped and affect one another, and the body of knowledge focused on the use of frames and EU trade governance.

## **2.2 Economic Diplomacy: a theoretical toolkit**

In order to develop a theoretical framework for the study of the TTIP negotiations, it will be helpful, firstly, to clarify the contours of the field in which this thesis is placed (Economic Diplomacy (ED)), and, secondly the theoretical approaches (i.e. Rationalism, Domestic-Based Approaches, Constructivism) that have been applied to its analysis. This first step (i.e. defining ED) appears necessary given the relative new scholarly attention (i.e. 1980s-1990s) placed on the realm of ED (see Lee & Hocking, 2010) and its contested definition. Secondly, this section will, for each theoretical toolkit, expand the original approach found in Woolcock and Bayne's work (2011). In a final paragraph, the section will consider the relevance of persuasion, which as a concept is present in the all three theoretical approaches analysed (i.e. rationalist approaches, domestic-based approaches, constructivist approaches). The purpose is to develop a broad understanding of the tools adopted for the study of ED and their relevance to the study of TTIP

**2.2.1 Economic Diplomacy.** As argued above, this research is conceived in the realm of Economic Diplomacy (ED), a subfield of International Political Economy (IPE).<sup>8</sup> The definition of ED remains contested given that, firstly 'conceptualizing economic diplomacy is by no means easy' (van Bergeijk et al. 2011, p.4) and, secondly because this strand of the literature has only recently (i.e. 1980s/1990s)

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<sup>8</sup> ED 'is considered as the narrow stem of a funnel through which all expressions of the interrelationship between IPE and diplomatic studies are channelled' (Okano-Heijman, 201, p.15).

gained new attention in the literature. This novel focal point is the product of the changes that took place within the international system and the consequent tendency, which emerged in the 1970s, to pay more attention to “low politics” issues (Lee & Hocking 2010).<sup>9</sup> The “Great Divide” in the understanding of ED can be summarised as follows: 1.) approaching ED in more restricted terms (i.e. focus on the process of negotiations) or 2.) in broader terms considering it as an instrument of foreign policy meant to achieve the state’s goals of economic prosperity and political strength (i.e. also focus on Grand Strategy). Thus, this section will explore both definitions and conclude that ED understood as the analysis of the process of international economic decision-making appears more instrumental for the scope of this thesis.

While Woolcock and Bayne are promoters of this first strand and, thus, consider ED as ‘the process of international economic decision making’, other scholars extend this field beyond the ‘simply negotiation of economic issues’ (2011, p.1; Woolcock, 2013). In a dedicated issue of *The Hague Journal of Diplomacy* regarding ED, Peter A.G. van Bergeijk, Maaïke Okano-Heijmans, and Jan Melissen define ED ‘as part of – and at the same time an instrument of – foreign policy, concerned with (decision-making) processes and the employment of political – economic instruments’ (2011, p.5). Maaïke Okano-Heijmans, more specifically, argues, that ED should be conceived ‘as the use of political means as leverage in international negotiations, with the aim of enhancing national economic prosperity, and the use of economic leverage to increase the political stability of the nation’ (Ibid., p. 17). Thus, ED is described as a pendulum oscillating between a power-end and a business-end spectrum where certain forms of ED might qualify as closer to one scope or another but still informed by both (Ibid). This definition places ED in a ‘state-centric realistic framework’ where ED is understood as the pursuit of ‘economic security’, which implies the search for compromise between ‘economic prosperity’ and ‘political stability of a nation’ (Ibid., p.16). However, such a conceptualisation of ED offers a pre-defined view of the scope of the field and fails to recognise that

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<sup>9</sup> Scholars tend to date economic diplomacy back to Thucydides (see Lee & Hocking, 2010)

ED could be pursued for other reasons, such as ideological and normative concerns, which may or may not be rooted in state power considerations. Hence, maintaining that different countries, political leaders, stakeholders, contingency of time, and normative concerns can alter, shape, and transform the reasons to negotiate beyond the duality of economic prosperity and economic security paves the way for a less constrained and more open-ended analysis. Following these premises, this thesis will thus rely on the Woolcock's conceptualisation of ED as 'the decision-making process and negotiation in international economic relations' which is 'about process rather than the structure of power of the universe of sectoral and national interests' (2013, p.9).

EU Economic Diplomacy, at the core of the present study, 'includes decision-making or how the Member States and the EU institutions reach (or not reach) common positions and objectives and then how the EU seeks to promote this agreed EU position in negotiations with third parties' (Ibid.). This specification is necessary given the nature itself of this research focused on the interplay between the domestic and the international levels and their impact on the EU stand in the negotiations. Such a conceptualisation of ED, as mentioned earlier, does not exclude geopolitical and strategic considerations but simply, rather than assessing whether or not TTIP will allow for certain strategic outcomes to manifest, allows one to understand those elements as possible (rather than given) preferences and frames in the negotiation process. The following section will explore the approaches adopted in the study of ED.

**2.2.2 Theoretical approaches to Economic Diplomacy.** Once the contours of what constitutes ED have been defined, the next step is to clarify the theoretical tools that might be applied for the study of this field. The first obstacle to address is that there is no single theory of ED upon which it is possible to rely (Bayne & Woolcock, 2011). Accordingly, this study will consider and review the analytical toolkit provided in the book *The New Economic Diplomacy* edited by Bayne and Woolcock (2011). The reliance on Bayne and Woolcock's work is justified: 1.) by its preeminent standing in the ED domain. Bayne and Woolcock's contribution has been labelled as 'the most elaborate analysis

of economic diplomacy to date, both theoretically as well as empirically' (Okano-Heijmans, 2011, p.29); and 2.) because of the selected definition of ED, Bayne and Woolcock's analysis (2011) provides the most conducive framework of analysis for the present research project.

This section will start by examining the theoretical tools applied to the study of ED: 1. rationalist approaches; 2. domestic-based approaches; and, 3. constructivist approaches. Without aiming to offer a comprehensive overview of the theoretical tools to the study of negotiations, the following section aims to offer a basic understanding of the main aspects and features of the three approaches. The theories of ED here reviewed represent, in fact, stepping stones for a composite formulation of existing theory which takes into account their relevant aspects but also corrects the deficiencies underlined in the following subsections.

**2.2.2a Rationalist Approaches.** Rational choice theory is based on three main assumptions: actors are unitary, rational, and utility maximisers (Woolcock, 2011). This approach downplays the contrasts and cleavages that are likely to occur within the state, as well as between different constituencies and state agents (Ibid.). The assumption of unitary actors implies that actors act as single units (Ibid.) but, as pointed out by Milner (1998), the state can rarely qualify as a unitary actor. The assumption of fixed preferences is revealed in arguing that the 'agent never changes his or her fundamental preferences over fully specified outcomes' (Dietrich & Lists, 2011, p.1). Preferences are understood as 'exogenously given' (Ibid., p.2). In other words, an 'agent's preferences are simply taken to be an essential but inexplicable feature of the agent's personal identity' (Ibid.).

Central to rationalist approaches is bargaining (Ibid). James D. Fearon argues that a 'bargaining problem refers to a situation where there are multiple [...] outcomes that two or more parties would all prefer to no agreement, but the parties disagree in their ranking of the mutually preferable agreements' (1998, p.274). Bargaining can be also understood as a quest for a Pareto improvement (Muthoo, 2000). A Pareto improvement is reached when the new condition emerging from the negotiations does not make the other negotiating party worse off (see Krasner, 1991). Thus,

the compromises to be acceptable to the parties has to be placed above the resistance point or Best Alternative to a Negotiated Agreement (BATNA) (below which the agreement will be of no value) and below (or on) the Pareto frontier (above which the new agreement will make the other party worse off) (Odell, 2000; Woolcock, 2011).

Strategies are essential to the bargaining process. In fact, Fearon (1998) argues that ‘bargaining problems [...] are resolved, if at all, through time, in sequences of offers and counteroffers or with one or both parties “holding out” in hope that the other will make concessions’ (Ibid., p.274). Although rationalist approaches have the merit of offering useful insights into the bargaining process between the negotiation parties, they do not provide a sufficient theoretical framework for the analysis of the complex interplay between domestic and international factors as understood in this thesis. As argued by Ye, in the bargaining process ‘states are assumed to make their decisions on the basis of the observed as well as expected responses of their rivals’ (2012, p.38). The fact that preferences regarding negotiators are assumed to be (relatively) fixed and exogenously, given that the process whereby those interests are mediated and transformed at the domestic level, does not form part of the primary focus of analysis.

To sum up, one may safely argue that, with regard to the rationalist approaches, as applied in ED, the emphasis tends to be placed on the final stage of the negotiations, i.e. the negotiation with the other party. The complex interplay between domestic and international elements as the role of normative elements, which remains the focus on this study, is then left mainly unexplored. This conceptualisation also downplays the role of normative elements. Whilst the rationalist approaches are necessary to account for, they are insufficient for this study alone.

**2.2.2b Domestic Approaches.** The relevance of domestic constituencies in negotiations has been widely recognised in the literature (see Langhelle et al., 2014). As argued by Hiscox, ‘almost all scholars’, with reference to international political economists, ‘recognize that politics at both the domestic and international levels should be a feature of any complete analysis of foreign economic

policy' (2011, p.128). Helen Milner (1992) identifies three reasons why the study of domestic constituencies is relevant in international negotiations: 1.) they help us understand how preferences are aggregated and what gains and losses matter the most; 2.) shed light on the reason behind specific strategies; and 3.) constrain the negotiation process because of the necessity of negotiators to gain domestic approval. This section will mainly focus on Putnam's Two-Level Game and its further developments. In fact, within the ED domain, an analytical framework that has received particular attention has been the Two-Level Game by Robert Putnam (1988) (see Woolcock, 2011). Not only is Putnam's approach one of the most applied to the study of how the domestic and the international level interact (Langhelle et al., 2014), but the article in which he sets it out is also the most cited article in the journal *International Organization* to date.

There is a vast array of scholarship focusing on how domestic factors might affect international outcomes (see Milner 1997) and how international factors might affect domestic outcome (see Milner & Keohane, 1996; Drezner, 2003). However, Chorev argued that it is essential to bridge the divide and understand the interplay between domestic level and international level without understanding one as a function of the other but as 'one field of actions that incorporates both' (2007, p.657). According to Putnam (1988), at the international level (Level I), negotiator agents try to reduce the possible adverse consequence of the agreement while satisfying domestic constituencies. At the domestic level (Level II), while constituencies lobby the government to compel it to adopt policies in line with their preferences, politicians attempt to affect negotiations in their favour by building coalitions among different stakeholders (Putnam, 1988, p.434). Most importantly, the game described by Putnam (1988) is not strictly divided into two phases, as all of the interactions may happen simultaneously and are cross-parties. The interactivity of the process has been emphasised by highlighting the multiple interactions among Level I and Level II players involved in the negotiation game. According to Lee Ann Patterson, what makes Putnam's framework 'both fascinating and conceptually complex is the idea that negotiations do not proceed in a linear fashion, from one level to the next, but instead occur simultaneously' (1997, p.142).

Putnam's considerations have a clear starting point: 'the requirement that any Level I agreement must, in the end, be ratified at Level II imposes a crucial theoretical link between the two levels' (1988, p.436). The definition of ratification at Level II is broad. It does not simply refer to the approval of an act by the legislature. The concept takes into account the necessity to gain support from a number of bureaucratic agencies, parliaments, interest groups, NGOs, and the general public (see Young, 2010). The accomplishment of ratification depends on what Putnam (1988) calls the size of the win set, that is the range of outcomes acceptable at the domestic level for each party.

The conclusion of the agreement is possible only if there is an overlap between player A and player B's win-sets. This concept is also captured in the negotiation literature though Raiffa's Zone of Agreement (ZA) (1982) or the Zone of Possible Agreement (ZPA) (Alfredson & Cungu, 2008; Sebenius, 1983). There are two main considerations to take into account in terms of bargaining power of a negotiating party. First, the smaller the win-set, the higher the likelihood of no agreement, but the stronger the bargaining position. The logic behind this statement is that the less concessions a party will be able to make, the more concession the other party interested in the agreement will grant (Putnam, 1988). This is also understood as the "Schelling conjecture" (1960; see also Lisowski, 2002; Pahre & Papayoanou, 1997; Hiscox, 2011). Conversely, the larger the win-set, the higher the likelihood of reaching an agreement, and the more limited the bargaining power. However, despite the hypothesis illustrated above, empirical evidence does not corroborate that idea that a limited win-set reinforces the negotiating position of a negotiator vis-à-vis the counter-party (Evans, 1993). This seems to be confirmed by the tendency of statesmen that do not actively attempt to reduce the size of their win-set (Ibid.).<sup>10</sup>

In the book titled *Double-edged Diplomacy: International Bargaining and Domestic Politics*, the editors Peter B. Evans, Harold Karan Jacobson, Robert D. Putnam (1993) have attempted a transition from metaphor to theory. In particular, Moravcsik (1993) argues that there are three

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<sup>10</sup> The argument of tied hands seems, nevertheless, to have more chances to work among "friends" as it was the case for President Regan who, aware of the constraints coming from public opinion on Schmidt and Kohl in the 1980s, decided to moderate his requests on Germany (Eichenberg, 1993).

essential blocks of theoretical concerns for which a number of hypotheses are advanced: domestic constraints; international constraints, and preferences of statesmen.

- Domestic constraints: the size of the win-set depends on domestic coalitions, how they are distributed, institutions, and voting rules (Lisowski, 2002). Strategies, persuasion, and manipulation throughout a selective use of information might be useful to affect the win-set (Moravcsik, 1993; Woolcock, 2011; Evans, 1993). Moreover, the propensity to successfully conclude the agreement is also linked to the cost of no agreement (Stein, 1993; Young, 2010).
- International constraints. International constraints might stem from a negotiator's domestic constituencies or the other party's domestic constituencies which consequently limit the bargaining power of the state agent. A negotiator can attempt to raise the cost of no agreement for the other party and reduce opposition against the agreement side-payments (Putnam 1988; Lisowski, 2002). A country might also attempt to alter the perception that the other country has on the agreement (e.g. state visit, speeches, etc.). Furthermore negotiators are likely to attempt to 'reinforce one another's standing with their respective constituencies' (this tactic is called collusion) (Putnam, 1988, p.451).
- Statesman preferences. Moravcsik (1993) argues that statesmen have preferences (i.e. acceptability set) over the agreement, which are not necessarily in line with the domestic ones. Policymakers' preferences and actions can, in fact, be dictated by a plurality of interests, which concern not only re-election (Ibid).

Although it is useful to incorporate both the domestic and international levels within a negotiation process, a clear limitation associated with these approaches is the limited attention placed on transnational alliances and frames. As argued by Keohane and Nye (1974; 1977), it is essential to consider the plurality of transnational relations, which are also relevant when exploring negotiations and their development.

The negotiation process is predominately understood through the lenses of the negotiators and so the relevance of the other stakeholders becomes subordinate during the negotiation process



(Drezner, 2003). In addition, insufficient attention has been paid to the negotiation framing: the conditions under which the frames can be more effective, explanations regarding their salience, and how and if persuasion can be directed by the constituencies toward the policy-makers. Persuasion is acknowledged only to a limited extent in the concept of reverberation and “good will” (see section 2.2.2d).

The analysis of Two-Level scholarship would remain incomplete without acknowledging how the game has been applied to the study of the EU (e.g. Patterson, 1997; Hubel, 2004; Larsén, 2007). The reason for ‘extending the game to three levels is that the EU constitutes an international organisation in itself’ where negotiations within each state, at the EU level, and between the EU and a third party can occur (Larsén, 2007, p.859). There are different versions of this Three-Level model. Leal-Arcas (2002) privileges an analysis of the interaction between the Commission and Member States and thus sets aside the relevance of other players in order to focus on the tensions that characterized the Commission’s trade policy with regard to the Member States. Hubel (2004), in his contribution, offers a classification of the Three-Level Game, which appears to isolate the EU institutions from any interaction with the domestic and transnational constituencies. In Larsén’s version, Intra-Commission negotiations among the different Directorate Generals (DGs) (e.g. DG agriculture, DG trade, DG development, etc.) represent Level III; negotiations between the Commission and Member States are referred to as Level II; and negotiation between the EU and a third party sits in Level I. This approach helps to explore the agenda-setting process but does not fully capture the game in the broader EU context since relevant actors, such as Member States and domestic constituencies are left aside.

The most well-known adaptation of Putnam has been developed by Patterson (1997). Patterson argues that ‘the unique structure of the EC requires that Putnam’s Two-Level Game be expanded to a Three-Level interactive game in which negotiations at the domestic [Level III], community [Level II] and international level [Level I] affect policy options at each of the other levels’ (1997, p.141). Level II is understood to comprise the negotiation(s) among Member States within the

Council. Notably, the adaptation (Level II) remains excessively state-centric and dismisses, for instance, the relevance of the European Parliament (EP) – the consent of which is imperative for ratification. Those elements have to be taken into account in order to proceed with a further adaptation of the model able to reflect the complexity of the most recent institutional and normative changes in the EU. Not only the Lisbon Treaty has sanctioned a new role of the EP, from (at least in trade negotiations) a consultation body to a gate-keeper but it has also increased the exclusive competences of the Commission (i.e. investment) introducing new dynamics and mobilising new stakeholders in the process of negotiating TTIP. Also, the possible mixed nature of the agreement increased the negotiating power of Member States and national parliaments. Thus, further adaptation of the model to the most recent institutional changes seems imperative to increase the analytical potential of Putnam's game as it will be discussed further in section 2.3.

**2.2.2c *The role of ideas in negotiations: Constructivism.*** In this section, attention will be paid to understanding constructivism in the context of ED. For the purpose of this thesis, constructivist approaches may be helpful to explain how domestic or transnational groups may affect negotiation framing and thus the negotiation process. In ED, constructivism is a useful theoretical tool to explore negotiation framing because it helps to uncover 'a singular interpretation of a particular situation and then indicate a proper behaviour' (Payne, 2001, p.39) or 'solutions to on-going problems' (Barnett, 1999, p.25). The section will first clarify the notion of frames, how to understand the role of business groups vis-à-vis NGOs, and what might affect the salience of these frames.

Frames refer to the 'conscious strategic efforts' by actors, which reflect a given conceptualisation of the world that 'legitimises action' (McAdam et al., 1996, p.6). It is, thus, different from coercion or the employment of negative incentive (e.g. shaming such as blaming political leader), or positive incentive (e.g. appraisal of leaders) or conversion (e.g. consensual dialogue) (Busby, 2007). All players involved in the negotiations might attempt to use frames to justify and legitimise their positions: business groups, NGOs, policymakers, parliaments, etc.

A long-standing debate concerned the use of frames by NGOs and business groups. For instance, Sell and Prakash rely on Constructivism to explain how both NGOs and business groups ‘influence policy debate’ (2004, p.148). The scholars argue that ‘(b)ehind every idea there is an interest and interests are guided by normative ideas’ (Ibid.). It is then necessary to take into account what are the most relevant ideas competing against one another, which interests they serve, and in which ways they are promoted. Hence, ‘there is not theoretical justification for distinguishing between social movements organisations and interest groups’ because all of them can be then considered as ‘interest organisations trying to influence public policy’ (Burstein, 1999, p.19). Both NGOs and business groups ‘have instrumental interests and normative concerns’ (Sell & Prakash, 2004, p.148). However, differences in behaviour and strategies might emerge between NGOs and business groups. An interesting point highlighted by Woolcock (2011) is that NGOs can be defined as “policy entrepreneurs” because in addition to affecting public opinion they are likely to push actively for a change by approaching policy-makers. On the contrary, although business groups attempt to engage with policy makers, they might be less directly involved in the shaping of public opinion. Gheyle (2016) has, for instance, argued that to avoid boycott from the public or major public criticism, corporations tend to shield behind business groups and association which will be more directly engaged in the process of lobbying the public and policy-makers as well. It has been widely recognised that negotiators and state actors, when defending a national interest, will tend to offer a justification of their interests and attempt to persuade by appealing to the rightfulness of their argument (see Woolcock, 2011).

Following from this, it might be useful to explore in a more detailed manner the conditions under which acceptance of frames by policy-makers might be more likely. Busby (2007) proposes six conditions that might facilitate, although not determine, the success of frames. The approach does not take into account that policy-makers might be equally attempting to use negotiation framing to have “their own way”. The focus in Busby’s approach remains on civil society and how frames used by civil society might deliver policy change. That said, Busby’s six conditions (a permissive

international context, focusing events, low cost of action, cultural match between the frame-makers and the policy-makers, the presence of credible information, and supportive gatekeepers) might make a valuable contribution to the analysis, from which the considerations that emerged from other scholars might be developed with regard to the salience of the frames.

Among the six conditions, the emergence of a permissive international (i.e. the ‘political opportunity structure’) context matters given that frames are ‘context sensitive’ (Olekalsn & Frey, 1994, p.406; Busby, 2007). A permissive international context can be affected by focusing events, which might affect the salience of the issue (Busby, 2007). Culture also plays a role because the existence of shared beliefs between the frame-makers and policy-makers increases the chances of successful acceptance of the frame by the latter (i.e. cultural match) (Ibid; Kaufmann & Pape, 1999). The cultural match between the policy-makers appears relevant beyond Busby’s approach, which was mainly focused on the effectiveness of the frames employed by civil society. Policy-makers might use cultural elements and cultural specific myths to reinforce and construct their frames. Mitchel Y. Abolafia’s (2004) introduces, for instance, in a study focused on policy-makers and how they might engage in framing, the concept of ‘framing moves’ and the relevance to pre-existing beliefs. Framing moves are, in the hands of policymakers, ‘strategic actions meant to contest or maintain existing frames’ which ‘are drawn from a repertoire of culturally available action to which every policymaker has access’ (Ibid., p.351). When considering the case of NAFTA, Skonieczny (2001) argues that central to the successful ratification of the agreement by Congress were the public discourses, pushed by Bill Clinton and Al Gore, that socially constructed NAFTA as an extension of the American Dream and American Exceptionalism. Thus, in line with Abolafia’s considerations, as the NAFTA case seems to show, recalling cultural aspects and pre-existing beliefs (see also Finnemore & Sikkink, 1998) might be a significant tool in negotiation framing for policy-makers as well. In the context of the EU, pre-existing beliefs and cultural traits might be especially relevant when referring to the political myths of “Green Europe” and “Social Europe” (see Lynggaard, 2017, Buonanno, 2017).

Being deeply engrained in the EU discourse, the image of Social or/and Green Europe are often invoked to legitimise political action (Buonanno, 2017).

Another element concerns the presence of credible information. In this context, epistemic communities,<sup>11</sup> media and other groups might have an impact on the success of a frame (Busby, 2007). Under a condition of uncertainty, the provision of reliable information might affect the way in which issues and problems are understood by policy-makers (Haas, 1992). Finally, frames tend to be more successful if they can count on supportive gatekeepers (i.e. veto players in Tseblis' words, (2002)) (Busby, 2007). However, this consideration might be extended within an institution or a broader context of veto players. If a veto player A manages to convince a veto player B to support a given frame, the success of the frame might become more likely. Moving beyond the concept of veto players, Jobert and Muller (1987) argue that certain actors retain a privileged position in a given context and, as a result, they will be more able to affect the emergence and dissemination of frames. This consideration leads one also to take into account the rules of the game to understand how the endorsement of a frame by certain groups might allow for its success given the political/moral weight assigned to them within an institutional context.

In addition to the six elements listed above, existing literature considers the content of a frame, the degree of transparency under which policy-makers operate, and the modus operandi adopted to create and support a frame. The successful acceptance of frames might also be affected by the content of the frame itself. Although Sociological Institutionalists argue in relation to the diffusion of norms that their universalistic nature might favour their diffusion (see Finnemore & Sikkink, 1998), if one considers psychology, experimental evidence suggests that negative frames tend to be more appealing than positive ones (Jarymowicz & Bar-Tal, 2006). More specifically, '[g]roups are more willing [...] to get personally involved in solving an issue framed as danger as compared to dealing with an issue

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<sup>11</sup> An Epistemic community represents 'a network of professionals with recognized expertise and competences' (Haas, 1992:3). An important element is that '[k]ey locations from which members of epistemic communities could gain significant leverage over policy choices include think tank, regulatory agencies, and [...] research bodies' (1992, p.32). Although the concept encompasses a broader notion, it can be also used to refer to the three categories identified above. (i.e. think tanks, regulatory agencies, and research bodies).

framed as a problem or an opportunity' (Curşeu, 2003 in Curşeu & Schruijer, 2007, p.348). The elements described above offer an overview of how the literature in different fields has explored under which conditions affecting a policy outcome becomes more likely and how it might be achieved. Despite taking into account these elements, it is important to keep in mind that frames are not monolithic entities, and that they tend to evolve over time (Kohle-Kock, 2000).

**2.2.2d Persuasion within Rationalist Approaches, Domestic Approaches, Constructivist Approaches.** Persuasion has found different conceptualisations among constructivists, domestic approaches and rationalist approaches. It is important to clarify that negotiation framing can be understood as a way to achieve persuasion, but the concept has broader significance. Persuasion is related to the action performed by an actor, which by offering arguments tries to influence others and make them 'agree on a course of action' (Odell, 2010, p. 627). The concept of persuasion appears to be treated in all three theoretical approaches to ED although with different connotation and expressed in different terms. This section will focus on the concept of persuasion in constructivist approaches, rationalist approaches and domestic-based approaches.

Under the rationalist realm, persuasion has also been considered and can be broadly distinguished in functional persuasion and rhetorical action (Grobe, 2010). Functional persuasion occurs in a context of uncertainty. Actors, which are considered to be utility maximisers, 'will try to realise their preferences given their prior beliefs about the problem at hand' or the policy options available (Ibid., p.11). Uncertainty, in this case, arises because there are several options to be considered and actors cannot be certain about the best policy solution (Ibid.). However, to engage with functional persuasion another condition must be satisfied: a new causal knowledge, which takes place when a party 'claims to possess new knowledge about the situation at hand and wishes to convince the other to endorse it' (Ibid.). Under these circumstances, functional persuasion may take place because one party presents the other with new policy options able to satisfy both parties' interests (Ibid.). It could be argued that the common assumption in sincere persuasion in

Constructivism (see below) and functional persuasion is that a change in preferences depends on a change in beliefs. This assumption tends to reduce drastically either the possibility of verifying the validity of the assumption *per se* (how do we know with certainty that change in preferences is linked to a change in beliefs) and the likelihood of such persuasion to be effectively encountered in negotiations. Another concept that deserves to be explored is that of rhetorical action (see Grobe, 2010; Risse & Kleine, 2010). Actors act as utility maximisers and rely on normative arguments to gain support for their preferred bargaining position. This type of instrumental arguing or rhetorical action proposed by Schimmelfenning (2001; 2006), requires the presence of at least one actor willing to change its preferences (see Risse & Kleine, 2010; Grobe. 2010). The main problem with this concept is that the reasons why certain arguments are more persuasive than others are not taken into account. However, the work offers insights into persuasion as a possible strategy for negotiators to influence the public and alter the EU negotiating position. For this reason, the scholarship examined here is valuable for the current study in so far as it can be related to strategy.

When discussing persuasion in Putnam's Two-Level Game (1988), Putnam seems to recall the feature of strategic persuasion considered as a collection of tactics that a negotiation party can be undertaken to alter perceptions of the other party's Level II. The so called "suasive reverberation", which consist in the attempt by a negotiator to affect the other party's Level II appears, for Putnam, to be more likely among allies (Ibid.). However, the scholar does not exclude that reverberation might cause negative backlashes. In addition to reverberation, another interesting concept is that of "restructuring", which seems linked to the ability to shape (in other words re-frame) the other party's perceptions about the cost of agreement or no agreement. Putnam also introduces the concept of "good will", which remains undefined but seems linked to the ability to persuade his/her Level II, given his/her high political standing (when present) (Ibid.). However, these considerations remain limited in their analytical potentials because they exclude how, for instance, how other stakeholders can affect, by persuasion, leaders' positions in the negotiations.

Within the constructivist realm, it is possible to distinguish between authentic persuasion and sincere persuasion (Grobe 2010). Persuasion when labelled as authentic is related to the willingness of actors to be persuaded by the best argument; they are involved in a truth seeking action. According to Thomas Risse (2000) there are three preconditions to be satisfied in order to authentic persuasion to take place:

- Condition 1. When involved in communicative actions, actors do not behave as utility maximisers but they are willingly to concede to the best argument, in other words they perform a truth-seeking function (Checkel, 2001; Risse, 2000).
- Condition 2. Sharing a 'common lifeworld' which represents 'a collective understanding to which they (actors) can refer when making truth claims' (Risse, 2000, pp.10-11)
- Condition 3. Perception of the other as equally entitled to participate and contribute. This conceptualisation has been put under scrutiny. Müller (2004 in Grobe 2010), for instance, argues that negotiators are not necessarily open and willing to change their views.

For authentic persuasion to take place a number of strict circumstances must be realised, which do not tend to be common or commonly detectable in real word negotiations. The concept of sincere persuasion finds its roots in Checkel's model of persuasion (2000, 2001). Persuasion, in this case, is described as 'a process of interaction that involves changing attitudes about cause and effect. It is, thus, a mechanism through which preference change may occur' (Checkel, 2001, p.562). Sincere persuasion may take place in the absence of coercion when uncertainty emerges and actors are more willing to examine new information.

In a more recent work, Risse and Kleine (2010) have developed a novel conceptualisation of persuasion. The starting point is that persuasion may also take place when actors involved in negotiations are not truth-seekers (Ulbert & Risse, 2005). Thus, persuasion will be understood as 'the prevalence of arguing, which involves a change in at least one of the actors strategies or preferences' (Risse & Kleine, 2010, p.711). This conceptualisation offers a valuable consideration. Whether actors are involved in truth-seeking or rhetorical action becomes less relevant as long as an effect is



produced either on the outcome or on the process of negotiation (Ibid.). Hence, the attention must be reverted to the conditions under which persuasion takes place. The argument made by Risse and Keine (2010) is helpful in the analysis of negotiation despite the fact that it limits the persuasion to the realm of negotiators. Despite the limitations of this scholarship and these specific conceptualisations, it is necessary to consider them in relation to the current research because persuasion is a constituent element of all negotiation processes and cannot be discounted in theoretical terms when evaluating how the EU negotiating position is affected during the negotiation process.

**2.2.3 Conclusions.** The section has explored the field of study in which the thesis is placed, ED here understood as the process of decision-making in international economic negotiations (Woolcock, 2011). The section has explored the three theoretical approaches applied to the study of ED (rationalist approaches, domestic approaches, and constructivist approaches). Although helpful, the rationalist approaches fail to represent the best approach to the study of TTIP in the manner conceptualised here. Thus, it is necessary to pay attention to the domestic-based and constructivist approaches, respectively.

As mentioned above, the starting point for this thesis is the acknowledgement that negotiations for an agreement are both domestic and international in nature. This conceptualisation leads one to explore the interplay among these two spheres. Thus, in order to develop a theoretical framework, it is essential to explore, firstly, the domestic structure of the actor negotiating the agreement (i.e. the EU) to understand the mechanism of the interactions and the plurality of the actors involved and, secondly, both the tools and arguments which can be employed to affect the EU position in negotiations and the conditions that may influence the likelihood of those arguments affecting the EU negotiating positions.

## **2.3 Interconnected Multidirectional Games (IMG)**

As mentioned in the introduction, the aim of this thesis is to analyse how consensus was reached within the EU with regard to the launch of the TAFTA/TTIP negotiations and what affected the EU negotiating position during the TTIP bargaining process. By drawing upon the existing literature on the Two-Level Game and MLG theory, this section will introduce Interconnected Multidirectional Games (IMG) as a framework for analysis; interconnected because the games take place in a complex web of interactions, and multidirectional because they take place both horizontally (i.e. at the same negotiation level) and vertically between different levels of negotiations. In order to analyse such a dynamic and multi-layered process, IMG remains rooted in the metaphors of the Two (Putnam, 1988) and Three Games (Patterson, 1997; Collinson, 1999), with insights from MLG (Mark & Hooghe, 2004), in order to capture more effectively the complexity presented by the EU. First, the section will explore one essential aspect of the negotiation process: negotiations do not happen in a vacuum (see Meunier & Morin, 2016). This claim has a major implication: understanding the international context in which the agreement is placed is essential. Secondly, it will illustrate briefly the main elements of MLG theory. While the Two-Level Game literature and insights from MLG define the structure of the theoretical model, in order to explore how the EU negotiating position is shaped, this section will finally explore the role of the frames and what affects their salience.

**2.3.1 International Context.** The international complexity in which the agreement is rooted requires one to explore the status of global governance in general, and global trade governance in particular. For the scope of this thesis, it is necessary to rely on a theory able to capture the broader picture of contemporary global governance and delineate the challenges manifest in the international context in which TTIP negotiations have to be placed. Events taking place at the international level 1.) affect the context (i.e. the status of the international trade regime) in which the actors are operating, 2.) affect the legitimacy and salience of frames related to the negotiation process. The theory used here describes global governance, as a whole, as gridlocked. According to David Held, Thomas Hale and

Kevin Young (2013), there are four pathways to the current global governance gridlock: growing multipolarity, institutional inertia, harder problems, and fragmentation.

The gridlock extends to security, trade, financial, and environmental governance hovering as a Damocles' sword on the future of the world's order as we have come to know it (see for instance Bremmer & Roubini, 2011). The irony in the current state of play, with reference to global trade governance (but this seems to hold true for other areas as well), is that its development which emerged in the aftermath of WWII, 'has enabled, but not kept pace with the evolution of the global economy' (Hale et al., 2013, p.157). The rise of emerging countries can be considered an unintended consequence of a 'deepening interdependence' resulting from the success of the global trade order (Ibid., p.29). A world with more economic powers can be understood as one of the (un)intended successes of the post WWII global trade architecture. However, such an outcome, although desirable in (some) absolute terms, has proved to make negotiation processes more difficult than in the past. This emerging multipolarity combined with the single undertaking rule seems to have led to institutional inertia (Ibid.). If, in the past (see Uruguay Round), the single undertaking helped to "touch base", later it has become the "torment of Tantalus" for international negotiators. Along with institutional inertia, harder problems have also manifested (Ibid., p.29).

The success of the old order has had a further practical manifestation: countries have managed to find compromise on the "easy" issues (Ibid). What remains to deal with is much more multifaceted and complex and it is further complicated by the intensity, extensity, velocity and density of globalisation (Ibid; see also Held et al., 2000). Thus, what has emerged from a multilateral deadlock has been fragmentation (Ibid.) and the quest, given the difficulty to push forward the global agenda, for bilateral, sectoral, and regional agreements (Aggarwal, 2016). Whether or not FTAs would prove a stumbling block or a stepping stone to a multilateral consensus (see Bhagwati, 1991; Baldwin, 2006; Ravenhill, 2011), the proliferation of new trade agreements simply qualified the new status quo of global trade governance. In addition, recent global trends also show the proliferation of new mega-FTAs. In addition to TTIP, countries have been engaged in two other mega deals: the Transpacific

Partnership (TPP) and the Regional Comprehensive Economic Partnership, which were both launched before TTIP. The first saw the US engaged in a negotiation process with another 11 countries, while the second deal is led by China.

Although one might argue that the proliferation of bilateral and regional agreements are not only a result of this global governance bottle-neck; but also a result of other political or ideological necessities (see Baccini & Urpelainen, 2015), the notion of gridlock surely informs the international context in which TTIP has to be placed. Fragmentation in trade governance might equally represent an “involuntary” window of opportunity. Negotiations of other deals (see for instance TPP, RCEP, and CETA) can also affect the process of negotiating TTIP into the other partner’s preferences and domestic constraints. All these considerations have thus informed a view of the negotiation process as affected by international developments while being deeply rooted in domestic interactions.

**2.3.2 Multi-Level Governance.** As mentioned above, the aim of this thesis is to explore what affected the EU negotiating position during the process of negotiating TTIP. It is useful briefly to consider Multilevel Governance Theory (MLG) to develop a broader understanding of the functioning of the EU. MLG offers an additional way to conceptualise and understand EU governance, and, thus, it offers a possible context in which Putnam’s model can be inserted and updated to grasp the new complexity with which the EU presents us. The section will briefly present the MLG insofar as this is useful for the purpose of the thesis.

MLG Theory started developing in 1990s with Gary Marks’ work, and since then has been an object of a conspicuous analysis (see Marks, 1993; Marks & Hooghe, 2004). It was born to offer an alternative view on European Integration, a field previously dominated by Functionalist and Intergovernmentalist analyses. Marks and Hooghe argued that MLG ‘is chiefly concerned with the relationship between [a] central government and a tier of non-intersecting subcentral governments’ (2004, p.17). With this definition they have advanced the idea of complexity and multi-actor participation to EU governance. Schmitter describes that MLG represents:

[A]n arrangement for making binding decisions that engages a multiplicity of politically independent but otherwise interdependent actors, private and public, at different levels of territorial aggregation in more or less continuous negotiation/deliberation/implementation and that does not assign exclusive policy competence or assert a stable hierarchy of political authority to any of these levels (2004, p.49).

The first part of this conceptualisation reveals similarities with the definition offered by Marks and Hooghe (2004). The typology of governance described by Schmitter does not recognise a stable hierarchy. It is the argument here that the structuring of the EU decision-making systems privileges some actors over others. The privileged position can be reflected in the effective power to make decisions rather than simply affecting them. The levelling of hierarchy can be also rejected in the analysis of the interaction between institutions since each of them presents different competencies to intervene in the process of decision-making at different moments according to the issue under consideration.

According to Piattoni, MLG can be understood as a research paradigm focused on the following three developments: 1.) political mobilisation, which takes place not only within ‘institutional boundaries and through conventional procedures’ but also ‘across these boundaries and outside these procedures’ (2009, p.2); 2.) policymaking: the separation between policymakers and others has been “tampered”. More actors qualifying as stakeholders may affect the decision-making process; 3.) the polity. Policy decisions are increasingly less qualified ‘as fixed’ (ibid.). This is because ‘institutions [...] and procedures are constantly tinkered with by the decision-making processes themselves’ (Ibid.). The most relevant consideration made by the theory is its challenging the idea that ‘non-state interests’ could affect the EU decision-making process ‘only through state representatives’ (Ibid., p.6).

The main critique posited by MLG against the Two-Level models has been that of focusing only on two levels and offering an overly-simplistic analysis of the much more complex EU system. The critique against the Two-Level model, although not intended towards its application to the negotiation process, may be still considered valid when the Three-Level model is taken into account; hence, when the role of Member States is overly emphasised and constitutes per se Level II of

analysis. Although a number of critiques are moved against a Two-Level model, the Putnam's model, when applied to negotiations between the EU and a third party, does not appear to be incompatible with MLG as section 2.4.2 will explain.

**2.3.3 The three levels of analysis in ING.** The IMG framework comprises three main levels: Level I, Level II and Level III. Level I encompasses negotiations between the EU and the US. The process of negotiation has been, in fact, described by Putnam as national governments attempting to 'maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments' (1988, p.434). This section will explore the three levels of negotiations.

Level I comprises the negotiations between the EU and the US. In understanding Level I it is necessary to consider the international context, and in particular, trends of global governance gridlock, how this might affect negotiations at Level I, the preferences of state agents, and negotiation framing. In order to define Level II and Level III it is necessary to draw from MLG theory and incorporate considerations by Collison (1999) and Piattoni (2009). Gary Marks and Liesbet Hooghe, among the most prominent scholars of MLG theory, have described the EU as '[a] multi-level polity (...) that delivers, or codelivers, several of the chief outputs of government' (2004, p.1). This thesis does not agree with the Schmitterian considerations (see section 2.4.1) regarding the missing of a stable hierarchy of political authority operating at multiple levels. A predominant peculiarity of trade negotiations is that there is a clear operational-institutional structure at the EU level, which represents the skeleton of the process into which other actors (e.g. NGOs, business groups, etc.), apart from institutions, participate.

To define Level II, I rely on the work of Sara Collinson (1999). The scholar, in an attempt to revise the Putnam's model, argues that Level II should encompass negotiations 'between governments represented in the Council of Ministers and between the institutions and committees and other bodies within the principal EU institutions' (1999, p.217). Hence, it is necessary to further

specify those committees and bodies. The community level, thus, should encompass all interactions amongst the EU institutions. Level II can then be described as a nested game with four main dimensions: 1.) Inter-institutional negotiations between EU institutions (see Figure 2.1); 2) Hybrid institutional negotiations comprising the bargaining process between an EU institution as a whole and a sub-institutional body in a different EU institution (e.g. Commission and a Parliamentary Group, PG) (see Figure 2.2); 3) Meso-institutional negotiations between sub-institutional bodies in different EU institutions (e.g. between the PGs and DGs) (see Figure 2.3); and 4) Intra-institutional negotiations taking place within one EU institution (e.g. between PGs) (see Figure 2.4).

In this approach, it is also necessary to distance from Scharpf's (2006) consideration of the Commission as a consensus facilitating power and its ability to be recognised as an honest broker. Although these considerations have been elaborated in exploration of the Theory of European Integration, the role of the Commission as an honest broker has been recently put under scrutiny by the general public and the empirical chapters will underline.

Figure 2.1. Inter-institutional Negotiations

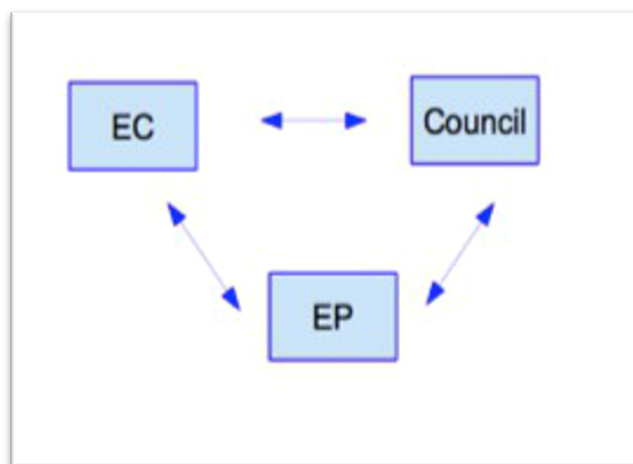


Figure 2.2 Hybrid-institutional Negotiations

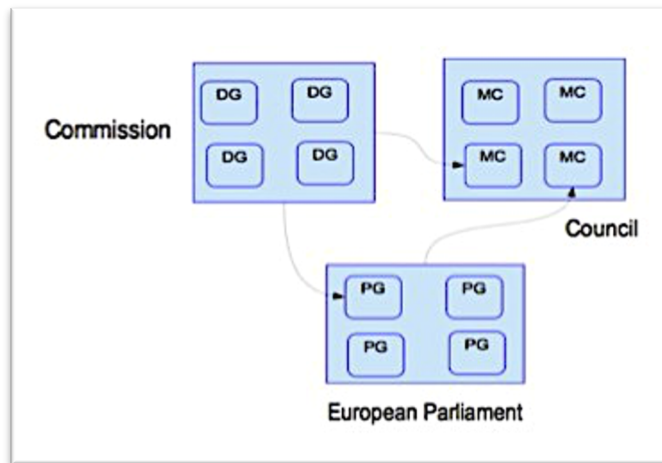


Figure 2.3 Meso-Institutional Negotiations

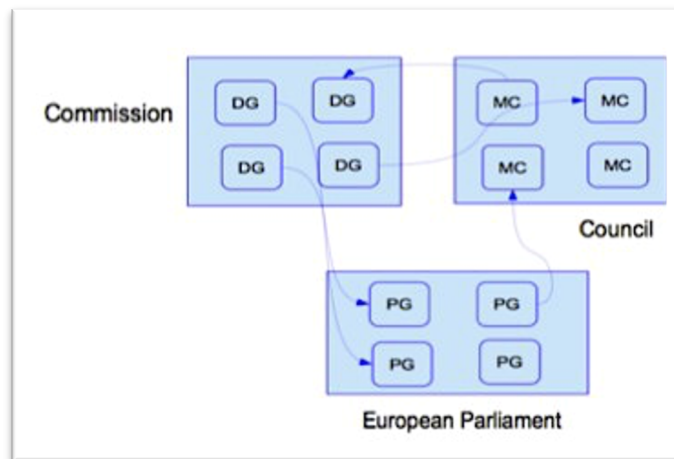
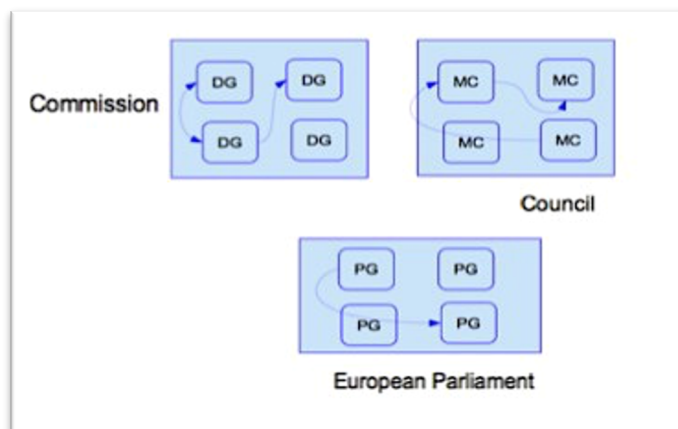


Figure 2.4 Intra-Institutional Negotiations

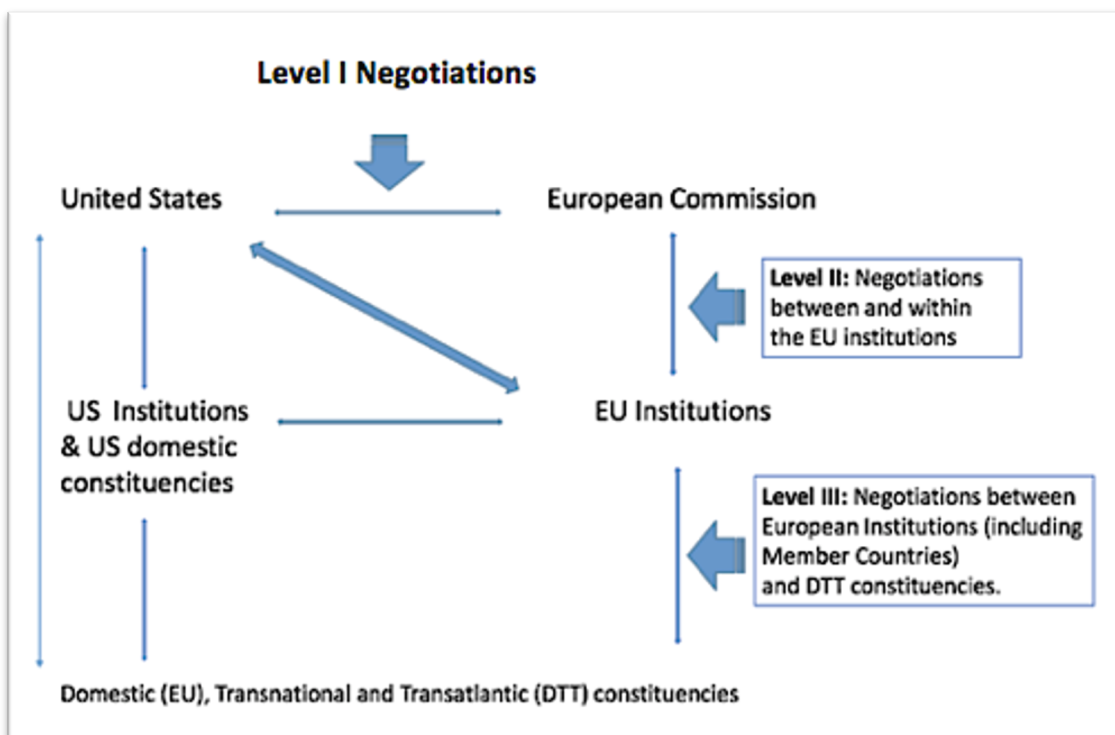


Level III, on the other hand, encompasses 1.) negotiations between Member States on one side and constituencies (trans-national, transatlantic, and domestic) on the other; and 2.) negotiations taking



place between the three EU institutions and domestic, transatlantic, and transnational constituencies. To define Level III, more specifically, one may rely on the consideration of Rainer Eising who argues that ‘(m)ultilevel governance implies many interactions among private and public actors both at the national and the EU level’ (2004, p.216). Thus, one might conceive this level as comprised by what this thesis describes as “diffuse action” that affects the process of negotiating TTIP. Figure 2.5 below offers a stylised version of the IMG.

Figure 2.5 The IMG



Source: Putnam, 1988; Patterson, 1997; Aggarwal and Evernett, 2015

At the top, one can see the Commission and the US negotiating the content of TTP. Level II (on the middle-top right) includes negotiations happening between and within the EU institutions. Level III (low right side) includes negotiations between EU institutions and domestic, transnational and transatlantic stakeholders. The emergence of transnational constituencies such as international advocacy groups, multinationals, and transnational epistemic communities, external actors (e.g. third countries) which feed from and are affected by these increased interconnections, give birth to a complex web of games operating in Level III.

As originally recognised by Putnam (1998), a party is able to affect the other party's constituencies. As the figure shows, the entire negotiation process is affected by interactions with the US at all levels (left side of the figure). Thus, the EU can exert influence on US negotiators and US constituencies in order to affect the US negotiating position; likewise the US might influence the negotiation process within and between all EU levels. Although the US side will not be at the centre of the analysis, given the nature of the case study, it will be necessary to explore the position of the US and US constituencies and how they might affect or align with by EU Institutions and constituencies.

**2.3.4 The Actors in IMG.** So far, the section has illustrated how the interaction between the international level and the domestic level will be analysed. However, in order to analyse how the domestic level (and EU level) and the international one interact, it is equally relevant to define the actors involved in the process and consider how those actors may have an impact on the EU negotiating position. In terms of actors, this study will draw on insights offered by MLG (see Marks, 1996) and expounds an approach that is actor-centric rather than state-centric, meaning that states are not the only actors involved in the negotiation process at Level II. Overall, MLG, by recognising the EU as a complex organism interacting through 'overlapping structures of governmental and non-governmental elites' (Wessels, 1997, p. 291), encourages one to consider a plurality of actors beyond the state(s). However, MLG offers a limiting view of institutions understood as 'sets of commonly accepted formal and informal norms that constrain political actors (individuals and groups of individuals) who are the only agents capable of goal-orientated action' (Marks, 1996, p.22). While institutions should be considered as 'providing resources and constraints for diverse political actors' (Ibid.) they should be also considered as actors – having a specific (albeit collective) will. This position does not exclude the possibility of competing views within the institution wherein different bodies or agents push toward specific ends inside and outside the institutions itself. Marks also argues

that ‘the interests of sub-national actors cannot be deduced from any institutional positions they hold’ (Ibid., p.29) which is not necessarily the case.

There is the need to recognise that, as Trondal (2001) has shown institutional affiliation may affect the way agents working within an institution process information and therefore perceive issues as well as interactions concerned with said issues. This might be valuable to identify contrasting preferences within the European Commission according to the different DGs, and the behaviour of political parties within the European Parliament for instance. On the basis of what is argued above, one can distinguish among three categories of EU actors:

- The negotiation body: the Commission (especially DG trade) and the US Trade Representative. Negotiators are not understood as unitary actors but as having their own set of preferences. Especially with regard to the EU, MLG has emphasised the non unitary nature of the Commission, often characterised by competing views among different DGs.
- The gate-keepers (or veto player): European Council and the European Parliament;
- Pressure actors: intra-institutional actors and pressure groups:
  - Intra-institutional actors: Member States, DGs, and EP's parliamentary groups, and various committees; and
  - Pressure groups: domestic and transnational constituencies (e.g. Business associations; NGOs, Business corporations, etc.).

It is important to emphasise that the pressure (intra-institutional) actors have a direct voice in the EU decision making process but their interests do not necessarily overlap with those of the institution to which they belong. The Lisbon Treaty sanctioned such a transition of authority by conferring to the European Parliament the role of gate-keeper in trade and investment negotiations.

Defection within a group is not common at the EU level; however, there are exceptions. The strong discipline of European parliamentary groups within the EP is likely to have a greater influence in determining aggregated positions at the EP level than the preferences expressed by governments.

When specific interests of domestic constituencies may compromise re-election, defection is still a viable option.

There is an additional aspect to consider: the role of Member States. The debate around the mixed nature of TTIP raised the issue of whether national parliaments might qualify as veto players. Field research has suggested that even if the agreement is not approved in each Member State, it will enter into force in the matters in which the EU has exclusive competence. However, more recently, Commissioner Malmström (2017), in a written answer to MEP Emmanuel Maurel, argued that ‘[s]ince CETA was adopted by the Council as a mixed agreement, it can only enter into force fully and definitively when all EU Member States have ratified the Agreement in line with their national procedures’. Therefore, if TTIP negotiations were to resume, this element would be likely to inform the proceedings.

Additionally, along with the EU actors we need to distinguish among US actors: the United States Trade Representative (USTR), the negotiating body; the Gatekeeper, the US Congress; Internal Institutional actors (e.g. Congressional Committees) and pressuring groups (e.g. NGOs; business groups, etc.).

**2.3.5 The theoretical elements embodied into the IMG framework.** Having clarified the structure of the IMG (i.e. Levels I, II and III) model and defined the actors involved in the negotiation process, it is necessary to explore further how the opposing arguments, reflecting different preferences, might have affected the EU’s negotiating position and the process of consensus gathering for TTIP. The framework adopted relies mainly on Busby’s work but also draws on other theoretical contributions (Benford & Snow 1988; 2000; Chorev, 2007) to develop a broader set of elements to be taken into account when analysing the frames during the TTIP negotiations. The analysis here is based on the assumption that ideas provide interpretative structures, which by conferring meaning to values and preferences (Carstensen & Schmidt, 2016). The question now becomes: why are certain frames more salient than others? In other words, when are they more likely to generate an impact on the EU

negotiating position? Although a number of scholars adopt different interpretations in order to analyse the elements that affect the salience of the frames, here the framework of analysis is mainly focused on a negotiation process involving a plurality of actors. The original contributions by Busby (2007) and Snow and Benford (1988; 2000) focus mainly on how civil society can affect the policy-makers' decisions. Here the elements mentioned are instead explored with regard to the interactions among all of the actors involved in the negotiation process. Thus, the framework is updated and adapted to the study of TTIP along the lines discussed above. First, the section will briefly recall Busby's work and, secondly, re-elaborate on several of the factors that are considered to affect the process of gathering consensus within the EU with regard to the launch of negotiations and the impact on the EU's negotiating position.

Busby, as explored in section 2.2.2c, has identified six conditions in order to explore the salience of the frames and thus their increased ability to affect the EU negotiating position and propensity to launch negotiations: a permissive international context; focusing events; a cultural match; supportive gate-keepers; the reliability of information; and the cost of political action. The conditions are here re-elaborated, integrating insights from Benford and Snow (1998; 2000) and Chorev (2007). They are developed as follows:

1. Permissiveness of the international context. This concept follows Busby's original formulation. In order to explore the permissiveness of a political action, it is necessary to consider whether or not the international context might be more conducive to the adoption of a political choice. Geopolitical, strategic elements and the impact on global trade governance might play a key role in understanding the extent to which the TAFTA/TTIP initiative could be welcome and/or legitimised.
2. Focusing events. Certain socio-economic and security events might generate exogenous shocks and, as a result, shake certain beliefs and increase the emphasis on the necessity to achieve change (Sabatier, 1998; Surel, 2000). Focusing events might exert a positive or

negative impact on the salience of the frames. Thus, it is argued here that they can be distinguished in positive and negative focusing events.

3. Supportive veto players. Since the aim of the thesis is to explore the effects on the EU negotiating position not only triggered by civil society initiatives, it is necessary to consider how multiple actors attempt to ensure the support of the main veto players. This category includes that of a cultural match between the gatekeepers and pressure groups and that of supportive gate-keepers, as developed by Busby (2007). The support of the main veto players can be linked to a cultural match or other events and factors, such as a persuasive campaign, institutional arrangements, focusing events, etc.
4. Credibility of the frame: The concept of reliability, as developed by Busby, can be equated to that of credibility, as explored by Snow and Benford (1988; 2000). The credibility of the frames depends on the credibility of the source and the consistency of the frames, which refers to the emergence of discrepancies between ‘beliefs and claims’, and the empirical credibility of the frames (i.e. whether they appear valid and real) (Ibid., p.620). In this context, it might be useful to consider the impact of opacity on a negotiation process. In an attempt to understand why agricultural policy remains highly protected in industrialised countries, Jensen and Shin (2014) argue that opacity might have a positive impact on the capacity of politicians successfully to frame a given issue. Opacity refers to the condition under which voters possess fragmented, unclear knowledge about a specific policy or decision and, thus, the policy-makers tend to have more room for manoeuvre in order to shape the discourse in a way that will support their political objective (Ibid.). Thus, the lower the opacity, the less room for manoeuvre for the policy-makers. However, opacity might also be a double-edged sword in the hands of policy-makers, since it can be framed as a tactic that is employed to pursue gains which are considered to oppose the general well-being. Thus, in other words, opacity might undermine the credibility of the source of the frame when it is the promoter of political action.

5. Political cost of action. Variations in the cost of political actions can be affected, according to the argument developed in this section, by the situational and structural positions of the actors and the level of heterogeneity of the preferences. Chorev (2007) argues that institutional arrangements might affect the situational position (e.g. material resources, political strategies, access to the decision-making process, etc.) and the structural position (i.e. dependence on the state for the economic activity of the group) of actors. While relevant, it is necessary to acknowledge that other factors might have an impact on the situational and structural position of pressure groups. The situational position might also be affected by the political relevance of a group to a governing party or its relevance regarding future elections. As far as the structural position of certain groups is concerned, it is also necessary to consider not only the level of economic dependency on the government but also their position and competitiveness within the global economy and the extent to which the government might have an impact on that. Another element that can affect the political cost of action is the level of heterogeneity and homogeneity of the preferences. Putnam (1988) argued that heterogeneity might grant the negotiators an opportunity to build different coalitions in support of a given position. When preferences tend to be significantly homogeneous, the negotiators are left with limited room for manoeuvre. Discounting homogeneous preferences might lead to involuntary defection (i.e. negotiating an agreement that will not be ratified at home).
6. Institutional arrangements. The role of institutions in affecting the EU negotiating position has been widely recognised by Putnam (1988). According to Chorev (2007), when the state officials are not independent, they will be more inclined to be affected by interest groups with a better situational position. When, instead, policy-makers are isolated, they will either be mainly affected by the preference of the institution or institutional branch in which they operate, or will disregard both (Ibid.). For Chorev (2007), institutional settings also affect which branch of government might matter the most (Ibid.). When considering the EU, it is

necessary to acknowledge the impact of the Lisbon Treaty and the consequent role attributed to the EP, which have made the arguments of the EP increasingly more significant. The fear of involuntary defection compels the Commission to pay attention to how the EP frames' aspects were related to the TTIP negotiations. Moreover, Art. 207(4)(a) and (b) of TFEU requires that Member Countries rely on a unanimous vote when negotiating cultural and audio-visual services as well as social, education and health services. In brief, the article grants (albeit conditional)<sup>12</sup> veto powers to Member Countries and defines a number of constraints, which might support or limit the salience of frames. Moreover, the idea that institutional arrangements might insulate certain institutions/decision-makers from societal interests has also been explored in the literature concerning the EU. Some argue, for instance, that the Commission has been vastly insulated from protectionist pressures (see Meunier, 2005) while others claim that such insulation has never fully taken place (see Dür & Mateo, 2016). This thesis adopts a middle ground position by arguing that, although the Commission appears to be less "vulnerable" to domestic pressures, these may still prove strongly influential. The degree of influence is dependent on a number of factors, such as the economic strength of the actors, public awareness, shared preferences, etc.

7. The degree of reflectiveness of the frames. The concepts refer to the extent to which certain frames are more likely to be considered to exert an impact on everyday life. *Ceteri paribus*, the higher the perceived degree of reflectiveness, the more likely an increase in the salience of the frames. This concept echoes that of centrality (i.e. the extent to which certain beliefs are central to the targets of the framing processes), experimental commensurability (the perceived degree of impact on everyday life) and narrative fidelity (i.e. the resonance within the cultural narrations or myths), as explored by Snow and Benford (1988). This last concept is particularly relevant to the study of the TTIP negotiations. For instance, the myth of a

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<sup>12</sup> The Member Country has to explain how negotiating the mentioned services constitutes a prejudice to 'cultural diversity' (Art. 207(4)(a)) and the ability of the Member Countries to 'deliver them' (Art. 207(4)(b)) (see also Schütze, 2015).



Social Europe or Green Europe,<sup>13</sup> which developed alongside the integration process, might appear relevant for anchoring the reflectiveness of certain frames to certain beliefs and values that are vastly diffused within the EU.

One of the key elements to note when exploring the salience of the frames and the impact on the EU negotiating position, as a response to the increase in salience, is that the EU is involved in a bilateral negotiation with the US. In other words, when confronted with a salience of frames requesting a change in the EU negotiating position, the Commission must balance the risk of involuntary defection with the possibility of a lack of agreement. This thesis will explore how the Commission attempted to balance these two necessities. The empirical analysis will also reveal which of these elements appeared more consistently to explain the changes in the EU position in the negotiations and whether or not it is possible to identify the common trends in the negotiation of TTIP that may prove useful to the study of EU trade policy in the future.

**2.3.6 Conclusions.** The present study, by adapting the Putnam model with MLG theory, intends to analyse what affected the development and the content of the EU negotiating position. The necessity to combine Putnam's model with insights from the MLG theory is made necessary by the case study under consideration: TTIP negotiations from a EU perspective. TTIP is first of all an international agreement negotiated between the US and the EU but the complexity of the EU decision making process makes it necessary to expand the conceptualisation of Level II by relying on MLG theory. MLG theory allows one to move beyond the state-centric approach of Putnam's Two-Level Game (1988) and introduce an idea of EU as a complex entity interacting through 'overlapping structures of governmental and non-governmental elites' (Wessels, 1997, p.291). The IMG develops on three levels: Level I (negotiations between the EU and the US), Level II (negotiating within and between

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<sup>13</sup> Both the concepts of Social Europe and Green Europe assign the EU a special role in protecting social standards and developing an economic model that does not discard environmental responsibility (see Della Sala, 2016; Lynggaard, 2017).

EU institutions) and Level III (negotiations between EU institutions and constituencies). In addition, in order to explore how the domestic level and the international level interact in the process of negotiating TTIP and shape the EU position, the IMG model attempts to take into account some of the theoretical tools introduced in the previous sections. The framework of analysis, drawing on the work of Busby (2007), Chorev (2007) and Snow and Benford (1988; 2000), defines seven conditions that can affect the salience of the frames. The thesis, in the empirical analysis, will then address how salience might affect the shape of the EU negotiating position and which of the specific trends among the elements mentioned (if any) can explore the impacts on the EU position.

## **2.4 Conclusion**

The TTIP negotiations, as argued above, represent a unique opportunity for the study of European Trade Governance and ED. In fact, despite hopes and fears associated with the negotiations, one could safely argue that the relevance of the agreement (for better or for worse), and thus its relevance in scholarship terms, cannot be easily discarded. This chapter, taking into account these elements in order to propose a theoretical framework for analysis, has first located the study of TTIP in the field of ED, here understood as ‘the process of international economic decision-making’ (Bayne & Woolcock, 2011, p.1). Next, this chapter offered an overview of the theoretical tools applied to the study of ED: Rationalism, Domestic Approaches and Constructivism examining their defining elements and deficiencies. Among them, Putnam’s model (Level I international; Level II domestic), located within the domestic-based approaches, represents the starting point for the analysis of how domestic and the international levels interact in TTIP negotiations. It is worth mentioning that the level of complexity of the EU decision-making process has brought scholars (see Patterson, 1997) to extend the model to a three level variant (i.e. Level I international, Level II community, Level III domestic). However, this adaptation of the model is insufficient for an inquiry of this kind as the state-centric approach is excessively limiting and does not allow one to take into account the complexity of actors involved in the process of shaping the EU negotiating position. Therefore, this

study takes particular account of MLG (with its emphasis on the EU as a multi-level polity), in order to broaden the focus beyond only the state. The principal output to be taken from this chapter is the presentation of Interconnected Multidirectional Games as a novel framework of analysis; constituted by an updated version of Putnam's model placed into the broader context of MLG theory, with additional theoretical variants considered as they have been identified as relevant. This framework entails three explicated macro levels of analysis: Level I: International; Level II: Inter-institutional negotiations; Hybrid-institutional negotiations, Meso-institutional, and Intra-institutional negotiations; Level III: diffuse action. Within the three level structure defined above, in order to understand the impact of the competing arguments and elements affecting the salience of the frames and the contours of the EU negotiating positions, this thesis relies on the work of Busby (2007), Chorev (2007) and Snow and Benford (1988; 2000). In particular, it will consider the seven conditions (i.e. a permissive international context, focusing events, cost of political action, supportive veto players, institutional arrangements, the degree of reflectiveness of the frames, and the credibility of the frames) in order to explore how the Commission balanced the risk of involuntary defection with that of a failure to reach agreement. In sum, this chapter sets the theoretical backdrop against which the following study will be carried out.

### **3. Methodology**

#### **3.1 Introduction**

The analysis of the methodology and methods, which is developed in this chapter, follows that of the existing scholarship, outlined in Chapter 1 and the development of the theoretical framework in Chapter 2 (i.e. Interconnected Multidirectional Games, IMG). The theoretical framework, as specified in the previous chapter, relies on a combination of Putnam's Two-Level Game (and its adaptations for the study of the EU) (see Putnam, 1988; Patterson, 1997), and the study of the salience of frames as a tool for affecting negotiating positions. As mentioned in the previous chapters, the aim of this thesis is to explore what made possible/facilitated the launch of negotiations and how the EU position in negotiations was altered during the bargaining process. An investigation of the methodology and research methods then becomes necessary before proceeding with the empirical analysis of the case study, since the choice of a methodological rubric deeply affects how a study is understood and carried forward.

A methodological tradition allows for the understanding of the principles underpinning the procedures of inquiry, and thus, offers the 'broad grounding' that 'good work' requires in the social sciences (Gerring, 2011, p.xxii). Unsurprisingly, different scholars adopt different classifications of paradigms (see Creswell, 2013). That said, the classification adopted in this study follows that of Grix (2010) and Moses and Knutsen (2007), according to whom, Positivism, Constructivism and Critical Realism are to be considered 'the three core research paradigms' (Grix, 2010, p.87). This research will rely on Critical Realism as a methodological tradition, which pays attention to the exploration of causal mechanisms leading to an outcome (or no outcome), how they develop, and when and how they are activated (i.e. generative causality) (Sayer, 2000).

Positivism, by dismissing the idea that the world is socially constructed, fails to match the ontological foundations of this study, which implements a framework of analysis that recognises the relevance of values and meanings attached to social reality. However, this thesis is not simply

oriented toward a process of understanding how the interaction is inter-subjectively shaped (as reflected in Constructivism), but also engages in a more generative-type of causal analysis (i.e. the generative model of causality consists of mapping the mechanisms that ‘make things happen in the world’ (Danermark, et al., 2002, p.206 in Reed, 2009), which raises a need to explain the mechanisms (where possible) that underline certain phenomena. These considerations do not allow one to ascribe the present thesis fully to either the positivist or constructivist traditions, but make it necessary to consider a different paradigm: Critical Realism.

This chapter will proceed as follows: firstly, it will define the concept of methodology, consider the main methodological debate between Positivism and Constructivism, and introduce Critical Realism, upon which this thesis will rely. The second half of the chapter will explore the choice of the case study and clarify the typology of the research methods. In particular, this thesis will rely on 1.) documentary analysis in order to identify preferences, changes in preferences, what might inform preferences, how and if preferences alter, how preferences have been absorbed by other actors, and modes of interactions; 2.) interviews will offer addition information regarding the negotiation process and preferences and will also help to triangulate the findings that emerge from the documentary analysis; 3.) discourse analysis will help to explore and understand the use of frames during the negotiation process; 4.) descriptive statistical analysis will make it possible to explore the recurrence of themes and add findings on how the preferences and frames have developed over time. Finally, the chapter will present the conclusions.

### **3.2 Methodology**

The key element in approaching a methodological chapter is to recognise that the choice of one methodological tradition over others implies: 1.) a different understanding of the social world and 2.) a different use (and understanding) of research methods to come to know social reality (Moses & Knutsen, 2012). According to Milton Friedman, ‘more than other scientists, social scientists need to be self-conscious about their methodology’ (1953, p.236). Methodology can then be described as the

ways in which we gather knowledge. More specifically, it ‘is concerned with the logic of scientific enquiry’ being ‘the overarching philosophical term concerned with the origin, nature and limits of human knowledge, and the knowledge-gathering process itself’ (Grix, 2010, p.32). Choosing a methodological tradition then implicates a specific view of the social world and, therefore, a specific use of research methods. Once the choice of methodology is set, then ‘the choice of methods becomes merely a tactical matter’ (Waltz, 1979; 2010, p.13).

The purpose of the following section is to explore the debate between Positivism and Constructivism and introduce a third way that helps to overcome the limitations that characterise the two established methodological traditions: Critical Realism, Positivism, Constructivism and Critical Realism are considered to be the three main methodological traditions (see Grix, 2010; Moses & Knutsen, 2007). Critical Realism, in particular, seems to offer the potential to overcome issues associated with the two other rubrics and offers room for a less deterministic, more structure-agency and causal oriented research tradition.

**3.2.1 Positivism.** Positivists argue that, given the existence of a real world independent of us, it can be explained through observation and falsification (Moses & Knutsen, 2012; Furlong & Marsh, 2010). This research paradigm has deep historical roots. It dates back to Aristotle and have among its major advocates: Francis Bacon, Auguste Comte, Thomas Hobbes, David Hume, John Stuart Mill, and Emile Durkheim (Grix, 2010). The section will explore the defining feature of Positivism. Secondly, it will illustrate the implications stemming from the adoption of such a paradigm, thirdly explore the ranking of methods and, finally, portray the limitation stemming from the adoption of such a methodological tradition in the thesis.

This research rubric is a broad domain and what follows is an attempt to identify roughly the complexity of a multifaceted tradition. Starting from this premise, a defining aspect of this methodological rubric is: the elaboration of hypotheses with dependent and independent variables, their operationalisations, and testing. The process of testing should imply verifiability (i.e. the

replicability of the process by others, and is understood as a key element in order to gain legitimacy of the study) (Grix, 2010). The relevance of verifiability is, in fact, implied in what positivists consider possible to know. Since the researcher's aim is to identify regularities, replicability of tests should be welcome in order to certify the validity of a claim (Moses and Knutsen, 2007).

Positivism has specific implications when applied to social science. As argued by Tim May, 'social life may be explained in the same way as natural phenomena' (1993, p.5). The result of the process of investigation should then lead to 'a set of "true", precise and wide-ranging "laws" [...] of human behaviour' (Ibid.). A positivist methodology, hence, implies the process of seeking common patterns in the real world through the collection of data and testing. This should allow positivists 'to account for individual events in the past and predict events in the future' (Moses & Knutsen, 2007, p.51). Reality is then operationalised in terms of 'causes and effects' (May, 1993, p.5). For Positivism the approach to causation is, as Sayer has defined it, 'successionist', meaning that 'it involves regularities among consequences of events' (2000, p.13).

Considering the centrality of measuring and testing in the positivist approach, a hierarchy of methods can be advanced. The classification of methods is based on the control capacity that each method ensures to the observer. In this classification, the experimental method gains primacy because of its 'ability to control and order causal and temporal relationship' (Moses & Knutsen, 2007, p.51). Among the non-experimental methods, there are methods based on statistic, comparative analysis and case study (Ibid.). It is beyond the purpose of this chapter to offer a complete overview of each method listed here. However, the discussion surrounding methods as applied by positivists is helpful in order to determine on what grounds other methodological paradigms distinguish themselves. In fact, while the experimental method is treated by positivists as the best option, case study, the selected approach for this research, is placed at the bottom of the scale because it offers limited room for verification (Ibid.). This is not to say that Positivism has not successfully been applied when focusing on a single case study, but that this type of analysis has been considered as a less than ideal or suitable approach.

There are several additional limitations to consider in relation to Positivism in regard to the aim and purpose of this thesis. For positivists, facts are classified ‘as objective social reality’ while values and beliefs are treated as having a ‘merely subjective status’ (Hughes, 1990, pp.115-116). This is not to say that those beliefs do not generate any impact in what is understood to be the real world but that the social world is made of “brute facts” (i.e. facts, structures, institutions, etc.) (Ibid.). Positivism would imply that ‘there is a social reality that can be discovered in each society independently of the vocabulary of that society, or indeed, any vocabulary’ (Taylor, 1978, p. 174 in Hughes 1990, p.116). In contrast with the positivist understanding of reality, this thesis considers the development of the EU negotiating position and alterations in a manner that cannot be understood without considering the meanings, values, and the language of the multiple actors and institutions intervening in the process. It is also worth considering another limitation of Positivism related to 1.) the possibility for an observer to be completely objective and, 2.) the implication stemming from adopting a “successive” understanding of causality. If a causal pattern can be established for a chemical reaction, for example, it is worth asking whether or not we can argue the same for social reality. In other words, can a causal mechanism of fixed relationships be considered equally detectable in the social world (Moses & Knutsen, 2007)?

Despite the critiques advanced in these last paragraphs in relation to this methodology, it is necessary to recognise the value of Positivism, the contribution to the literature, and the rigorous analysis that has characterised this paradigm in the study of social science which, also because it is able to ensure external validity, has informed policy-making process and policy recommendations. As this research project understands social constructions to be an essential part of the negotiation process, it is necessary to consider other methodological traditions.

**3.2.2 Constructivism.** Having emerged as a reaction to the dominance of Positivism, Constructivism is a broad term for a number of nuanced perspectives on human reality. As argued for Positivism, under the constructivist-umbrella, a number of “sub-approaches” can be included. The world, for the



constructivist perspective, cannot be perceived 'as it is' (Moses & Knutsen, 2007, p.11). Since each of us experiences reality differently, the process of investigation implies the discovery of multiple worlds, a process in which the observer plays a central role (Ibid.). In other words, there is not such a thing as "the real world" but a number of real worlds shaped by human agency. Constructivists, instead of being involved in a process of objective observation to uncover the one real truth, recognise the divide between the natural world and social reality and act as a result of this understanding. In other words, constructivists seek to investigate the 'human consciousness and its role in international life' (Ruggie, 1998, p.856 in Finnemore & Sikkink, 2001, p.392). The "founding fathers" of this research paradigm are Gian Battista Vico, Immanuel Kant, G.W. Hegel, Karl Marx and Max Weber, Ervin Goffman among others (Grix, 2010; Hughes, 1990). The aim of this section is to identify the most salient contours of this broad paradigm. This section will first explore the defining features of Constructivism, then consider the use of methods and, thirdly, address the possible limitations stemming from the application of this tradition to the current thesis.

Since Constructivism has emerged as a reaction to Positivism, in relation to three main issues (i.e. objectivity v. objective-subjective duality; predictions v prediction discounting; causal explanations v. constitutional causality) we may understand the depth and the implications stemming from the choice of one tradition instead of the other (see Finnemore and Sikkink, 2001; Hughes, 1990). In a first place, constructivists reject objectivity, which is a primary concern for Positivism, in favour of a duality of subjective and objective (Hughes, 1990). For Constructivism, social reality is a "human by-product"; thus, since each human being experiences the world differently, a social world made of law-like terms cannot exist (Moses & Knutsen, 2007).

In the constructivist realm, social constructions can be only addressed throughout investigator-investigatees interaction (Guba & Lincoln, 1994). Hence, constructivists, undertaking their research 'generate or inductively develop a theory or pattern of meanings' (Creswell, 2013, p.9). Secondly, in contrast to their positivist counterparts, constructivists are not concerned with predictions to be tested but with the understanding of social facts, which 'have no material reality but

exist only because people collectively believe they exist and act accordingly' (Finnemore & Sikkink, 2001, p.393). Finally, constructivists tend to be less concerned, in comparison with positivists, with causal explanations. In fact, for Constructivism the necessity to understand is prioritised vis-à-vis the necessity for the establishment of causal links (Grix, 2010). Finnemore and Sikkink (2001) elaborate more on this point arguing that Constructivism is concerned with a different type of causal explanation, which is called "constitutional causality". More specifically, by understanding the 'constitution of things' it is possible to realise 'how things are put together makes possible, or even probable' and explore 'certain kinds of political behaviour and effects' (Ibid., p.394). In this sense, it may be argued that 'constitution' is 'causal' (Ibid.).

These considerations (i.e. reliance on interpretation, focus on social facts not prediction, a different causal understanding) lead to a different use of the same methods of those adopted in natural science. If the premise for constructivists is that reality is a 'social construction', then the preferred method should be that of 'open-ended questioning', since constructivists try to 'address the "processes" of interaction among individuals' and focus on the context 'to understand the historical and cultural setting of participants' (Creswell, 2013, p.25).

Quantitative methods are not rejected by the constructivist tradition which, in some cases, relies on both qualitative and quantitative research (Finnemore & Sikkink, 2001). Comparative methods and case study are, for instance, common in the constructivist tradition although employed differently (i.e. without the necessity for generalisation and abstraction, theory testing, etc.) (Creswell, 2013).

Among the main critiques advanced in relation to Constructivism, there is the limited verifiability of constructivist claims. Although constructivists 'have implemented some systemised research methods', one of the main problems associated with a constructivist rubric is that 'an ordered and consistent methodological framework that coherently combines different methods is very rare' (Lupovici, 2009, p.195). This critique is shared by other scholars (e.g. Easton, 2010).

In relation to European Integration, Moravcsik argues that constructivist research has contributed ‘far less to our empirical and theoretical understanding of European Integration than their meta-theoretical assertions may suggest’ (1999, p.670). This consideration stems from two essential absences related to the constructivist work 1) distinctive testable hypothesis 2) methods to test such hypotheses (Ibid.). Problems related to these aspects generate questions with regard to the validity of claims made. Easton argues that a common feature of the constructivists is that of rejecting ‘the possibility of knowing what is real and reject the possibility of discerning causality’ (2010, p.118). Thus, constructivists can simply offer their own interpretations ‘which leads one to wonder how we can evaluate different interpretations’ (Ibid.).

Despite the criticism, Constructivism has the merit to expand the understanding of social reality to emphasise the idea of a reality that, as argued by Furlong and Marsh (2010), is socially and discursively constructed, a reality that does not necessary abide by universal laws and cannot be examined in an objective manner. That said, this methodological rubric seems to suffer problems related to testability and verifiability. In the question posed by this thesis, the process of interaction between the domestic and the international level implies the explaining of the mechanisms through which the change or no change has transpired. In other words, this thesis is not simply oriented toward a process of understanding how the interaction is shaped but also toward a more generative-type of causal analysis (i.e. mapping the mechanism that ‘make things happen in the world’ (Danermark, et al. 2002, p.206 in Reed, 2009), which places emphasis on explaining the mechanisms, when possible, behind phenomena. These considerations do not allow one to ascribe fully the present thesis to the constructivist tradition and requires the examination of a third paradigm: Critical Realism.

**3.2.3 Critical Realism.** Critical Realism is considered to be an attempt to combine some positivist elements with constructivist ones while also rejecting some. The core defining element of this paradigm is that although there is a social reality, which is independent of our experience, ‘our interpretation/understanding of [it] affects outcomes’ (Furlong & Marsh, 2010, p.204). In other

words, Critical Realism ‘is neither nomothetic (that is, law-seeking) nor idiographic (concerned with documenting the unique)’ (Sayer, 2000, p.3). The founding father of Critical Realism is Roy Bhaskar (Fairclough et al., 2004; Danermark, 2002 et al.; Mir & Watson, 2001). This section will first explore the main features of Critical Realism, then focus on the methods adopted and, finally, consider why it has been the chosen methodology for this work.

The following points clarify the main features of Critical Realism and offer a synthetic overview of its defining elements:

- Critical realists argue that there is a social world that is independent from our experience (Furlong & Marsh, 2010; Moses & Knutsen, 2007, Easton 2010).
- Critical Realism is defined by a ‘depth ontology’ (Kerr, 2003, p.122). In other words, although Critical Realism argues that there is a world independent from our experience, its complexity and multi-faceted nature does not allow us to fully observe it (Elder-Vass, 2007).
- Critical Realism has a ‘stratified ontology’ (Sayer, 2000, p.12). This point is connected to, and represents a further clarification of, point 2. In order to understand this ontological connotation it is necessary to consider how Critical Realism differentiates among the real, the actual and the empirical (Ibid.). The real identifies ‘whatever exists’ and it is ‘the realm of objects’ and ‘their structure’ (Ibid., p.119) and ‘causal powers and liabilities’ (Fairclough et al. 2004, p.25). The actual, instead, regards the conditions under which specific powers are activated and the consequences stemming from it (Sayer, 2000). The empirical is about what is detectable by senses (Miller, 2015). An essential point is that experience is ‘contingent whether we know the real or the empirical or the actual’ (Sayer, 2000, p.12). Meaning that our experience of the world does not exhaust the world itself.
- Critical realists, given point 2 and 3 above, are then involved in ‘inference to the best explanation’ (Furlong & Marsh, 2010, p.204). Since reality is perceived to be multi-layered (Moses & Knutsen, 2007), what can be observed may reveal ‘a false picture’ of experienced reality (Furlong & Marsh, 2010, p.204). The recognition of the existence of hidden structures,

which may not be observable leads critical realists to doubt that ‘what actors say is so, is necessarily so’ (Ibid.).

- Critical Realism places emphasis on interpretation. In point 3. the sections introduced the concept of structures and causal powers. According to Critical Realism, when causal powers are exercised, the final outcome is not determined but dependent on a number of factors, such as the interpretation of the other (Sayer, 2000). Since, meanings are thought, along with material circumstances and the context, to constitute reality, social science must grant room for an interpretative understanding (Ibid.).
- Critical Realism also engages in causal statements (Grix, 2010). While Positivism has a deterministic understanding of causal mechanisms (A plus B causes C), Critical Realism is concerned with the identification of causal mechanisms and their functioning, and when/if activated and with understanding their trigger (Sayer, 2000). The view of causation presented by Critical Realism tends to be more complex than the one advanced by positivists. In the positivist paradigm, objective observation leads to the identification of regularities and allows for predictions, the Critical Realist tradition deploys a ‘generative model of causality’ where causal analysis, being generative, implies ‘the elucidation of the processes and mechanisms’ that lead to events (Reed, 2009, p.431).
- Critical Realism considers structure and agents mutually constituted (Grix, 2010). More specifically, agency is understood as having the potential to shape any social situation but its ‘transformative potential’ is constrained, realised or multiplied by the conditions under which it acts (Reed, 2009, p.431).

In order to consider what methods can be applied under the critical realist umbrella, it is also useful to recall briefly the main elements characterising this methodology and advance the explanation for the selection of specific methods. As Margaret Archer puts it, Critical Realism breaks the equivalence proposed by Positivism: ‘Observation + Correlation = Explanation + Prediction’ (2013, p.190) arguing that social reality is an ‘open system’ because social systems are necessarily ‘peopled’ (Ibid.).

In other words, possible alternative patterns may be generated as a result of human ‘reflexivity towards and creativity about any social context’ (Ibid.). Thus, Critical Realism dismisses the quest for regularities in the world. A key element is that, despite the fact that the social world exists independently from our experience, the way in which it is interpreted may affect outcomes. Thus, it is necessary to understand and explore both the external “reality” and the social construction of it in the attempt to shed light on social phenomena (Furlong & Marsh, 2010). Critical Realism is then understood to produce a ‘much richer layer of explanatory variable and generative mechanism’ than Positivism (Kerr, 2003, p.123) and represents a more rigorous paradigm than Constructivism by trying to provide a generative causal analysis (Easton, 2010; Reed, 2009).

Although King, Keohane, and Verba (1994), in “Designing Social Inquiry: Scientific Inference in Qualitative Research”, appear to attach a halo to the superiority of quantitative research, the debate within Critical Realism adopts a different, more nuanced view. In terms of methods, although some authors argue that Critical Realism seems to prefer naturalistic techniques (see Moses & Knutsen, 2007), there is an on-going debate in the literature regarding the methods. Andrew Sayer (2000) distinguished between extensive and intensive research design. In the former case, the method aims at discovering repetitive patterns through multiple observations. Thus, the researcher would rely on surveys, questionnaires, statistics and structured interviews (Ibid.). The extensive approach would produce descriptive ‘representative’ generalisations and use ‘replication’ for testing, although it would have ‘a limited explanatory power’ and not necessarily be applicable to other populations in different contexts (Ibid.). In the latter case, the primary questions that guide the study would be ‘how does the process work in a particular case [...]? What produces a certain change? What did the agents actually do?’ (Ibid., p.21). Thus, the researcher would mainly opt for qualitative analysis and interviews. In general, critical realists tend to argue that, without opting for a sharp contrast between methods, both qualitative and quantitative methods should be welcome and applied in a study (Furlong & Marsh, 2010). In fact, while quantitative methods would help to explain, for instance, the extent of financial market globalisation, qualitative methods would help us to understand how

globalisation is ‘perceived or discursively constructed’ (Ibid., p.205). Quantitative methods, in Critical Realism, can help to identify “demi-regularities” (i.e. ‘more or less empirical patterns within specific time and space boundaries’) (Iosifides, 2013, p.131). The complexity of social phenomena can only be captured if qualitative methods are also employed, which help to grasp ‘depth processes and features’ and ‘elucidate causal generative mechanisms, mostly unobservable at the empirical level of events’ (Ibid., p.132).

Despite the value of this methodological tradition, it is useful to address the limitations of applying this approach to the present case study in relation to the research questions posed. One of the problems arising in relation to Critical Realism may be the following: if it is argued that reality is stratified and we may not access the deepest stratum, then how do we know that the mechanisms identified actually reflect the “real world”? Questions regarding validity and verifiability of models of analysis have been addressed in the literature.

A way to solve the problem of validity and verifiability could be the reliance on different research methods and data. In fact, triangulation (i.e. the use of multiple methods or data sets to increase confidence in the results) is seen as one possible way to overcome limitations and reinforce the validity of findings. This is not to say that triangulation has been exclusively employed by critical realists but that, the choice of different research methods and data sets may represent a valid way to corroborate further the explanation of the mechanisms behind an event (Miller, 2015).

As argued throughout the text, Critical Realism places emphasis on generative causality, meaning that, when approaching research, the aim of the researcher should be that of providing ‘knowledge about the [...] mechanisms that generate [...] outcomes’ (Reed, 2009, p.432). When applied to the present study such a task becomes more difficult to perform since the final outcome of negotiations remains un-known. One may ask how we can adopt Critical Realism as a paradigm when the final outcome has not yet materialised. The answer to the question requires one to set a time frame for analysis and consider what changes have materialised or not in the EU negotiating position during that time-frame. Once this study provides an understanding of what practically constitutes the initial

EU position in negotiations, it is then possible to see changes and identify the mechanisms through which any alterations have or have not taken place. In Critical Realism, in fact, the object of study does not only consist of the “happening of” an outcome; rather, the object of analysis could also consist of “the not happening of” (an outcome), despite the attempts to generate a change (see Moses and Knutsen, 2007). Thus, given the elements provided, this paradigm seems to offer the potential to overcome issues associated with the two other rubrics and offers room for a less deterministic, more structure-agency and causal oriented paradigm.

**3.2.4 Conclusions.** This section has explored Positivism, Constructivism and Critical Realism as research paradigms and has attempted to capture the overarching difference among them. If Positivism considers reality as independent of our experience, Constructivism portrays reality as a social construction. Critical Realism, on the other hand, in the attempt to solve the Constructivism vs. Positivism debate, combines elements of both research rubrics. While, in fact, Critical Realism considers social reality as existent per se, this is, given its complexity, hard to uncover. Significantly, for Critical Realism reality is constituted not only by material circumstances but also by meanings. Such a consideration make interpretation relevant for the critical realist framework. More importantly, the choice of one paradigm above others leads to a different set of questions underpinning a given study. While a positivistic understanding of the world would lead the observer to ask: how do I come to know the real world? A constructivist observer would instead ask: how do I capture ‘the meaning of social action for the agent performing it’ (Moses & Knutsen, 2007, p.11)? While a critical realist would approach research by considering ‘how deeply is the truth buried?’ (Ibid.) and what are the mechanisms that led the events to happen (Easton, 2010)?. Thus, clarifying the research methodology for a study defines the contours of the study itself. Positivism, by rejecting the idea of the world as socially constructed, does not appear consistent with the IMG framework which instead places emphasis on the role of values and norms. However, the present study does not argue that interactions can be only understood as intersubjective (see Constructivism) but also



attempts to catalogue and analyse the mechanisms behind an outcome (or no outcome). These considerations do not allow one to ascribe fully the present thesis to either the positivist or the constructivist tradition, but require one to consider a different paradigm: Critical Realism.

### **3.3 Research Methods**

Now that the methodological debate has been outlined and the choice of methodology specified (i.e. Critical Realism), it is necessary to explore the research methods on which the present study will rely. Research methods are here understood as ‘the various procedures [...] used in research’ which might also imply the collection of data (Rajasekar et al., 2006, p.5). It has been clarified in the section above that the thesis will adopt Critical Realism as its research paradigm. Within Critical Realism, Sayer has distinguished between extensive and intensive research (see above). Intensive research focuses on a specific case and it is understood as aiming to discover ‘substantial relations of connection and situates practices within wider context, thereby illuminating part-whole relationship’ (Ibid., p.22). Given the scope of intensive research, a defining feature of intensive case studies is that researchers tend to rely on interviews and the preferred research methods are qualitative rather than quantitative (Sayer, 2000). Following from these premises, the thesis will rely on qualitative research methods and more specifically, it will employ: documentary analysis, discourse analysis, interviews, and descriptive statistical analysis. Documentary analysis, interviews and descriptive statistical analysis will help to define actor preferences and the extent to which the EU negotiating position has been altered over time. Discourse analysis instead will help to explore the evolution of discourses around TAFTA/TTIP and what made a set of arguments emerge over others in time. The combination of multiple research methods will help to triangulate the findings and offer a more valid understanding of the interaction between the international and the domestic level in the process of negotiating TTIP.

A final specification is necessary before proceeding. The analysis here focuses on a case study (i.e. TAFTA/TTIP negotiations). The case-study approach to research is associated with multiple definitions in the literature. Depending on the circumstances, it is defined as a method (Moses &

Knutsen, 2007), a strategy of inquiry, a methodology (Creswell, 2013), or a choice regarding the object of the study (Stake, 2005). For the purpose of this thesis, a case study will be understood as ‘the intensive study of a single case’ (Gerring, 2011, p.20); in this case, TAFTA/TTIP negotiations. Before proceeding to explore the research methods, firstly, it is necessary to explore what constitutes the original EU negotiating position. Secondly, it will explore the methods selected to approach the research, together with their use and limitations.

**3.3.1 The EU negotiating position.** Defining the precise composition of the original EU negotiating position is an arduous task. The thesis will use the initial negotiation mandate as a proxy for the initial EU position in the negotiations and as a useful tool suggesting the main preferences in the negotiation process and their limits.

The mandate has been agreed by Member States in June 2013 and made public on the 9th of October of the same year. It represents what the Commission and the Council thought could be negotiated and granted the final consent of the European Parliament and domestic and European constituencies. The mandate is helpful in clarifying the red lines that the Council decides to impose on the Commission and, by doing so, limits the issues to be negotiated to the elements contained within it. For instance, the possibility to negotiate over encryptions, which emerged during the negotiation process, was ruled out by the Commission since no clear mandate was given by the Council on that specific issue (Interview 27042016). However, the negotiating directive appears generic in some circumstances, leaving the Commission room for manoeuvre. That said, it also is important to recognise that the Council maintains oversight of the Commission behaviour through the Trade Policy Committee (TPC).

Additional official documents, such as the EU’s initial positions and interviews, will be also taken into account in order further to elucidate the initial EU position in the negotiation and hard limits. This approach will, on the one hand, represent useful guidance on identifying the path that led

to the adoption of the mandate and what has been agreed within it and, secondly, make it possible to explore how the EU's position has altered, with greater clarity.

Once the understanding of the initial EU position has been completed, the next step will be exploring how the EU negotiating position has been further shaped. In fact, the purpose of this thesis is not only to explain how the launch of negotiations became possible (see Chapter 4) but also how the EU negotiating position has been affected once negotiations were launched (see Chapters 5 and Chapter 6). The following sections will explain the methods employed to achieve it: documentary analysis, discourse analysis, interviews and statistical analysis.

**3.3.2 Documentary Analysis.** Documentary analysis will help to shed light on the different actors' preferences, the development of these preferences, and the mechanisms for interaction (written questions, resolutions, official declarations, etc.). In short, the documentary analysis will help to define what affected the launch of negotiations and the EU negotiating position.

Documentary analysis implies the study of documents. When approaching documents it is necessary to be aware of the origins, purpose and audience of the object of analysis (Grix, 2010). In other words, researchers should pay attention to the context in which the document has been elaborated, presented and also used. In terms of sources for documentary analysis, it is necessary to distinguish amongst the official documents and databases provided by the EU and the US government, documents provided by think tanks, media, leaked documents, and social media information. This section will briefly consider, for each level of negotiations, the main actors involved in the negotiation process at different levels and the type and sources of the documents employed in the analysis.

**3.3.2a The Commission.** The object of this stage of analysis will be: 1) understanding how preferences are shaped by the European Commission; 2) the level of engagement of the Commission with other institutions and their components (e.g. with the Member States, the European Parliament

(EP) etc.); 3) the interaction with pressure groups (i.e. constituencies) including the tools and discourses advanced to expand the Commission's room for manoeuvre; and 4) how interactions with the US might have an impact on the Commission. The section will illustrate the main data available and how it will be used.

Documentary analysis will, in the first instance, comprise analysis of official documents made available by the EU institution; it will enable greater understanding of the activity of the Commission, shed light on the objectives illustrated above. The web page dedicated to TTIP is divided in three main sections:

- About TTIP (content, impact and process);
- Documents explained (Ensuring transparency in TTIP negotiations; TTIP's impact – benefits, concerns, myths; The EU's position in the negotiations; TTIP and its impact on the rest of the world; Speeches on TTIP; Advisory Group; Negotiation rounds - press material);
- Have your say (e.g. a list of contacts). The analysis of the section on “TTIP's impact – benefits, concerns, myths” will shed light on the controversial issues and how they have been addressed over time.

Once the controversial issues have been identified, attention will be paid to 1.) the position papers; 2.) the negotiation texts proposed by the Commission; and 3.) the reports regarding the negotiation rounds. They will help to clarify how the EU preferences changed throughout the negotiation process (i.e. from the development of an EU position in 2011-12 to the launch of negotiations in 2013, and from the launch of negotiations up to 2016). A systematic analysis of the materials will help to identify the main themes advanced by the Commission in relation to TTIP negotiations and the ways in which the EU negotiator has engaged with the Member States, the EP, as well as the public and the US. This thesis will also rely on leaked documents (these usually concern the Commission) as made available by the Guardian, Green Peace, the Independent, and BBC. These documents usually comprise international communications and a broader and less polished overview of Commission's discourses, preferences and tactics.

**3.3.2b The European Parliament.** With regard to the European Parliament, the purpose of the thesis is to explore the role played by the EU institution. In this case, the aim of the analysis will be to understand how the EP positioned itself with regard to the previous attempts to launch negotiations and attempted to affect the EU position after the launch of negotiations. Thus, the analysis will take into account documents reflecting the position of the EP over time.

The analysis will take into account parliamentary debates and resolutions passed in relation to a transatlantic trade agreement. To enrich the analysis, the thesis will also assess written questions and additional declarations made by MEPs. Interviews with EU officials have confirmed that the enforcement of Rule 130, which grants MEPs the right to put written questions to the Commission, is usually pursued to force the Commission to take a clear stand on certain aspects, which might be unclear or controversial. Since the questions are made public, they offer a way to clarify certain aspects even before a defined policy has been advanced through the official channels, like position papers, press releases, press conferences, etc. Once the data have been collected, the next step is to proceed with the analysis by identifying the preferences expressed with regard to the negotiation outcome(s).

When focusing on Level III negotiations, the analysis will include the interactions taking place between the EP and domestic, EU-based constituencies, transatlantic and transnational constituencies. In this respect, declarations published on political groups' web sites, as well as interviews with media may be relevant in shedding light on how the EP engages in the negotiations labelled as level III. The picture emerging from the analysis of the data collected, as argued above, will need to be enriched and checked against additional data. In this respect, interviews will offer a valuable source of data in understanding political group's positions, and hidden mechanisms adopted to affect the negotiations, as well as to confront different understandings regarding the reasons behind the failures and/or successes in affecting the EU negotiating position.

**3.3.2c The Council of the EU and Member States.** Documentary analysis with regard to the Council will consider the official documents released by the Council and Member States. The underlying assumption when analysing the Council of the EU is that its preferences do not necessarily correspond to those of the single Member States, meaning that the negotiation mandate can be considered a compromise among different states' preferences. Thus, the analysis be done for both the Council and Member States separately, as well as combined. The aim is to clarify the preferences, how and if these have changed over time.

In terms of sources, this thesis will rely on the Council database and within it on the section "Documents and Publications", pay attention to press releases and documents related to TTIP negotiations (e.g. meetings of the Trade Policy Committee (TPC) when available). The Library of the Council has been also consulted in the context of archival research that will be conducted in Brussels in order to achieve a comprehensive account of the documents available on TTIP negotiations related to the Council. That said, the main limitation when exploring the case of TTIP consists of the scant availability of documents relating to the Council. Press Releases, interviews and reports will also be examined to add to the official documents.

In addition to the Council, it is necessary to consider the intra-institutional actors operating within it; in this case the Member State. This research will mainly focus on Italy, France, the UK, and Germany in order to maintain coherence and a focus that is manageable in the context of this study. This narrowed focus is justified not only by the necessity mentioned immediately above but also by the fact that these four countries account for the largest shares of seats in the EP (73, 73, 74, and 96 seats respectively). Initially this study sought to examine the countries with the three highest proportions of seats of the EP, however with the UK and Italy being equal at 73, they were both included. Moreover, in order to capture main negotiations happening at Level II and Level III, this study will conduct systematic search on news (by using primary search engines and tailoring the search for news from 2013 to 2016 with keywords relating to TTIP debates), when relevant in order to identify preferences and positions of Member States related to Level II. Interviews may help to

shed light on the role performed by different actors in negotiations and complete the information emerged through documentary analysis. That said, the analysis will take into account the role of other Member States, if this appears to be relevant to understanding the emphasis on a specific position or clarifying the elements underlying changes in the EU negotiating positions. Moreover, the positions of France, the UK, Germany and Italy, although privileged for the reasons explored above, might depend on the issue under considerations. Thus, their positions will be taken into account, where relevant, for the analysis. In certain cases, in fact, the role of the other stakeholders might be more decisive in explaining the changes in the EU negotiating position.

**3.3.2d Pressure Groups.** Level III negotiation refers to all negotiations taking place between EU institutions or intra-institutional actors and constituencies. Constituencies may be domestic, when part of one Member Country; European when they are located in two or more Member States; transatlantic, meaning that they are based in a Member State (or more Member States) and the US; transnational when located in a party involved in the negotiation (either the US or the EU) and also in a third party, or external, when they are located in a state or states not involved in the negotiations. There are also two different types of negotiations concerning pressure groups: 1.) negotiations happen within a Member State and involve a Member State and domestic and/or European and/or transnational and/or external constituencies; and 2.) negotiations might involve a constituency and an EU institution or intra-institutional actor(s). The significant number of contributions to TTIP by civil society make a comprehensive evaluation of them all unfeasible. The approach outlined below explores a possible method of selection. Within regard to the negotiations taking place within the Member States, attention will be placed on the interactions that affected the size of the EU negotiating position significantly and, thus, when the analysis requires it, this further layer of interaction may be considered in order to map the path to a specific alteration of the EU negotiating position.

Regarding the negotiations between an EU institution (or an intra-institutional actor) and a constituency, it is necessary to distinguish among the channels provided by the Institutions or

spontaneous initiatives by the constituencies. In the first case, the analysis will include the examination of five public consultations (PC) launched from 2012 to 2016 by the EU in relation to TTIP. PCs 1, 3, 4 and 5 are publicly available on the EU webpage. Consultation 3 has been made available upon personal request (Personal Correspondence with the European Commission, November 2015). The PCs represent a relevant source of information to understand the preferences and priorities of the different constituencies, and the evolution of them and they concerned on the following themes:

- Growth and jobs, April 2012 (48 contributions)
- The future of EU-US trade and economic relations, September 2012 (contributions are not available)
- Regulatory issues for possible future trade agreement, October 2012 (52 contributions)
- Investment protection in EU-US trade talks, January 2015 (150,000 contributions)
- SME Survey in the context of the Transatlantic Trade and Investment Partnership (TTIP), January 2015 (contributions not available due to the type of the consultation)

The replies to PCs will represent a valuable source of information to understand preferences, and preferences shifts in the context of TTIP. Submissions by EU constituencies in response to the USTR's request to comment on the TTIP negotiations in 2013 will be also considered. The analysis will also explore the positions and discourses of the organisations mentioned in the official study by the EP on civil society in TTIP (see Armanovica, & Bendini, 2014), which was considered to enjoy a certain degree of influence, given its international and transatlantic stand (Greenpeace, Friends of Europe, etc.), and the institutionalised transatlantic dialogue between the EU and US (i.e. Trans-Atlantic Business Dialogue (TABD); Transatlantic Consumer Dialogue (TACD)). The final aim is to identify the discourses employed to affect the EU position, together with the factors that them more or less compelling.



**3.3.2e *The US Government and US constituencies.*** To understand the interaction between the domestic level and the international level, it is necessary to take into account the influence of US government and US constituencies on the EU Level II and EU Level III negotiations. In this section, the study will focus on constituencies based in the US.

In order to understand to what extent US actors operate in the context of affecting EU preferences, in relation to the US government, the analysis will examine documents produced by the US trade Representative (USTR), which is, for the US, the body in charge of the negotiation process. The texts made available by the USTR can be classified as follows: summary of US objectives, negotiating round and public forum information, T-TIP blog posts, facts sheets, reports, and press releases. The analysis of the documents included in the section listed above will focus on those texts that refer to the EU, for instance in response of a position, to support a claim, to persuade the counterpart regarding a better compromise, or to build alliances with European intra-institutional actors, etc. This documentary analysis will help to individuate, when present, attempts to affect the EU position in negotiations. In addition to the documents provided by the USTR, it will be necessary to expand the data sets and consider the texts provided by the US diplomatic mission to the EU and US federal agencies.

Furthermore, the analysis will consider if and to what extent US constituencies are engaged in the negotiations and in pressuring the Commission. In this respect, the five PCs will be helpful in assessing how the US constituencies, in so far as they are participants in the PCs, are involved in the process. Moreover, to complete the analysis of the US constituencies and their attempt to influence the EU, it will be relevant to examine the documents produced by the US Congress in relation to TTIP. Finally, the European Parliament Liaison Office with US Congress represents a further source of information and texts for understanding the interaction among the two sides of the Atlantic. This documentary analysis will be complemented with interviews and accredited newspaper articles aimed at understanding additional channels for interaction and other actors (within the US administration, the Congress or outside) involved in the process of TTIP negotiations.

**3.3.3 Interviews.** Interviews will represent an essential research method to unveil the complexity of the interactions between the domestic and international level in TTIP negotiations. They will help to clarify the mechanisms and methods of compromise, offer insights with regard to how and under which circumstances international factors might be more relevant than domestic ones and vice versa in affecting the negotiation process and how and if international concerns reverberate into the negotiation process. Despite the value of documentary analysis to fulfil part of the tasks mentioned above, the scope of the present research requires a further engagement with relevant stakeholders in order to uncover the mechanisms put in place by different actors in different negotiation levels to achieve a given negotiation outcome. This section will clarify the format of the interviews and the concerns with regard to a sample bias.

The format of interviews has been semi-structured meaning that a free form has been utilised with the intent of addressing specific aspects and elements in the negotiation process. The main points in the interview sessions have been related to:

- The preferences of the interviewee and the political group, institutions, permanent personal, constituencies, and, possibly, the reasons behind those preferences, which will further unveil additional negotiation processes.
- Which concerns reverberate into the negotiations process and guide, affect, motivate it.
- The role of actors and other elements in affecting the relevance of domestic factors vis-à-vis international ones.
- The mechanisms and means through which those preferences are advanced. In other words, what instruments have been put in place to achieve a specific outcome.
- To what extent the mechanisms put in place and discourses have been successful in shaping the EU original preferences and how they have developed

The interviews will offer a valuable source of information to add and/or validate the findings that emerge from documentary analysis. It is relevant to point out that interviews have the potential to

reveal hidden patterns and help to specify further the preferences of the actors in question. Public documents tend to be the expression of an institution or intra-institutional actors and allow for a limited understanding of the negotiation process. Interviews may help also to identify if/how institutional affiliation generates an impact on preferences and related discourse(s).

The interviews will be subjected to an interpretation process that will help to clarify the context in which declarations are made and the institutional context when relevant. The interviews have been carried out with relevant stakeholders such as leading representatives from EU institutions, staff and bureaucratic bodies, an US official, as well as members of different constituencies. Contacts have been established by email and in-person meetings in Brussels. By relying on the snowball-sampling technique, the pool of interviewees has been developed further. The use of snowball-sampling here is deliberate given the political nature of this study, in light of the difficulty of accessing relevant political leaders.

This necessarily to rely on snowball-sampling technique leads to concerns about a sample bias, which is recognised here. However, despite these concerns, this technique has been chosen for the reasons mentioned immediately above as well as because of the benefits it offers, explained immediately below. Although MEPs and staff have been more easily engaged, in relation to the Council and the Commission it has been more difficult to arrange interviews. Another limitation to be acknowledged concerns MEPs' willingness to be interviewed and the over-representation of one political group (i.e. Socialist & Democrats, GUE/NGL, Greens) in the interviews might emerge. Moreover, interviews were carried out with EU institutions and their components, which offer a more limited overview of civil society. In order to correct this limitation, this thesis will engage in the analysis of debates, resolutions, written and oral questions, as well as voting behaviour to grasp, systematically the preferences of different political groups and the mechanisms employed. With regard to civil society, in order to offer additional information, the analysis will also consider press releases, reports and official declarations, in order to triangulate the data.

One of the main limitations to be associated with this research method is related to the nature of the subject and the secrecy of certain information along with the necessity for some interviewees to keep some aspects private. It is necessary to specify that despite being helpful, the interviews present some limitations in terms of what it is possible to know. The use of other research methods and the comparison among different sources from different institutions, parties and constituencies will help to reduce, although not resolve, the problem illustrated above.

**3.3.4 Discourse Analysis.** The concept of “discourse analysis” is associated with a number of different interpretations (see Brown & Yule, 1983; Wodak & Meyer, 2009; Lundborg & Vaughan-Williams, 2015). Here discourse analysis is understood as exploring the ‘role of language in constructing reality and the manner in which discourses provide space for particular subject identifying opposing discourses and how they were used to shape reality’ (Feltham-King & Macleod, 2016, p.3). To perform discourse analysis, the thesis follows the approach adopted by Feltham-King and Macleod (2016) who advocate the usefulness of a combination of discourse analysis (DA) and content analysis (CA). If DA ‘is concerned with the development of meaning and in how it changes over time,[...]’, CA ‘assumes a consistency of meaning that allows counting and coding’ (Hardy et al, 2004, p.20).

It is necessary to start with CA in order to ‘track the multiplicity, variety and [...] historical contingency of discourses constructed in [...] decades’ (Ibid., p.). More specifically, qualitative CA is understood as the process of ‘systematic classification process of coding and identifying themes or patterns’ (Hsieh and Shannon, 2005, p. 1278). The thesis relied on a mixed approach and use of conventional content analysis (CCA) and summative content analysis (SCA). In CCA, the approach followed was to advance a “pilot study” that allowed for the identification of the main codes to be used for classifying the texts (King & Macleod, 2017). Once the codes were identified through an initial examination of the documents available, the second step was to codify the texts available into the categories previously developed and, when necessary and helpful, identify sub-codes (Hsieh and

Shannon, 2005). The analysis then explored how the different codes related to one another and they extent to which they did so.

This approach adopted was to analyse EP debates and official speeches, which were analysed and classified in six main codes later identified as TAFTA/TTIP frames. The analysis also permitted the evaluation of the evolution of these codes/frames over time and the presence of sub-codes belonging to a specific code. For instance, the need to reinvigorate the transatlantic relationship (main code) is welcome on the basis of shared common values and missions or given the economic weight of the two partners (sub-codes). SCA was also employed through the thesis by providing graphs exploring the recurrence of specific content in the parliamentary debates, which was then followed by an analysis of the meaning of the content and implications for the study. Although recurrence is not sufficient for the analysis, it represented the first step to explore how the debate has evolved in three decades and set the basis for discourse analysis.

As for discourse analysis, the starting point for this analysis is the acknowledgement that discourses represent ‘structures of signification which construct social realities’ (Milliken, 1999, p.233). Once the main codes/frames were identified, the analysis explored how they were employed during the negotiation process, the values underpinning them, which actors among the different levels of negotiations relied on them and on what basis, as well as how they reverberated throughout the negotiation process and with what results on the EU negotiating position. The aims was to identify how preferences were constructed and legitimised on the basis of different value-based arguments and how contradictions and clashes emerged with regard to the discourse employed by different actors and on the basis of which system of values. Although frames have showed a certain degree of consistency since the 1990s, the DA showed how the elements underpinning them changed over time and how their understanding and ability to shape reality shifted from the 1990s to 2016. Therefore, the combination of the two methods appears well suited for the scope of the thesis.

**3.3.5 Statistical Analysis.** The statistical analysis, for the purpose of the research, will represent a further method for gathering additional insights from the data. When considering the MEPs' activity, given the significant amount of data that emerged from the analysis of the debates, descriptive statistics might offer an effective tool for synthesising and exploring the findings. The section will briefly address the purpose of employing statistical analysis.

The analysis will focus on the parliamentary debates concerning TTIP negotiations. The purpose of this form of statistical analysis will be simply descriptive and serve as a synthesis of the findings. However, if in a poll, the sample is both standardised and randomised in order to try and approximate a representative sample of the entire population, the aggregated contributions, in this analysis, cannot make this claim. However, this is not to disparage the value of debates and the useful information they provide. That said, to correct such deficiency it will be necessary to rely on additional polls and statistical analysis as provided by the Euro-barometer to have a more impartial understanding of the level of contestation surrounding TTIP.

**3.3.6 Conclusions.** The section has illustrated the research methods to be adopted in the present thesis. Research methods can be described as the procedures performed in the analysis and understanding of data (Grix, 2010). The thesis will mainly rely on qualitative research methods. The research methods to be employed in this study consists of: 1.) documentary analysis to understand preferences, context and subsequent changes; 2.) semi-structured interviews: to expand what gathered from documentary analysis and explore additional mechanisms of interaction; 3.) discourse analysis; and finally 4.) descriptive statistical analysis. The combination of research methods will help to elucidate how the interaction between the international and the domestic level take place in the negotiation of TTIP.

### **3.4 Conclusion**

This section has illustrated the methodological tradition to which this thesis will ascribe: Critical Realism and the research methods to be adopted in the analysis. After an analysis of Positivism, Constructivism and Critical Realism, the typology of case study and the aims to be achieved make Critical Realism the best-suited approach for the present study. Critical Realism engages with generative causality where attention is placed on ‘systematic knowledge about the underlying mechanisms that generate concrete events and outcomes’ (Reed, 2009, p.432). This definition fits the purpose of the thesis; i.e. to explore how it was possible to reach a consensus regarding the launch of TTIP negotiations in 2013 together with what altered the initial EU position and with which outcome.

In terms of research methods, in order to analyse what affected the launch of negotiation in 2013 and the EU negotiating position, this thesis has proposed a number of research methods: 1. documentary analysis; 2. semi-structured interviews with relevant stakeholders; 3. discourse analysis; and 4. descriptive statistical analysis. The complexity of the decision-making process and the secrecy of negotiations will pose some limitations to the data that the research will be able to assemble. Further limitations might be linked to the use of the snowballing technique and bias within the sample of respondents. That said, the vast pull of data to be examined and the combination of four different research methods allows for triangulation and crosschecking of the information gathered with subsequent analysis.

## **Introduction to Chapters 4-6**

The TTIP negotiations, as argued in the previous chapters, represent a relevant case study for the analysis of the EU negotiation process and EU trade policy. The overarching aims of this thesis are to analyse 1.) how was it possible to achieve a consensus about the launch of the TTIP after decades of failed attempts? And 2.) what has affected the EU position during the negotiation process? The thesis has so far explored the gaps in the literature (Chapter 1), defined the theoretical model for the study (Chapter 2) and presented its methodology (Chapter 3). Before proceeding with the analysis, it is necessary to re-cap briefly the content of Chapters 1-3 before introducing the content of Chapters 4-6.

Chapter 1 explored the main themes dealt with by the scholarship on TTIP. The analysis shows that three main themes have emerged in the literature so far: 1) the economic (critical) discourse; 2) the strategic argument, and 3) the actor-based analysis. The chapter has observed that the analysis of the interaction among the actors remains limited and requires further research. Moreover, rather than focusing solely on the Commission's discourse (or the management of fictional expectations, according to DeVille & Brügge, 2016), it might be useful to explore how different actors have engaged in different arguments in TTIP, what these are, what has made some of them more salient than others, and how they have impacted on the EU negotiating position.

Chapter 2 introduced the theoretical framework to be adopted in the analysis. This thesis considers negotiations as 'both domestic and international' (Langhelle, 2014, p.1). The study relies on the literature stemming from the Two-Level Game and MLG (see Putnam, 1988; Patterson, 1997; Collins, 1999) and framing analysis (see Busby, 2007; Benford & Snow, 1988; 2000) to elaborate its theoretical approach. The chapter introduces Interconnected Multidirectional Games (IMG) as a theoretical framework. Games are considered to be interconnected because they take place within a complex web of interactions among different levels and they qualify also as multidirectional as they take place both horizontally (i.e. at the same negotiation level) between different typologies of actors and vertically between different levels of negotiations (Level I between the EU and US negotiators,



Level II between and within EU institutions, and Level II between EU institutions and actors and domestic and transnational constituencies). The Two/Three-Level scholarship often considers side payments, tactics and strategies as tools that increase support at home. Here, the analysis will focus on what affects the salience of the frames, with consequent implications for the process of consensus building within the EU and the alteration in the EU's position in the negotiations once TTIP talks were launched.

Finally, Chapter 3 introduced the methodology to be adopted (i.e. Critical Realism) and the choice of the research methods. The chapter also lists documentary analysis, discourse analysis, interviews and descriptive statistics as the methods of analysis. If Chapters 1-3 represented the foundations of the analysis, Chapters 4-6 will attempt to answer the research questions illustrated above.

While Chapter 4 will focus on the previous attempts to negotiate the agreement and what made possible the launch of negotiations in 2013, Chapters 5 and 6 will focus on how the EU position was affected during the negotiation process. More specifically, Chapter 4 will analyse the previous attempts to launch negotiations, which occurred since the 1990s. By collecting evidence from the 1990s onwards, this chapter will identify the main arguments that emerged with regard to the TAFTA/TTIP negotiations, explain the shift in the salience of the frames, the ability to build coalitions, and the consequent impact on the prospect of launching negotiations. It is argued in Chapter 4 that the shifting political cost of action, focusing events, and a more permissive international context affected the salience of the frames. In particular, the Financial Crisis (i.e. a focusing event) had the effect of temporarily reducing concerns for EU standards, while also creating more pressing arguments concerning economic growth and the rise in welfare.

Chapters 5 and 6 explore the negotiations of the sectors that were deemed sensitive in the TTIP negotiations for the EU in greater depth. If the aim of the thesis is to explore what affected the EU negotiating position during the negotiation process, it is therefore necessary to consider the issue that appeared to cause controversy within the Union and threatened the conclusion of TTIP. Although

negotiations were halted in 2016, these issues represented a clear obstacle to their conclusion and still represent a significant stumbling block if negotiations were to be revived. Chapters 5 and 6 will analyse the roots of the frames adopted with regard to the negotiations on specific sectors, as well as why certain discourses acquired greater value within the EU. More specifically, Chapter 5 will focus on the issues that were deemed sensitive for the negotiation of a TAFTA/TTIP since the 1990s: the audio-visual sector and the agricultural sector. While Chapter 5 will focus on sectors that have traditionally been a sensitive area in the debate regarding a transatlantic FTA, Chapter 6 will explore how the launch of negotiations led to the emergence of and/or increased relevance of additional obstacles to the conclusion of negotiations. With the launch of negotiations, the concerns expanded to include a number of issues and sectors, the most controversial being 1) chemicals; 2) workers' rights; 3) environmental protection; 4) public services; and 5) data protection (see European Parliament, 2012a; 2012b; 2013a; 2013b 2014; 2015a; 2015b; Armanovica & Bendini, 2014).

This brief overview of the empirical chapters aims to introduce the analysis in the upcoming chapters, which will explore the development of the EU negotiating position and how it was affected during the negotiation process . The answer lies in the analysis of the complex interaction among the different levels of negotiations, the level of homogeneity of preferences, the high reflectiveness of frames, the emergence of focusing events, the political cost of action, and factors affecting the degree of credibility of competing frames. Finally, the analysis will also show how the Commission, in adopting specific requests, balanced the need to avoid involuntary defection (i.e. to negotiate an agreement that will not be ratified) vis-à-vis fears of no agreement given specific US red lines.

## **Chapter 4. Why TTIP now? Transatlantic Partnerships in Historical Context**

### **4.1. Introduction**

The analysis in this chapter is based on the acknowledgement that none of the previous attempts to negotiate a transatlantic trade agreement proved successful. Most of the literature focuses on the weight of the business community, emphasises the impact of the Financial Crisis, considers strategic concerns, and takes into account the gridlock in multilateral trade governance to explain the launch of the negotiations (see Hamilton, 2014a; 2014b; 2015; Hadfield & Fiott, 2013; 2014). However, an extensive analysis of the endeavours to initiate negotiations from the 1990s up to 2013 is missing. To fill this gap, this chapter adopts a broader overview and analyses how the actors have attempted to reach a consensus around the idea of a TAFTA since the 1990s. The central question of the chapter is, therefore: how was it possible to achieve a consensus about the launch of the TTIP?

The starting point for the analysis is that actors involved in a negotiation process tend to justify their position and legitimise their preferences (see Carstensen & Schmidt, 2016). Frames, however, are neither disjointed from nor independent of material elements (see Sell & Prakash, 2004). It is beyond the scope of the chapter to address whether or not the attempted persuasion through frames is to be considered an exercise of authentic persuasion, sincere persuasion or rhetorical action (see Chapter 2). The argument here is that frames 'enable some actors and constrain others' (Radaelli & Kramer, 2002, p.39), facilitate or hamper the process of coalition building and, consequently, affect the development of a consensus around a policy option.

A key aspect of the analysis developed here is that arguments that emerged from the 1990s to date in favour of and against a transatlantic agreement may be grouped under the same six overarching frames. This finding has important implications. Since the arguments adopted have persisted since the 1990s, what, if anything, has changed to explain the launch of negotiations? The argument of this chapter is that the ability to build coalitions among and within the different levels around a given position is affected by the shifting salience of the frames. More specifically, by collecting evidence

from the 1990s onward, this chapter explains the shift in the salience of the frames, the ability to build coalitions around a given discourse and the consequent impact on the prospect of launching negotiations. Shifting political cost of action, focusing events, and a more permissive international context affected the salience of the frames. This difference in salience, in turn, affected the possibility of building a consensus around the transatlantic project.

This chapter will identify the frames used in relation to the TAFTA/TTIP project. Secondly, it will focus on the attempts to launch negotiations in the 1990s, in 2006-7, and in 2013. Finally, the chapter will briefly explore how old concerns started to increase the posturing against TTIP within Level III and Level II with the launch of negotiations. This last section will pave the way for the analysis in Chapter 5 and Chapter 6. The chapter will rely on documentary analysis, secondary research, descriptive statistical analysis, and interviews with EU officials, business associations and civil society, and text analysis in order further to analyse the frames adopted, the different stakeholders' positions, and how these evolved over time.

## **4.2 Frames in the Transatlantic Project**

Data analysis has led to the identification of the overarching frames adopted in the negotiation of TAFTA/TTIP. For the identification of the frames surrounding the launch of negotiations, the present analysis has relied on 700 MEP speeches, official speeches by Member States and the Commission, and official documents. It also relied on literature of the 1990s (see Hindley, 1999; Donges et al., 1997), the 2000s (see Mildner, 2008) and the 2010s (Hamilton, 2014a; 2014b; 2015; Van Ham, 2013, etc.) regarding transatlantic economic integration and previous attempts to launch a TAFTA/TTIP. For the purpose of this chapter, the thesis adopts a dichotomous vision of the frames employed (i.e. in favour and against the launch of negotiations) to explore how various coalitions have gathered around the different arguments. In the following chapters, however, the analysis will abandon this more simplified approach to explore how the frames have been used to affect the EU negotiating

position. For instance, frames focused on EU standards have not only been used to request a halt to negotiations but have also been employed to justify a change in the EU's textual proposal.

The frames may be divided into two groups: frames in support of or against the launch of negotiations, which can be further classified into six meta-frames (i.e. three per group) as it will be explored below. Those in favour are as follows:

- Frame 1. An FTA with the US is considered a tool for reinforcing the transatlantic bond in conditions of uncertainty at the international level. This frame is expressed in a plurality of ways. Actors refer to the special tie between the EU and the US and the shared values and mission that characterise the transatlantic friendship, the relevance and weight of the transatlantic bond in the international context, and the need to act together to face mutual challenges.
- Frame 2. An FTA with the US is conceived as helpful to rebalance excessive US focus on other geographical areas and, therefore, diminish the strategic relevance of the EU as a partner for the US.
- Frame 3. An FTA with the US is perceived as economically beneficial given the possible gains in economic growth associated with it. The significant economic interconnectedness indicates that further regulatory convergence has the potential to generate a number of additional economic benefits.

On the other hand, the frames employed against the launch of negotiations can be summarised as follows:

- Frame 4. An FTA with the US is considered detrimental to EU values and the EU model; in this context, emphasis is usually placed on the conviction that the EU better protects consumers and that the aggressive attitude of the US business community might present a challenge to the EU model. Later, during the TTIP negotiations, concerns for the EU standards also derived from the perceived disproportional influence of multinationals during the

negotiations (Interview 11042016). The (presumed) lack of transparency is also often used to support claims denouncing the over influence of multinationals (Ibid.; Interview 28042016).<sup>14</sup>

- Frame 5. An FTA with the US is a threat to multilateral trade governance; an agreement between the EU and the US could represent a shift from a multilateral approach to decision-making, which is in the interests of all countries, toward a more bilateral approach, which would favour only the two actors. The need to support a multilateral approach must also be inserted into a broader global image of being a fair global player that the EU has attempted to push (see Cerutti & Lucarelli, 2008).
- Frame 6. An FTA with the US is considered problematic for developing countries: thus, a trade agreement between the EU and the US might have negative consequences for poorer countries.

The table below explores the frequency with which the aforementioned frames have appeared in the EP debates since 2006 and offers an indication of their significance over time. Although the analysis of parliamentary debates offers a partial view of how EU institutions and actors at Level II and Level III used the frames mentioned, such analysis still offers a valuable contribution to answering the research question. The table not only offers a valid snapshot of the evolution of the emphasis of certain arguments but also more clearly reveals on which topics the MEPs progressively came to focus the most. It should be acknowledged that before the the Lisbon Treaty came into force, the EP did not have veto power over trade agreements negotiated by the EU. Despite the fact that the EP did not qualify as a veto player in the two previous attempts to launch negotiations (i.e. 1990s and 2006-7), the Parliament was aware that its support represented a key element to gain broader consent and legitimacy around the initiative.

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<sup>14</sup> The question of transparency remains controversial in TTIP. Several concerns have been expressed with regard to the secrecy of the negotiations (Interview, 11042016; Interview 17042016; Interview 28042016), but others have regarded the negotiations as ‘the most opened in the history of negotiations’ (My translation) (e.g. Interview 20042016).

**Table 4.1 TAFTA/TTIP Frames**

Frames	2006		2007		2012		2013		2014		2015	
	Debates*		Debate **		Debate		Debate		Debate		Debate	
Addressing concerns for developing countries	1	4.1%	1	4.1%	1	1.7%	1	0.8%	-	-	2	0.5%
Concerns for developing countries	0	0	1	4.1%	0	0	1	0.8%	-	-	-	-
<b>Tot. speeches mentioning developing countries</b>	<b>1</b>	<b>4.1%</b>	<b>2</b>	<b>4.2%</b>	<b>1</b>	<b>1.7%</b>	<b>2</b>	<b>1.6%</b>	-	-	<b>2</b>	<b>0.5%</b>
Threats to the EU model	7	29%	4	16%	4	6.7%	26	21%	29	31%	141	38%
Addressing and expressing mild concerns	2	8.3%	4	16%	14	23%	50	40.3%	42	45%	128	36%
<b>Tot. speeches mentioning the EU model/values</b>	<b>9</b>	<b>37.5%</b>	<b>9</b>	<b>37.5%</b>	<b>18</b>	<b>30%</b>	<b>76</b>	<b>61.3%</b>	<b>71</b>	<b>75.5%</b>	<b>269</b>	<b>74%</b>
Concerns for the WTO	2	8.3%	1	4%	1	1.6%	3	2.1%	-	-	-	-
Addressing concerns for the WTO	2	8.3%	3	12.5%	5	8.3%	7	5.6%	1	1.1%	-	-
<b>Tot. speeches mentioning the WTO</b>	<b>4</b>	<b>16.6%</b>	<b>4</b>	<b>16.6%</b>	<b>6</b>	<b>10%</b>	<b>10</b>	<b>8.1%</b>	<b>1</b>	<b>1.1%</b>	-	-
Shared values and common mission	6	25%	5	21%	5	8.3%	14	11.3%	7	7.4%	22	6%
Relevance of the transatl. bond	15	62.5%	13	54%	34	56.7%	43	34.7%	19	20.2%	77	20.7%
Need to act together	11	45.8%	9	37%	8	13.3%	23	19.3%	13	13.8%	49	13.2%
<b>Tot. speeches mentioning Strategic issues</b>	<b>16</b>	<b>66.7%</b>	<b>15</b>	<b>62.5%</b>	<b>35</b>	<b>58.3%</b>	<b>54</b>	<b>43.5%</b>	<b>29</b>	<b>30.8%</b>	<b>98</b>	<b>26.3%</b>
<b>Tot. speeches mentioning the US focus on other areas</b>	-	-	-	-	-	-	<b>1</b>	<b>0.8%</b>	-	-	<b>4</b>	<b>1.1%</b>
Positive frames on the economy	8	33.3%	9	37.5%	45	75%	69	55.6%	39	41.5%	132	35.5%
Doubts re: the economic argument	-	-	-	-	2	3%	6	4.8%	9	9.6%	50	13.4%
<b>Tot. speeches mentioning economic issues</b>	<b>8</b>	<b>33.3%</b>	-	<b>37.5%</b>	<b>47</b>	<b>78%</b>	<b>75</b>	<b>60.5%</b>	<b>48</b>	<b>51%</b>	<b>172</b>	<b>34%</b>
<b>Tot. Speeches</b>	<b>24*</b>		<b>24**</b>		<b>60</b>		<b>124</b>		<b>94</b>		<b>372</b>	

Source: European Parliament, 2006a; 2016b; 2007a; 2007b; 2012a;2012b; 2013a;2013b; 2014a; 2015a; 2015b.

\*The EP debate on Mann's 2006 report was held in conjunction with the debate on Brok's report.

\*\*The 2007 EP debate addressed both security and economic issues. The table considers speeches that concerned the establishment of a transatlantic economic partnership.

The table takes into account the number of times an argument has been cited, rebuked or dismantled in a debate. For frames related to economic issues, for instance, the table considers the percentage of speeches in which the economic argument has been used to support negotiations and in which it has been questioned, respectively. In the table, frames focused on EU standards and values are also considered. The speeches referring to this frame can be classified into two main groups: those that treat the agreement as a real threat to EU standards (i.e. threats to the EU model in the table) and those that acknowledge the concerns, make recommendations, and/or manifest trust in the work of the Commission (i.e. addressing and expressing mild concerns in the table).

Although not all of these frames have been used with the same degree of emphasis and intensity, they appear in the official documents and speeches and are broadly acknowledged in the literature. In order to triangulate the data, the present chapter also relies on interviews and other official speeches and documents since the 1990s to explore how other stakeholders have behaved in relation to the arguments for and against the launch of negotiations over time and how they have used them. References to other sources are acknowledged throughout the text.

### **4.3 The 1990s Attempts**

The idea of negotiating a transatlantic agreement emerged for the first time during the Kennedy presidency in the 1960s. However, attempts to negotiate a transatlantic agreement only began to take shape and consistency in the 1990s (Gostomski & Michałowski, 2015). The initiatives that emerged in 1995 and later in 1998 saw the UK and Germany and, especially in the late 1990s, the Commission as the main promoters while France instead opposed the idea. The salience of the frames against the launch of negotiations limited the possibility of building a broader pro-TAFTA coalition. An overall un-permissive international context, high political cost of action, and negative focusing events undermined the salience of the growth-based frames. The section will, firstly, explore the opposing preferences and the use of frames adopted in the debate and, secondly, it will analyse what affected the salience of the frames and thus the possibility of launching negotiations.



**4.3.1 Preferences and Coalition Building around Opposing Frames.** The following section will analyse the failed attempts to launch negotiations in the 1990s. It will firstly explore how Germany, the UK and the Commission attempted to build a coalition around the transatlantic project. Secondly, it will analyse how France opposed the idea and how the EP and the epistemic community legitimised the concerns. Thirdly, it will explore how the business community negatively affected the salience of the growth-based frames and, finally, illustrate the failure to reach a compromise within the Council.

The 1995 effort was the first concrete attempt to push the idea of TAFTA, but the initiative did not lead to the desired outcome. Between 1994 and 1995, Germany and the UK started to support the idea of a TAFTA, which was advanced by German Foreign Minister Klaus Kinkel in a 1995 speech at the Chicago Council of Foreign Relations (Hindley, 1999; Donges, et al., 1997). However, a more concrete attempt emerged in the late 1990s by the hands of Margaret Thatcher. The launch of negotiations was then advanced by Leon Brittan, Vice President of the Commission at the time under the label of the New Transatlantic Marketplace (NTM). The proposal contained four actionable areas: 1.) the removal of technical barriers to trade; 2.) a political commitment to eliminate all industrial tariffs by 2010, 3.) the establishment of a free trade area in services; 4.) further liberalisation of investment, public procurement and intellectual property rights (European Commission, 1998).

According to the UK, Germany and the Commission, a number of concerns made the need for a TAFTA even more compelling: the uncertain international context due to the end of the Cold War (Frame 1.) and the US's increasing focus on Asia (Frame 2.). The uncertainty at the international level made manifest the need for some European leaders to reassert their alliance with the US. In 1996 Margaret Thatcher described the idea of a TAFTA as a way to bring the 'two civilisations closer together' (in Gordon, 1996, p.75). The transatlantic bond had been greatly shaped by the threat posed by the Soviet Union since the end of WWII, and the end of the Cold War motivated both sides of the Atlantic to redefine their relationship in a new international context (see Heuser, 1996; Smith, 2002; Steffenson, 2005; Guay, 2000, McGuire & Smith, 2008; Meyer & Barber, 2011). The transatlantic relationship was 'drifting apart' after the end of the Cold War (see Hindley, 1999, p.44; Siebert, 2005;

European Commission, 1998). Relying on 'free commerce' was conceived of by European leaders 'as the instrument of a revitalized alliance between the democratic nations of the North Atlantic' (Barfield, 1998, p.2003).

The UK, Germany and the Commission also attempted to build a coalition around the need to reinvigorate the transatlantic relationship given the US's focus on other geographical areas (e.g. US's Asia Pivot, NAFTA, etc.) (see Donges et al., 1997). The European fears of the US's growing emphasis on Asia led the Commission, Germany and the UK to push for a transatlantic agreement (Gordon, 1996).

Frames based on the economic benefits of the agreement were also employed to gather consensus (i.e. Frame 3). Leon Brittan described the project regarding NTM negotiations as 'a huge leap forward for Europe's relationship with the US, bringing not only strong economic benefits for both business and consumers, but also a new political momentum to relations across the Atlantic' (European Commission, 1998, p.1). The economic argument had emerged within the EP as well. The Committee on Economic and Monetary Affairs and Industrial Policy favoured the proposal put forward by the Commission, mentioning the economic benefits deriving from such a deal, but concerns remained.

Within the Council (i.e. Intra-institutional negotiations, Level II), although the UK and Germany were in favour of the agreement, France was among the strongest opponents to a transatlantic deal. France remained concerned over the impact of a transatlantic agreement on the WTO negotiations ongoing at the time (i.e. Frame 5) (see ICTSD, 1998). Moreover, the political cost of action for some gatekeepers affected the salience of the frames employed against the launch of negotiations. President Jacques Chirac argued that the NTM proposal was against 'the vital interests of his country, especially with regard to communications, agriculture and intellectual creativity sectors' (Ibid.). Agriculture and audio-visuals remained the Achilles' heel for the transatlantic deal and, thus, one of the most problematic aspects in the process of launching negotiations. The

situational and structural position (see Chorev, 2007) of these groups reduced France's ability to compromise.

Although the Commission's final proposal for the NTM did not mention the agricultural sector, according to Article XXIV of the GATT, in order for a regional agreement to be compatible with the GATT rules, it has to cover 'substantially all the trade' (Art. XXIV.8 of the GATT). In other words, not including agriculture would have likely made the agreement incompatible with the multilateral regime.<sup>15</sup> Its inclusion, on the other hand, represented a political cost that France was not ready to tolerate. These issues do not touch solely upon material considerations (i.e. reduced income for certain groups with a relatively strong negotiation power). The agri-food sector and audio-visual services have come to embody a number of societal functions within the EU that needed to be protected (see Chapter 5). The threat that the agreement represented for EU standards was a stumbling block to the launch of negotiations. These elements negatively affected the possibility to build coalitions in support of the launch of negotiations.

As for the other Level II actors, at this stage the EP did not facilitate the launch of negotiations either. In the motion for a resolution on "Transatlantic Trade and Economic Relations" tabled in December 1997 (see para. 35), the Committee on External Economic Relations expressed concerns over the threat that NTM would pose to the WTO (and the negative impact on former U.S.S.R. states) and called both the EU and the US to be committed to the functioning of the multilateral system (see European Parliament, 1997a). The fear that a transatlantic agreement could compromise the recently established multilateral forum received further legitimacy since concerns were shared by certain thought leaders (see Steffenson, 2005) and by Renato Ruggiero, at the time Director-General of the WTO (Hindley, 1999). Finally, concerns regarding the launch of TAFTA were also expressed in relation to developing countries (Frame 6). According to part of the epistemic community, a TAFTA

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<sup>15</sup> The question of article XXIV.8 is a complicated one. There is no agreed definition of what "substantially all trade" actually means (Ravenhill, 2011). However, the exclusion of agriculture was considered to pose a big obstacle to the compatibility of a TAFTA with the multilateral rules.

might have generated negative spill-over effects for poorer countries (see Donges, et al., 1997; Siebert, 2005). This was considered to be incompatible with the European mission and ideals.

In analysing EU Level III, it is worth noting that the prospect of the agreement met only partial support from business and labour communities (Schott & Oegg, 2001). The Transatlantic Business Dialogue (TABD) was established between the EU and the US in 1995 as part of the New Transatlantic Agenda (NTA). Stuart Eizenstat, former Undersecretary for International Trade at the Commerce Department argued that, '[t]his [TABD] process is not a fifth wheel. It has become part and parcel of the entire transatlantic agenda' (in Green-Cowles, 2000, p.275). The transatlantic business community was divided regarding the NTM. To some extent, Leon Brittan's proposal was in line with the TABD's preferences. Part of the TABD perceived the NTM as a possible solution to the slow negotiation pace of Mutual Recognition Agreements (MRAs) talks. However, on the other hand, part of the American business community argued that the NTM was excessively ambitious and preferred focusing on the conclusion of MRAs (Ibid.). Moreover, negotiations for MRAs between the US and the EU proved bargaining over regulatory issues, at the core of the NTM, to be extremely difficult to achieve, setting a bad precedent for any successful prospect of regulatory cooperation (Steffenson, 2005).

Although the proposal to launch negotiations was approved by the European Commission on the 11 March 1998, it was not agreed upon by the Council of Ministers in April (van Scherpenberg, 2008). French opposition had been expressed even before the Commission meeting in March in 1998 when the Commission agreed on final proposal to be submitted to the Council. President Chirac's convictions did not fade away with time, and during the Council meeting (Intra-institutional negotiations, Level II) in April 1998, he led opposition against the NTM (ICTSD, 1998; European Parliament, 1998). Division at Level II sustained by opposition and only a mild support to the NTM at Level III worked against the launch of negotiations. Scepticism of the business community over the TAFTA project further limited the salience of the economic argument. In the absence of a broad

coalition, the Commission, the UK and Germany had to put aside the prospect of TAFTA for almost 10 years.

**4.3.2 The Salience of Frames.** In the 1990s, the negotiation for a transatlantic trade agreement took place under an un-permissive international context, which reinforced the salience of frames against the launch of negotiations and limited the capacity of the UK, Germany and the Commission to build a coalition around the TAFTA project. Furthermore, the political cost of action concerning the launch of negotiations represented a significant obstacle for France given the opposition of the agricultural sector and the audio-visual sector. This section will, firstly, explore the elements characterising the international context and thus the degree of permissiveness at the global level regarding the transatlantic project and, secondly, analyse the negative focusing events (i.e. Iran-Libya Sanctions (ILSA) and the dispute about the US Helms-Burton Act) that hampered the prospect of a TAFTA. The 1990 Transatlantic Declaration between the European Community (EC) and the US was followed by the signature of the New Transatlantic Agenda (NTA) in Madrid in 1995, which marked the recognition of the EU as a ‘major political institution’ from the US’s perspective (Devereaux et al., 2006). The process of institutionalising a transatlantic friendship also concerned the debate regarding the establishment of a TAFTA. If a changed international context (i.e. the end of the Cold War) allowed for the proposal of a TAFTA in the 1990s, the shift in permissiveness that occurred did not prove sufficient to allow frames in favour of the launch of negotiations to prevail. Another problem was the recently established WTO in 1995. The establishment of the WTO reinforced claims that saw a EU-US agreement as a threat to the newly created multilateral system. This, therefore, made the prospect of launching negotiations for the agreement less salient.

Despite Leon Brittan’s reassurance that the NTM would be ‘fully compatible with World Trade Organisation rules and will pave the way for further multilateral trade liberalisation, bringing benefits to third countries’ concerns remained (European Commission, 1998, p.1). The NTM was considered less beneficial than the prioritisation of multilateralism (see Hindley, 1999). Furthermore,

concerns for EU standards were also legitimised by the longstanding problems that had emerged regarding hormone-treated beef. The EC/EU de facto ban on US imports since the 1980s functioned as focusing event and had further legitimised those concerns. The WTO dispute, which saw the US as a complainant against the EC in 1996, complicated the situation and increased concerns for the threat that the US seemed to represent over EU standards.

The pre-existing indisposition to a transatlantic agreement appeared to be further nourished by a number of negative focusing events: Iran-Libya Sanctions (ILSA) and the dispute about the US Helms-Burton Act. These two disputes emerged as stumbling blocks to the Commission's attempt to persuade others of the positive effects of an MNT (Steffenson, 2005; see ICTSD, 1998; European Parliament, 1998). Although Busby (2007) considers a focusing event as useful in allowing new frames to emerge and a shift in policy to take place, it is the argument here that focusing events could also prevent shifts from taking place and reiterate the status quo. The Iran-Libya Sanctions (ILSA) and the dispute over the Helms-Burton Act made the EU less willing to advance trade liberalisation with the US. As pointed out in 1998 by former British Foreign Minister Robin Cook in relation to a transatlantic agreement, '[a] settlement [on disputes with the US over Helms-Burton and Iran-Libya Sanctions] is a precondition for developing future trade liberalization and an enhanced trans-Atlantic relationship' that seemed evident on the horizon (ICTSD, 1998). Moreover, the Committee on External Economic Relations declared that the sanctions represented 'the single most acute disruptive element in transatlantic relations' (see European Parliament, 1997b). The compelling nature of the frames against negotiations, in this case reinforced by the focusing events mentioned above, made the prospect of agreement more difficult to justify and accept widely.

**4.3.3 Conclusions.** The 1995 and 1998 initiatives to launch negotiations for a TAFTA did not lead to the most desired outcome, even with the Commission as the main promoter of the 1998 attempt. It had managed to agree on the launch of negotiations, which was then sunk by opposition the Council, which also reflected general scepticism at Level III. The Commission can be understood to be a victim

of involuntary defection. This term is explored by Putnam in relation to the inability of a negotiating party to ensure ratification (Putnam, 1988). In this instance, the term can be adapted to capture a situation leading to the abandonment of the initiative to negotiate due to lack of internal agreement. Although the Commission appeared convinced of the existence of a minimum set of positions to be agreed upon, the outcomes of the initiative proved it wrong. The thesis will use the initial negotiation mandate as a proxy for the EU initial position in the negotiations. Opposition at Level II in the EU was further legitimised by an un-permissive international context and reinforced by negative focusing events (e.g. the EU-US Trade disputes). Moreover, the political cost of action for France and the tepid enthusiasm of the business community reduced the salience of growth-based arguments, despite the significance of the economic benefits and relevance of stronger transatlantic relations.

#### **4.4 The Merkel initiative**

In 2006-2007 a new attempt was made to launch negotiations for a TAFTA. Chancellor Angela Merkel, supported by top politicians of the Christian Democratic Union (CDU), advanced the idea of a TAFTA in September 2006 (see Mildner, 2008) but without success. Several actors at Level II and III remained unenthusiastic about the German proposal for a number of reasons – particularly among Levels II and III. The salience of frames against the launch of negotiations remained higher than that of frames in support of negotiations. Thus, the section will explore how Germany attempted to gain support. Secondly, it will consider what affected the salience and frames and, finally, present the conclusions to the section.

**4.4.1 Preferences and Coalition Building around Opposing Frames.** The aim of this section is to explore how different frames were used in an attempt to support or hinder the launch of negotiations. The section will, firstly, explore how Germany attempted to build a coalition around a TAFTA and, secondly, discuss the disagreement at Level II and III. Thirdly, it will consider the attempt by Germany to increase the legitimacy of the initiative by convincing the Commission of the benefits of

a Transatlantic Partnership Agreement (TPA) and also involving the EP in the debate. Finally, the section will consider the reasons for the failure of the attempt to launch negotiations.

German Chancellor Merkel emphasised the economic benefits and the positive strategic spill-overs of a transatlantic trade agreement in order to build consensus around it (Frame 3 and 1) (see Financial Times, 2006). As for the economic benefits, Merkel declared that ‘history shows that close trans-Atlantic economic integration is always the impetus for boosting economic growth’ (Spiegel, 2007) (Frame 3). Merkel also argued for the need to establish a stronger EU-US partnership to face changes in the global arena (Frame 1). In the early 2000s, emerging powers were perceived as generating uncertainty in the international context. Former German Foreign Minister Guido Westerwelle, for instance, argued that a TAFTA would help ‘shape the newly emerging multipolar world in a way that preserves our interests and is firmly anchored in our shared values’ (in Alcaro & Alessandrini, 2013). The need of a TAFTA was then presented as a response to concerns about the necessity of governing globalisation and the rise of new powers such as China and India (Bandler & Rashish, 2007) (Frame 1).

Concerns over the US focus on other areas were used as a further motive for a TAFTA. President George W. Bush had undertaken a number of initiatives that pointed to a US pivot to Asia (Frame 2) (see Manyin et al., 2012) such as announcing negotiations with South Korea at the beginning of 2006 (see Twining, 2006); the US had also showed the intention to negotiate an FTA with Latin America countries (see Salazar-Xirinachs & Granados, 2004), which increased fears of US disinvestment in the EU (Frame 2).

Despite these arguments, disagreement within Level II and Level III was apparent. The Commission’s opposition to a TAFTA was stated clearly in 2005 when the prospect of a transatlantic trade agreement was excluded to prioritise the conclusion of the Doha Round (see European Commission, 2005). EU Trade Commissioner Peter Mandelson argued in relation to TAFTA, ‘I know no EU country that supports this idea’ (AFX, 2006). Disagreement did not only appear within Level II but also within Level III in Germany. For Bernd Pfaffenbach, former German State Secretary, the



attempt to launch TAFTA was a ‘kiss of death’ for multilateral trade negotiations (Schmucker & Braml, 2007). There was, in fact, general fear about an agreement that could have tied together two of the biggest economic powers by granting each other ‘exclusive trade preferences’ and thus undermine the multilateral system (Mildner, 2008, p.647). Fears regarding the WTO were made explicit in 2005 when the Commission rejected the idea of an FTA with the US (European Commission, 2005). The fear was that such an initiative could compromise the already complicated negotiations of the Doha Round (Ibid.).

The Greens (i.e. Inter & Intra-institutional negotiations, Level II) shared similar considerations at the EU level (Spiegel, 2007). Arguments concerning the health of the WTO (Frame 5) and the threat of a TAFTA to the EU model (Frame 4) also hindered the process of coalition building around the idea of an FTA with the US. Experts and senior figures in world trade governance (e.g. former USTR Zoellick, WTO General Director Lamy, etc.) expressed concerns about the project and contributed toward de-legitimising the TAFTA initiative (Frame 5). The epistemic community concerned with the threat that a TAFTA by supporting the Commission’s claims played an important role in legitimising the opposition to the launch of negotiations.

In an attempt to build support around a transatlantic deal, Merkel ensured the support of the Commission for a Transatlantic Partnership Agreement (TPA). The exact scope of the TPA remained vague in 2006.<sup>16</sup> In 2007, it was clarified that the TPA was intended to cover regulatory cooperation.<sup>17</sup> During the EP debates in 2006 and 2007 the Commission argued that the TPA was not a FTA. That said, the initiative was perceived as such by many and, at the very least, as a main step in that direction (see European Parliament, 2006a; 2006b).

Merkel relied on two German MEPs to push forward the idea of a TAFTA within the EP (Bandler & Rashish, 2007). Two German MEPs, Elmar Brok, Chair of EP Committee on Foreign Affairs (European People Party, EPP), and Erika Mann, INTA Committee (Party of the European

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<sup>16</sup>European Parliament resolution of 1 June 2006 on EU-US transatlantic economic relations (2005/2082(INI)) and European Parliament resolution of 1 June 2006 on improving EU-US relations Agreement (2005/2082(INI)).

<sup>17</sup>See European Parliament resolution of 25 April 2007 on transatlantic relations 2007/2530(RSP).

Socialists, PES), each wrote a report to be discussed by the EP in 2006. In order to gather consensus around the idea of a TPA, strategic considerations and the growth-based claims were adopted by supporters of the initiative. For instance, MEP Christofer Fjellner (EPP) argued that:

Transatlantic trade [...] forms a large part of the engine of the world economy. [...] The trade between us [...] is, in fact, a precondition and something that makes us all, throughout the world, richer. [...] I therefore hope that we, together with the USA, can realise the idea of a barrier-free transatlantic market by 2015. [...] I and the Swedish Conservatives intend to vote, rather, in favour of the report and in favour of a transatlantic free trade area. (European Parliament, 2006a)

The establishment of an EU-US common market, according to MEP Konrad Szymański, was understood to be necessary in order to ‘put the two transatlantic actors in a position to compete with China and India’ and ‘bring success in stemming the threat to our security’ (European Parliament, 2006b). In the 2007 parliamentary debate, which concerned a further EP resolution on transatlantic relations, particular emphasis was again placed on economic aspects (Frame 3) and strategic issues (Frame 1). MEP Charles Tannock (EPP) argued that:

I fully support the German Presidency’s initiative for an extensive economic partnership between the EU and the United States, which now represents some 40% of world trade, and in particular Chancellor Merkel’s ambitious aim for a transatlantic market without barriers by 2015 (European Parliament, 2007a).

Strategic concerns remained central to the EP debate. Thus, in the 2006 and 2007 debates, particular attention was paid to the transatlantic bond and the necessity of acting together to motivate further economic integration within a context of uncertainty.

Despite the support for the initiative, a number of concerns around TAFTA remained. Concerns grounded in the necessity of protecting EU standards, which were linked to a myth of “Social Europe”, remained deeply rooted in the EP. They both appeared in the 2006 and 2007 debates on the TPA. For instance, according to MEP Glyn Ford, the TPA was to be considered as a threat to the EU model:

Here there is the call for the creation of a free-trade area with the US by 2015. [...] I have not been fighting to protect a social dimension to the Union, vital for ordinary Europeans, to allow it to be sold out via the back door by the creation of a gigantic free trade area. (European Parliament, 2006b).

Addition concerns regarded the impact that a transatlantic deal could have represented for developing countries in Asia and Latin America (see Bandler & Rashish, 2007). These arguments emerged within

the EP and the epistemic community and were used to build opposition to the agreement (see Table 4.1).

For countries like Italy and France, the situational and structural position of the agribusiness made the political cost of action especially apparent given the opposition these Member States were likely to face at home. Moreover, within Germany some doubts developed as well. The Ministry of Economics and the Chancellery in Germany (i.e. Level III) were against the prospect of TAFTA for two main reasons: the existence of already low tariff levels with the US in non-agricultural goods, which defeated the purpose of a TAFTA, and the sensitivity of the agricultural sector (WikiLeaks, 2006). These elements also limited the frames' persuasive capacity on economic considerations. Since the agreement appeared detrimental or of limited relevance for some sectors, its capacity to deliver economic results came with strings attached. Thus, in addition to worries about the health of the WTO and the Doha Round, concerns for certain sectors delegitimised the initiative, as other sceptical actors (e.g. segments of the EP, part of the epistemic community, etc.) focused on EU standards (Frame 4) and developing countries (Frame 6) to oppose the idea of a TAFTA.

Despite the initial attempts and the initiatives undertaken by Germany, Merkel failed to gather sufficient support for the idea of a TAFTA. According to Congressman Phil English, the strong opposition within Europe made it necessary to consider less ambitious initiatives than a trade agreement, which once again was abandoned (see Streit Council, 2007). The idea of a TPA/TAFTA was replaced by the establishment of a less institutionalised, less binding, and less ambitious Transatlantic Economic Council (TEC). In brief, if, on the one hand, the German Chancellor managed to gather sufficient support for increased transatlantic economic integration, this proved insufficient to ensure the launch of negotiations for a TAFTA.

**4.4.2 The Salience of Frames.** In terms of negotiation framing, this analysis shows that frames characterising the 2006-2007 discourse had already emerged in the 1990s but the elements favouring or generating obstacles to their salience had changed. Similarly, analysis of the literature (see Bandler

& Rashish, 2007; Mildner, 2008) and official documents has revealed that the 2006-2007 pro-negotiation frames echoed those that had emerged in the 1990s. But, what affected the salience of these frames in this time period? Although a number of events increased the international permissiveness of the agreement (i.e. post-Afghanistan and Iraq War context; rise of emerging powers), others (e.g. Doha Round; EU-US disputes; concerns for the agri-food sector) negatively affected the prospect of agreement. The section will first analyse the degree of permissiveness of the international context and then explore the focusing events, which affected the launch of negotiations.

Transatlantic relations had been fractious during the first Bush term (see Schweiger, 2006); in fact, limited progress took place in transatlantic economic cooperation between the EU and the US (see Pollack, 2005). The 21st century has been characterised by a number of relevant shifts in the international arena. In particular, 9/11, the following Afghanistan War in 2001 and Iraq War in 2003 have shaped, and, in some respects, damaged the relationship between the US and Europe (see Bandler & Rashish, 2007). Although the EU-US partnership had previously been described as a 'successful but unhappy marriage', the two seemed headed for a complex divorce at the beginning of the new millennium (Howard, 1999, p.164). However, a number of elements affected the relationship over time: security-related issues and the rise of new powers.

The Afghanistan and Iraq Wars and the consequent loss of US legitimacy, in addition to the difficulties in concluding the Doha Round, which became apparent in 2003, incentivised economic cooperation in the second G.W. Bush Administration. The increased complexity following the invasion of Iraq context made it apparent for Europe and the US that re-building Iraq was going to be costly (Cox, 2004; Moravcsik, 2003; Kagan, 2004). Especially in this era, the American public tended not to favour any spending related to reconstruction in comparison to the US appetite for spending associated to the war directly (Interview 32042017). The need for European support started to emerge in the US official rhetoric at the end of the first Bush term (see Cox, 2004; Kagan, 2004) and the EU-US relationship started to improve in the second Bush term.

With regard to the rise of new powers, economic studies increased concerns over the declining power of the West. In 2003, Goldman Sachs published a study titled *Dreaming with the BRICs: The Path to 2050* in which it was argued that by 2050 the economies of Brazil, Russia, India and China would be larger than those of the US, Japan, Germany, UK, France and Italy (Stuenkel, 2015). The prediction was further reaffirmed in 2005, when Goldman Sachs argued that the BRICs were going to grow faster than had originally been predicted (Ibid.). In 2006, the increasing competition from China (i.e. positive focusing event) led the US, Canada, and the European Union to raise concerns in the WTO about China's tariffs on car components. This fed concerns over the rise of emerging economies and the need to think of a possible TAFTA to reinforce the transatlantic partnership (see Financial Times, 2006). The need to look to an old friend appeared to be a natural strategy for the German Chancellor and the idea of TAFTA was based on these premises. It was this new more permissive climate that allowed Angela Merkel to advance the idea of a TAFTA. It does not come as a surprise then, that among the frames in support for TAFTA, the most significant one (see Table 4.1) concerned the increasing uncertainty in the international context, which called for stronger transatlantic partnership.

Difficulties with the Doha Round also generated a more permissive context for the launch of TAFTA. But the project was considered too risky for the WTO, especially by the Commission, which was more interested in the conclusion of the Doha Round. The resolution of outstanding EU-US disputes such as the "Banana War" (although temporarily) and the resolution of the dispute on the Foreign Sales Corporations (FSC) provision in the US tax code was conducive to a more cooperative environment. However, the Airbus-Boeing dispute generated further complications (i.e. negative focusing event) (see European Parliament, 2006a). Finally, the situational and structural position of the agri-business in some Member States (e.g. Italy, France, etc.) increased the political cost of action, negatively affecting the salience of the frames in favour of the launch of negotiations.

The salience of frames against the launch of negotiations remained higher. The process of coalition building around the economic-based frame and the strategic frame did not appear sufficient

to build a coalition supporting the idea of a TAFTA. If in the 1990s the proposal for a TAFTA was clearly vetoed by France, the unsuccessful launch of negotiations in 2007 was due to a wider number of factors. In addition to the one explored here, it is worth noting that the US remained sceptical of the agreement given the opposition of the regulatory agency and the ongoing Doha Round trade talks (Mildner, 2008). Difficulties within the US might have negatively affected the process of coalition building within the EU. Since the US showed scepticism towards the idea of a TAFTA, the commitment to find a compromise within the EU was also negatively affected. Once again the project of launching negotiations for a TAFTA was postponed.

**4.4.3 Conclusions.** This section has explored transatlantic relations and the difficulties encountered in further promoting institutionalisation and the launch of the TAFTA. Given the transatlantic rift of the first Bush term, it does not come as a surprise that the major achievements in the cooperation with the EU took place in the second Bush term, where more openness towards the EU emerged from the US side. In this new context, the idea of launching a TAFTA emerged again. Despite the commitment to the project showed by Angela Merkel, opposition at Level II and an unenthusiastic Commission did not lead to a TAFTA but, instead, to the launch of the TEC in 2008. Although frames in support of the launch of negotiations were sustained, concerns regarding the rise of the rest and the necessity to keep multilateralism alive – as argued by the epistemic community and the Commission itself – reduced the significance of frames in favour of the agreement and, in combination with and sustained by opposition at Level II, led the initiative to sink once again.

#### **4.5 The Launch of TTIP negotiations**

The path toward the negotiation of a comprehensive transatlantic agreement was initiated in the 1990s, when the idea of a TAFTA was put forward by Klaus Kinkel in 1994 and by Lord Brittan in 1998, but it did not meet sufficient support (see section 4.1.2). Attempts to resurrect the initiative were undertaken by Germany in 2006-7 but failed once again (see section 4.2.2). Despite the

challenges that remained, in June 2013 the US and the EU announced the launch of TTIP negotiations. The context and conditions leading to this breakthrough, therefore, mark a turning point in this history. What led to this achievement? A number of elements at each level facilitated the launch of negotiations. The argument here is that the increased salience of frames in favour of negotiations combined with a decrease in salience of those against the launch of talks facilitated the process of coalition building. The shift in salience was mainly triggered by the advent of the Financial Crisis and, secondarily, by the death of the Doha Round. The reduced cost for political action for some Member States also contributed to an increase of salience of the economic-based argument. However, the shock induced by the Financial Crisis had only momentarily increased the salience of the economic based frames. The section will explore the diverging preferences and how different frames were used in the process of gathering a consensus regarding the launch of the TTIP negotiations. Secondly, it will analyse what affected the salience of the frames in support of the launch of negotiations and how the momentum was lost. Finally, the section will present the conclusions.

**4.5.1 Preferences and Coalition Building around Opposing Frames.** With the advent of the Financial Crisis, economic-based concerns became a key element to understand the launch of negotiations. The section will, firstly, consider the increased salience of the growth-based frame, the role of Public Consultations (PCs) and how stumbling blocks related to agriculture and audio-visuals could be overcome. Secondly, it will analyse the role of strategic frames and the decreased relevance of the frames employed against the launch of negotiations. These combined elements facilitated the process of launching negotiations.

The economic argument (Frame 3) emerged as one of the main drivers in gathering support around the launch of negotiations. From 2011 to 2013 a process of building the EU negotiating position took place. The path to the launch of TTIP negotiations was initiated in 2011 during the US-EU summit and was concluded in July 2013 at the G8 meeting with the formal initiation of the

negotiations. The outcome of the 2011 Summit consisted of instructing the TEC to establish a High-Level Working Group (HLWG) on Jobs and Growth.

The HLWG was directed by USTR Ron Kirk and EU Trade Commissioner Karel De Gucht and was meant ‘to identify policies and measures to increase US-EU trade and investment to support mutually beneficial job creation, economic growth, and international competitiveness’ (European Commission, 2011). Once the HLWG final report was issued in February 2013, it was concluded that a comprehensive agreement was the best option to ensure ‘the most significant mutual benefit of the various options [...] considered’ (HLWG, 2013, p.1). The final report was followed by a shared US-EU memo wherein the EU and the US announced the start of the procedures necessary to launch negotiations (European Commission, 2013a). The dominant discourse that accompanied the preparatory phase and the launch of negotiations was the fact that TTIP has the potential to be the ‘cheapest stimulus package’ for boosting economic growth (De Gucht, 2013a) (Frame 3).

While the Council was one of the main promoters of the decision to launch negotiations, it was the Commission, which had the primary task to build consensus, function as mediators among different preferences, and define an “EU position”. Article 207 of the Treaty on the Functioning of the European Union (TFEU) assigns exclusive competence over Common Commercial Policy (CCP) to the Union. More precisely, ‘the scope of the CCP [...] covers goods, services, and the commercial aspects of intellectual property. It equally includes FDI’ (Schütze, 2015, p.886). The Commission must receive the mandate to negotiate by the Council before initiating the negotiations. The issue of the mandate required a number of preliminary passages, the first of which consists of putting together the EU position, which took the Commission approximately two years to achieve (i.e. from 2011 to 2013) (Interview 15042016). In order to determine the standing of Level III, the Commission launched a number of consultations (Ibid.).

In the case of TTIP, three different PCs took place in 2012: 1.) growth and jobs, (April 2012); 2.) the future of EU-US trade and economic relations (September 2012); and 3.) regulatory issues for possible future trade agreement (October 2012). The consultations showed overwhelming support for



TTIP and received contributions from both EU stakeholders and, in particular, the business community (Level III), as well as their American counterparts (see European Commission, 2012a; 2012b; 2012c).

The majority of replies originated from the business community identifying specific sectors (e.g. telecommunications, financial services, legal services, automotive, chemicals, etc.) in which cooperation was considered welcome. The business community has been largely in favour of fostering transatlantic ties (Interview 24042016; Interview 25042016; Interview 26042016), given the degree of integration between the two economies (Interview 21042016) (see also Young, 2016), and lobbied for it, engaging different institutions and MEPs (Interview 24042016; Interview 25042016; Interview 26042016).

Over time, the level of transatlantic economic interconnectedness has grown. Each party is the first export destination for the other (DG Trade, 2018). One defining features of transatlantic investment relations is that one third of trade is intra-firm, suggesting a high level of integration in the transatlantic business community (Ibid). The data suggest that, from 2003 to 2013, EU exports and imports to the US have grown annually by 2.8 per cent and 2.45 per cent, respectively (Istituto Affari, Italiani, 2014). However, the level of trade engagement with China has risen far more dramatically, reaching double digits with regard to both the annual growth in exports (i.e. 14.04 per cent) and imports (13.03 per cent) (Ibid). Therefore, a trade agreement with the US was also meant to improve trade relations with the US (Ibid.).

It is also worth mentioning that the real source of such interconnectedness is investments. The US investment in the EU appears to be three times higher than what is invested in Asia, while EU investment in the US appear to be eight times higher than the EU's combined investment in China and India (DG Trade, 2018). In particular, the significant flow of FDI, according to Young (2016), suggests a strong level of interconnectedness between businesses on both sides of the Atlantic. Therefore, regulatory convergence in TTIP would have meant increasing the efficiency among highly interconnected firms (Ibid.).

These considerations explain why TTIP has been characterised overall by transatlantic alliances, with the notable exception of the agri-food sector (Ibid.). Despite the general absence of a transatlantic “league” in agriculture (with some notable exceptions, such as that between the European Crop Protection Association and Crop for Life America), the EU agri-food sector did also appear to favour negotiations. Moreover, three PCs were launched in 2012. The tables present an analysis of the October PC and March PC (the September PC is unavailable) and, more specifically, of the players that addressed agriculture negotiations in TTIP. Overall, in the 2012 PC attention was paid to the need to reduce tariffs, increase regulatory cooperation, and find a compromise on Sanitary and Phytosanitary (SPS) issues (see tables below). Concerns have emerged with regard to imports of hormone beef and animal welfare but they were limited. In fact, the majority of contributors appeared in favour of agriculture negotiations in TTIP. The data shows that concerns over the agricultural sector did not fully manifest at the beginning of the negotiation process. This increased the legitimacy of the TTIP initiative.

Table 4.2 First Public Consultation

<b>Public Consultation</b>	<b>Type</b>	<b>Suggested Reduction in Tariffs</b>	<b>Suggested dialogue on regulatory cooperation and/or SPS issues</b>	<b>Suggested dialogue on Certifications and Standards</b>	<b>Concerns over further convergence</b>
Latvia	<b>Country</b>		x	x	
Denmark	<b>Country</b>		x		
European Association of Dairy Trade	<b>Business Association</b>	x	x	x	
European Fresh Producer Association	<b>Business Association</b>		x	x	
European Food and Drink Federation	<b>Business Association</b>		x	x	x (hormone beef)
Transatlantic Animal Welfare Council	<b>NGO</b>			x	x (animal protection)
European Sugar Producer Association	<b>Business Association</b>				x (sugar)
Danish Agricultural and Food Council	<b>Business Association</b>		x		
Orgalime	<b>Business Association</b>			x	

Association of German Chambers of Industry and Commerce	<b>Business Association</b>	x	x		
Federation of German Industries	<b>Business Association</b>	x	x		
Foreign Trade Association	<b>Business Association</b>	x	x		
Transatlantic Business Dialogue	<b>Business Association</b>	x	x		
Business Europe-US Chamber of Commerce	<b>Business Association</b>	x	x		
EuroCommerce	<b>Business Association</b>		x		
Confederation of British Industry	<b>Business Association</b>	x			
European American Business Council	<b>Business Association</b>	x			
EuroChambers	<b>Business Association</b>	x	x	x	

Source: Author's elaboration of Stakeholders' contribution to the First EU Public Consultations on TTIP negotiations in 2012

Table 4.3 Third Public Consultation

<b>Public Consultation</b>	<i>Type</i>	<i>Suggested Reduction in Tariffs</i>	<i>Suggested dialogue regulatory cooperation and/or SPS issues</i>	<i>Suggested dialogue on Certifications and Standards</i>	<i>Concerns over further convergence</i>
Asociacion Espanola De Productores de Vacuno de Carne	<b>Business Association</b>				x (Beef)
Business Europe and US Chamber of Commerce	<b>Business Association</b>		x		
Confederation of Danish Industry	<b>Business Association</b>		x		
EuropaBio and Biotechnology Industry Organization	<b>Business Association</b>		x	x	
European Association of Dairy Trade	<b>Business Association</b>	x	x	x	
European Boating Industry	<b>Business Association</b>		x		
European Crop Protection Association (ECPA) and CropLife America (CLA)	<b>Business Association</b>				
European Starch Industry Association (AAF) + Corn Refiners Association (CRA)	<b>Business Association</b>		x		
The Humane Society International (US and EU)	<b>Business Association</b>		x	x	
International Fur Trade Federation	<b>Business Association</b>		x	x	

Transatlantic Animal Welfare Council	<b>NGO</b>			x	x
US Chamber of Commerce	<b>Business Association</b>		x	x	

**Source: Author's elaboration of Stakeholders' contribution to the Third EU Public Consultations on TTIP negotiations in 2012**

The heterogeneity of preferences within the agri-food sector reduced the salience of economic concerns on which France had based its opposition against a TAFTA. The analysis of EU PCs in 2012 reveals that the business sector appeared in favour of discussing agriculture in TTIP. In particular, a significant part of the EU dairy sector was supportive of a transatlantic pact (see Hansen-Kuhn & Suppan, 2013). Potential gains from the recognition of Geographical Indications (GIs) generated more favourable dispositions towards the agreement in countries such as Italy (Interview 01042016) and France, historically warier of negotiating agriculture. Moreover, as emphasised by a report commissioned by the AGRI Committee for the EP, in addition to the dairy sector, other sectors, such as wine and spirits, sugar, and biodiesel might gain the most from TTIP (Bureau, et al., 2014), while beef, ethanol, poultry and cereals might be the most negatively affected (Ibid.). The elements discussed show the emergence of heterogeneous interests within the agricultural sector. The analysis of the 369 submissions to the USTR on TTIP (USTR, 2013) show that only 62 also regarded agriculture. Among this 62 submissions, four contributions came from EU-based associations (i.e. the Confederation of British Industry; Business Europe; the European Service Forum; and the Bertelsmann Foundation), thereby promoting a discussion of agriculture. Although not all the contributions appeared to favour negotiations (e.g. Friends of the Earth Europe, certain German SMEs, etc.), this heterogeneity of preferences gave the Commission more room for manoeuvre.

According to Putnam (1988), heterogeneous interests allow negotiators more room for manoeuvre. Since interests are not concentrated with a specific preference, as in the case of homogeneous interests, different coalitions can be built. The emergence of heterogeneous interests in the agricultural sector facilitated the process of consensus building and reinforced the salience of the economic-based argument.

The Eurobarometer survey also showed a generally positive attitude towards increased trade with the US. Around 71 per cent of the EU population considered trade and investment with the US as a generator of economic growth for the EU (see Flash Eurobarometer 380, 2013). Support from Level III also increased the salience of the economic theme as well as the Commission's ability to build coalition around the TTIP project.

In addition to the Council and the Commission, the EP (Level II) assumed a relevant role in the early stages of negotiations for TTIP. The EP expressed its initial favourable position on the prospect of a transatlantic agreement with the resolution of 23 October 2012 entitled "Trade and economic relations with the United States". With the 2009 Lisbon Treaty the consent by the EP became necessary for the successful ratification of any trade deal. This institutional change had an impact on the development of the process leading to the launch of negotiations since understanding the EP's position as veto player became a necessary step in avoiding involuntary defection.

The 2012 EP report sponsored by Vital Moreira emerged after the release of the HLWG interim report in 2012 with the intent of backing the anticipated opening of negotiations on a transatlantic trade and investment agreement. The EP report was approved by a strong majority (526 vote in favour, 94 against, and 7 abstentions) mostly composed of EPP, Socialist and Democrats (S&D), the Alliance of Liberals and Democrats for Europe (ALDE), the European Conservatives and Reformists (ECR), and the party of Europe of Freedom and Democracy (EFD). If the frames concerning with the economic potential of the agreement had emerged in 33.3 per cent of the speeches in 2006 and 37.5 per cent in 2007, they jumped to 75 per cent in 2012 (see table above). Although one could argue that frequency reported above does not necessarily show salience, it sheds light on what appeared more relevant to mention in order to persuade in a debate because it is understood as most appealing and relevant at a given time. In 2012, it was the growth-based argument.

Strategic arguments (Frame 1), however, did not disappear from the TTIP discourse. The necessity to reinvigorate the EU-US relationship also appeared as an instrument used to shape the TTIP debate. The respondents mentioned geopolitical considerations as one of the main elements

through which it is possible to interpret the launch of TTIP (Interview 07042016; Interview 09042016; 11042016; Interview 22041016; Interview 31042016).<sup>18</sup> As it was the case in 2006-2007, the growing influence of emerging economies was made more worrisome by the crisis generated by the global downturn of 2007-8. With regard to emerging countries, the attention in the interviews was mainly paid to the emergence of countries like China and the failure of the Doha Round, which have typically been (re)connected to the exigence of setting new global standards (Interview 11042016).

In a shared US-EU press release accompanying the announcement of TTIP negotiations, it was argued that TTIP ‘is also a powerful demonstration of our determination to shape an open and rules-based world’ (G-8 Summit, 2013). Moreover, Van Rompuy, in emphasising the strategic relevance of the transatlantic partnership argued that:

[W]hat is at stake with a trans-Atlantic free trade area is to enshrine Europe and America’s role as the world’s standard status beyond product specifications by setting a positive force in shaping the way we work and the way we live our daily lives. This is of key strategic significance, ladies and gentlemen; the Atlantic is not the past, it is also the future (G8 Summit, 2013).

The general debate surrounding TTIP seems then to acknowledge this point. Interviews have also revealed that the EU was trying to use TTIP to reinforce cooperation with the US vis-à-vis other countries not only as a response to failed multilateral trade talks but also to strengthen cooperation in other sectors (e.g. energy and sustainable development) (Interview 07042016; Interview 08042016). Although on the one hand, the overarching themes have not substantially altered, on the other, new geopolitical developments reinforce the need for a stronger transatlantic partnership and for the EU and the US to be “standards setters rather than standard takers” (Hamilton and Pelkmans, 2015). These arguments have appeared in the EP debates on a transatlantic FTA (see European Parliament, 2012a; 2012b) and in the official rhetoric within the Union (see G8 Meeting, 2013). For instance, according to MEP Vital Moreira:

[B]oth economies are facing common challenges that can only be properly addressed jointly rather than separately. These include low growth, the dramatic progress of the new emerging economies,

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<sup>18</sup> Geopolitical considerations and the intention to set global standards appeared to be a recurring element in the interviews when the respondents were asked about the reasons behind the launch of negotiations. However, although some respondents shared the premises of the Commission’s rhetoric, others did not consider it a plausible and/or sufficient argument.

particularly China, and the increasing protectionism in some important economies [...] (European Parliament, 2012a).

Among the frames adopted to support the launch of TTIP, concerns over the US's focus on other geographical areas (Frame 2) have characterised the discourse surrounding a TAFTA (and then TTIP) since the 1990s. They then reappeared in 2011 but with limited relevance. EU concerns over the US Pivot to Asia have been widely explored in the TTIP scholarship (see Hamilton, 2014a; 2014b; Gostomski & Michałowski, 2015) and have been employed within the EP (see European Parliament, 2013a; 2013b) to support the launch of negotiations. For instance, according to MEP Francisco Jose Millan Mon (EPP) a 'new dynamism [was] also politically opportune, because many believe that the transatlantic relationship could lose force by the turn of the United States to Asia' (European Parliament, 2013a). However, conversations with Commission Officials have led to understanding the negotiations of TPP from a different perspective. Interviews have pointed out that the Trans-Pacific Partnership is actually helpful, simply in trying to understand what the US position over specific issues is and where the US "red lines" are in relation to specific issues like the environment (Interview 30042016). The Commission has not relied on the discourse stemming from the fear of an US disinvestment in the EU and increased focus on Asia (i.e. the so-called US Pivot to Asia). On the contrary, the Commission had expressed a positive view of the impact of TPP for TTIP (see Inside US Trade, 2014a).

The frame about the US pivot to Asia also became focused on how TTIP and TPP could become a response to the rise of emerging economies (see Van Ham, 2013) or on how TPP negotiations could allow the EU to identify US preferences and act accordingly (Interview 31042016). The absence of a negative interpretation of TPP by the Commission can be explained by their necessity not to criticise the US strategy. This was done to present the public with the idea of a strong friendship with the US, which rather than pushing away EU allies (as it was the case with Bush) was willing to work with them and develop a common strategy.

The increased salience of the frames in favour of negotiations was combined with a decrease in relevance of the frames against the launch of negotiations as was evident in the analysis of the EP

debates (see table above). The complexity regarding the conclusion of the Doha Round generated a more permissive international environment. The argument here is that there was no multilateral project that could be compromised, threatened or sunk by the negotiation of a transatlantic trade agreement (see European Parliament, 2013a; 2013b; 2014; 2015a; 2015b).

In the TTIP debates, concerns for the WTO (Frame 5) remained, but the EU-US trade deal was pointed out as a solution to the stalemate and as the only way forward given the impasse at the multilateral level. In addition, although concerns regarding developing countries were still present in the EP debates, they receded in the face of growth-led priorities in 2013-14. That said, frames concerned with the impact of a TAFTA on the EU model (Frame 4) emerged once again in the 2012 and the 2013 EP debates – and not only there.

A persistent frame in the TAFTA/TTIP debate has been that concerning EU standards. In particular the 2013 debate focused on audio-visual services. The possibility of overcoming the opposition was due to a number of events. It is necessary to recall that at the Council level (Intra-institutional negotiations, Level II), France, as it happened in 2007 and in the 1990s, posited a number of concerns over the inclusion of audio-visual services in the negotiations. To put it simply, the prospect of including audio-visual services caused the Commission and some Member States (e.g. the UK and Germany) a huge EU headache. Audio-visual services are, legendarily, an issue of particular concern for France. The issue of audio-visuals was linked by the French Government and within the EP with the necessity to protect EU standards and culture (see Chapter 5 on this point). The EP resolution,<sup>19</sup> which asked for the exclusion of audio-visual services from the negotiation mandate, passed with 460 votes in favour, 105 against and 28 abstentions in May 2013. The majority in support of TTIP comprised mainly MEPs of the following European Parliamentary Groups: EPP, S&D, ALDE, ECR, and the EFD.

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<sup>19</sup> European Parliament resolution of 23 May 2013 on EU trade and investment negotiations with the United States of America (2013/2558(RSP))



This legitimization of the initiative from Level II represented a facilitating factor for compromise since it took place before the Council's meeting in which the mandate was to be agreed upon in June 2013. Thus, the resolution had two important functions: 1.) it increased the legitimacy of the TTIP project, and 2.) it reinforced the French opposition by reiterating concerns over the inclusion of audio-visual services. In this new context, the Council managed to agree upon the audio-visual exception, as desired by France, despite the original opposition to the exception by Germany and the UK.

It is worth noting that France could have exercised its veto power as allowed by Art. 207(4)(a) of TFEU. When an agreement concerns cultural and audio-visual services, unanimity is required. Although this was surely an option for President Hollande, such a decision would have weighed heavily from a political perspective. In the process of launching negotiations with the US, it was necessary to demonstrate a united front. Moreover, the support of the EP on the exclusion of audio-visuals appeared to be a useful tool for legitimising French concerns. Gaining support from the only EU institution elected directly by EU citizens increased France's bargaining power and stand vis-à-vis the other Council members. The request to exclude audio-visuals thus also became difficult to disregard from a political stance, even though the veto power would not have been exercised.

The exclusion of audio-visuals from the negotiation mandate had furthermore reduced, although temporarily, the salience of the frames concerned with the need to protect EU and French values from the challenges posed by the US. In addition, the cost of political action (i.e. supporting the launch of negotiations) diminished as a result. In 2013, the EU and the US managed to launch negotiations for TTIP.

**4.5.2 The Salience of Frames and the lost momentum.** In 2013 the launch of negotiations appeared to be a great achievement for both the EU and the US. However, a number of stumbling blocks started to emerge and add momentum, and the rush to conclude the negotiations eventually waned. The advent of the Financial Crisis allowed for certain concerns to momentarily recede. The economic

downturn and the hope for economic gains appear more relevant in 2012 than in 2013 (see Table 4.1). In fact, 2013 was marked by a decrease in the number of observations regarding the impact of the agreement on the EU model (see Figure 4.1). The argument here is that the Financial Crisis had only a temporary effect on the increased relevance of growth-based frames vis-à-vis frames expressing concerns for EU standards. The section will consider what originally affected the salience of the frames concerned with the EU standards and subsequent developments in the salience of frames.

If in the 1990s and 2006-07, previous attempts expressing the need for a TAFTA were mainly based on strategic considerations, those appeared less relevant than economic arguments in this latest push (see Figure 4.1). The Financial Crisis of 2008 represented a focusing event that increased the salience of the frames concerned with the economic argument. The conclusion of an agreement delivering economic growth in the aftermath of the crisis was indicated as one of the main motivations for the launch of negotiations by several respondents (Interview 08042016; 16042016; Interview 23042016; Interview 24042016; Interview 27042016).<sup>20</sup> In brief, the need to ensure economic gains allowed for frames based on this argument to be compelling in the process of gathering consensus. Improvements on longstanding controversies such as the beef dispute generated a more positive climate and functioned as positive focusing event.

In 2009, the EU and the US agreed on a memorandum of understanding (MOU) to solve controversies over beef trade, which generated hopes with regard to the ability of the EU and the US to agree on longstanding issues which were likely to represent part of what had to be discussed in TTIP. In addition, the resolution of the audio-visual controversy seemed to confirm the Commission's commitment to protecting EU standards. Further legitimacy to the project came from the difficulties in the WTO. The death of the Doha Round functioned as a positive focusing event and made the necessity for closed EU-US ties in trade-related matters more salient.

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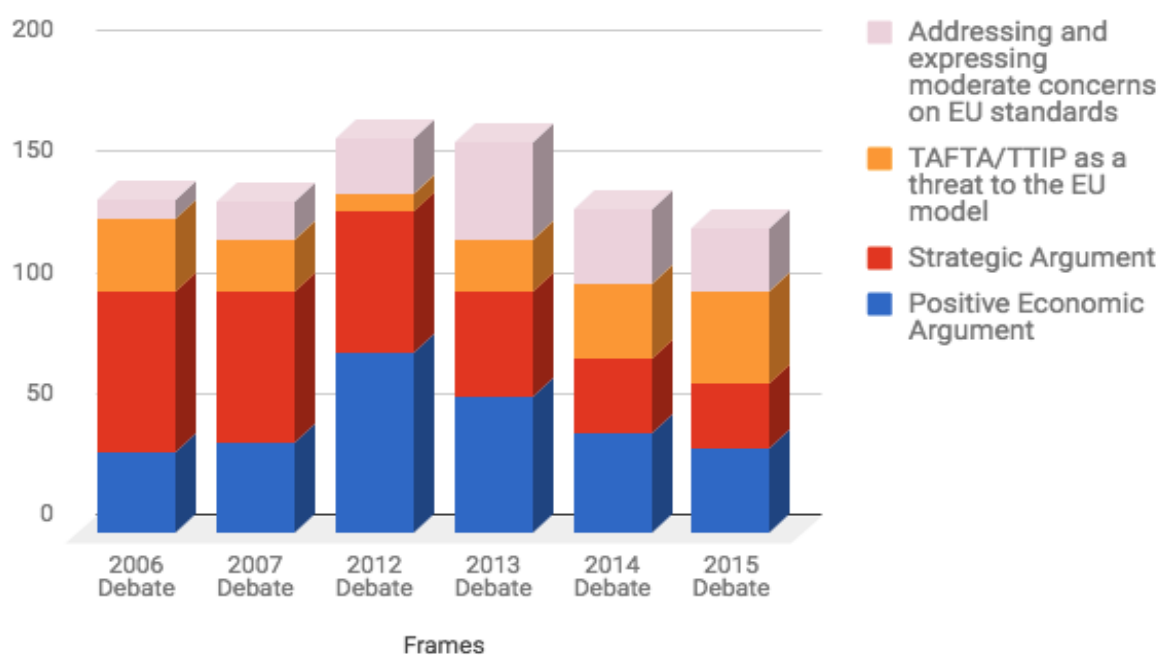
<sup>20</sup> Although this point of view, in some cases, did not necessarily reflect the respondents' convictions, the Financial Crisis was generally considered the main element to consider in order to understand how the launch of negotiations was justified.

Although the emphasis on economic gains still appears fairly high in 2013, it is possible to see a decrease in the number of times in which this specific topic appears in the EP debate in comparison to 2012. Although the analysis of EP debates offers a partial overview of EU institutions, it shows a significant shift in the use of frames related to TTIP and captures a change in people's attitudes towards the agreement. The reduced emphasis on economic gains visible in the 2014 and 2015 debates can be linked to growing popular opposition against the agreement (Level III), which is also reflected in the increased salience of frames concerned with the health of the EU model (see Figure 4.1).

The epistemic community appeared divided as well. While some studies confirmed the economic benefits of the agreements (see CEPPII, 2013; CEPR, 2013; etc.), others started to warn against the perils of TTIP (see Stiglitz, 2016; De Ville & Siles-Brügge, 2015a; 2015b). The economic benefits started to be increasingly questioned within the EP as well. An MEP, for instance, argued that there are two main problems with the scientific studies proposed by the Commission: firstly, the expected economic growth deriving from the agreement is relatively small; and, secondly, it is based on a number of conditions (e.g. a given level of regulatory convergence) that are impossible to achieve (Interview 22042016).

In time, the salience of the frames in favour of negotiations started to fade away (see Figure 4.1). Part of the S&D, Greens, GUE/NGL, the more populist European parties (i.e. Europe of Freedom, Direct Democracy and Europe of Nations and Freedom (EFDD)) also increasingly referred to the threat posed by TTIP to the EU model to justify their opposition to the agreement. As argued by a Trade Advisor to the S&D Group, 'TTIP has been more controversial and high profile than what the Commission had expected' (Interview 01042016). Figure 4.1, by considering the recurrence (y-axis) of given issues in speeches, identifies how the EP debates evolved over time with regard to EU standards and economic arguments.

Figure 4.1 Frames



Source: Author's elaboration of the EPs debates

In 2015, the frames considering TTIP a threat to the EU model became more numerous (see figure above). Another line of argument pointed out that the agreement would benefit mainly multinationals (Interview 28042016). The cultural myth of “Social Europe” and “Green Europe” rooted in the European culture facilitated the appeal of civil society with the consequent increase of salience of the frames mentioned. Longstanding concerns over agricultural issues like GMOs and hormone beef have been used to gather opposition around the transatlantic project. And despite the insurance given by the Commission with regard to their exclusion from TTIP, they have continued to be part of the debate.

Several concerns were also linked to the primary role of the business community in the negotiations (Interview 11042016). The (either real or perceived) disproportional influence of multinationals was considered, according to several respondents, to be a direct threat to EU standards (Ibid.). Questions concerning TTIP became questions about the EU model. As an MEP argued, ‘TTIP is much more than free trade and it is about how the society will be organised, how we organise our democratic decisions, how we organise the defence of our standards’ (Interview 22042016).

The following chapters will explore these elements more in depth. Here it suffices to point out that although some focusing events have affected the salience of frames concerned with EU standards (e.g. *Morris v. Australia*,<sup>21</sup> *Vatterfall v. Germany*; leaked documents, perceived lack of transparency,<sup>22</sup> etc.), all these considerations were based on long established cultural elements.

The threat that negotiation with the US would represent for the EU model broadly understood had been present in Europe since the 1990s. The Financial Crisis, rather than representing a watershed for the growth-based model within the EU trade policy, facilitated the development of a consensus with regard to the launch of negotiations. In other words, the shock created by the Financial Crisis functioned as a temporary focusing event, which, supported by other structural adjustments (e.g. with regard to the agricultural sector), appeared sufficient to affect the salience of frames based on positive economic considerations.

In 2015, in the days preceding the vote on the TTIP resolution, several MEPs were surprised by the numbers of emails they received and the overall confusion about the vote (Interview 030142016; Interview 04042016). Several thought, ‘we were voting on TTIP, so we were asked in the emails to vote against the agreement’, despite the fact that the resolution was instead a collection of recommendations for the Commission (Interview 0304106).

The chapter does not intend to downplay the significance of regulatory divergence between the EU and the US in understanding the slow pace of negotiations nor to downplay the role of civil society as the main vehicle for a widespread opposition to the transatlantic agreement. The point here is that an increase in salience of frames when combined with a relevant convergence of interests among veto players can generate enough political support and legitimacy for an initiative that otherwise would appear excessively controversial. Second, if the change in the salience of frames is mainly dependent on a momentary shock, which does not generate a permanent change in values and

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<sup>21</sup> A respondent specifically referred to the case of *Morris v. Australia* as having an impact on the mobilisation of the public (Interview 09042016).

<sup>22</sup> For instance, an EPP MEP declared ‘[t]he delay and unnecessary secrecy have resulted in the build-up of distrust among our citizens. We have seen the rumour mill go over into overdrive. Member states’ silence allowed these stories to flourish. But I know it is too late to counter the narrative’ (Interview 17042016).

opinions, a boomerang effect in the persuasion process takes place. Old considerations tied to cultural elements can re-emerge to generate political opposition with regard to a given project.

**4.5.3 Conclusions.** The path to the launch of negotiations for TTIP was paved with obstacles. Despite the number of attempts in the 1990s and then in 2006-7, the launch of negotiations for a TAFTA did not seem like a viable possibility. The advent of the Financial Crisis increased the salience of old frames associated with the positive effects of a transatlantic trade agreement. The more permissive international context also benefited from the more cooperative attitude of the Obama presidency, as well as the deadlock in global trade governance, which reduced the significance of the frames describing a TAFTA as a threat to the multilateral system. It is in this different context that Member States and the US found more fertile ground for the negotiations and tasked the Commission with writing the EU negotiation mandate. The launch of negotiations was further legitimised by the endorsement of the EP and Level III constituencies (e.g. business sector). Moreover, although France had been a vivid opponent to a Transatlantic agreement, the possibility of economic gains and the exclusion of audio-visual services allowed for compromise to be found at Level II as well.

## **4.6 Conclusion**

This chapter has offered an analysis of the underlying conditions and political pathways required for the launch of TTIP negotiations. The purpose has been to evaluate how the launch of negotiations became possible in 2013, despite previous failed attempts in the 1990s and 2006-7. The chapter has adopted a framework of analysis based on the Two-Level Game literature and theories analysing the role of frames in negotiations, which carries potential analytical findings to understand how preferences and frames develop throughout a negotiation process and are used to legitimise a given policy. The argument here is that ideational aspects do not have a deterministic impact on a policy outcome in 'a crude cause-effect relationship' (Radaelli & Kramer, 2002, p.39) but they enable or constrain actors and affect the capacity to build coalitions.

The analysis of 700 parliamentary speeches and other official documents has led to the identification of a number of frames that have been used to support or oppose the launch of TAFTA since the 1990s. The two frame families related to TAFTA/TTIP (i.e. those in favour and against) can be divided into three meta-arguments: the positive economic discourse, the need to reassert the EU-US leadership, and the need to re-balance the US's increasing focus on other geographical areas; while the frames against TAFTA can be summarised as: TTIP posing threats to EU models and values, threats for developing countries, and threats to multilateral trade governance. Since the content of the frames had not changed, how was consensus actually built?

Since the 1990s, EU leaders had tried to push for the idea of a TAFTA. But it was only in 2013 that convergence among veto players allowed for the initiative to be explored between the EU and the US, even though the primary arguments in favour and against had not actually changed in any significant way. Given the significance of a TAFTA/TTIP, which if ratified would represent the biggest bilateral agreement ever negotiated (DeVillle & Siles-Brügge, 2015a), legitimisation of the initiative appeared necessary.

In 1995, 1998, and 2006-7, stumbling blocks to the negotiations were traceable back to opposition among stakeholders at the different levels of negotiations and to difficulties in legitimising the prospect of the agreement. The Financial Crisis made frames considering the agreement as carrying economic benefits for the EU more salient. The salience of the economic frame appears to have increased over time as Table 4.1 suggests. While the strategic argument and the economic argument remained the most used in the EP debates, the economic downturn had increased the relevance of the economic argument. The collapse of the Doha Round also contributed to the launch of negotiations by generating a more permissive international context for the negotiation.

The prospect of a TAFTA has long been characterised by concerns about threats to the EU model. Mainly because of the Financial Crisis, it is the argument here that those concerns were momentarily put aside. But, because of the ability of the civil society, part of the epistemic community, and some sections of the EP to capitalise on events affecting the salience of the frames

(see Chapter 5 and 6), old arguments emerged once again and increased the posturing against the TTIP. Those concerns were not new but had characterised the transatlantic debate on a TAFTA since the 1990s and were deeply connected with values deeply rooted in EU culture as the next chapters will explore.

The following chapters will explore how shifts in salience of frames might affect negotiation outcomes. The analysis of official documents had revealed that agriculture and audio-visuals can be classified as longstanding sensitive issues in the TAFTA/TTIP debate (see Chapter 5). In addition to those, concerns for EU standards had expanded to include new issues: public services, chemicals, workers' rights, environmental protection and data protection (see Chapter 6). The next chapters will analyse the sensitivity of the issues mentioned, investigate why some of them became sensitive after the launch of negotiations, and explore why the frames generated a differentiated impact on the sectors mentioned and imposed different constraints on the Commission.



## **Chapter 5. Agriculture and Audio-visual Services in TAFTA/TTIP**

### **5.1 Introduction**

This chapter explores the negotiations on agriculture and audio-visual services in TTIP. As the analysis in Chapter 4 shows, these two sectors have been the most sensitive with regard to the launch of transatlantic trade negotiations since the 1990s (see Chapter 4). More specifically, the present chapter focuses on the frames that have characterised the debate over audio-visuals and agriculture and how the stakeholders have managed, on the basis of different arguments, to affect the negotiation process. The analysis shows two important elements. In the case of both agriculture and audio-visuals: 1.) growth-related concerns have battled against frames focused on the preservation of an EU way of life; 2.) the degree of divergence between the regulatory approach of the EU and the US, which was made more compelling by the negotiating strength of the US (see García-Duran and Eliasson, 2017), further increased the credibility of the concerns.

The analysis suggests that the situational and structural position of some stakeholders and focusing events affected the salience of the frames and, thus, the launch of negotiations. In particular, the high reflectiveness of the frames expressing concerns for EU standards was linked to discourses (e.g. the notion of cultural exceptionalism, the multi-functional discourse, etc.) (see below) that were deeply-rooted in the EU integration process. Their wide acceptance, in conjunction with other factors (e.g. focusing events, etc.), made the salience of such frames, more likely to become manifest. Finally, the analysis also suggests that homogeneous interests reduce the ability to compromise at Level I but increase the bargaining power of certain stakeholders within Level II. Putnam's original formulation considers the presence of homogeneous interests as factors that can reduce the size of the win-set but also increase the bargaining power of a party at Level I. Although more recent developments have dismissed this consideration and argued that homogeneous interests reduce the probability of compromise at Level I (see Moravitsick, 1993), the analysis here shows that Putnam's original argument might be valid for Level II and III.

The chapter will proceed as follows: it will firstly consider the audio-visual sector and then the agricultural sector. For each of these, the chapter will explore the main arguments adopted, the process that led to the launch of negotiations, and the developments in the negotiations that took place from 2013 to 2016. The chapter relies on secondary sources, primary sources, descriptive statistical analysis, and interviews with EU officials and relevant EU stakeholders.

## **5.2 Audio-Visual Services in the EU**

The section will analyse in greater depth the TTIP debate over audio-visuals. More specifically, the analysis will explore competing arguments over the inclusion/exclusion of audio-visuals in/from negotiations and how different actors have relied on these arguments to justify their own preferences and persuade others. This case is relevant for two reasons: 1.) it has been a long-standing stumbling block for the negotiations of a transatlantic trade agreement since the 1990s; and 2), despite the attempt to include the sector in the negotiations in 2013, opposition at Level II and III has led to its exclusion from negotiations. On what basis was the opposition regarding the inclusion of audio-visuals built and how did it gain legitimacy? It is argued here that a consensus was built by linking the negotiation of the sector to a threat to EU values and, in particular, to the notion of “cultural exceptionalism”.

The thesis argues that the notion of “cultural exceptionalism”, which is deeply-rooted in the EU integration process, legitimised the positions of France and the EP and made their request actionable. The situational and structural position of certain actors within Level III further reduced the ability of France to compromise. Although the literature has already argued that audio-visual services were of significant importance to France (see DeVille & Siles-Brügge, 2016), the present analysis illustrates the basis of such a statement and how the cultural argument was used in the bargaining process. Thus, the section will first explore the traits characterising the competing arguments. Second, it will explore the launch of the negotiations and how the concept of cultural

exceptionalism was relied upon in the debate to build coalitions. Finally, the section will analyse the recent outcomes of the negotiation process.

**5.2.1 Competing arguments: the economic argument and cultural exceptionalism within the EU.** Audio-visual services represent a conflictual issue within the EU. The divergent views on the sector and its negotiation in TTIP reflect the deeper controversies within the Union. Two main arguments emerged in the debate: growth-based considerations vis-à-vis considerations stemming from the notion of “cultural exceptionalism”. This section will explore the economic considerations, the notion of cultural exceptionalism (particularly the concepts of political identity and cultural diversity embedded in it) and how different actors (i.e. the European Parliament, Member States and Commission) positioned themselves in the debate. This is relevant in order to identify the discourses in which the frames are rooted.

There have been two opposing tensions within the EC/EU since the 1980s with regard to the EU audio-visual policies: between those in favour of the free market and the adoption of policies directed towards liberalisation (read the UK) and those in favour of state support for the industry and a much more controlled liberalisation (read France) (Collins, 1994). In addition to this underlying tension, in the context of TTIP, the economic argument attached to the negotiations concerned the need to provide an economic stimulus to the economy. In the context of TTIP, the economic discourse also concerned the need to negotiate all of the relevant sectors without making any relevant exemptions in order to unleash the full economic potential of the agreement. The potential of the agreement was linked to its degree of comprehensiveness. Studies like 2013 CESP or 2009 Ecorys have pointed out that, the stronger the liberalisation, the higher the gains. Moreover, the HLWG on TTIP declared that a ‘comprehensive agreement [...] could generate new business and employment by significantly expanding trade and investment opportunities in both economies’(2013, p.2). The absence of red lines would have facilitated the achievement of greater benefits for the economy.

The need to ensure the competitiveness of the sector was counterbalanced by the need to safeguard the societal role played by the audio-visual sector. The key concept in explaining controversies is that of “cultural exceptionalism”, which implies that culture and cultural services cannot be treated like any other services, given their intrinsic value. The special role of culture in protecting diversity and ensuring social cohesion is codified in art. 167 of TFEU (ex art. Article 151 TEC), confirming the relevance of the two concepts within the Union. More precisely, within the EU, the notion of cultural exceptionalism is linked to that of political identity (which encompasses social cohesion) and the protection of diversity explored below (see Littoz-Monnet, 2013).

The political role of culture and cultural services is based on the acknowledgement that the cultural industry plays a relevant role in shaping a political identity (see Gellner, 1983). Stemming from this premise, EU elites have attempted to develop a common policy on audio-visuals to foster and facilitate the process of integration that has been taking place since the 1980s (Collins, 1994). This integrating value of audio-visual services was also recognised by the EP. In 1982, with the Hahn resolution on radio and television broadcasting, the EP clearly stated that European integration had to go through the media as well, which are understood as a means of further supporting cohesion within the European Community (Littoz-Monnet, 2013). This view has also recently appeared in the Commission rhetoric when declaring that ‘Europe’s cultural and creative sectors contribute to [...] social cohesion’ (DG Communication, 2014, p.3). Thus, the political role of audio-visuals appeared to be rooted in the EU discourse.

Cultural diversity progressively became a guiding approach for EU policy-making and the EU media policy (see Barbato, 2005). Not only did the European elites attribute a fundamental role to culture in shaping an EU identity (Collins, 1994), but the concept has been particularly strong in France (Wheeler, 2004). The value attributed to the role of audio-visuals by France has also emerged within the GATT and been codified in what has been called “cultural exception”. France achieved the introduction of the *l’exception culturelle* in the GATT negotiation in 1993 (see Pulkowski, 2014; WTO, 2017). The cultural exemption consisted of recognising that cultural services should not be

treated like any other service (see Akhtar & Jones, 2014). The request was also based on the necessity for considering culture services as deeply connected with given values and specificities in societies. With the Uruguay Round, the idea of cultural exception progressively shifted towards and became embedded in that of cultural diversity (see Bartsch, 2014) which, as a concept, appeared more open-ended and more ‘semantically [...] neutral’ (Dauncey, 2010, p. 74 in Bartsch, 2014).

A brief overview of the actors’ preferences reveals that, while countries like Italy and Cyprus appeared to share the French view on the sector, others, such as the UK and Sweden, leaned towards the liberalisation of audio-visuals. This also helps to predict clashes during the TTIP negotiations. Moreover, if the EP approach towards audio-visuals has been fully informed by the social role that the sector is understood to play within the Union and the necessity to protect it (see resolution of 12 March 2014 on Preparing for a Fully Converged Audiovisual World), the Commission has adopted a more ambivalent attitude.

The Commission’s position regarding audio-visuals was mainly shaped by the integration process. The Commission, as manifested by Jaques Delors in 1985, supported the use of audio-visuals as instruments for integration (Collins, 1994, p.90). However, the Treaty of Rome prevented the Commission from undertaking actions in the cultural sector (Ibid.). Given this constraint, the Commission’s initiatives had to be presented in economic terms when concerning the cultural sector (Ibid.). Thus, it is argued here that the Treaty’s structure, combined with the influence of UK commissioners (see Wheeler, 2004), has shaped the Commission’s behaviour and explains the Commission’s emphasis on the economic aspect of the sector. The Commission’s primary focus on economic matters has often caused a stir in the EP. With the resolution of the 12 March 2014 on Preparing for a Fully Converged Audiovisual World the EP expressed concerns over the ‘lack of a specific reference to the dual nature of audio-visual media as cultural and economic asset’ (para. 33) in the Commission’s 2011 Green Paper on audio-visuals. This event also reveals divergence in attitude with regard to audio-visuals between the two EU institutions. The EP has often displayed an attitude that is less prone to liberalisation.

The section has offered an overview of how the competing arguments (i.e. the economic discourse and the notion of cultural exceptionalism) with regard to the audio-visual sector emerged within the EU. Complications related to the inclusion of audio-visual services started to emerge within the Commission in 2012. They were then made more explicit by France and made more compelling by the cultural industry and by the EP, as will be explored in detail in the following section.

**5.2.2 The Launch of Negotiations: Audio-visual Services.** This section will explore the process that led to the exclusion of audio-visuals from the negotiations. It will first consider the debate taking place among Commissioners. Secondly, it will explore how France and the EP managed to build a consensus around the exclusion of audio-visuals and how competing discourses were used in the debate and with which outcome for the EU position in the TTIP negotiations.

The debate within the Commission was centred around economic considerations while addressing concerns rooted in the notion of cultural exceptionalism (i.e. the political role of culture in shaping identity and the value of cultural diversity). On 12 March 2013, the Commission discussed the submission of a draft of the TTIP negotiating directives to the Council (i.e. Inter-Institutional negotiations, Level II). The Commission's behaviour has also to be understood in light of international changes. In 2005, for the first time, the EU participated as a single actor at the UNESCO Convention on the promotion of the diversity of cultural expression. The Convention granted the Commission the right to promote what agreed in the text of the convention in the same way as Member States (see Vlassis, 2015). The Commission has used the UNESCO Convention to legitimise new actions in the audio-visual sector and support discussions regarding audio-visuals in trade agreements (see European Commission, 2006). This new role played by Commission has paved the way to further conflict with the Council and the EP.

Former President of the Commission Barroso and former Trade Commissioner De Gucht argued for the necessity to include audio-visuals in the negotiation mandate (see Minutes of the

2038th meeting of the Commission, 2013). On the other hand, Andrulle Vassiliou from Cyprus (former Commissioner of Education and Culture), Michael Barnier from France (former Commissioner for the Internal Market and Services), and Antonio Tajani (former Commissioner for Industry and Entrepreneurship) from Italy opposed the idea (Vlassis, 2015). Italy, France and Cyprus have been the most vocal about the exclusion of the sector from the negotiations. While, during the meeting, Barroso and de Gucht promptly argued against the exclusion of audio-visuals, ‘because that would be [...] of little use in the protection of Europe’s cultural and linguistic diversity’, other EU commissioners responded that the sector should be ‘kept out so that the Union could maintain its traditional position as a key promoter of cultural diversity’ (Ibid.). This revealed immediately the emergence of tensions within the Union.

Along with the notion of cultural diversity, the centrality of culture in the EU integration process equally surfaced in the debate. In June 2013, Nicole Bricq, Minister of Foreign Trade, and Aurélie Filippetti, Minister of Culture, argued in a public statement that ‘[t]he cultural exception is a key element in the European political project’ and thus audio-visuals must be excluded from the negotiations (Embassy of France in the UK, 2013). The statement recalled the long standing political value attributed to culture within the EU and appealed to the old debate within the Union. According to an EU official, who was part of the negotiation process, France famously protects its own cultural output (Interview 19042016).

Concerns were also expressed by the cultural industry. A petition launched in April 2013, which attracted 8,661 signatures, requested the exclusion of the sector from negotiations. The Commission’s intentions to negotiate the sector were understood as a breach of the EU’s long-standing commitment to protect cultural diversity made 20 years before (see Petition of European Filmmakers, 2013). The negotiation of audio-visuals had to be excluded, according to the petition, because ‘[c]ulture is at the very heart of European identity and ideals’(Ibid.). Again, identity-based arguments were used to motivate and legitimate preferences with regard to the audio-visual sector.

The French position can be understood by also considering, in addition to the elements emphasised above, the historical and symbolic links between left-wing parties and the cultural sector in France (i.e. Level III). The French intransigence was deeply tied to its domestic sector and the situational position of certain groups with regard to the Socialist party. The French cultural sector has manifested a strong connection with the left wing in France, even supporting the diffusion of left-wing thinking (see Littoz-Monnet, 2013). It is argued here that this link between the government and certain sectors at Level III reduced the room for manoeuvre of President Holland, exponent of the Socialist Party. The French Assembly had also requested the exclusion of audio-visuals from negotiations. The supposed mixed status of the agreement further increased the need to find an acceptable compromise on the issue. Failure to do so would have meant not only that France could have exercised its veto power within the Council but also a possible failure to ratify the agreement by the French Legislator.

This situation forced the French government to be more intransigent on the issue of audio-visuals. In brief, France, conscious of the opposition within Level III, especially to the French cultural industry, seems to have acted to reach a compromise that could satisfy the concerns of its constituencies and its economic interests in achieving the launch of negotiations.

Led by France, Cultural Ministers from Germany, France, Austria, Belgium, Bulgaria, Cyprus, Hungary, Italy, Poland, Portugal, Romania, Slovakia, Slovenia and Spain opposed the inclusion of audio-visual services as well by the signing of a letter addressed to the Irish Presidency of the EU (i.e. Level III negotiations). Although trade ministers of the mentioned countries did not necessarily agree on the exclusion of audio-visuals (see Vlassis, 2015), France acted to legitimise its position and exploited the divisions within the Member States at Level II and III.

The Commission and the UK opposed the French request. The economic argument was used to perorate the cause for the inclusion of audio-visual services. De Gucht, referring to the case of audio-visuals, argued that no relevant sector should be excluded from the negotiations (see Federation of European Film Directors, 2013). Audio-visual services represent 2 per cent of the trade volume between the EU and the US (see Hayers, 2013), with the UK being the best positioned to gain from



the further opening up of the sector (see Buonanno, et al., 2015). The need to include the sector in negotiations was linked to the necessity of negotiating a broader agreement that was able to deliver the highest possible economic benefits for Europe.

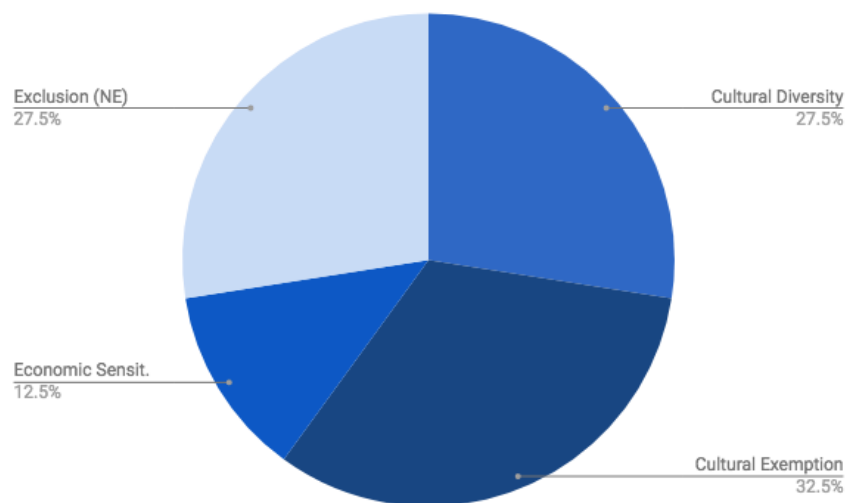
As mentioned earlier, David Cameron and Karel De Gucht argued for the necessity of a comprehensive trade agreement that, only if broad and ambitious, could deliver the anticipated economic benefits (see Minutes of the 2038th meeting of the Commission, 2013). To reinforce these claims, De Gucht argued that the exclusion of the EU sensitive sector from the negotiations would have legitimated requests from the US to make a similar request for sectors that were sensitive to the US but in which the EU had offensive interests, thereby limiting the economic benefits for the EU (Ibid.). This argument was also supported by the declaration of US ambassador to the EU William Kennard who, in relation to the exclusion of audio-visuals, argued that there ‘will be a price to pay [...] if this is not a clear mandate, it will increase the pressure on our side to do the same’ (Financial Times, 2013). However, the economic argument did not resonate within the EP.

The EP contributed to the debate on audio-visuals in TTIP. The notion of cultural exceptionalism dominated the discourse on audio-visuals. With the resolution of 23 May 2013, the EP formally demanded the exclusion of the sector from the bargaining process and, by doing so, the EU institution further legitimised the French request (i.e. Inter & Intra institutional negotiations, Level II). In the 2013 parliamentary debate on TTIP, for instance, Silvia Costa, Italian MEP of the S&D delegation, argued for the exclusion of audio-visuals because their inclusion in the negotiations constituted a threat to EU cultural diversity (European Parliament, 2013a). The request was echoed on the same basis by other MEPs, such as Helmut Scholz and Bernd Lange (Ibid). Arguments regarding cultural identity also surfaced during the debate. Constance Le Grip, a French MEP, for instance, supported the exclusion of the audio-visuals from the negotiations:

I have opposed their inclusion in the European Commission’s negotiation mandate and I am delighted with the large support shown by the European Parliament for our cultural exception. It is a great victory for the French EPP delegation, who fought to protect European culture. The film and audio-visual industry is not an economic sector like any other – it is an industry which sustains European identity and it cannot be sold off to Hollywood producers (European Parliament, 2013b).

The analysis of the parliamentary debate (see Figure 5.1) reveals that MEPs requested the exclusion of audio-visuals by relying on the arguments rooted in the notion of cultural exceptionalism. The arguments were made even more salient by the degree of divergence in the transatlantic approach. For instance, the US has not ratified the UNESCO Convention on the protection of cultural diversity. While only a small percentage invoked the economic sensitivity of the sector to justify their position, the necessity to protect cultural diversity and the recognition of the special role played by culture were the main arguments in the debate. This is reflected in the figure below. More specifically, figure 5.1 identifies the frequency with which specific aspects connected to audio-visual services (e.g. economic sensitivity of the sector, need to protect cultural diversity, etc.) appeared in the EP debates from 2012 to 2014. In addition, 48 per cent of the requests came from French MEPs across the political spectrum, confirming that the issue appeared extremely sensitive for France as a country.

Figure 5.1 the Audio-visual sector in the 2013 EP debate



Source: Author's elaboration of the 2013 EP debate

These controversies were reflected within the Council. In June 2013, after 12 hours of negotiations, the Council (i.e. Intra-institutional negotiations, Level II) agreed on the negotiation mandate and excluded audio-visuals from further negotiations. French Prime Minister Jean-Marc Ayrault, regarding the inclusion of audio-visuals in the TTIP negotiations, argued that France 'will go as far

as using its political veto. This is about our identity, it's our struggle' (in John & Blenkinsop, 2013, p.1).<sup>23</sup> Despite the fact that, under French pressure, other Member States agreed on the exclusion of audio-visuals, the mandate remained vague.

In the TTIP negotiation mandate (see Section 21), it is stated that '[a]udiovisual services will not be covered by this [i.e. Chapter on Services] chapter' (see Council of the EU, 2013). Consumer associations have pointed out that the formulation regarding the exclusion of audio-visual services in the mandate does not prevent the inclusion of the section in other chapters (Interview 07042016). Thus, if, on the one hand, France, supported by the EP, by relying on the notion of cultural exceptionalism, achieved the exclusion of audio-visuals from the Chapter on Services, concerns for audio-visuals have emerged in other facets of the negotiations process, as the following section will explore.

**5.2.3 After the launch of negotiations: further developments for the audio-visual sector.** With the TTIP mandate, which was agreed upon in July 2013, the issue of audio-visuals appeared to have been resolved. However, concerns regarding the vague formulation of Section 21 of the mandate led to fresh concerns. This section will explore how the EP imposed restrictions on the Commission's capacity to negotiate on audio-visuals in other chapters of the TTIP.

The mandate excluded the negotiations of audio-visuals from the Chapter on Services, leaving open the possibility of negotiating over audio-visuals in other sections of the agreement (Interview 07042016). Aware of this possible outcome, the EP adopted a number of tools to ensure the exclusion of the sector from the negotiations. In the resolution of 12 March 2014 on preparing for a fully converged audio-visual world, the EP argued that 'including audio-visual culture and media in international free trade agreements represents a contradiction of the EU's commitment to promote cultural diversity and identity' (para. 38). The notions of cultural identity and diversity were adopted

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<sup>23</sup> If a trade agreement contains provisions on culture and audio-visuals, for its negotiations and conclusions, unanimity is required within the Council (see Schütze, 2015).

to justify, once again, the EP's position on audio-visuals and reduce the negotiating power of the Commission.

Concerns regarding audio-visuals led the Commission to make further statements in July 2014. The EU negotiator, while recognising the interest of the US in gaining better market access, acknowledged that the sector deserved special treatment. The Commission gave two reasons to explain its position: 1.) the role of cultural services is fundamental in ensuring social cohesion; and 2.) cultural diversity is understood to be a 'distinctive feature of the EU' (2014, pp.1-2). Furthermore, in the resolution of 8 July 2015 containing the EP's recommendations to the Commission on the negotiations for TTIP, the EP declared that the Commission should:

[E]nsure via a legally binding general clause applicable to the entire agreement [...] that the parties, reserve their right to adopt or maintain any measure [...] with respect to the protection or promotion of cultural and linguistic diversity, in line with the relevant Articles as established in the Treaty on the Functioning of the European Union, as well as media freedom and media pluralism, irrespective of the technology or distribution platform used and keeping in mind that the mandate given to the European Commission by the Member States explicitly excludes the audiovisual service.

The action of the EP, aware of the US preferences, appeared to be directed towards preventing the Commission from making concessions in new areas. Although the US is not particularly interested in traditional audio-visual services, Washington remains keen to discuss on-demand audio-visual media services (Vlassis, 2015).

The Commission, aware of the opposition at Level II and III, included in its textual proposal of July 2015 a number of exemptions regarding cultural services. Audio-visual services were excluded from the scope of Chapter II on Investments (see Article 2-1), of Chapter III on the Cross-Border Supply of Services (see Article 3-1), and on Chapter IV on Electronic Commerce (see Article 6-1) (see European Parliamentary Research Service, 2016). The special role and regard for cultural services was also recognised in Chapter I on General provisions and Chapter V on the Regulatory Framework.

To limit further any attempt by the Commission to deviate from its recommendations, in the resolution of 13 December 2016 on a coherent EU policy for the cultural and creative industries, the EP further clarified its positions and requested:

[T]he exclusion of cultural and audiovisual services, including those provided online, to be clearly stated in agreements between the Union and third countries; emphasises, in this context, the need to keep cultural and audiovisual services outside the scope of the negotiating mandate for general free trade agreements.

These additional red lines further constrained the EU's position and the Commission's ability to advance negotiations on these aspects, that were based, once again, on the special function that audio-visuals are understood to perform within the EU.

**5.2.4 Conclusions.** Frames adopted with regard to audio-visuals are deeply-rooted in the history of the EU and the process of European integration. Although the Commission's arguments were also rooted in discourses developed during the integration process, the lower level of reflectiveness of such frames, based on economic considerations, reduced their appeal. Frames rooted in the notion of cultural exceptionalism showed a higher level of centrality (i.e. they appeared to be more significant to the targets of the framing processes), and narrative fidelity (i.e. they could be more easily linked to specific cultural narrations that characterise EU society).

The notion of cultural exceptionalism has been relied upon to legitimise the preferences of France and the EP. Moreover, the situational and structural position of the cultural sector with respect to a Socialist French Government has further reduced the room for manoeuvre. Although it might appear difficult to classify French behaviour as genuine persuasion or rhetorical action, the use of the negation of cultural exceptionalism, rooted in the Union, legitimised the request stemming from the Member Country. The impact on the EU negotiating position generated by the debate on audio-visuals has been ambivalent. As a result of the process, the number of the issues that could be negotiated has shrunk but, without the exemption of the sector, it could not have been formed at all.

### **5.3 Agri-food in the EU**

Agriculture has been one of the main stumbling blocks regarding the launch of negotiations. The sensitivity of agriculture has, for a long time, motivated a conservative policy in the Commission. The necessity of including the sector as implicitly required by art. XXIV of the GATT made the

prospect of launching negotiations a difficult task to achieve. However, since 2008, structural changes in the economy have motivated the EU to adopt a new strategy that is more in favour of liberalisation. The wise liberalisation argument (ensure competitiveness while safeguarding the most vulnerable agri-food sectors) has been widely adopted to support the inclusion of agriculture in trade agreements. The Commission has also relied on this argument to support the inclusion of agri-food in TTIP, but concerns remained. On what basis was the opposition regarding the negotiation of agriculture built and how did it gain legitimacy?

It is argued here that the frames concerned with the health of the EU model linked the negotiation of the sector to a threat to specific configurations of the EU model. The frames adopted found their legitimacy in the so-called multi-functional discourse. In the EU, this multi-functional discourse, which had developed since the 1950s, implies that the agri-food sector should be subject to particular protection, given the number of societal functions performed for society as a whole. However, one should notice that the agricultural sector followed a different path to audio-visuals. More heterogeneous preferences reduced the salience of frames based on the multi-functional discourse. Nevertheless, a number of red lines were imposed at Level II. The EP, by motivating its action on frames rooted in the multi-functional arguments, legitimised the imposition of red lines on the Commission. This section will explore the multi-functional discourse and the wise liberalisation argument, the process that led to the launch of negotiations and the developments subsequent to the initiation of the bargaining process.

**5.3.1 Competing Arguments: Multi-functional Discourse and Wise Liberalisation.** The discourse around agriculture can be distinguished into two main arguments: the “wise” liberalisation argument and the multi-functional discourse. The former is related to the need to increase competitiveness while protecting the most sensitive sectors in the agri-food business. The latter, meanwhile, offers justifications for the protection of the sector on the basis of the societal functions that the EU agricultural model entails and its structural weakness (see Erjavec & Erjavec, 2009; Potter 2006).

These arguments have been employed in and affected the negotiations of the TTIP. The section will briefly address both discourses.

**5.3.1a The Multi-functional Discourse.** The concept of multi-functionality has characterised the EU debates on the agricultural sector and has often been used in the context of the Common Agricultural Policy (CAP) and EU trade policy. Analysing the discourse in greater depth will allow me to explore how these elements were used in the debate. It is argued here that two arguments stemming from the multi-functional discourse have been employed in the TTIP debate. More specifically, the need either to treat agriculture carefully or to exclude it from the TTIP was legitimised by concerns for 1.) the economic sensitivity of the EU agricultural sector; and 2.) the protection of the principles and approaches adopted to safeguard the societal functions performed by the EU agricultural model. Both elements were made even more compelling by the competitiveness of the US agri-business industry and the degree of divergence in the transatlantic approach. The section will explore, firstly, the notion of multi-functionality. Secondly, it will consider how certain principles were codified in the EU legislation and the consequent difficulties in reaching a compromise in the TTIP negotiations.

The notion of multi-functionality finds its early seeds in the concept of agricultural exceptionalism, which was recognised in the GATT (see Art. XI and Art. XVI), and was initially sponsored by the US in the 1940s and 1950s (see Halpin, 2005; Daugbjerg & Swinbank, 2008). Later, the concept also became central to the European Community's trade policy (Daugbjerg & Swinbank, 2008). Originally, the notion of agricultural exceptionalism was related to the environment-related peculiarities of the sector (subject to weather conditions, climate change, etc.) and the benefits provided to the community in terms of food security (Ibid.). In the EU, since the 1990s, the agricultural exceptionalism came to include a broader number of societal functions (Ibid.) and the concept of exceptionalism then transitioned in that of multi-functionalism (Hodge, 2000).

The concept of multi-functionality was based on the idea that EU policy had to grant 'sufficient number of farmers [to] be kept on the land', since 'there is no other way to preserve the

natural environment, traditional landscapes and a model of agriculture based on the family farm as favoured by society generally' (Commission of the European Communities, 1991, pp.9-10). The concept also appeared more recently in the Commission's rhetoric:

[F]arming must thus fulfil multiple functions: meeting citizens' concerns about food (availability, price, variety, quality and safety), safeguarding the environment and allowing farmers to make a living (European Commission, 2013d).

Recently, the EP in its resolution of 27 of April of 2017 on the state of play of farmland concentration in the EU has recognised:

[T]he importance of small-scale family farms for rural life, since they play an active role in the economic fabric of rural areas by conserving the cultural heritage and maintaining rural life, sustaining social life and making sustainable use of natural resources, in addition to producing a sufficient amount of healthy and high-quality food [...] (Para.14)

The analysis of the EU discourse on agriculture, centred on multi-functionality, has so far highlighted the following elements: 1.) the EU agricultural model has a specific structural configuration (i.e. based on SMEs and family businesses); 2.) it performs a number of societal functions.

The structural weakness of the sector appears relevant to the TTIP debate for the following reasons. The competitive disadvantage of the EU agri-business industry vis-à-vis US multi-nationals poses concerns regarding farmers' survival. The EU agricultural sector is, in fact, characterised by the presence of family farms (see Cardwell, 2004) and small and medium enterprises (SMEs), which need protection against the challenges posed by globalisation and multi-nationals (Potter, 2006).

The second main argument stemming from the multi-functional discourse concerns the societal benefits of the EU agricultural model. Given the purpose of the thesis, the study takes into account functions that are understood to be relevant for the analysis of TTIP negotiations (and exclude for now the issue of affordability that is more closely linked to the CAP policy and had only surfaced in the TTIP to a limited extent).

The analysis of the passages above and the literature on the multi-functional discourse (see Potter, 2006; Potter & Tilzey, 2005), allow for the identification of the main functions performed by the EU agricultural model: ensuring food safety, affordability, quality and respect for the environment and the protection of traditional elements. These considerations are echoed by the EP, according to



which the EU agricultural model is ‘based on product quality, food safety, consumer health, strict animal welfare rules and the use of environmentally sound practices’ (European Parliament, 2015c).

The pursuit of these elements has been achieved through the adoption of principles and approaches codified in the EU legislation. Protection of food safety and quality has been defined and protected in the Union through the adoption of the Precautionary Principle (PP) and the Farm-to-Fork approach (FtF). Protection of the gastronomic heritage has been achieved through, for instance, Geographical Indications (GIs). Animal Welfare Rules (AWR) are in place because of the need to ensure food safety and animal welfare. The table below presents a brief illustration of these principles and approaches and the main controversies with the US (see Table 5.1).

The argument here is that the frames concerned with the EU model could more easily resonate within the Union because, by associating the TTIP negotiations with a threat to the cardinal principles of the EU agri-food model (PP, FtF, etc.), they manage to achieve a higher degree of reflectiveness. Frames have often relied on key images, which identify the societal functions explicated by the EU model. This last consideration explains why certain aspects (e.g. hormones in beef, chlorinated chicken, etc.), which became representative of the acquired principles, were placed at the centre of the TTIP debate. In other words, specific elements of the agri-food sector (cloned meat, chlorinated chicken, hormones in beef, etc.) were symptomatic of the principles and approaches that had been codified and widely accepted within the Union. These images could resonate in the Union, given the widely accepted norms that have come to characterise the EU farming model and the differences between the US and EU approach. Section 5.4.2 will explore in more detail the use of these elements in the TTIP negotiations.

**Table 5.1 The EU Farming Model**

	<b>Reasons</b>	<b>Codification and Use</b>	<b>Controversies</b>
<b>PP</b>	Extensively used in the agri-food sector as a consequence of the food crisis in the 1990s (see Hanekamp et al., 2012; Ugland & Veggeland, 2006). The crisis affected the public perception of food safety. “Mad cow” disease, dioxin contaminated feed, and adulterated olive oil increased the demand for an improved EU system to ensure food quality and consumer health (European Commission, 2004).	Although the principle was enshrined in 1992 in the Maastricht Treaty, it informed EU decisions well before that date (e.g. ECJ decision on hormone beef ban of 1990).The Commission stated that the decision to invoke the ‘precautionary principle is a decision exercised where scientific information is insufficient, inconclusive, or uncertain and where there are indications that the possible effects on the environment, or human, animal or plant health may be potentially dangerous and inconsistent with the chosen level of protection’ (European Commission, 2000a). The definition was endorsed by the Council in 2000 and also by the EP. The principle has been codified in article 191 of TFEU. The Commission specified that, although there is a specific reference to the environment in the article, ‘in practice, the scope of this principle is far wider and also covers consumer policy, European Union (EU) legislation concerning food and human, animal and plant health’ (Communication from the Commission on the precautionary principle /* COM/2000/0001 final).	The US reliance on the scientific method implies that a product must be proven harmful to public health to justify the undertaking of measures. The different regulatory philosophies have often generated conflict between the two transatlantic actors, which have emerged during the TTIP negotiations as well.
<b>FtF</b>	Both approaches have been more clearly developed as a result of the “food crisis” of the 1990s. From the events of the 1990s, two aims emerged: 1.) the need for increased food safety and 2.) the necessity of providing detailed information to consumers regarding food (Eurostat, 2011).	The EU regulations were upgraded during the 1990s and 2000s and the “General Food Law Regulation” was adopted in 2002. The new legislation introduced the concept of “traceability”, which included the duty of the industry ‘to make sure that all food stuffs, animal feed and feed ingredients can be traced right back through the food chain, from farm to fork’ (European Commission, 2004, p.10). The EU Novel Foods Regulation from 1997 was ‘the only EU legislation covering animal cloning’ (USDA, 2018) until January 2018. It has been amended by Regulation (EU) 2015/2283 entered into force in January 2018. The new Regulation establishes that ‘until specific legislation on food from animal clones enters into force, food from animal clones should fall under the scope of this Regulation as food from animals obtained by non-traditional breeding practices and should be appropriately labelled for the final consumer in accordance with the Union legislation in force’ (para 14).	1. The US does not have a system of traceability for meat from cloned animals and their offspring. 2. The use of methods to sanitise food adopted in the US appear to undermine the Farm-to-Fork approach, which requires additional costs to be ensured, and puts EU produces at an economic disadvantage.
<b>GCE</b>	As the EU is not likely to be competitive in basic agricultural products, focusing on products which are linked to its traditions might be an economically advantageous approach (Matthews, 2015).	GIs, according to the EU, refer to agricultural products, the specificity of which is dependent on the geographical area where they are ‘produced, processed and prepared in a given geographical area using recognised know-how’ (DG SANTE, 2016, p.2). A registration system in in place in the EU to ensure that GIs, once recognised, remain protected.	The protection of GIs in the US is achieved through trademarks (TM). A TM ‘simply grants exclusive rights to the owner of the mark over the good or service’ (see Arfini et al., 2016:7).
<b>AW</b>	AWR satisfies two necessities: they ensure consumer health, food quality, and food safety (see European Commission, 2004) but also respond to ethical concerns raised by consumers and vastly diffused among consumers (see Broom, 2017).	According to Article 13 of the TFEU: “In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals”	The Commission (2018a) has recognised that ‘the animal welfare considerations [...] have given rise to calls for Union rules restricting the use of cloning for farming purposes and to ban the marketing of food from clones’.

Source: Arfini et al. 2016; Broom, 2017; DG SANTE, 2016; European Commission, 2004; 2018; Eurostat, 2011, Matthews, 2015; Hanekamp et al., 2012; Ugland & Veggeland, 2006.

**5.3.1b Wise Liberalisation.** With the outbreak of the Financial Crisis, the Commission embraced a more pro-active liberalisation of agriculture in trade policy to ensure the competitiveness of the sector. According to the Commission, the necessity to ensure the growth of the agri-food sector, which faces new obstacles given the structural adjustments of the economy, motivated the development of a new strategy (see European Commission, 2016a). In order to understand the evolution of the argument, the section will briefly recall the competing tendencies (i.e. liberalisation and protectionism) that have come to characterise the EU approach to agriculture and explore the development of the new EU strategy.

The sensitivity of the sector has led the EU to adopt a protectionist attitude since the 1950s. The EU conservative approach has long been reflected in multi-lateral negotiations. It has also often found justification in the multi-functional discourse explored above. Despite this, demands for greater liberalisation have, however, been persistently heard within the Union. This protective approach has often been criticised by certain lobbies at Level III. In the 1990s, with the negotiations of the Uruguay Round, part of the industry requested a more pro-liberalisation approach (Potter, 2006). The lobby activity of the European Roundtable Industrialist (ERI), the UK food industry, and the confederation of the Food and Drink Industries requested an EU agricultural model that was less firmly based on state assistance (see Potter & Tilzey, 2005). Also, Level II countries like the UK, the Netherlands, and Denmark have shown a pro-liberalisation attitude. France, Italy and Spain have, instead, opposed these pressures. The Commission (often restrained by DG agriculture), as a result of these competing pressures, has resisted the inclusion of agriculture in trade negotiations for several decades (see OECD, 2000).

Considering the specific case of TAFTA, the agri-food sector has been the Achilles' heel to any attempt to negotiate a transatlantic trade agreement (see Fogarty, 2002). With regard to the specific case of TAFTA/TTIP, the necessity to include the agri-food sector in negotiations in order to make an agreement that is compatible with art. XXIV GATT has often represented a serious obstacle to the launch of negotiations (see Chapter 4). France has been most vocal about the exclusion

of agriculture from TAFTA in the past. In general, the sensitivity of the agricultural sector has often led the EU to handle carefully the inclusion of agriculture in trade agreements (see OECD, 2000) and it has proven to be reluctant to make concessions (see the EU-South Africa FTA, or Mexico-EU FTA, etc.). However, the structural changes in the EU have justified a substantial change in approach undertaken by the Union when negotiating trade agreements.

Since 2008, the Commission has been developing a new perspective on the agricultural sector. The outbreak of the Financial Crisis has made more compelling the need to face the challenges of globalisation and to ‘take advantage of the opportunities offered by globalisation’ (Enterprise and Industry DG, 2009, p.6). The need to increase competitiveness is rooted in the objectives of Europe 2020 (European Commission, 2010). In 2010, a report for the Commission dedicated to the study of the EU-South Korea FTA pointed out the benefits for the EU agricultural sector (especially dairy and meat) that the agreement was going to deliver (Decreux et al. 2010). A clearer explanation of this more pro-active approach with regard to agri-food in trade agreements has been provided in a recent study entitled ‘Impacts of EU trade agreements on the agricultural sector’, undertaken by Copenhagen Economics for the Commission (European Commission, 2016a). This study has been endorsed by the Commission and also by EU Commissioner of Agriculture Phil Hogan (see European Commission, 2016b). This approach is in line with the new EU trade strategy, Trade for All - Towards a more responsible trade and investment policy (European Commission, 2015b).

The new pro-active role of the Commission in agriculture is defined by the conditions of the internal market. The EU market does not offer sufficient room for growth due to the economic crisis, ageing population, and dietary preferences (see Boulanger et al., 2016). On the other hand, the international market offers instead room for the agri-food sector to grow (Ibid.). Within this new more proactive policy, the Commission has ensured that sectors that are deemed to be sensitive are shielded from excessive liberalisation (see Agriculture and Fisheries Council, 2016). This new strategy has failed to find favour with the entire EP. While some political parties within the EP have appeared more willing to support the approach (e.g. EPP; ALDE), others have expressed concerns (e.g. Greens,

European United Left–Nordic Green Left (GUE/NGL)). Also, country divisions have appeared in the EP when measures on agricultural have an effect on the country of origin.

The wise liberalisation argument has come to characterise the new Commission's approach towards agriculture. This is not to argue that the multi-functional discourse has disappeared from the Commission's rhetoric but that, at least, it has been accompanied by a more pronounced liberalisation attitude. This has generated a number of consequences for the TTIP negotiations, as the argument has been employed by the Commission to reassure concerns over the sector and reinforce claims over the possible gains to be achieved through the TTIP.

**5.3.2 The Launch of Negotiations: the Agri-food Sector.** The inclusion of agriculture within a transatlantic trade agreement has been a historic stumbling block for the launch of negotiations. This section explores how the debate evolved around the agricultural sector, the arguments adopted, and the outcomes so far. The first section is divided into two parts: the first part considers the process that led to the launch of negotiations and the second part examines in more detail why certain agricultural sectors have come to dominate the debate. The second section will consider the subsequent developments from the launch of negotiations to the halting of them in 2016.

**5.3.2a The Negotiation Mandate.** While the Commission relied on the wise liberalisation discourse to support the launch of negotiations and ensure the achievement of economic benefits, other actors at Level II and Level III started to express concerns over the health of the EU agricultural model and the impact that the TTIP might generate on EU standards. This section will explore the actors' preferences and how competing discourses were used in the phases leading up to the adoption of the negotiation mandate and the launch of negotiations.

The Commission, with regard to agriculture, focused its argument on two main objectives, both of which were related to the need to ensure competitiveness and economic gains: 1.) establishing common regulations to avoid unnecessary costs (see De Gucht, 2013b) and 2.) facilitating access for

the EU agri-food sector into the US market (De Gucht, 2013c). Around the economic-based argument, the Commission attempted to build a broad coalition. The need to improve EU access to the US market emerged also in the 2012 parliamentary debate. MEP Sergio Berlato (EPP) declared that the agri-food business would have benefitted from better access to the US market, while MEP Rares-Lucian Niculescu (EPP) emphasised the benefits to be achieved for agriculture through the TTIP (European Parliament, 2012a).

The EU negotiator, in line with the wise liberalisation argument, also manifested a clear intention to safeguard sensitive sectors. The Commission (2013e), in response to a written question by MEP Rares-Lucian Niculescu argued that the transatlantic agreement:

[W]ill increase the market share for the EU products in the US market, while guaranteeing a balanced outcome overall. The TTIP will also provide specific treatment for the most sensitive products. The Commission will carefully take into account the sensitivities in the EU agricultural markets in order to minimise any negative impacts.

Respondents have also pointed out that Member States that are traditionally wary of liberalisation, such as France and Italy, have appeared more inclined towards the inclusion of agriculture in the TTIP negotiations (Interview 19042016). Under Former Prime Minister Matteo Renzi, Italy has changed its long-standing policy. Explanations are related to the growth capacity of Italian exports, which would benefit from the agreement. Traditionally, Italy has remained relatively protectionist regarding trade policy and suspicious of excessive liberalisation also because of concerns over the agricultural sector. After the change in government from Letta to Renzi, Italy has appeared open to international trade and interested in the potential gains of the TTIP (Interview 01042016). This new position was also supported by numerous Italian farm associations (i.e. Copagri; Conagricoltura; Coldiretti) (Level III). The novel attitude of the Italian government has been also embraced by Paolo De Castro, Vice Chair of the AGRI Committee in the EP and member of the same political party as former Italian Prime Minister Renzi:

[It] would be short sighted not to consider this agreement as a great opportunity for our agriculture and our food products. [...] If we were to remove tariff and non-tariff barriers that affect our products in the US, there would be considerable growth opportunities for our companies [...] (European Parliament, 2013a).

From the French perspective, while certain agricultural sectors are at risk, those concerns were likely to be outweighed by the strengths of France, for example, with regard to processed agricultural products (Interview 19042016). France does have a large agricultural sector and, while the US is very good at producing primary agricultural products (soy beans, maize, sugar, etc.), Europe is far better at producing processed agricultural products (cheese, wine, etc.) (Ibid.). Thus, the economic advantages have reduced (although not removed) the political cost of action for France and Italy and given a green light for a more comprehensive negotiation over agriculture in TTIP.

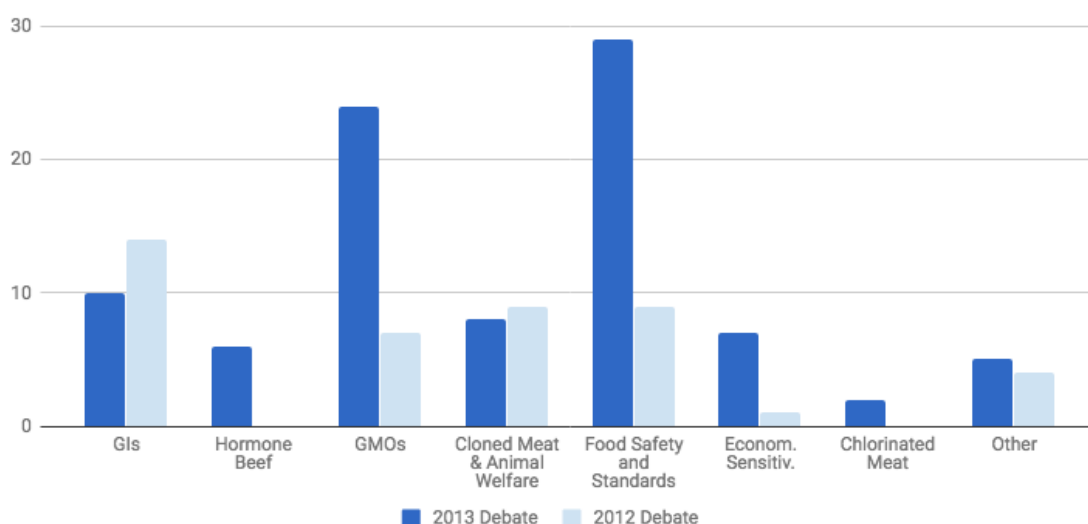
With regard to the inclusion of agriculture in the negotiations, a number of stakeholders at Level III appeared to be supportive of the initiative, at least during the initial phases of the negotiations. Overall, the PCs taking place in 2012 revealed that there was a more favourable attitude towards the negotiations of agriculture in the TTIP (see Chapter 4). Also, the German Farmers' Association (DBV), which is representative of 90 per cent of German farmers, declared that it was in favour of negotiations while requesting the protection of certain sensitive sectors in the negotiations (poultry, pork, etc.) (Euroactive, 2015a) (i.e. Level III). Thus, the wise liberalisation discourse appeared to be embraced, or at least not fiercely opposed, by a number of actors at Level II and Level III during the initial phase, that led to the launch of negotiations.

Along with discourses based on wise liberalisation and economic gains, concerns for the EU model started to emerge and became more insistent in 2013. In the EP, overall concerns regarding the EU standards appeared more limited in 2012 (30 per cent) and increased in the 2013 debate (61.3 per cent) (see Chapter 4) (i.e. Inter & Intra institutional negotiations, Level II). As argued in Chapter 4, once the shock of the Financial Crisis had diminished, old concerns re-emerged to dominate the debate. These concerns were spread out by increasing civil society mobilisation, which found in the EP the primary vehicle for diffusion within the Union. In order to understand why certain elements became sensitive and represented a Trojan horse for a smooth negotiation, it is necessary to consider the elements stemming from the multi-functional discourse.

An increasing number of MEPs between 2012 and 2013 relied on the discourse concerning the structural weakness of the agricultural sector and focused on the impact of the TTIP on SMEs to legitimise their concerns. Concerns for the sector and its economic sensitivity are captured in the table below, which examines the EP debates on the TTIP in 2012 and 2013 and the recurrence of a specific issue in the debates. These concerns were echoed by several NGOs (i.e. Level III). For instance, Friends of the Earth Europe (2016) argued that, while big corporations will benefit from the agreement, SMEs will not (2016).

This rhetoric reflected the elements characterising the multi-functional discourse: a specific configuration of the EU farming model based on SMEs which, given the function performed, necessitate protection, in this case, from US multi-nationals. The sensitivity of the topic is then linked by a well-established conceptualisation of the EU farming model and the moral obligation to protect it, given its relevance to EU society. Figure 5.2 shows the frequency (y-axis) with which specific topics appeared in the EP debates from 2012 to 2013.

Figure 5.2 The Agri-food sector in the 2012 and 2013 EP debates



Source: Author's elaboration of the EP debates

The analysis of the two EP debates shows that, in addition to general concerns about EU standards and food safety, the debates focused on GIs, GMOs, cloned meat and animal welfare, economic



sensitivity, chlorinated meat, and, in 2013, also beef containing hormones. As mentioned in the section 5.4.1a, each of these issues is linked to the principles and approaches that have been developed over time to protect the EU agricultural model and the societal functions performed by it.

Issues like beef containing hormones and GMOs are related to the PP and thus are representative of an EU model whose primary philosophy is ‘better safe than sorry’, to cite Tony Blair (see Runciman, 2004). The necessity of preserving the PP in the TTIP was also expressed by the Transatlantic Consumer Dialogue in 2013 (TACD, 2013), thereby reinforcing the pressure for its protection during the negotiations. The EP, supported by civil society at the Level III, set, throughout the 2013 debate, the first red lines for the Commission.

To respond to these mounting concerns, in the 2013 parliamentary debate, Karel De Gucht, in front of the EP, pointed out the EU offensive interest in agriculture and the possible economic benefits of the agreement. The former president of the Commission declared that:

There will be discussions on GMOs, but the results of the negotiation will not be that any GMO can be imported. Of course there will be discussions on hormone beef, but the result of the negotiation will not be that it will be possible to import hormone beef into the European market, because we have to negotiate within the framework of the existing legislation (European Parliament, 2013a).

If, on the one hand, the EP acted to impose constraints on the Commission, US declaration also sent a clear warning to the Commission’s US Agricultural Service Officer Jim Grueff, who argued that ‘the quickest way to collapse this whole agreement in the EU is for the European Parliament to hear that the EU Commission is negotiating changes to the precautionary principle’ (Inside US Trade, 2013). In this context, the Commission and Member States attempted to reach a compromise, as reflected in the negotiation mandate. In addressing concerns over negotiations, a delicate compromise has been reflected, as the mandate, which was approved in June 2013, suggests:

Provisions of the SPS chapter will build upon the key principles of the WTO SPS Agreement, including the requirement that each side's SPS measures be based on science and on international standards or scientific risk assessments, while recognising the right for the Parties to appraise and manage risk in accordance with the level of protection that each side deems appropriate, in particular when relevant scientific evidence is insufficient, but applied only to the extent necessary to protect human, animal, or plant life or health, and developed in a transparent manner (Council of the EU, 2013)

Despite the implicit reference to the PP (i.e. manage risk when the scientific evidence is insufficient to ensure the chosen level of protection), neither the PP nor the concept of traceability in relation to food is mentioned in the text. The mandate insists on the negotiation of an agreement that is consistent with the EU acquis and legislation in order to ensure, among other objectives, the protection of consumer standards. The issue of animal welfare is also treated in the negotiation mandate, which states the intention of establishing a cooperation mechanism to address equivalence on animal welfare between the Parties (Council of the EU, 2013). Once the mandate was agreed upon, rounds of negotiations began from July 2013 to October 2016. Concerns over the agricultural model continued to rise, further putting under increasing scrutiny the Commission, as section 5.4.2 will analyse.

**5.4.2b Sensitivity Explained.** The previous section offered an overview of the events leading up to the launch of negotiations, this section instead explores the sensitivity of certain aspects of the agri-food sector. More specifically, the section will analyse the cases of GMOs, meat containing hormones, chlorinated chicken, cloned meat, and animal welfare. It is necessary to take into account that the degree of divergence between the EU and US approach to agriculture and the pre-existing controversies increased the credibility of the concerns regarding the threat that TTIP represented to the EU agri-food model. These concerns have deep historical roots, as the section will explain.

The controversy regarding beef containing hormones is related to the PP adopted in the EU (Johnson, 2015). The controversy is made more salient by its age. Disagreement between the EU and the US dates back to the early 1980s when the EU started limiting the use of hormones from (Ibid.). By 1989, the EU had implemented a full ban on meat treated with hormones (Ibid.). The ban, according to the US, could not to be justified under SPS-WTO rules since, as argued by the US, it was not based on proper scientific evaluation and led the US to file a complaint to the WTO in 1996 (see SPS-WTO Agreement).<sup>24</sup> The EU reacted by commissioning studies, which cast doubts on the

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<sup>24</sup> The WTO DSM decided in favour of the US in 1997.

safety of the growth hormones, but the risk assessment was not considered sufficient by the US. (Ibid.) The EU called into question the PP to justify the adoption of restrictive measures. Only in May 2009, after 13 years, did the EU and the US reach a settlement through a memorandum of understanding (MOU). The US suspended some of the retaliation measures in exchange for better access to the EU market, which has been granted to non-hormone treated beef. The 2009 MOU has left the US farm business and some food EU and US lobby groups (e.g. Food Drink Europe) unhappy and willing to address further SPS issues in TTIP, which created several concerns within the Union.

The debate around GMOs is defined by the PP as well. The issue is similarly central in the US, and resolving controversies on GMOs in the TTIP will affect US exports, especially those involved in the trade of GM maize and other GM crops. The EU biotech industry, in alliance with the US industry (i.e. Level III), has requested, as emerged from the 2012 Public Consultations, improvement in SPS and a more regulatory compatibility between the EU and the US on GM crops (see EuropaBio and Biotechnology Industry Organization, 2012; European Crop Protection Association and CropLife America, 2012b). A transatlantic alliance (see also Aggarwal & Evenett, 2017) at Level III is then attempting to pressure EU Level II. While the Commission remains generally more in favour of GMOs' recognition (Vogel, 2012), Member States (and especially Italy, France, Germany and Austria), with the exception of the UK, Netherlands and Belgium, are more sceptical (Ibid). This generates conflict at Level II, thereby making the prospect of a compromise within Level II more difficult to achieve.

Between 1996 and 1997, when a number of GMOs were approved by the Commission, public concerns emerged (Lynch & Vogel, 2001). Public intransigence mostly derived from the food crisis of the 1990s affected the willingness of the public to open up to GMOs (Vogel, 2012). The backlash appeared so significant that by 2005, 27 of the 30 largest food producers in the EU were refusing to rely on GMOs in the EU (Ibid.). Since Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms, reliance on the PP has been the rule for addressing GMO-related issues (Ibid). The Commission, in fact, stated that the PP could be invoked if negative

political effects were to be generated by the introduction of GMOs into the market and when scientific uncertainty existed (Ibid). This was achieved due to the strong position adopted by several Member States (Italy, Austria, France, etc.) and as a result of the strong pressure within their Level III (Ibid). Despite the fact that, in 2003, a new regulation (i.e. Regulation (EC) 1830/2003) concerning the traceability and labelling of GMOs promoted a highly stringent labelling regulation, consumers' concerns remained high (Ibid).

More recent events made the prospect of a compromise between the EU and the US more difficult to achieve (Aggarwal & Evenett, 2015; 2017). Until 2014, once EFSA had prepared its scientific assessment and confirmed the absence of risks, the Commission had to submit a proposal to authorise a given GM crop/seed to the Council for its approval by a qualified majority. If this were not achieved, the decision was left to the Commission. However, Directive (EU) 2015/412 grants Member States wider decisional powers over the cultivation of GMOs on their territories and is likely to make the diffusion and acceptance of GMOs in the EU more difficult (Ibid.).

Questions concerning the import of meat which had undergone pathogen reduction treatments (PRTs) and cloned meat are considered to make the FtF approach redundant. EU concerns about chlorinated chicken assume particular relevance. The principle of traceability states the need to track food destined for humans and the ingredients chosen from the production process to food distribution (see Sharma & Treat, 2015). The issue concerning chlorinated chicken has been used as a symbol of the EU standards and an EU model based on a FtF production process (BEUC, 2014). Since 2012, the US and the EU industry has attempted to address the import of meat that has been treated in the US with PRTs to ensure its safety (Inside U.S. Trade, 2014b). Since 1997, the EU started to adopt measures to prevent imports of poultry products that were subject to such treatments. Given the failure to solve this matter, the issue has been elevated to the WTO Dispute Settlement Mechanism but no final decision has been taken yet.

The respondents have argued that, even if there are no safety concerns, imports of chlorinated chicken would make redundant the EU FtF approach and allow the US to gain unjustified

competitiveness in the EU market (e.g. Interview 22042016). Moreover, the issue of traceability became even more sensitive because of the horse meat scandal of 2013. In early 2013, the aforementioned scandal induced a revision of the controls aimed at protecting the FtF model (European Parliament, 2013c). Thus, the event also led to the adoption of the more stringent regulation on food traceability (i.e. Regulation (EU) No 1337/2013). These events have a direct effect on TTIP.

Concerns about cloned meat are based on wider concerns about food safety. The negotiation of the issue represents a challenge to the FtF approach, as mentioned above, and animal welfare rules. First of all, in the US, the traceability of cloned meat is voluntary, which again represents a problem to the FtF approach. Secondly, the issue concerning cloned meat represents a long-standing debate between the Commission and the EP and is based also on concerns about animal welfare. The Commission has ruled out the existence of any risks to human health.

In a press release from December 2013, the Commission argued that the European Food Safety Authority (EFSA) conducted a scientific risk assessment in 2008 on cloning and ‘concluded that there is no indication of any difference for food safety on meat and milk of clones and their offspring compared with those of conventionally bred animals’ (European Commission, 2013f). Such conclusions were also confirmed in 2009, 2010, and 2012. However, attempts to define new EU legislation on cloned meat by the Commission and the Council failed in 2011. The rejection was also based on the acknowledgement that cloned animals suffer significantly and often need to be euthanised, raising ethical concerns in the Union (BEUC, 2014). Moreover, although the Commission presented a new proposal for a directive on the cloning of animals in 2013, the attempt proved to be “unsuccessful” (see section below). The TACD and a number of consumer associations also expressed concern over the import of cloned products (TACD, 2013; Sharma & Treat, 2016), thereby increasing the sensitivity of the issue at Level II and III.

The section has briefly defined the agri-food related aspects which have been used in the TTIP debate to justify concerns over the EU model, it has explored the developments within the Union and

why negotiation with the US, given its different approach, appear to be particularly problematic for many in the EU.

**5.4.3 After the Launch of Negotiations.** Further developments for the Agri-business Sector. At the beginning of the negotiation process, the Commission adopted economic arguments to support the negotiations regarding the agricultural sector but, since the 1<sup>st</sup> Negotiation Round in 2013 and more pronouncedly in 2014, the discourse of the Commission became more defensive. Given the red lines imposed by EU Level II and EU Level III, a compromise with the US on agricultural issues appeared more difficult to achieve. Although negotiations were halted in October 2016, difficulties in finding a compromise between the EU and the US positions became clear when confidential documents were leaked by Greenpeace in May 2016. The section will explore how concerns further developed on the basis of the multi-functional discourse, how the actors have attempted to gain influence in the negotiations, and how the EU negotiating position has been affected. This section will firstly focus on the case of GIs and then explore concerns regarding the agri-food sector. Secondly, it will analyse the case of SMEs and that of cloned meat, which appear to have been particularly relevant in the debate. Finally, it will consider the difficulties in finding a compromise that emerged at Level I.

In 2012, the EP requested that gains in the agricultural sector should be ensured through the better protection of property rights, such as GIs. The analysis of the EP debate in 2012 reveals that requests for the protection of GIs against the counterfeit measure in the TTIP came mainly from Italian MEPs from various political parties (i.e. the EFD, EPP and S&D), indicating that the issue was of greater interest to the country than for any specific political group. Interestingly, however, in 2013, requests for the protection of GIs were pushed forward by MEPs from different Member States. Although one might argue that different MEPs responded to the interests of their domestic constituencies, GIs remain in the interests of Southern EU countries and are of limited relevance to other EU countries. Therefore, it is argued here that the broader support within the EP for GIs was also due to the protection of agri-food specificities being considered a reflection of a given

understanding the EU agri-food model, which also includes the need to safeguard the EU's gastronomic heritage. Moreover, as argued by the Political Advisor to an S&D MEP in relation to the TTIP 'on issue like GIs nationality matters. GIs tend to interest Southern Europe the most but I saw also MEPs from Northern Europe to consider GIs like a something symbolic about the EU and EU excellences' (Interview 10042016). The argument here is that, given its intrinsic value (which also implies the protection of the cultural heritage of the EU, an element of the multi-functional discourse), over time, the issue became more keenly felt within the EP, as Figures 5.2, 5.3 and 5.4 show. Pressure to include GIs, however, was not welcomed by the US and reduced the likelihood of an overlap between the EU and US positions.

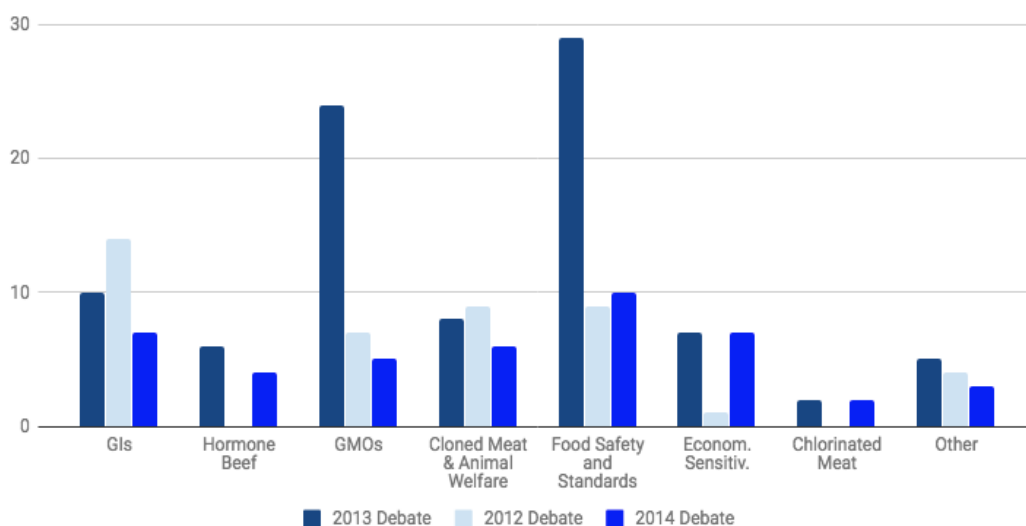
Concerns about the agri-food sector had always been a stumbling block for a TAFTA/TTIP project. Complications emerged since the launch of negotiations and dragged on throughout the bargaining process. If the concerns regarding the EU model appeared to ease in 2012, they increased again after the launch of negotiations in July 2013. In the aftermath of the 3<sup>rd</sup> Round, EU Chief Negotiator Iñatio Garcia Barcero, in response to concerns, declared that the TTIP would not lead to lowered standards in the agri-food sector. Issues concerning agriculture appeared difficult to resolve. Not only does the analysis of the EP debates from 2012 to 2015 reveal an increasing number of concerns (see Figure 5.4) but also the attitude of the Commission in its public speeches changed over time signalling the more pressing necessity to address concerns. Although the Commission started to address concerns regarding the EU agricultural model since 2013, this was usually in response to a specific question or input. Since 2014, however, the discourse put forward by the Commission started to address concerns in the agricultural sector, without specific external input (see De Gucht, 2014a).

In 2014, a new EP was elected and took office on the 1st of July. The sensitivity of the TTIP negotiations became clear when, in the very same month, the new EP decided to discuss TTIP negotiations. The debate took place on the 25<sup>th</sup> of July and was addressed by Karel De Gucht (prior to his replacement), who further ensured the EP that the TTIP would not lead to lower EU standards on food and food safety (European Parliament, 2014). Within the EP, some considered the assurance

given by the Commission on GMOs vague (Interview 41042016). Figure 5.3 captures the evolution within the EP of the debate on the TTIP from 2012 to 2014. In comparison with 2013, the 2014 parliamentary debate seems to suggest that the concerns over agriculture were less significant. There are two considerations here: 1.) the 2014 debate was not intended to lead to the adoption of a resolution on the TTIP. It simply represented an opportunity for MEPs to explore certain aspects related to the negotiation process (especially with regard to the ISDS, see Chapter 6); 2.) if one considers the percentage of speeches addressing the issue of agriculture in 2014, it is striking that 48 per cent of them addressed the issue. Thus, one could argue that, in relative terms, the degree of sensitivity increased. Figure 5.3 illustrates with what frequency (y-axis) some elements were addressed during the EP debates from 2012 to 2014.

With the renewal of the Commission, in 2014, new Trade Commissioner Cecilia Malmström inherited a difficult situation. During her first official speech on the TTIP, delivered in November 2014, the new Commissioner declared that the agreement was not going to ‘change our laws in areas where our they are just too different – like genetically modified food or hormone beef’ (De Gucht, 2014b, p.2). A key element in understanding the growth in the salience of the frames that considered TTP a threat to the EU model was the degree of divergence in the transatlantic approach. Such a condition increased the credibility of such frames and thus their resonance.

Figure. 5.3. The Agri-food sector in the 2012, 2013 and 2014 EP debates





Despite the assurances, the EP and civil society's concerns did not diminish. In July 2014, the "STOP TTIP" platform, supported by more than 500,000 organisations around Europe, requested the registration of a European Citizens' Initiative (ECI) against the conclusion of the agreement. The initiative represented a powerful tool for expressing concerns about the protection of the EU model and confronted the Commission with mounting concerns.

The protection of SMEs, a key element in the multi-functional discourse, became the apple of discord in the debate. On the one hand, the Commission argued that SMEs would benefit from the agreement but, on the other, part of the EP (with the notable exception of part of the EPP, ECR and ALDE) and civil society argued the opposite case. SMEs account for 28 per cent of the value of EU exports with the US and 88 per cent of companies involved in trade with the transatlantic partner are SMEs (European Parliament, 2018a). It comes as no surprise that an entire chapter is dedicated to SMEs. Despite the Commission's commitment to wise liberalisation, ensuring that SMEs would benefit from the agreement remained a well-manifested commitment (see European Commission, 2015c).

A Fifth PC on SMEs was carried out between 2014 and 2015 and offered some evidence to the Commission's argument.<sup>25</sup> According to the Commission's surveys, the highest number of replies came from SMEs operating in the agri-food sector (i.e. 91 replies out of 371),<sup>26</sup> which seemed to favour greater cooperation in order to gain better market access to the US (see European Commission, 2015c). Although no sampling technique was adopted, the PC shows at least that some of the SMEs in the sector would favour better access to the US market. Other SMEs appeared, instead, concerned about the agreement (e.g. KMU gegen TTIP, which translates as "SMEs against TTIP") and this more critical position emerged during the 2015 EP debate. For instance, MEP Miguel Viegas (GUE/NGL) argued that 'from the economic viewpoint the implementation of this agreement means the end of our

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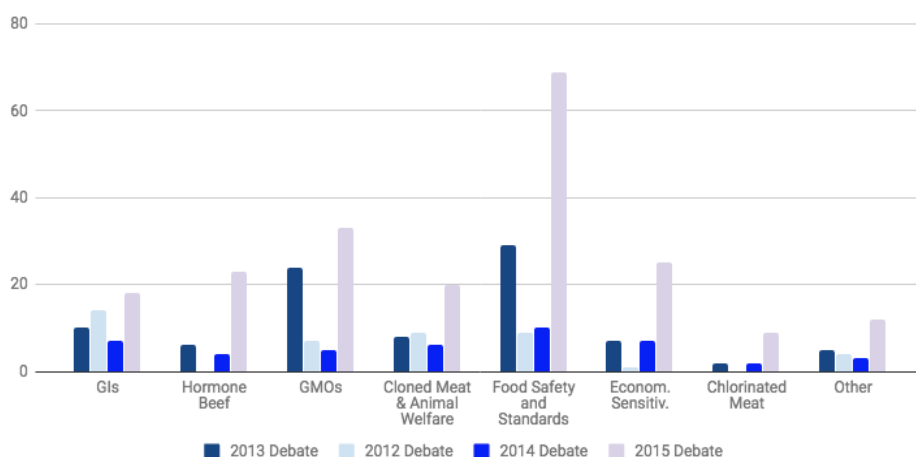
<sup>25</sup> The PC attracted the submission of 869 European companies and was carried out from July 2014 to January 2015.

<sup>26</sup> The number refers to the survey concerned with barriers to trade.

production model based on family-agriculture’ (European Parliament, 2015a). The necessity of protecting SMEs from the agreement remained debated both within the EP and outside.

The issues regarding hormones in beef, GMOs, concerns regarding cloned meat and chlorinated chicken remained prominent in the European Parliament (see Figure 5.4.). The major outcome of the resolution of 8 July 2015 was that of imposing red lines on the negotiations process. The resolution made two points clear: 1.) the EU level of protection cannot be lowered; and 2.) when the EU approach and the US approach differ substantially, no convergence should take place (e.g. cloning). This element introduces what this thesis defines as the “Maximum Divergence Criterion” (MDC) (see Chapter 6). To complicate the situation further, the legislative proposal of the Commission on cloned meat was drastically rejected by the EP in 2015 (i.e. negative focusing event). In 2013, the Commission advanced a proposal for a directive on the cloning of animals that had been kept and reproduced for farming purposes by imposing a ban on the cloning of certain species (i.e. cattle, sheep, pigs, goats, and horses). On the one hand, the Commission’s proposal was going to grant the Commission more room in negotiations with third countries and avoid possible disputes at the WTO (Euroactive, 2015a). On the other, the proposed legislation (that was amended by the EP in 2015) increased concerns about TTIP and the EU farming model (Ibid.).

Figure 5.4. The Agri-food in the 2012, 2013, 2014 and 2015



Source: Author’s elaboration of the EP debates

The figure above shows the frequency (y-axis) with which specific topics appeared in the EP debates (x-axis) from 2012 to 2015. It is also worth noting that the Commission has several times argued that no EU laws would be subject to change through the TTIP. The proposed legislation could then be interpreted as a way of circumventing this hurdle and, in doing so, increasing the possibility of making concession at Level I. In 2015, the EP Committee for the Environment, Public Health and Food Safety and the EP Committee for Agriculture and Rural Development of the European Parliament requested a more restrictive approach involving banning the cloning of all animals. The Committee cited concerns for animal welfare and food safety, further limiting the possibility of making concessions in the TTIP (see European Parliament, 2015c).

The amended proposal, voted by the two EP committees, was discussed and adopted by the EP in September 2015. The EP made clear its disapproval ‘of animal cloning for food production purposes because it jeopardises the defining characteristics of the European farming model’ (European Parliament, 2018b). All of these elements have an impact on the negotiation rounds from 2013 to 2016 and increased concerns.

Confronted with unwavering concerns, in January 2016, EU Trade Commissioner Cecilia Malmström continued to argue that the EU ‘will defend the precautionary approach to regulation in Europe, in TTIP and in all our other agreements’ (2016a, p.1). The TTIP chapters leaked in May 2016 by Greenpeace sparked fresh concerns and increased the salience of the frames with regard to the EU farm model. The PP is not mentioned in the 248 pages of TTIP negotiation texts. The lack of reference to the PP caused a stir within the Union, as reflected by the media and commentators.

Finally, the analysis of the leaked text sheds lights on the negotiation process at Level I. The Commission was restrained at home by frames rooted in the multi-functional discourse and internationally by positions undertaken in compliance with both its wise liberalisation argument and the multi-functional discourse. It was clear, from the analysis of the leaked documents and reports on the negotiation rounds, that one of the major concerns was the protection of GIs for wines. This intent can be linked to the wise liberalisation argument (GIs are an economic resource for the EU) but is

also a reflection of the multi-functional discourse insofar as GIs represent a way to protect the gastronomic heritage and traditions. The issue of GIs appeared difficult to solve. The US opposition to a wider recognition of GIs was also manifested by the US industry and 177 Members of Congress, who requested the USTR not to make concessions (see Troszczyńska-Van Genderen & Bierbrauer, 2014). Although negotiations have been halted, the case of GIs represents an example of how the Commission attempted to balance the risk of involuntary defection at Level II and III with the risk of a no agreement.

The refusal of the US to change the 2006 Wine agreement caused a stir in the Commission, which ‘expressed strong concerns’, informing the US that ‘it will follow up at the political level’ (see European Commission, 2016c, p.5). Complications emerged with regard to the EU’s sensitive sectors (i.e. bovine meat, rice and sugar) which, were going to be subject to protection. The leaked text reveals that the US was using wine, sugar, and cheese as leverage against the EU. The protection of these sectors appeared necessary to avoid involuntary defections at Level II and III. The final Negotiation Round, the 15<sup>th</sup>, took place in October 2016, when it was made clear that the negotiations were to be put on hold.

**5.4.4 Conclusions.** This section explored the negotiations on agriculture within the TTIP, where the debate was focused on frames stemming from the wise liberalisation argument and the multi-functional discourse. In particular, the Commission adopted the wise liberalisation discourse to ensure economic competitiveness while, at the same time, limiting the risk of increased opposition that opening up might certainly have initiated. Different actors at Level II and Level III have adopted these elements to legitimise their actions and convince others. In the case of agriculture, more heterogeneous interests led to a more fragmented picture. Although the outcome of the negotiation rounds conducted so far does not indicate that all concerns have been met, the EP managed to set a number of red lines, justified on the basis of frames echoing the multi-functional argument. Despite

the fact that De Gucht (2014b) repetitively argued that ‘we will not import any meat that is treated with hormones; we will not give a blanket approval of imports of GMOs’, concerns remained.

Public concerns have further legitimised the cautious attitude of the EP on the Commission’s cloning proposal and the Member States’ attitude towards the handling of GMOs. In turn, this has further limited the capacity of the Commission to make concessions in TTIP. Moreover, the attempt to modify the EU legislation on cloning can also be understood as a focusing event, thereby further undermining the credibility of the Commission. Although the intention to modify the legislation preceded the launch of negotiations, the timing did not help the Commission’s case. The case of agriculture, given its high profile and degree of reflectiveness, has also further ignited concerns with regard to the maintenance of EU standards overall, with a general negative impact on the negotiations as a whole. As a result, compromise with the US became more difficult to achieve.

#### **5.4 Conclusion**

This chapter explored the TTIP negotiations with regard to audio-visuals and agriculture which, as emerged in the previous chapter, represented significant stumbling blocks to the launch of negotiations. Chapter 4 explored how the sensitivity to specific concerns was temporarily reduced. The present chapter, instead, explored how frames were used to empower or restrain certain actors from adopting specific decisions with regard to the negotiations regarding audio-visual services and agriculture. The outcome of these restraining and empowering motions has affected the size of the EU negotiating position and, as a result, also the ability to reach a compromise between the EU and the US. The analysis has highlighted that economic-based frames were often confronted with frames based on the necessity of preserving the EU model. In the case of audio-visuals, the notion of cultural exceptionalism, which is deeply-rooted in the EU integration process, was adopted to request the exclusion of the sector from the negotiations. In the case of agriculture, the multi-functional discourse, that had developed within the union since the 1950s, was used to legitimise concerns regarding the inclusion of the sector in the TTIP.

The argument is that, for audio-visuals, the homogeneity of preferences within France and the situational and structural position of certain groups with regard to the French Government made imperative the exclusion of the sector of negotiations. This decision removed the issue from the mandate, gained more support at Level III, and avoided problems of involuntary defection, but at the same time complicated the prospect of a compromise with the US. In the case of agriculture, the heterogeneity of preferences led to mixed outcomes during the negotiation process. The business community appeared divided over the inclusion of agriculture in TTIP, which reduced the cost of political action. However, the debate about EU standards, affected by a number of focusing events, generated complications not only for the sector per se but also in general for the overall agreement. The high degree of reflectiveness of the frames concerned with the EU model affected the overall negotiation process.

## Chapter 6. The New Challenges to the Negotiation of TTIP

### 6.1 Introduction

This chapter concludes the analysis of TTIP negotiation and focuses on several issues which have become controversial with the launch of negotiations. As argued in Chapter 2, this thesis aims to explore what affected the EU negotiating position during the TTIP negotiations. In other words, it assesses how the initial EU positions altered during the trade talks. Before proceeding with the analysis, it is necessary to recall the findings so far and define the contours of the analysis that will follow.

The chapter follows the analysis developed in Chapter 4 and Chapter 5. Chapter 4 focused on the past attempts to launch negotiations and what facilitated their incipit in 2013. The argument is that the increased salience of the frames in favour of the launch of negotiations was positively affected by a change in the level of permissiveness in the international context, a shifted political cost of action, and a number of focusing events. In particular, the Financial Crisis temporarily reduced the salience of the frames expressing concerns over the impact that a TAFTA/TTIP could have on EU standards, which have, however, emerged once the initial shock of the crisis was absorbed. Chapter 5 developed a more detailed analysis of the two persistent stumbling blocks to the launch of negotiations (i.e. audio-visuals and agriculture), how it was possible to overcome these in 2013, and how they were dealt with during the negotiation process, and with what implications on the EU negotiating position.

This last empirical chapter aims, instead, to explore issues that became increasingly controversial with the start of negotiations (i.e. chemicals, environmental protection, data and environmental protection, public services, workers' rights).<sup>27</sup> In all of these cases, the degree of

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<sup>27</sup> See European Parliament, 2012a; 2012b; 2013a; 2013b 2014; 2015a; 2015b. See Armanovica and Bendini, 2014. Also, an EPP MEP declared 'we cannot have a viable agreement without underlining that Europe's high standards of protection of the environment, health, consumer safety, social principles, privacy and data protection must remain' (Interview 17042016).

divergence (either perceived or real) in the transatlantic approach increased the credibility of the concerns over the EU standards. Moreover, concerns were more likely to become salient when the sectors and relative regulatory approach touched upon the values and/or elements that were deeply-rooted in the EU societal fabric (e.g. the myth of a “Green Europe” or a “Social Europe”). The point that this chapter makes is as follows: the extensity and intensity of the impact on the EU negotiating position have been linked mainly to focusing events. The combination of a high degree of reflectiveness and focusing events seems to be the most consistent element that can explain the increase in the salience of the frames concerned with the EU model.

The chapter will first explore the case of data protection, chemicals, workers’ rights, environmental protection, and public services. The analysis will rely on primary research, text analysis, interviews and descriptive statistics to support the arguments and triangulate the data. Given the number of issues to analyse, the section will be more concise in exploring the key arguments. If this approach, on the one hand, limits the depth of the analysis, on the other, it increases the empirical validity of the findings by making it possible to analyse more sectors.

## **6.2 Controversies in TTIP**

The aim of this section, as mentioned in the introduction, is to explore the negotiations of the issues which became sensitive with the launch of negotiations. It is beyond the purpose of this thesis to assess whether or not the overall level of protection in the EU exceeds that in the US. Here, let it suffice to say that the issue is highly debated in the literature (see Wiener & Rogers, 2002; Vogel, 2012; Hammit et al., 2013). Scholars have argued that the size of the agreement, the ambitiousness of the deal, the relevant political weight of the other negotiating party (the US), and accusations regarding the secrecy of the negotiations all served to increase public attention (see Young, 2016; Gheyle, 2016) As emerged in Chapter 5, there are, however, two further elements to take into account in order to explain why concerns developed with regard to specific sectors:



1. The degree of divergence between the respective regulatory approaches of the EU and the US to a given issue. Rather than simply taking into account their divergence, it is necessary to explore how such a divergence has been perceived and used to justify various positions; and
2. How certain sectors reflect the values and standards, which are rooted in the EU societal fabric.

Frames expressing concerns about the EU standards were based on the idea that, given the level of divergence between the EU and the US and the US' bargaining strength, cooperation might lead to a regulatory downgrading within the EU (see García-Duran & Eliasson, 2017). This awareness increased the credibility of the aforementioned frames. Moreover, the Commission, by recognising the existence of such a divergence in approach, appeared to legitimise, albeit involuntarily, these concerns. For instance, Karel De Gucht argued that:

One of the loudest arguments against TTIP that is often raised is that the agreement will force Europe to lower its high standards for protection: protection of the environment, of consumers and of workers. The argument is that our European model is much better than the American one and if we try to tear down trade barriers between the two continents we will also automatically tear down the high European standards. [...] And where the gap in approach between the EU and the US is too wide, we just will not change our rules. (European Parliament, 2014).

The recognition of transatlantic differences became the criterion according to which the EP (but also civil society) defined its red lines during the negotiation process, as the EP resolution of the 8 July 2015 seems to confirm.

[The European Parliament] [a]ddresses, in the context of the ongoing negotiations on TTIP, the following recommendations to the Commission to ensure that [TTIP] [...] will not affect standards that have yet to be set in areas where the legislation or the standards are very different in the US as compared with the EU, such as, for example, the implementation of existing (framework) legislation (e.g. REACH), or the adoption of new laws (e.g. cloning), or future definitions affecting the level of protection (e.g. endocrine disrupting chemicals).

This “maximum divergence criterion” (MDC), which will appear throughout the analysis, became the criterion for excluding or limiting negotiations in certain areas and, consequently, the element around which concerns have been built.

With regard to the second point (i.e. how specific sectors reflected given values), the high degree of reflectiveness of certain frames, recalling values rooted in EU society, facilitated the increase in the salience of certain discourses. It is the argument here that the high degree of

reflectiveness of the frames concerned with the health of the EU model was mainly rooted in the myths of Social Europe and Green Europe.

The myth of a Social Europe is linked to a specific perception of the EU ‘as the bastion of Europe’s “social model”, an approach to governing market economies that sets it apart from the rest of the global economy’ (Della Sala, 2016, p.537). The myth of a “Green Europe”, on the other hand, which developed during the integration phase as a response to the market-oriented focus of the Union, has come to identify the EU both domestically and internationally (see Lenschow & Sprungk, 2010). These myths identify the figure of an ‘exceptional Europe’ in its approach to the global economy (Della Sala, 2016, p.537) and thus a specific EU way of life.

The sections below will analyse the chemical sector (6.2.1), data protection (6.2.2), workers’ rights (6.2.3), environmental protection (6.2.4), and public services (6.2.5). For each section, the study will explore differences to the US approach, the reasons behind the controversies and opposing frames, the initial EU position, and how and to what extent the increased salience of frames tying the negotiation of TTIP with a threat to EU standards affected the EU negotiating position. The main limitation of the analysis is that negotiations have not been concluded but talks were terminated in 2016. Despite that, the documents made available and the interviews allow the study to assess how and to what extent certain elements affected the EU negotiating position.

**6.2.1 Chemical Sector.** Transatlantic actors had attempted to achieve cooperation with regard to the chemical sector in the past. However, despite the difficulty of finding a compromise, the sector was not considered a major stumbling block to the launch of negotiations but increasingly became a salient one (see EuroActive, 2015b). The argument here is that, in the case of chemicals, the frames expressing concerns for EU standards were reinforced by a specific focusing event (i.e. a leaked document) and appeared to be involuntarily legitimised by the Commission’s arguments. The Commission, in fact, by acknowledging the significant divergences between the EU and US regulations on chemicals, involuntarily reinforced the doubts regarding the appropriateness of

transatlantic cooperation in this area. Although the EU negotiator used the MDC to justify a milder form of cooperation, the negotiations at Level II and Level III revealed increasing difficulties. A negative focusing event further undermined the Commission's stand. Leaked documents suggested the Commission's intention to delay the adoption of new EU criteria with regard to endocrine disruptors (and thus the possible ban on certain substances), apparently to please US officials (see The Guardian, 2015a). This focusing event increased 1.) the salience of the frames focused on the danger of negotiating on chemicals; 2.) negatively affected the credibility of the Commission's pledge to protect EU standards; and 3.) culminated in reducing the extent to which the issue could be negotiated at Level I. This section will first consider the pre-negotiation phase and the emergence of competing arguments, before exploring the developments in negotiations following the launch of trade talks.

**6.2.1a The Pre-negotiation Phase.** This section will explore the pre-negotiation phase. More specifically, it will consider, first, the history of attempted bilateral cooperation on chemicals; secondly, it will analyse the main differences in regulatory philosophy and the use of competing arguments up to the launch of negotiations. The aim of this section is to set the basis for the analysis of the negotiation talks.

Historically, since the mid-1990s, the chemical industry on both sides of the Atlantic, through the Transatlantic Business Dialogue (i.e. Level III), has attempted to push for better regulatory cooperation, without success. Obstacles to transatlantic cooperation can be traced back to the US Congress's difficulties to reform the US regulation and the aspiration to develop a global regulatory system (Elliot & Pelkmans, 2015). In particular, the intention to develop international standards distracted the two transatlantic players from bilateral cooperation. For Elliot and Pelkmans (2015), since the 2000s, the EU has attempted to define its own approach to chemicals regulations and, thus, crystallise a European view before engaging in conversation on chemicals at the international level, which also left less room for transatlantic cooperation. In 2001, the White Paper on the Strategy for

a future Chemicals Policy made the PP the key guidance to regulation on chemicals (Ibid.), thereby signalling a significant departure from the US approach, as will be explored below. Improving the cooperation on chemicals, as requested especially by business groups (i.e. Level III), became one of the objectives to be pursued during the TTIP negotiations.

The concerns that emerged during the TTIP debate are rooted in the different regulatory systems adopted in the EU and US, respectively. The EU system is based on REACH (the Registration, Evaluation, Authorisation and Restriction of Chemicals), which imposes, according to the EU, stricter rules than the US system (Interview 06042016). The regulation requires industries to collect sufficient data on chemicals and to report these via an EU database. The EU mantra on chemicals, “No Data No Market”, points to a significant divergence between the two regulatory systems. The US relies on the Toxic Substances Control Act (TSCA), which, according to certain academics and NGOs (i.e. Level III), offers a lower level of protection (Elliot & Pelkmans, 2015).

According to Gerstetter et al. (2014), while the EU system requires the registration of chemicals with the European Chemicals Agency and the provision of safety data, the US system has more relaxed rules on safety data, which are only requested in specific circumstances and are not compulsory for chemicals traded before 1976 (Ibid.). The difference between the two systems resides in the approach to regulation. Buonsante (2015) summarises this neatly, arguing that, in the EU, the basic understanding is that a substance, given the possible harm it might cause, must be subject to regulation (Ibid.). On the other hand, in the US, the ‘exposure to the substance under normal conditions of use must be proved, and this exposure must constitute an unreasonable risk, in order for the chemical to be regulated as a substance of concern’ (Ibid.). This difference in approach has led to a number of controversies and problems that have made it difficult to reach a compromise. These considerations mainly refer to the TSCA Act of 1976 before it was amended by Frank R. Lautenberg Chemical Safety for the 21st Century Act in 2016.

With regard to the frames adopted, in the case of chemicals, as in the case of audio-visuals and agriculture, the Commission and the industry relied on the economic argument (i.e. better

regulatory cooperation, less cost, greater competitiveness) to support negotiations. On the other hand, civil society (Level III) and a number of MEPs (i.e. Level II) from different political families (e.g. S&D, the Greens, GUE/NGL, EFDD) expressed concern regarding the inclusion of chemicals in TTIP and framed the negotiations on the subject as a possible threat to EU standards. Once the intention to launch negotiations on a transatlantic trade agreement became clear in 2011-12, the chemical industry on both sides lobbied both transatlantic negotiations to promote coordination (see Elliot and Pelkmans, 2015; House of Lords report, 2014). The inclusion of the sector in the negotiations and the necessity of promoting coordination were intended to reduce costs and spur competitiveness (see House of Lords Report, 2014).

The economic argument employed by the Commission was also echoed in the 2013 parliamentary debate on TTIP. While some MEPs expressed concern regarding the inclusion of chemicals in TTIP (see, for instance, MEP Tiziana Beghin), others manifested their support, given the economic impact to be derived from greater coordination in the sector (e.g. MEP Jaroslav Paska; MEP Edit Herczog) (European Parliament 2013a). Fears expressed by civil society at Level III and by the EP were related to the impact that regulatory cooperation might have had on the PP, which guides the EU approach to the regulation of the sector.

The Commission appeared well aware of the difficulties to be faced during the negotiations, even before the talks officially began (see European Commission's position paper on Chemicals, 2013). The EU negotiator defined, accordingly, its position on chemicals. In a document compiled for the TPC (i.e. Hybrid-institutional negotiations, Level II), and, thus, destined for the Member States, the Commission expressed its opinions with regard to the sector:

Both industry associations and governments are aware that neither full harmonisation nor mutual recognition seem feasible on the basis of the existing framework legislations in the US and EU: REACH (Regulation (EC) 1907/2006) and TSCA (Toxic Substances Control Act) are too different with regard to some fundamental principles (European Commission, 2013h, p.1).

The argument, according to which a significant qualitative difference exists between the EU and the US, emerged from the interviews as well. An EU Official, for instance, argued that, 'in the EU there are stricter rules and long tests before market is reached while in the US it is easier' (Interview

06042016). The Commission's strategy was to propose milder forms of cooperation in order to avoid major backlashes. Karel De Gucht, while insisting on the opportunities that TTIP might deliver with regard to the chemical sector, argued:

[C]hemicals should be another area when we can work together. This is a very different scenario because European and American chemicals' legislation is so different. But here we can still cooperate. There are several important areas – like labelling requirements and better coordination of safety assessment – where TTIP could make things more efficient for companies and regulators (2013d).

At this stage, a positive focusing effect seemed to assist the Commission's argument. In 2012, the US Congress was engaged in an attempt to revise its regulation on chemicals, which might have facilitated a dialogue on the issue. The US reform might have supported the impression of introducing higher standards in regulating the sector reducing doubts about the impossibility of a compromise between the EU and US. The EU's response to concerns was to propose four main objectives (see EU position paper on Chemicals, 2015), which appeared to seek a shallower form of cooperation than that sought for other sectors (e.g. automobiles). However, opposition from Level III led the Commission to make a number of adjustments, as the section below will explore.

**6.2.1b The Development of Negotiations.** This section will examine the EU objectives with regard to chemicals, and then analyse the opposition of different stakeholders at Level III and Level II. The analysis will then focus on negative focusing events and the impact on the EU negotiating position.

The EU's position on chemicals was mainly clarified after the launch of negotiations through the publication of a position paper in 2014. While the negotiation mandate simply included the chemical sector as one of the issues under negotiation, the position paper published by the Commission on the 14<sup>th</sup> of May of 2014 illustrated the following as the main aims to pursue during the negotiations:

1. Co-operation on the prioritisation of chemicals for assessment and the assessment methodologies;
2. Promotion of alignment in classification and the labelling of chemicals;

3. Co-operation on new and emerging issues, with particular emphasis on endocrine disruptors, nanomaterials, and mixture toxicity;
4. Enhanced information sharing and protection of confidential business information (CBI).

The analysis of the negotiation rounds suggests that the EU negotiator and the US discussed three pilot projects which reflect the objectives of the Commission. The first project concerned the prioritisation and assessment of substances and the second classification and labelling since the 7<sup>th</sup> Round (September/October, 2014) (see European Commission, 2014b). The third pilot project, instead, concerned the analysis of the differences between safety data sheets and became part of the conversation in the 8<sup>th</sup> Negotiation Round (February 2015) (see European Commission, 2015d).

Concerns at Level III, however, remained. Despite the manifest EU attempt to embark on a shallow form of cooperation, Friends of the Earth Germany (i.e. Level III) argued that the proposed forms of cooperation with the US on the chemical sector represented a threat to the PP (see Euroactive, 2015b). Cooperation on new, emerging issues was considered a possible way to affect the level of EU protection on novel substances. Frames expressing concerns about the EU standards were legitimised by differences in regulatory approaches.

NGOs, such as BEUC (i.e. Level III) and the EP Committee on the Environment (Level II), have been vocal regarding the exclusion of chemicals from the negotiations (Interview 22042016), and a sector of the epistemic community also showed signs of concern. For instance, Buonsante argued that ‘US industry is putting the EU under pressure to ignore this discussion, both by trying to undermine the scientific consensus around endocrine disruption and by claiming catastrophic effects on trade’ (2014, p.1). The statement questioned the economic argument used by the Commission and cast doubt on the usefulness of including the section in TTIP.

The work of NGOs led to specific outcomes in terms of chemicals in TTIP and, as a result, affected the EU position in the negotiations, as confirmed through interviews. The EPHA representative involved in the TTIP Advisory group mentioned that meetings took place with MEPs. The INTA resolution of 8 July 2015 included ‘language we advocated for’ (Interview 08042016).

The EP, in the resolution, aware of the increasing concerns and pressured by groups at Level III, issued specific requests. The EP asked the Commission to ensure that TTIP:

[W]ill not affect standards that have yet to be set in areas where the legislation or the standards are very different in the US as compared with the EU, such as, for example, the implementation of existing (framework) legislation (e.g. REACH), [...] or future definitions affecting the level of protection (e.g. endocrine disrupting chemicals) (European Parliament resolution of 8 July 2015).

The EP resolution introduced clear red lines during the negotiation process and stated the necessity of maintaining the EU standards. NGOs operating at Level III managed to affect the parliamentary debate on chemicals by reinforcing the salience of the arguments used to express concerns regarding the EU standards. In particular, the manifested intention to cooperate on new and emerging issues led to complications during the negotiation process.

The prospect of cooperation on the new issues (i.e. Point 3. above), in particular, caused a stir in the EU and was understood to be possibly negatively affecting the EU standards. These fears were confirmed by a negative focusing event. According to *The Guardian* (2015a), as a result of pressure from AMCham and US officials, in 2013, the Commission officials postponed the updating of the EU criteria on the endocrine disrupting chemicals contained in pesticides. This update was apparently considered a potential obstacle to the TTIP negotiations (Ibid). The event led Sweden, backed by the EP and the Council, to initiate court proceedings against the Commission for the delay in reforming the European Documentation Centre (EDC) classification (Ibid). The Court of Justice, in its ruling of 2015, declared that delay was unjustified. The event increased the salience of the frames concerning the EU model and reduced the room for compromise with the US. Although, in May 2015, endocrine disruptors were mentioned as a possible topic conversation in TTIP, a Commission spokesperson argued:

Given the fact that a possible future TTIP Agreement will most likely not enter into force before the adoption of definitive EU criteria to identify endocrine disruptors, it is clear that the EU's ongoing impact assessment and adoption of definitive criteria will not be dealt with in the TTIP negotiations (The Guardian, 2015a).

Although pesticides were not going to be dealt with in the TTIP chapter dedicated to chemicals, the issue increased awareness of endocrine disruptors and sparked further concern regarding further cooperation with the US on the issue. The EU text proposal on chemicals, published in July 2016,



confirms the objectives that were made explicit by the Commission in 2014 with regard to the intention to increase the exchange of information and avoid the duplication of tests. Although cooperation on new substances is indicated as one of the objectives, no reference to endocrine disruptors appears in the text or any of the additional official documents after 2015. In line with the EP's recommendations, art. 1(2) of the text illustrates that:

Nothing in this Annex shall oblige the Parties to achieve any particular regulatory outcome, or to advance, suspend, delay, or stop their regulatory activities, or shall affect the ability of each Part to conclude its respective regulatory procedures [...] (European Commission, 2016e).

Although a final assessment is not possible, given that the unavailability of the final, consolidated text, it is possible to argue that the Commission seemed to act during the negotiation rounds to increase efficiency and reduce costs and avoid involuntary defection.

**6.2.1c Conclusions.** The awareness of a limitation at Level III seems to have exercised its highest impact with regard to the development of an EU position on chemicals in TTIP, thereby restraining the breath of cooperation prior to the launch of negotiations. Despite this, the debate revealed that the EU negotiator had over-estimated, during the initial phases of the negotiation, what was possible to agree upon in the negotiations. The heated debate on EU standards, combined with an involuntary legitimisation of concerns by the Commission itself and further affected by the release of leaked documents, increased the persuasive capacity of the frames expressing concerns over EU standards.

**6.2.2 Data Protection.** The possible inclusion of provisions regarding data flows in TTIP have led to concerns within the EU (Level II and III). Civil society organisations (e.g. BEUC, etc.) have argued that, given the different level of data protection existing between the EU and the US, the agreement might result in lower EU standards. Despite the fact that the Commission excluded the negotiations of data protection from TTIP since 2013, concerns remained. According to a number of NGOs, negotiations could potentially have repercussions regarding data protection. The argument here is that the divergence in the level of protection fed concerns over the possibility of regulatory downgrading.

A number of focusing events (e.g. the Snowden scandal, and the case of the Safe Harbour Agreement, etc.) also confirmed fears. These concerns led the EP to impose a clear red line on the negotiations. This section will explore the pre-negotiation phase and, secondly, explore the development of negotiations.

**6.2.2a The Pre-Negotiation Phase.** This section will briefly address the difference between data protection in the EU and the US, respectively, and its relevance to discussions concerning cross-border data flows in TTIP. It will then consider the concerns that emerged within the EP and civil society and the complications that arose following the Snowden scandal. The analysis will shed light on the controversies surrounding the inclusion of provisions on data flows in TTIP.

Regulating cross border data flows in TTIP brought with it complications. The EU and US differ significantly with regard to their legislation on data protection (see Aggarwal & Evenett, 2017). While in the EU there exists a strict and comprehensive legislation on this issue, in the US, the legislation is more fragmented (Ibid.). Each US state offers different safeguards, since data protection is regulated at the federal level, at the state level and also by the private sector (see Beaverstroem, 2014). In brief, the US regulation then appears ‘less comprehensive’ (Aggarwal & Evenett, 2017, p.603). A further “complication” stems from the EU legislation itself. To ensure the protection of data and safeguard the privacy of EU citizens, in 1995, the EU approved and adopted the Data Protection Directive (repealed by Regulation (EU) 2016/679).

The Directive has prohibited the transfer of data to third countries in which the system of protection in place is considered inadequate to safeguard privacy. Since the level of protection in the US was deemed inadequate by the Commission (see Martenczuk, 2008), a number of agreements were signed to ensure the protection of EU citizens’ personal data (e.g. the Safe Harbour Agreement; the PNR agreement; etc.). Of particular relevance to TTIP is the Safe Harbour Agreement, which

entered into force in 2000<sup>28</sup> and developed a framework, which permitted businesses to the transfer data on EU citizens to the US through a system of voluntary certification. Data (e.g. information about credit cards, names) are, in fact, essential for the digital economy (see Maxim, 2014).

With the upcoming start of negotiations in July 2013, civil society's concerns regarding data protection in TTIP were also echoed in the EP (i.e. Level II and III). It was a matter of public knowledge that the US was keen to negotiate provisions on the digital economy and cross-border data flows (see European Parliament Research Services, 2016). The stark difference between the EU and the US approach has been widely recognised by a number of NGOs and consumer associations as well. Friends of the Earth Europe, the European Consumer Organisation (BEUC), Transatlantic Consumer Dialogue (TACD), and European Public Health Alliance 33, in a joint report, argued that '[d]ata protection standards in the US and EU are starkly different and unbalanced. Contrary to in the EU, in the US there is no statutory recognition of privacy as a fundamental right' (2013, p.1). Similar arguments resonated within the EP. For instance, MEP Martina Anderson (GUE/NGL) argued that while, for the EU, data protection is a fundamental right, for the US, data protection is regarded as 'bad for business' (European Parliament, 2013a). During the 2013 parliamentary debate, for instance, MEP Bernard Large (S&D) declared:

I would like to cite [...] the field of data protection, where we say in Europe, of course, this is a fundamental individual right that must be secured, where the partners beyond the Atlantic have different ideas (European Parliament, 2013a).

It is in this context that the Snowden scandal of 2013 ignited concerns within the EU. Not only did several Member States request that the TTIP negotiations be halted but concerns regarding the protection of the personal data of EU citizens were unabashedly legitimised. With the Snowden revelation, the agreement came under scrutiny (see Aggarwal & Evernett, 2015). In July 2013, Vice President of the Commission Vivien Reding (2013) argued that 'Prism has been a wake-up call. The

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<sup>28</sup> Data protection between the EU and the US is also regulated by other agreements, such as the PNR agreement and the EU-US agreement on bank transfer data.

data protection reform is Europe's answer [...] The Safe Harbour Agreement may not be so safe after all'.<sup>29</sup>

The necessity of negotiating a “new” Safe Harbour Agreement emerged. Reaching a better level of protection with the transatlantic counterpart became a necessity before discussing data flows in TTIP. The impulse to solve the situation was also linked to the interests of the transatlantic industry. US industry appeared, in fact, extremely keen to include provisions facilitating cross-border data flows, given the economic advantage that might have derived from the simplification of certain barriers (e.g. local content requirements, data localisation barriers, etc.) (Aggarwal & Evenett, 2017). Also, EU business (i.e. Level III), given the economic advantages linked to the agreement, appeared keen to negotiate data flows in TTIP (Ibid.).

Two complications related to TTIP thus stemmed from the Snowden scandal: 1) concerns regarding the data protection of EU citizens were legitimised; and 2) without an agreement ensuring adequate data protection, including a provision on data flows in TTIP, represented a new challenge. According to the EU legislation, as mentioned earlier, data cannot be transferred to a country whose protection is deemed unsafe. Conscious of these difficulties, the EU and US started to negotiate over the issue of data protection in 2013 outside TTIP.

Although the issue of data protection appeared relevant to the EP, the EP debate in 2013 took place before the Snowden scandal and, thus, the issue was not central in the speeches. The Prism became a matter of public knowledge a few weeks prior to the launch of the TTIP negotiations and was destined to become a contentious element within them.

**6.2.2b The Development of Negotiations.** Although the Commission had, in several instances, argued against the inclusion of data protection in TTIP, a number of events strengthened these concerns. These led the EP to impose clear red lines on the negotiation of data protection in TTIP. This section

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<sup>29</sup> Prism was the name of the NSA surveillance programme, which granted the US agency access to US internet companies.

will explore the Commission's response to these concerns and the red lines imposed by the EP resolution of 8 July 2015 on TTIP.

The complications caused by the Snowden scandal, which became public a few weeks before the 1<sup>st</sup> Negotiation Round, made the negotiation of data flows a sensitive topic within the EU. Since 2013, the EU and US attempted to find a solution that might replace the Safe Harbour Agreement. The necessity to negotiate the agreement in parallel with TTIP seemed to represent a solution to avoiding data protection representing an additional obstacle to the TTIP negotiations (see Maxim, 2014). The negotiation over data flows were, in fact, halted until the question of data protection could be solved (European Parliamentary Research Service, 2016). Thus, dealing with data protection in another accord might have eased the pressure on the negotiations regarding a trade agreement with the US.

On several occasions, the Commission also lobbied by Level III actors (e.g. TACD), argued that data protection will be excluded from the scope of the agreement (see, for instance, European Commission, 2015d). The exclusion was, for instance, addressed by Vice President of the Commission Viviane Reding (2013):

Data protection is a fundamental right. That's why a discussion on standards of data protection should be kept separate from the give and take of a trade negotiation. I am grateful to my colleague Karel de Gucht for saying that data protection is outside the scope of Transatlantic Trade and Investment Partnership (TTIP).

In the proposed text on Regulatory Cooperation, discussed with the US in April 2015, the Commission specified in the general notes that 'this chapter does not cover legislation [...] such as acts determining the principles of, inter alia, [...] the protection of personal data' (see European Commission, 2015d, p.2). However, despite the reassurances by the Commission itself, concerns within the EP remained. The EP explicitly requested the Commission to:

[E]nsure that the EU's acquis on data privacy is not compromised through the liberalisation of data flows [...] while recognizing the relevance of data flows as a backbone of transatlantic trade [...]; to incorporate, as a key point, a comprehensive and unambiguous horizontal self-standing provision, based on Article XIV of the General Agreement on Trade in services (GATS) [...]; to negotiate provisions which touch upon the flow of personal data only if the full application of data protection rules on both sides of the Atlantic is guaranteed [...] (2.XII) (European Parliament resolution of 8 July 2015)

To solve the issue of data protection and calm concerns, the EU and US took different steps. For instance, they negotiated an Umbrella Agreement on data privacy and protection (DPPA) in 2015.<sup>30</sup> However, a further complication stemmed from an unexpected actor at Level II, the EU Court of Justice, which, in October 2015, declared the Safe Harbour Agreement invalid and requested the EU and US to work together towards a solution by January 2016. Although this situation might have made the negotiation process more difficult, the two transatlantic actors acted fast. In February 2016, the EU and US presented a new agreement, the so-called Privacy Shield, which was deemed adequate by the Commission. However, the Article 29 Working Party, which is an advisory body containing representatives from each Member State did not appear enthusiastic about the agreement (see Aggarwal and Evernett, 2017). The EP requested that the Commission should implement the recommendations suggested by the Party, thereby muddying the water further.

Despite the halting of negotiations by the advent of the Trump Presidency, it appeared clear that the Snowden scandal had a strong impact on the TTIP negotiations and negatively affected the Commission's room for manoeuvre by legitimising the overall concerns regarding data privacy.

**6.2.2c Conclusions.** The divergence in the level of protection legitimised concerns over a possible regulatory downgrading in the EU. The salience of the frames expressing concerns about the protection of data and EU standards increased as a result of the Snowden scandal. The Commission acted by ensuring that data protection would not form part of TTIP. In this case, concerns, as in the case of chemicals, were pre-empted by the Commission and thus the effect on the EU position became manifest at the very beginning of the negotiation process.

**6.2.3 Workers' Rights.** With regard to workers' rights, concerns that developed in the EU are rooted in the different (or apparently different) level of protection granted to workers in the EU. This

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<sup>30</sup> The DPPA established a framework for law enforcement cooperation.

divergence led to a heated debate on the preservation of the level of protection granted to EU workers. To these considerations, the Commission responded by denying that the agreement would lead to lower labour standards in Europe and maintaining that it was, instead, likely to lead to increased wages and, thus, better welfare for workers (see Armanovica & Bendini, 2014).

The key problem that emerged in the debate concerned the decision of the US not to ratify six of the eight ILO Conventions (see De Ville et al., 2016). As in the case of chemicals, the emphasis on a divergent approach legitimised fears over standards downgrading. The perceived divergences in labour protection legitimised concerns in the EU, which, however, were not shared by all of the players at Level II and III. This heterogeneity of preferences led to mixed outcomes. The section will first explore the pre-negotiation phase and the emergence of competing arguments while the second part will consider the development of the negotiation process.

**6.2.3a The Pre-Negotiation Phase.** This section will briefly explore concerns over EU standards; secondly, it will examine the different approaches towards labour protection in the EU and US FTAs; and, thirdly, it will analyse the use of frames in the pre-negotiation phase and the diverging preferences among the actors. The analysis shows that the (perceived) divergence in approach to labour protection, also recognised by the Commission, legitimised a number of concerns within the EU.

While the 28 Member States have ratified the eight fundamental ILO Conventions, the US has only ratified two (i.e. Convention 105 on Forced Labour and Convention 182 on Child Labour). This element has led to the belief that labour protection in the US is lower than the norm in Europe (see Armonica & Bendini, 2014; Hilary, 2014). Although the US has often argued that its domestic labour law respects and is in line with the content of the Conventions (De Ville et al., 2016), several commentators have argued that the real transatlantic difference concerns the limitations on trade union rights in the US (see Weissborodt & Mason, 2014; Compa & Meyer, 2010). Interestingly, this consideration allows the actors who are arguing against TTIP to adopt an economic argument to

increase the salience of the frames. If trade union rights are limited in the FTA, this leads to an unfair competitive advantage for some actors (Hilary, 2014; De Ville et al., 2016). The argument was also employed to legitimise the growth-based arguments put forward by the Commission. This issue appears complicated, especially given that the ratification of the ILO conventions is a hard limit for the US.

Against this background, it is necessary to point out that the US tends to include stricter provisions in its trade agreements with regard to labour rights, which usually include sanctions in cases of violation (Interview 29042016). Although they have been applied only in one case (i.e. Guatemala), the system appears more stringent than the practices adopted by the EU. In the EU, instead, although the EP has attempted to include labour provisions in trade policy since the 1980s, only since 2008 (i.e. with the EU-CARIFORUM agreement the EU negotiator has decided to follow the path advocated by the EP (De Ville et al., 2016). Thus, contrary to expectations, the EU's approach to labour protection in FTAs appears to be less effective than that of the US.

Within Level III, different preferences emerged. The PC of September 2012 revealed limited concerns regarding EU labour standards. In the Commission's summary (the submissions are unavailable), the EU negotiator specified that:

[M]ore than half of the stakeholders expected a positive impact on the level of employment, including an increase in wage levels as well as improvements of labour standards, in the EU and the US respectively. Only a small percentage of respondents feared that increased cooperation on trade and investment would have a negative impact on employment levels (European Commission, 2012a).

The majority of replies came from business groups (26.4) and trade associations (41.2 per cent), which might suggest why concerns regarding labour standards remained limited. However, the Trade Unions and NGOs started to lobby the Commission to ensure the achievement of two objectives in particular: 1) the ratification of the ILO Conventions by the US; and 2) the adoption of sanctions in cases of violation of the labour provisions. Around these elements, civil society organisations built their campaign. The relevance of these two aims was made even more compelling by the fact that the



Commission had manifested an intention to make the Chapter of Sustainable Development (i.e. labour rights and the environment) the gold standard for future negotiations.

While the Commission, in its rhetoric, argued that TTIP might have generated benefits for wages and possibly also employment (see European Commission, 2013c), within Level II, the EP expressed some concerns regarding labour rights. For instance, MEP Bernard Large argued that:

[T]he issue of workers' rights is a crucial one where we in Europe have developed a specific culture of social dialogue and have also developed a canon of labour relations based on the conventions of the International Labour Organisation that look very different in the United States. (European Parliament, 2013a).

A parliamentary assistant to an S&D MEP argued that concerns about labour provisions were mainly related to the difference in standards and the perceived lack of transparency, which fomented doubts (Interview 04042016). In the resolution of 23 May on EU trade and investment negotiations with the US, the EP requested the agreement to ensure respect for labour standards in line with the ILO core principles. However, it also considered that, although different, the EU and US system granted a similar level of workers' protection. The resolution, in fact, specified that 'the EU and US share common values, comparable legal systems and high, even if different, standards of labour, consumer and environmental protection' (see European Parliament resolution of 23 May on EU trade and investment negotiations with the United States of America).

In the end, the negotiation mandate, which reflects the aggregated preferences of the Commission and Council, included the need to conclude an agreement which ensured a high level of protection of labour (see para. 8) but the heterogeneity of the positions (see above) that emerged allowed the Commission to set aside possible contentious elements. No clear reference to the ratification of the ILO conventions or the inclusion of sanctions appears in the text.

With regard to Level III, as mentioned earlier, the Trade Unions lobbied the Commission to request the US to ratify the remaining ILO Conventions as a means of ensuring the protection of labour standards in the EU. In addition, the main EU Trade Union (i.e. ETUC) and the main US trade Union (AFL-CIO) (Level III) have pressured the Commission to include within TTIP a system of sanctions to discourage the violation of labour provisions, following the US approach (Interview

29042016). The absence of a clear stand by the Commission on these issues fed concerns over EU standards, as the following section will explore.

**6.2.3b *The Development of Negotiations.*** This section will consider the development of negotiations. It will first focus on the Commissions' argument and what affected the salience of the frames adopted by the EU negotiators; secondly, it will consider the preferences of the different actors; and, finally, it will analyse the red lines imposed by the EP and consider how and to what extent these have been followed by the Commission. The argument is that the Commission, faced with mixed preferences and concerns over a possible compromise with the US, adopted in the negotiating text those provisions which might have solved problems related to involuntary defections without irreparably compromising an agreement at Level I.

Despite the concerns emerging from civil society, the Commission has often declared, since the negotiations began, its intention to uphold high labour standards in TTIP. Karel De Gucht (2013b), for instance, argued that:

[T]he Single Market provides perhaps the highest level of consumer, environmental and labour protections in the world. There doesn't need to be a trade-off between high standards and open markets.

The Commission's argument concerning possible job creation and increased wages became the object of increased scrutiny (see DeVille & Siles-Brüge, 2015). The economic models employed by researchers, often referred to by the Commission (Ecorys, 2009 and CERP, 2013), assume 'full employment of factors, including labour' (Khorana, 2015, p.13). The predictions, therefore, remain 'unrealistic' since they 'do not address specific key macroeconomic variables' (Ibid.). As a consequence, the studies that are often referred to by the Commission have been the object of criticism by scholars and NGOs (see DeVille & Siles-Brüge, 2015; Raza, 2014). The epistemic community has progressively questioned, at best, and eroded, at worst, the legitimacy and the credibility of the economic argument employed by the Commission.

In parallel, the emphasis on the homogeneity between the labour protection of the EU and the US was dismissed by the EP in the TTIP resolution of 8 July of 2015, further undermining the Commission's defence. This marked a turning point in the EP's rhetoric. Although labour provisions have formed part of the conversation on TTIP since 2012 in the EP, these became a more pressing matter in the 2015 debate, where concerns for labour standards and sustainable development appeared in 41 speeches. The EP (Level II), affected by several actors at Level III (ETUC and AFL-CIO), requested in the resolution of 8 July 2015 the introduction of a number of provisions related to the protection of labour rights. For instance, MEP David Martin, commenting on the resolution, declared: '[w]e have demanded that the US sign and ratify core ILO conventions on workers' rights' (European Parliament, 2015a). The protection of EU standards was again linked to the ratification of the core ILO conventions. Concerns regarding labour protection were also reinforced by the Commission's evident intention to make this chapter the gold standard for future negotiations.

It is impossible to assess the overall impact on the EU negotiating position, given that the negotiations have been altered but not concluded. However, the documents available allow the illustration of preliminary findings (see the table below for a complete overview). In particular, the table outlines the requests made by the EP in the resolution of 8 July 2015 with regard to labour standards and compares these requests with the original proposal made by the Commission in 2013, the Commission's text proposal of October 2015, and the content of the negotiation rounds and official documents. As mentioned in section 6.2.2a, the main difference between the EU and US in terms of labour protection is related to freedom of association and the right to collective bargaining. The Commission attempted to strike a balance between preferences at Level II and Level II vis-à-vis the US preference. If, on the one hand, the Commission had not asked the US to ratify the ILO conventions, during the 12<sup>th</sup> Negotiation Round, the EU negotiators presented its proposal of four "thematic articles", including the freedom of association and the right to collective bargaining. That said, the slow pace at which some of the recommendations were followed further supported arguments which portrayed TTIP as a Trojan horse for EU standards.

As Table 6.1 shows, most of the requests expressed by the EP are included in the text proposal tabled for discussion with the US. Notable exemptions, as mentioned by NGOs and De Ville et al. (2016), are the request to ratify the ILO conventions and the inclusion of sanctions in the case of the violation of labour provisions. On this last point, the institutional aspects, including a system for dispute resolution, appeared to be part of the EU’s commitment (see the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Negotiation Rounds). Once the substance of the chapter was agreed upon by the respective parties, the Commission made a commitment to discuss the issue. Thus, the EU negotiator appeared to follow at least part of the requests coming from the EP and civil society (i.e. Level II and III)

**6.2.3c Conclusions.** Although several of the requests advanced by the EP in the TTIP resolution of 8 July 2015 and Trade Unions were met, the explicit demand for the ratification of the remaining ILO conventions remained unheeded. Given the heterogeneity of the preferences (see EP, ETUC, BusinessEurope; etc.) and the absence of a clear focusing event, the outcome was mixed. While ETUC and AFL-CIO pushed for a strong stand in TTIP, the business community made milder requests.<sup>31</sup> The Commission was caught in a complex balance of levels. To avoid involuntary defection, the EU negotiators included proposals coming from Level II and III, which did not appear to compromise the possibility of reaching an agreement with the US. On the other hand, it rejected request for the US to ratify the remaining six core ILO Conventions. Such a request could have compromised the possible agreement with the US and thus the conclusion of an agreement at Level I.

**Table 6.1 Recommendations and Developments**

Initial EU Proposal (2013)	EP resolution (July 2015)	EU Text Proposal (2015)	Others: Negotiation Rounds (NR) and other documents
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<sup>31</sup> Business Europe, while not excluding nor requesting the ratification of the Convention and the inclusion of sanctions, has argued that ‘Parties should be free to define policies and measures adjusted to labour and environmental standards they deem appropriate...calls for an effective enforcement of all TTIP provisions’ (BusinessEurope representative, in DeVille et al., 2016: 41).

<p>The Commission considered necessary to include a mechanism to ensure successful monitoring of provisions but no reference appears with regard to sanctions or dispute systems .</p>	<p>Request to include enforceable provisions (e.g. dispute settlement mechanisms, and sanctions).</p>	<p>No mention to sanctions or possible dispute systems. However, in the proposal the Commission declared that ‘[t]he EU reserves the right to make subsequent modifications to this text [...]. In particular, additional proposals, including on [...] dispute settlement, will be developed at a later stage’ (European Commission, 2015e, p. 1.)</p>	<p>In the 11<sup>th</sup> NR the EU argued that provisions on institutional and procedural aspects (such as dispute settlement) will take place only once the substance of the text is clarified and agreed. In the 14<sup>th</sup> NR, the EU ‘confirmed that it will develop provisions [...] well suited to guarantee the implementation and enforcement of the substantive provisions’ (European Commission, 2016f, p.13).</p>
<p>Mention to the ILO Conventions. The proposal precise that ‘the TTIP negotiations should reflect the Parties’ commitments in the labour area with respect to ILO principles and rules’ but the proposal does not mention the need for the US to ratify the ILO Conventions.</p>	<p>Ratifications of the ILO Conventions</p>	<p>Non requested. References to the ILO Conventions appear through the text.</p>	<p>In the 11<sup>th</sup> NR the Commission referred to ILO Decent Work Agenda as guiding principles for the Chapter on Sustainable Development. In the 13<sup>th</sup> NR the Commission provided additional information on its proposal on “thematic articles” regarding the four ILO core labour standards (i.e. freedom of association, the right of collective bargaining, abolition of child labour and forced labour, non-discrimination). In the 14<sup>th</sup> NR the two parties ‘confirmed the priority they both attach to including in the agreement commitments to the [...] ILO core labour standards and discussed the most appropriate way to address this issue’ (European Commission, 2016f, p.12). In the 15<sup>th</sup> NR discussions continued on the core labour standards. No clear request to ratify the core ILO Conventions emerged during the negotiation rounds.</p>
<p>The proposal indicated the need to ensure civil society’s participation</p>	<p>Dialogue with and Participation of civil society</p>	<p>The negotiation party will ‘encourage public dialogue with and among stakeholders, particularly non-state actors’ (Art. 18.2). Moreover, in the proposal., the Commission declared that ‘[t]he EU reserves the right to make subsequent modifications to this text [...]. In particular, additional proposals, including on [...] civil society participation [...] will be developed at a later stage’ (European Commission, 2015e, p. 1)</p>	<p>In 11<sup>th</sup> NR, the Commission addressed the need to ensure civil society ‘s participation. In the 14<sup>th</sup> Round of Negotiations, both parties emphasised the need to ensure civil society’s participation and the respective ways to achieve it.</p>
	<p>Inclusion of labour standards in other parts of the agreement</p>	<p>N/A</p>	<p>N/A</p>

	Requested a Trade Sustainability Impact Assessment (TSIA)	N/A	The Commission has pushed forward the compilation of a trade and sustainability impact assessment. The TTIP TSIA was concluded and published in March 2017.
	Access to information and consultation for employees	According to the Text proposal, 'the Parties shall [...] implement effective domestic policies and measures for information and consultation of workers' (Art.5.3a) (European Commission, 2015e)	N/A
The proposal indicated Corporate Social Responsibility (CSR) as one of the objectives to be pursued in TTIP	Addressing CSR	'The Parties agree to promote CSR and responsible business conduct' (Art. 20.2) (European Commission, 2015e)	In the 11 <sup>th</sup> NR the Commission addressed the relevance of CSR. In the 13 <sup>th</sup> NR, the Commission illustrated in detail its proposal on CSR

Source: De Ville et al., 2016; European Commission, 2013i; 2015e, 2015f; 2016f; 2016g

**6.2.4 Environmental Protection.** Among the concerns expressed with regard to the TTIP negotiations, environmental protection has emerged as a controversial topic. Once the EU approach on specific issues became clearer, concerns focused on the implications for the environment, stemming from the TTIP chapters (e.g. Energy Chapter; Chemicals, Investment Protection), and the Chapter on Sustainable Development, which was considered as promoting an unsatisfactory level of protection by NGOs. The Commission attempted to respond by arguing that TTIP would not lower environmental protection. On the contrary, the agreement granted an opportunity to set a gold standard with regard to the approach to sustainable development. The section will first analyse the frames adopted and focus primarily on the overall fears regarding environmental protection, the concerns stemming from the inclusion of an Energy Chapter and ISDS (concerns regarding chemicals were explored in section 6.2.1). It will subsequently consider issues concerning the proposed Chapter on Sustainable Development. The argument is that heterogeneous preferences led to mixed outcomes. Although the given frames were legitimised by focusing events, their increased salience had a marked impact on the negotiation process.

**6.2.3a The Pre-negotiation Phase.** The EU and US are generally considered to have divergent attitudes with regard to sustainable development. The section will first briefly analyse the different perceptions regarding the level of environmental protection between the EU and US. Secondly, it will explore the conceptualisation of the EU as a “Green” power. Such a notion, which has been shaped by the Commission itself since the 1980s, offered fertile ground to NGOs concerned with the safeguarding of environmental protection within TTIP. The high degree of reflectiveness of the frames concerned with sustainable development and the protection of the environment increased the salience of the related frames.

While the US attitude towards the protection of the environment has been wanting, as shown, for instance, by the failure to ratify the Kyoto Protocol, the EU demonstrated a different stand towards climate change and protecting the environment.<sup>32</sup> Although Morin and Rochette argue that the EU and US’ approach to the environment in FTA have, over time, ‘converged on a shared set of environmental norms’ (2017, p.621), concerns remained. The argument here is that what mattered in the TTIP debate, in addition to the diverging transatlantic attitude (real or perceived), was the reflectiveness of this topic within the EU. The EU has, in fact, often projected itself ‘as an environmental leader’ (Ibid., p.134). The myth of a “Green Europe” has accompanied the integration process and has come to identify the role of the EU both internationally and with regard to the Member States (see Lenschow & Sprungk, 2010). The EU environmental policy was originally developed to address the concerns that emerged from the economic integration and progressively, since the 1980s, it became one of the defying features of the EU (Ibid.).

The purpose behind the construction of myths is that of generating legitimacy for policy decisions and actions (see Della Sala, 2010). That said, the myth, once it had become part of the collective understanding of a political entity, can be used by other actors to limit the policy decisions made by the elite itself. For instance, NGOs can adopt myths ‘to justify their policy positions’

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<sup>32</sup> For instance, there are controversies with regard to the different transatlantic approach to aviation emissions.

(Lynggaard, 2017, p.1425). There are two elements to take into account: 1) the Commission, by portraying itself as an environmental champion, offered legitimacy for the concerns developed by the NGOs with regard to environmental protection in the EU; and 2) concerns were further legitimised by the divergent attitude towards climate change and environmental protection in the US. For instance, MEP Marc Tarabella argued: ‘[a]re we going to grovel in front of the United States at the expense of our values? Are we going to surrender the high environmental standards we fought so hard to establish?’ (European Parliament, 2013a).

If one considers the negotiation mandate, the text specifies the need to preserve high environmental standards (see para. 8). However, the reassurances given by the Commission did not appear to arrest the mounting concerns. With the launch of negotiations, the debate developed around the provisions included in other TTIP chapters and the publication of the text on sustainable development, as the next section will explore.

**6.2.3b *The Development of Negotiations.*** With the development of negotiations and the emergence of new information regarding the directions undertaken by the Commission, the concerns over environmental protection became more pressing. The section will explore how the concerns focused on the Energy Chapter, ISDS, and the Chapter on Sustainable Development. Despite the presence of heterogeneous preferences, the increase in the salience of the frames manifesting the need to safeguard EU standards affected the EU position in the negotiations.

The EU and US negotiations (i.e. Level I) included a discussion on sustainable development (i.e. environment and labour standards) since the 1<sup>st</sup> Negotiation Round. Despite the continuous reassurance regarding upholding a high level of environmental protection in the EU,<sup>33</sup> the concerns over the EU standards did not cease to characterise the TTIP debate. With regard to the EP, for instance, the analysis of the 2012 and 2013 EP debates shows that environmental protection has

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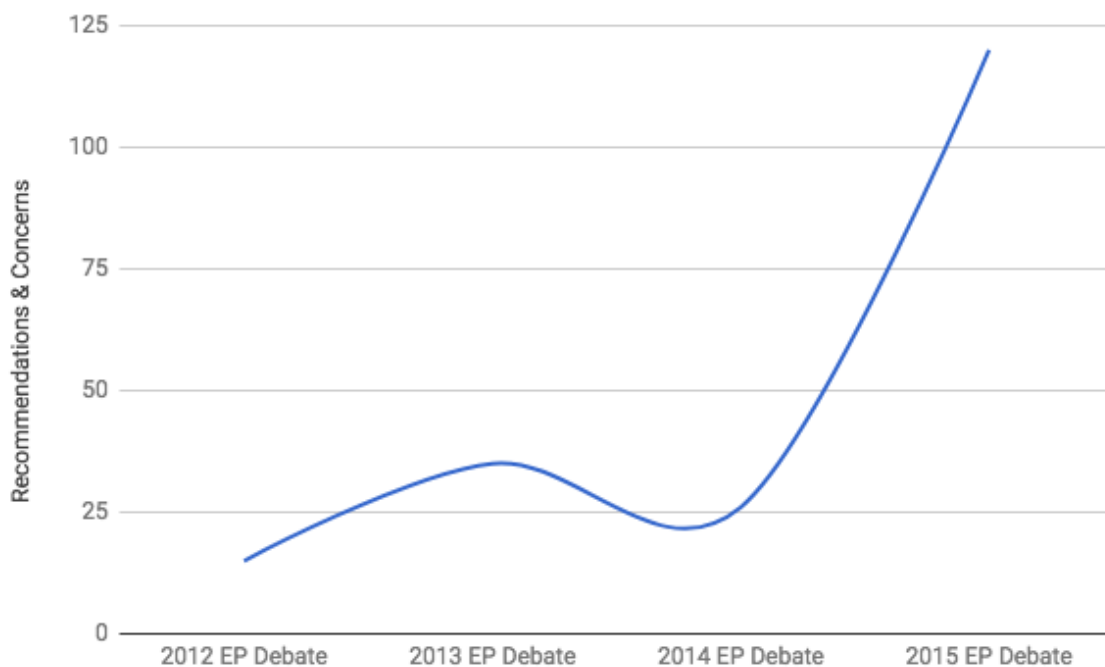
<sup>33</sup> EU Chief Negotiator Ignacio Garcia Barcero declared that that the agreement would uphold ‘the highest standards of consumer, environment, health and labour protection’ (2013:1).



represented a critical element in the TTIP debate from the start. Concerns grew exponentially in 2015, as Figure 6.1 below shows. Explanations for such an exponential growth can be traced back to the development of an EU position on the Energy Chapter, the intention to include an ISDS, and the publication of the EU text on sustainable development.

The inclusion of an Energy Chapter has raised some doubts about the potential environmental harm hidden in the provisions of TTIP. The Commission's priority has been to avoid an energy shortage in the EU (Interview 05042016). Such a necessity appeared to be shared by the EP as well and to be reflected in the Large report on TTIP (see INTA Committee, 2015). The message behind the inclusion on an Energy Chapter in TTIP was that of making the EU more independent from Russia. The conflict between Ukraine and Russia made compelling the necessity to ensure energy supplies for many former USSR (now EU) states (e.g. Poland, Hungary, etc.). The conflict represented a focusing event, which encouraged the Commission to discuss energy in TTIP.

Figure 6.1 Environmental Protection



Source: Author's elaboration of the EP debates

The graph above illustrates the frequency with which the issue of environmental protection appeared in the parliamentary debates from 2012 to 2015. The y-axis clarifies how many times the issue appeared in the debates, while the x-axis refers to the specific EP debate considered. The geopolitical element to the TTIP negotiations had, however, the effect of increasing concerns among environmentalist groups for two main reasons: 1) many feared the TTIP might increase fracking in the EU and allow US companies to pursue it freely on EU territory; and 2) there were concerns that the TTIP, by facilitating oil imports or gas production, could reduce incentives for developing renewable energy. If the actors at Level II within the Council (e.g. Germany) consider the Chapter on Energy as necessary to avoid an energy shortage, for environmentalist groups and NGOs (i.e. Level III), (e.g. Friend of the Earth Europe; Corporate European Observatory, ATTAC France, the Sierra Club, etc.), TTIP represents a threat to the environment. Chair of the UK environmental audit committee (i.e. UK Level III) Joan Walley echoed these concerns, arguing that TTIP might be ‘throwing away hard-won environmental and public-health protections’ (The Guardian, 2015b). Also, MEP Molly Scott Cato argued that ‘the import of cheap US gas from fracking could undermine renewable generation in the UK and across Europe’ (Ibid.).

The fear associated with the discussion on fracking in the TTIP was that US multinationals would be allowed to produce shale gas in the EU without limits (Interview 19042016). However, respondents confirmed that only Member States could decide whether to allow shale gas extraction in their territory (Ibid.). The implied aim of the TTIP is ‘to make the rules of fracking, once the government have set their mind on it, equal among all EU countries’ (Interview19042016). The attempt to soothe concerns over the environment have, however, not proven to be particularly successful. Two main focusing events have catalysed public opinion and increased concerns: 1) two gas companies (i.e. Total and Schuepbach) decided to take legal actions against France; and 2) Lone Pine Resources Inc. decided to sue Canada. Total and Schuepbach decided to take legal action against France because of the French decision to impose a ban on fracking in 2011. In the case of Canada,

the government decided to impose a moratorium against fracking in 2011 and 2012, which led the companies to sue the Canadian government.

The case involving France has been used by environmentalist groups and NGOs (i.e. Friends of the Earth Europe; Corporate European Observatory, ATTAC France, the Sierra Club) to oppose the introduction of an ISDS in TTIP, since such a mechanism will give companies an additional tool for challenging environmental decisions made by governments (see Cingotti et al., 2014). The case of Canada has been used to support these concerns further (Ibid.). Lone Pine Resources Inc. decided to sue Canada under NAFTA, which includes an ISDS. During the 2013 parliamentary debate, MEP Paul Murphy relied on the event to justify his opposition to the negotiation of the agreement.

At the moment, there are USD 2.5 billion worth of claims pending against Canada for imposing regulations in the public interest, including regulations against fracking. A joint struggle across the Atlantic by working people is needed to stop this attempted race to the bottom in the Atlantic (European Parliament, 2013a).

The intention of the Commission to introduce an ISDS, in brief, has been used by a group at Level III to legitimise claims according to which TTIP might contain provisions that could undermine the environmental protection in the EU.

Other reasons for concern are related to the EU text Proposal on the Chapter on Sustainable Development, which was published by the Commission in November 2015. The provisions in the text have been considered inadequate by civil society. Paul de Clerck, spokesperson for Friends of the Earth Europe has argued that the leaked text shows a ‘contradiction with Europe’s commitments to tackle climate change’ (The Guardian, 2016). The myth of a “Green Europe” has been exploited by civil society to mobilise public opinion and make the EP more concerned about this issue (Buonanno, 2015).

The EP, in its TTIP resolution of 8 July 2015, clearly requested that the Commission should maintain high standards regarding environmental protection. While some of the requests (i.e. to conduct an ex-ante trade sustainability impact assessment and cooperate over the development of low-carbon, environmentally friendly technologies) have been executed, other recommendations

remain unlisted. As in the case of labour standards, the EP requested that the provisions designed to safeguard the environment:

- 1.) are not limited to the Chapter on Sustainable Development;
- 2.) are made enforceable;
- 3.) ensure the ratification of the core international environmental agreements (see VIII, d(ii)).

With regard to point 1), provisions designed to safeguard the environment were included in other Chapters (e.g. chemicals), although these were considered unsatisfactory by some NGOs (e.g. Friends of the Earth Europe). With regard to point 2), as emerged in the section on workers' rights, the Commission did not exclude the possibility of including measures to ensure the enforceability of the provisions once the substance of the agreement is agreed upon. Point 3) remains unlisten.

One of the main requests by NGOs was the exclusion of the ISDS from TTIP. Concerns over the ISDS were not only linked to environmental protection. The overall concerns about the ISDS were more broadly linked to the need to protect the right of countries to regulate in the public interest (see section 6.2.4). The ISDS issue was particularly sensitive, given that the US appeared keen to ensure its inclusion. After the PC of 2015, when an overwhelming number of replies demonstrated strong opposition to the mechanism, the Commission, despite the concerns expressed by the business community, changed its attitude. The EU negotiator, aware of the red lines also imposed by the EP, ended up proposing an alternative mechanism, the Investment Court System (ICS), even before the request was explicitly made by the EP in its resolution of 8 July 2015.

**6.2.4c Conclusions.** As in the case of workers' rights, the Commission was confronted with diverging preferences between Member States, EP, Business groups, and NGOs. If the heterogeneity of the preferences allowed the negotiators to build different coalitions among those aligned to the negotiators' view, a number of focusing events limited this potential. The increased salience of the frames expressing concerns over the EU standards had an impact on the EU negotiating position.

However, although a number of recommendations were followed, this did not automatically allay the concerns. The case of the ISDS represents an exemption to this *modus operandi*, since its replacement with the ICS was not welcomed by the US or the industry. However, the extent to which the issue represented a serious threat to compromise with the US remains difficult to assess.

**6.2.5 Public Services.** The debate concerning public service has been one of the most controversial in TTIP. A number of developments during the negotiation process led to NGOs labelling TTIP as threatening the Member States' ability to make choices in the interests of their citizens. These concerns emerged within Level II as well. Within the EP, some groups, by focusing on the divergences in the transatlantic approach to education and health, considered the provisions in TTIP to be a direct threat to the EU model. The following section will explore the ideational elements attached to public services, and subsequently examine how these elements were employed during the TTIP negotiations.

**6.2.5a The Pre-Negotiation Phase.** The EU recognises a “special role” to public services (European Commission, 2015g). This special understanding of public services became the basis upon which the TTIP opposition could gather consent. This section will, first, briefly illustrate how the EU understands public services. Secondly, it will address how the Commission has attempted to ensure their protection in FTAs and explore the development of different positions and arguments up to the launch of negotiations. This first section aims to analyse the values attached to the protection of public services.

Despite the presence of diverging views among Member States, during the process of Europeanisation, a common element has been recognised and widely accepted: not all services can or should be subject to market rules (CESI, 2012). In the EU jargon, public services are referred to as Services of General Interest (SGI) (see Delimatsis, 2017). SGI can be divided into economic services (SGEI) and non-economic services (NESGI) (see Krajewski & Kynast, 2014). Here, suffice

to say that the difference between SGEI and NESGI resides in the limitation on the decisional powers of the Member States. SGEI ‘fall within the treaties’ but ‘are predominantly a matter for the Member States’ [...]. By contrast, ‘general interest services that lack an “economic” character are totally excluded from the scope of the Union Law’ (Schütze, 2015, p.756).

Since the 1980s, SGEIs have been subject to a ‘controlled liberalisation’, as defined by Romano Prodi (2002, p.1). The process of integration was aimed at ensuring efficiency, good quality and price accessibility. The need to ensure universal access to the services remained a constant element in the Commission’s discourse (Prodi, 2002; European Commission 2015g). The Treaty of Amsterdam of 1997 further clarified the relevance attributed to SGEI ‘in the shared value of the Union’<sup>34</sup> and ‘in promoting social and territorial cohesion’ (Article 16).

The process of Europeanisation has, also, raised concerns within certain Member States and highlighted the need to ensure broader control over public services. During the negotiations regarding the Lisbon Treaty, the Netherlands, (i.e. Level II) pushed for the inclusion of Protocol No. 26, which reasserts the subsidiarity principle and re-affirmed the role of Member States and local authorities (Piris, 2010; CESI, 2012).

These considerations guided EU trade policy. The necessity to protect public services has been a constant in the DG Trade activities. The EU protection of public services started to develop in 1995 with the negotiation of the GATS, which defined the multilateral regime for services. These objectives ‘are at the heart of the European social model and of the social market economy which characterises it’ (European Commission, 2015g, p.4). The protection of public services is necessary to ensure that the citizens have access to essential goods and fundamental services, and also ensure solidarity and societal cohesion (Ibid.).

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<sup>34</sup> The meaning of ‘shared values’ has been debated in the literature. For instance, Wehlander argues that the promotion of ‘safety and affordability, equal treatment and the promotion of universal access and of users rights’, which is specified in Protocol no. 26, seems to refer to the EU’s ‘values of human dignity, equality and respect for human rights and the well-being of the people of the EU’ (2016: 95).

The debate around public services in TTIP did not appear particularly controversial prior to the launch of the TTIP negotiations, but several recommendations and fears appeared within the EP during the early stages (Interview 01042016). In the 2012 parliamentary debate, MEPs from different political families (S&D, Verts/ALE, EPP, GUE/NGL) expressed concerns about public services. For instance, MEP João Ferreira (GUE/NGL) underlined that ‘[f]urther attacks on public services are being lined up, with private capital advancing into ever more new areas of social life’ (European Parliament, 2012a). In the 2013 parliamentary debate, which preceded the immediate launch of negotiations, concerns developed with regard to the risk of opening up public services. In this context, MEP Bruno Gollnisch’s speech, given during the 2013 EP debate, emphasised the perils of an ISDS with regard to public services (European Parliament, 2013a).

The analysis of the negotiation mandate suggests that the Commission and Member States (i.e. Level II) were wary of the sensitivity regarding public services within Level III. The mandate, in fact, excludes from the negotiations the so-called government services, as covered by GATS 1(3.) and underlines the need to preserve the ‘high quality of the EU’s public utilities [...] in accordance with the TFEU and in particular Protocol No. 26’ (see para. 18-19). Controversy started to emerge because of the vagueness of the formulation, focused on the mechanisms chosen by the Commission to ensure the protection of public services in TTIP (i.e. negative list) and the proposal to introduce an ISDS, as the following section will explore.

**6.2.5b The Development of Negotiations.** Concerns about public services became more dominant from late 2013 onwards and centred around the necessity of protecting the EU societal model by safeguarding the state’s power to make choices in the public interest. Within the EP (Level II) and civil society (Level III), concerns were expressed with regard to the degree of divergence in the transatlantic approach to public services. The argument here is that opposition was triggered by the tools employed in the attempt to safeguard public services (i.e. a negative list), provisions for investors (i.e. ISDS), and a number of focusing events. This section will first explore the emerging

concerns within Level II and Level III, then the case of the ISDS and the decision to adopt a negative list. Subsequently, the section will consider the Commission's response to these concerns, the extent to which the Commission's strategy reduced the opposition and which recommendations have been followed during the negotiation process.

The analysis of the negotiation rounds shows the sensitivity of the issue with regard to the TTIP negotiations at Level II and III. The stakeholders' concerns manifested since the 1<sup>st</sup> Negotiation Round (see European Commission, 2013<sup>1</sup>). The protection of public services was also a reason for concern within the EP (Interview 01042016). The fear was that the level of protection for public services would be compromised (Ibid). MEPs kept pushing the Commission to make a clear declaration regarding the exclusion of public services from the negotiations (Ibid.).

The analysis of the EP debates shows that the necessity of protecting public services concerned in particular the need to safeguard education, public health, and water from aggressive liberalisation. The parliamentary speeches focused on these issues for two main reasons: 1) these are understood to be basic services that should be provided in the pursuit of a more equal society; and 2) the EU approach, especially with regard to education and health care, was considered to differ significantly from that of the US. Opening up these sectors to the US was conceived as a threat to the EU model. EU associations at Level III were also vocal about the exclusion of public services from the TTIP. Pressure, for instance, came from EU NGOs such as EPHA (Interview 08042016) and the European Students' Union (ESU) (Level III), which expressed concerns over an increased commodification and privatisation of education.<sup>35</sup>

The debate around public services was particularly relevant in the UK. It was focused on the National Health Service (NHS) and the risk of privatisation that might have followed from the agreement. Thus, the key argument was that TTIP might have limited the ability of the country to make decisions in the public interest. Interviews with policymakers compared the UK interests

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<sup>35</sup> See Mélenchon (2014) and Le Hyaric (2014).



regarding the NHS to the French attitude towards audio-visuals (Interview 13042016). Most of the opposition in the UK was 'centred around the issue of public services' (Interview 16042016). Concerns became significant not only because of the increasing civil society's involvement, fuelled by a campaign organised by the 'People's NHS' (2015), but also because they were directly manifested by the UK NHS (see NHS, 2017). The ISDS was at the top of the list of concerns.

The proposal for an ISDS represented one of the most widely debated elements in TTIP (European Commission, 2015f), and public services represented the most controversial aspect of it (Interview 12042016). Concerns over the impact of an ISDS caught the EU by surprise. Since the TTIP negotiation mandate included an ISDS, both the EP and Council had agreed upon its inclusion, the former by passing the TTIP resolution of 23 May 2013 and the latter by agreeing upon the negotiating directive. Thus, in the case of ISDS, the focal point of the mobilisation was Level III. Also, the perceived lack of transparency made the issue even more controversial. For instance, an S&D MEP argued that '[h]ad Commission and the US negotiation teams regularly informed about the current state and had they tried to reach viable and broad compromise on controversial issues (e.g. ICS resp. ISDS) in the course of the negotiation process, public opinion would never be as negative as it is today' (Interview 18042016).

The PC of 2014, launched by the Commission to respond to the mounting criticism of the inclusion of an ISDS, confirmed an unanticipated degree of opposition to the mechanism. Concerns about the ISDS were also raised by focusing events, such as *Morris v. Australia* and *Vattenfall v. Germany* (see Mayer, 2016), which showed how the system could be used to challenge public choices made by states. The mobilisation was then reflected within the EP, which became more vocal about the ISDS (European Parliament, 2014). Also, Germany and France became more outspoken with regard to the exclusion of the mechanism from the negotiations in 2015 (Euroactive, 2015c). Germany especially took a more active role in addressing the issue of ISDS, given that the debate around the issue became toxic (Interview 01042016). Although the *Vattenfal* case exploded in 2011, with the

progress of negotiations and the release of the mandate in 2014 (which instructed the Commission to negotiate the ISDS) concerns grew.

As a result of the increasing pressure at Level II and III, since the beginning of 2015, the Commission became more outspoken. The mounting pressure led the new trade Commissioner Malmström to hold a number of meetings with policymakers, civil society and the US counterpart on the issue of public services (see European Commission, 2015f). Increasing concerns in Europe led the Commission and USTR to issue a joint statement about public services (Interview 09042016). The intention was for the EU to avoid involuntary defection and for the US to reduce the opposition in the EU. The statements had two aims: to ensure that the powers of the Member States with regard to public services would not be limited as a result of TTIP and that the level of protection granted by the EU in relation to public services would not be undermined by the agreement. In January 2015, the trade Commissioner argued that:

[A]ll publicly funded services, no matter how they are delivered, are protected in the EU's trade agreements [...] And if an EU government has decided in the past to outsource some public services to a private contractor, it is free at any time in the future to reverse this decision (Malmström, 2015, p. 2).

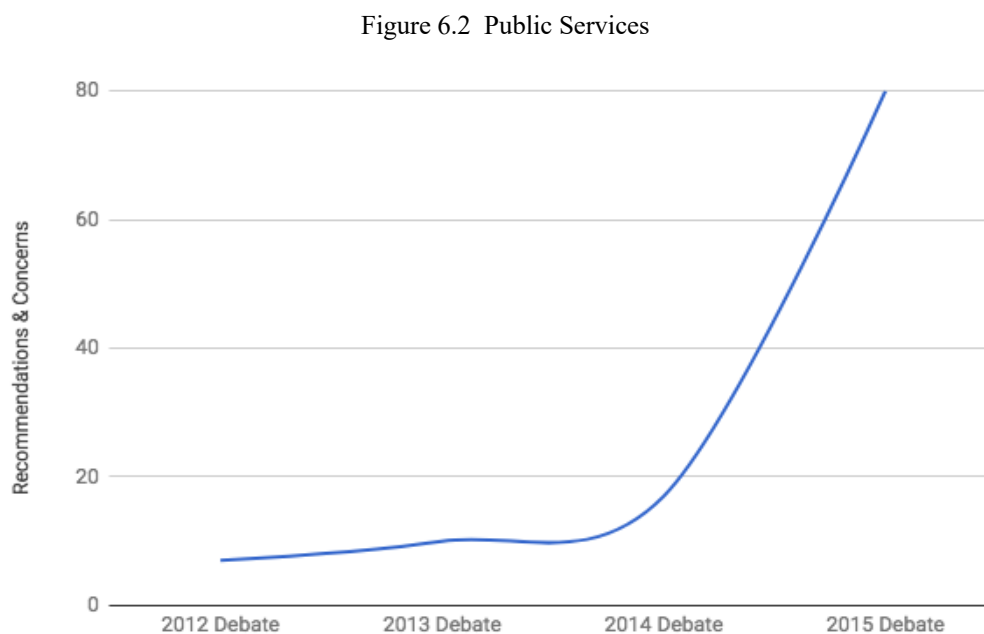
A joint statement was released in March 2015, by Ambassador Froman and Commissioner Malmström:

U.S. and EU trade agreements do not prevent governments, at any level, from providing or supporting services in areas such as water, education, health, and social services. [...] No EU or U.S. trade agreement requires governments to privatize any service, or prevents governments from expanding the range of services they supply to the public (2015, p.1).

On the 31<sup>st</sup> of July, the Commission decided to make public the EU proposal on services. The document seemed to respond to the concerns that had animated the debate. Annex II contained reservations for government services, including health, education, water and 'new services that may emerge as a result of technological developments' (European Commission, 2015d, p.4). Moreover, in September 2015, the Commission proposed a plan to introduce an ICS (European Commission, 2015h) which pre-empted the already clear opposition coming from the EP and attempted to address a red line that had already been clearly manifested. According to an S&D MEP, the new proposal on the ICS was 'a direct result of public pressures, NGOs and European Parliament activities' (Interview

18042016). The graph below illustrates how many times (y-axis) the issue of public services appeared in the parliamentary debates from 2012 to 2015. The y-axis identifies the number of times the issue appeared in EP debates, while the x-axis identifies the specific EP debate considered.

Despite these assurances, concerns remained. As an analysis of the 2015 EP debate shows (see Figure 6.2), MEPs were concerned about the effect of TTIP on the public sector. Concerns over public services and the possible limitation of the power of the Member States were fed at the EU level by the Commission's intention to adopt a negative list and the prospect of an ISDS. The EP was informed of the intention to create a negative list on the day before the vote on the TTIP resolution.



Source: Author's elaboration of the EP debates

This issue caused a stir because it differed from the usual tools (i.e. a reliance on a positive list) adopted by the Commission and so represented a new trend, starting with the negotiation of a trade agreement with Canada.

The negative list identifies services that will not be opened up as a result of the negotiations. Although the Commission argued that positive or negative listing ensure the same level of protection (European Commission, 2015g), the Greens/EFA claimed that such an approach 'could lock-in the

future liberalisation of non-exempt services and prevent countries from reversing liberalisation trends' (2016). Concerns regarding the power of the Member States to make decisions that were in the public interest went side by side with concerns regarding the EU societal model and the right of Member States to regulate, as these passages show:

Working people in my home country only supported and continue to support the European Union's internal market because it comes attached to a social model, and public services are a key pillar of that social model. MEP Jude-Kirton Darling (European Parliament, 2014).

We want to guarantee the rights of Member States to legislate, organise, fund and regulate all public services. MEP Marian Harkin (European Parliament, 2015a).

Concerns within the UK persisted. In 2016, former UK Prime Minister David Cameron had to accept an amendment to the Queen's Speech. It was the first time since 2014. Such amendment was proposed by 25 Tories, the Labour Party, and the Scottish National Party (SNP). Its scope was to prevent the privatisation of the NHS in TTIP (i.e. UK Level III). One may reasonably argue that the amendment represented one of the main issues used by Tories to challenge Cameron in the context of the Brexit campaign (see the Guardian, 2016). Nevertheless, the argument here is that NHS-driven concerns were particularly relevant for Level III to justify the reliance on such a political strategy.

The Commission reassured the public and the EP regarding the protection of public services and adopted some of the recommendations from Level II and III (e.g. confirmed the exclusion of the ratchet clause for public services; the replacement of an ISDS with ICS, etc.), but concerns remained. The Commission, in its textual proposal for the Chapter on Regulatory Cooperation presented in March 2016, clarified that the provisions in the chapter were not going to affect each party's ability to provide SGI (see Delimatsis, 2017). Although one could argue that the intent of the EP was to ensure that the Commissions' intentions would be followed, the opposition did not seem to water this down. In the UK, for instance, it remained a persistent worry.

**6.2.4c Conclusions.** The case of public services became controversial for two reasons: 1) the necessity of ensuring the provision of public services is a defying trait of the EU model and is based on the acknowledgement that not all services should be completely subject to market rules; and 2)

the difference in approach to public services between the EU and the US. Focusing events and the intention to use specific provisions in the text increased the salience of the frames portraying TTIP as a threat to the EU model and the public interest. Opposition from Level II and III ended up, once again, affecting the EU negotiating position. In the case of the ISDS, its replacement with ICS caused concerns within the business community, especially within the US. Whether or not the new proposal was likely seriously to complicate the possibility of compromise with the US is a difficult question to answer, given that the negotiations have been halted.

### **6.3 Conclusion**

The chapter analyses issues which became increasingly controversial with the launch of the TTIP negotiations. The actors relied on frames expressing concerns about EU standards, which were understood to be threatened by the TTIP negotiations, to support their positions. The salience of the frames appeared to be linked to the difference in approach between the EU and US (which affected the credibility of certain frames) and the values that were deeply-rooted in the EU societal fabric (which reflected a specific conceptualisation of the EU standards and their high degree of reflectiveness).

The analysis has shown that the increase in salience of the frames can be often linked to focusing events (i.e. leaked documents, disputes, etc.). Given the heterogeneity of preferences, and the possibility of building different coalitions to ensure ratification, focusing events represented a watershed in assessing which frames became more salient and which requests were compulsory to follow to avoid voluntary defection. The Commission, by considering the requests from Level II and Level III, attempted to avoid voluntary defection (i.e. negotiating an agreement that would not be ratified). The EU negotiator, in deciding which requests to follow, seemed to be equally affected by the other party's preferences. The Commission's acceptability set seemed, then, to be affected, although not determined, by a fear of both involuntary defection.

## Conclusion

*All progress is born of inquiry.  
Doubt is often better than overconfidence,  
for it leads to inquiry and inquiry leads to invention.*

Houdson Maxime

The thesis has explored the launch and negotiations related to TTIP. The aim of the research was to analyse what facilitated the launch of negotiations in 2013, after decades of failed attempts and how the EU position was altered during the process of negotiating the agreement. The analysis of TAFTA/TTIP represents a unique case study for the analysis of EU trade policy and Economic Diplomacy (ED), to which this study aims to contribute. The economic and political relevance of the agreement, the unique involvement of civil society in the EU, the changes affecting the balance of power within the Union, and the decades of failed attempts preceding the launch of negotiations make the TAFTA/TTIP a unique “stress test” through which to explore EU trade policy.

Accordingly, the research question of this thesis was as follows: *How was consensus reached in the EU for the launch of the TAFTA/TTIP negotiations and what affected the EU negotiating position during the TTIP bargaining process?* To answer these questions, it has been necessary, first, to explore the process of consensus building from the 1990s, when the first attempt to launch negotiations took place, up until 2013, when the negotiations were officially initiated. Secondly, the analysis has focused on how the EU position has progressively changed shape from its development to the end of negotiations (i.e. from 2011-12 to 2016). This entailed a consideration of the interactions between the different players, the salience of the frames, as well as what influenced the effectiveness of the framing processes in shaping the EU negotiating position, and with what outcomes.

To present in detail the analysis carried out, firstly I will recall here the content of the six chapters of this thesis. Secondly, I will illustrate the main findings and present several observations that may prove helpful to future research in the realm of ED and EU trade policy, to which the present work aims to contribute. I will also specify how the analysis contributes to existing knowledge and

its claim to originality and conclude by considering possible policy implications stemming from the analysis of the TTIP negotiations.

**I. Summary of the thesis.** This section will consider, chapter by chapter, the context of the thesis and present the main findings and arguments for each of the six chapters of the thesis.

The scholarship focused on the TTIP negotiations (see Chapter 1) can be broadly considered as belonging to the following three lines of argument: 1.) the economic (critical) approach; 2.) the strategic considerations; and 3.) the role of the actors and their interaction. Most of the scholarship developed around the project of a transatlantic agreement has focused on the economic impact of the agreement and the ideological, domestic and strategic benefits stemming from it (Hormats, 2014; Hamilton; 2014; Straubhaar, 2014; Woolcock, et al., 2015; Hamilton and Pelkmans, 2015) (see section 1.2.1). The main “sin” with regard to this economic-based discourse is its determinism. The literature seems to argue that, if A is achieved (i.e. economic growth through ratification), B and C will follow. Moreover, the arguments fail to pay attention to how the groups and constituencies might value other elements more than the achievement of economic growth (i.e. EU standards), which can nevertheless be questioned. The economic argument has been increasingly criticised by part of the TTIP scholarship for two main reasons: 1.) the agreement is a further manifestation of Neoliberalist logic and detrimental to EU standards (see Zeilinger 2015; Lindstrom, 2016; Crouch, 2014); 2.) the CGE models adopted are flawed (Capaldo, 2014; De Ville & Siles-Brügge, 2015; 2016, George, 2016; Raza et al., 2014) and, the Commission, aware of the problems associated with the models adopted, is attempting to manage “fictional expectations” (see DeVille & Siles-Brüge, 2015; 2016) (see section 1.2.2). The literature mentioned has the merit of pointing out the main discourses associated with the TTIP talks. However, given the purpose of the thesis, the research here analyses the frames set without attributing to the Commission’s frames any “a priori” negative connotations.

The second strand of the literature (i.e. the strategic implications) (see section 1.3) focuses on the potential for TTIP to have geopolitical effects (see Hadfield & Fiott, 2013; Pomorska &

Vanhoonaeker, 2014; Telò, 2016; Gamble 2016; Hamilton and Pelkmans, 2015; Peterson, 2016; Hilary, 2016) and also to revive or not multilateral talks (Hamilton, 2015; Kupchan, 2014; Keohane & Morse, 2016; Woolcock, et al., 2015; Aggarwal & Evenett, 2016, Hilary, 2016). Although it is valuable to grasp the complexity of the IR discourses associated with TTIP, it might be equally interesting to consider how these arguments have reverberated in the process of launching TTIP and with what implications for the EU negotiating position.

The third strand of the literature focuses on the role of the actors in the TTP debate and analyses the business community's preferences (see Dür & Lechener, 2016; Young, 2016), the role of the NGOs (De Ville % Siles-Brüge, 2015; Strange, 2016; Young, 2016; García-Duran & Eliasson, 2017), and the EU institutions (Novotná, 2016; Jančić, 2016) and Member States (Chan & Crawford, 2017; Mayer, 2016) (see section 1.4). What emerges from the analysis is the necessity to develop further an understanding of the mode of interactions among the different actors (in particular, between the EU institutions) within TTIP as well as the impact of this on the EU negotiating position. Expanding the empirical analysis to more cases/sectors within TTIP and relying on data that has not been employed before (e.g. the analysis of parliamentary speeches, interviews, etc.) might shed further light on how it is possible to affect the negotiation process.

To develop the theoretical model that was adopted in the study, it was necessary not only to explore the gaps that emerged in the existing literature on TTIP, but also to define a model of analysis that was capable of capturing the complexity of a negotiation process and the functioning of the EU (see Chapter 2). Here, the analysis is located in the realm of Economic Diplomacy (see section 2.2), which focuses on 'the decision-making process and negotiation in international economic relations' which is ultimately 'about process' (Woolcock, 2016, p.9). The theoretical approach used in this thesis, called Interconnected Multidirectional Games (IMG), draws on Putnam's Two Level Game literature, enriched by Multilevel Governance theory, and is here used to capture the complexity of the EU system (see section 2.3). The reliance on the Two/Three Level Game literature is justified by the fact that the EU is involved in a negotiation process with another party, while the reliance on



MLG appears necessary in order to develop a less state-centric focus and be aware of the complexities of the EU.

The structure of the model is based on different levels of negotiations (see 2.3.2): Level I, which comprises negotiations between EU and US negotiators; Level II the Community level, which concerns negotiations between the EU institutions; and Level III which instead refers to the vast array of interactions within Member States and between multiple stakeholders (domestic European, transatlantic and transnational) and EU institutions. The basic assumption is that the Commission will attempt to avoid involuntary defection by welcoming requests from Level II and III, balanced against the fear of a lack of agreement. It remains a solid point in the analysis that the US and its constituencies might attempt to affect the different EU levels of negotiations.

In order to explore what might affect the EU negotiating position, this thesis considers the role of frames (see section 2.3.4). The scholarship on the Two-Level Games tends to focus its attention on strategies, tactics, side payments, and issue linkages (see Putnam 1988; Evens, 1993). Here, instead, the focus is on how shifts in the salience of the frames can affect the EU position. The underlying element of the analysis is that an increase in the salience of certain frames (e.g. their persuasive capacity and likelihood of resonance) increases the ability to affect the EU position. The aim here is not to construct a deterministic argument but to consider how shifts in salience might affect coalition building and the probability that the EU position in negotiations will be affected. In brief, the analysis attempts to identify the mechanisms which are more likely to lead to changes in the EU negotiating position.

By considering the work of Busby (2007), Benford and Snow (1988; 2000) and Chorev (2007), the thesis focuses on seven main factors to explore the shifts in the salience of the frames (i.e. the permissiveness of the international context, focusing events, the credibility of the frames, the degree of reflectiveness of the frames, supportive veto players, the cost of political action, and institutional arrangements). The analysis has made it possible to identify which elements or which combinations of elements appear with greater frequency and are more likely to affect the EU

negotiating position. In order to perform the analysis, as explored in Chapter 3. the thesis has relied on document analysis, discourse analysis, descriptive statistics and interviews. The secrecy of certain aspects of the negotiation process, the unavailability of the US position and the halt of negotiations impose limits on the analysis. However, the vast array of documents released by the EU, offer a sufficient pull of information to perform an analysis with significant empirical validity.

The empirical analysis of this thesis included Chapter 4-6. The first task was to explore the process of consensus building leading to the launch of TTIP, and thus what made possible the launch of negotiations in the first place (see Chapter 4). By relying on 700 speeches within the EP, EP resolutions concerned with TAFTA/TTIP, existing research and official documents, it was possible to individuate six overarching frames, which have been consistently used from the 1990s up to 2016:

- Frame 1. An FTA with the US is necessary to support the transatlantic alliance in a context of increasing uncertainty at the global level.
- Frame 2. An FTA with the US might rebalance the US focus on other geographical areas.
- Frame 3. An FTA with the US is considered economically beneficial.
- Frame 4. An FTA with the US is considered a possible threat to EU values and the EU model.
- Frame 5. An FTA with the US is an obstacle to multilateral trade governance;
- Frame 6. An FTA with the US is considered potentially problematic for developing countries, since a number of negative spillover effects might stem from the agreement.

Frames 1 to 3 have been used to support the launch of negotiations, while frames 4-6 were adopted to oppose the start of trade talks with the US. Having said that, these frames were not only used in a strictly dichotomous way. For instance, frames expressing concerns about EU standards have been used both to oppose the launch of negotiations and to request the adoption of specific safeguards for the EU model. However, since the aim of Chapter 4 was to explore what made possible the launch of negotiations, the focus was on how frames in favour and against the negotiations gained salience. The subsequent chapters, given their different purpose, explored the content of the frames employed, the values and preferences they reflect and how rooted they were in the EU integration process.

Since, as mentioned above, the frames adopted have been consistent for decades, what affected their salience and thus the launch of negotiations in 2013? Answering this question entailed exploring what made the emergence of a EU negotiating position possible in the first place. To solve this puzzle, it was necessary to analyse the past attempts to launch negotiations. The first attempt took place in the 1990s (see section 4.3) the second in 2006-7 (see section 4.4) and the final and successful one in 2013 (see section 4.5).

Economic and strategic frames have battled against frames concerned with the need to protect EU standards, safeguard multilateral trade governance and protect developing countries from harm. Frames in favour of a TAFTA were employed by Germany and the UK to persuade actors at Level II and III. In the 1990s, although international adjustments (e.g. the end of the Cold War) might have favoured a transatlantic agreement, the establishment of the WTO reduced the degree of international permissiveness for a TAFTA. Negative focusing (i.e. Iran-Libya Sanctions (ILSA) and the dispute over the US Helms-Burton Act) increased the relevance of frames concerned with EU standards at Level II. The business community (i.e. Level III) proved to be unenthusiastic about the proposal. The TABD appeared more interested in the negotiations regarding Mutual Recognition Agreements (MRAs), which represented a more achievable task. In addition, the need to include agriculture within the agreement – as required by Article XXIV of the GATT – combined with fears for the audio-visual sector made the cost of political action high for France (i.e. French Level III). Both the muted enthusiasm of the business community and the cost of political action for France reduced the salience of economic-based frames, while concerns for the EU mode remained high in the epistemic community and in the EP. The initiative sank.

In 2006-7, despite Merkel's attempt to launch negotiations for a TAFTA, concerns regarding the EU model and multilateral trade governance reduced the room for manoeuvre. Despite the emphasis on the economic and strategic benefits of a reinvigorated transatlantic partnership, the process of consensus building, supported by Germany, did not herald the launch of negotiations. The new permissiveness of the international context might seem to have affected the salience of the

strategic frames positively. However, opposition within the EU at Levels II and III remained. The Commission was sceptical about the initiative. The prospect of concluding the Doha Round had not yet become an impossible chimera. In addition, concerns regarding EU standards emerged within the EP (i.e. Inter & Intra-institutional negotiations, Level II). The TAFTA project was postponed once again and the EU and US then opted for the establishment of the Transatlantic Economic Council (TEC) rather than a binding trade agreement.

The launch of negotiations did not happen until 2013. Since 2011, the EU and US (i.e. Level I) manifested the intention to foster regulatory cooperation and the idea of a trade agreement began to take shape. What affected the salience of the frames and thus the possibility of building a sufficient coalition to launch negotiations? The strategic frames were made more salient by the increase in the economic and political relevance of emerging countries. With regard to the frames linked to the US focus on geographical areas other than Europe, on the one hand, the US Asia Pivot was used to support the strategic relevance of the agreement and reassert the role of the EU as a strategic partner for the US. On the other hand, the TPP negotiations represented an additional opportunity to define a global approach against the emerging economies. In addition, the decrease in the salience of the frames expressing concerns about multilateral trade governance was motivated by the failure of the Doha Round. Having said that, the role of the “golden boy” in the battle of the frames was played by economic-based arguments.

The Financial Crisis functioned as a focusing event and made the prospect of “easy” economic growth a derisible option. Changes within the structural position of the agricultural sector reduced the cost of political action and also reinforced the salience of the economic-based frames at Levels II and III. If one examines Table 4.1, which reports the variations in the use of frames from 2006 to 2015, it is apparent that, around the time of the launch of the negotiations, the salience of frames concerned with economic growth and the Financial Crisis spiked. Although the analysis of the EP debates cannot account for all EU institutions, it remains a useful way to monitor how the frequencies of certain frames changed over time. Finally, the exclusion of audio-visuals from the negotiations, as

requested by France and the EP and agreed upon by the Council (i.e. Level II negotiations), had a positive effect on the launch of negotiations. If, on the one hand, the exclusion of audio-visuals reduced the number of issues tabled for negotiations, on the other, it made the launch of negotiation possible. The exclusion of the sector from negotiations also gave an impression that the EU was willing to protect sensitive sectors and model. Moreover, the resolution of the Beef Dispute in 2009 functioned as a positive focusing event, since it gave the impression that solutions could be found without compromising the EU standards. The “honey moon” between Level II and III did not last long. With the launch of negotiations, not only did the old concerns start to emerge but they spread across the EU, causing a stir in public opinion. Why was this possible?

The argument in Chapter 4 is that momentary shocks, which function as focusing events, might increase the viability of a political option (see section 4.5.2). However, if changes do not lead to an alteration in beliefs, they appear to exert only temporary effects. As soon as the shock has been absorbed, old concerns, rooted in existing beliefs, emerge once again, especially if the frames manifested a high degree of reflectiveness; in other words, if they are more easily considered to be anchored to everyday life. This is what happened with regard to the TTIP negotiations.

Having explored what affected the development of the EU negotiating position in TTIP negotiations and solved the first puzzle, it is necessary to analyse what affected the EU position during the negotiation process (see Chapters 5 and 6). Similar agreements to TTIP (if we exclude CETA),<sup>36</sup> such as the EU-South Korea FTA and the EU-Japan FTA, did not attract an equivalent level of civil society mobilisation, even though the content was not dissimilar from what was discussed during the TTIP negotiations. García-Duran and Eliasson (2017) argue that the central element for understanding the public concern is related to the perceived strong negotiation power of the US vis-à-vis that of the EU. Thus, the conviction that the TTIP negotiations will lead to the adoption of US standards, which are considered to be less strict than those of the EU, led to mounting concerns.

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<sup>36</sup> The problem of CETA might be linked to the idea that it represented the mould TTIP.

However, this line of argument fails to explain why frames expressing concerns about the EU model had a different impact within different sectors. How was this possible? Chapters 5 and 6 focus on this puzzle.

Chapter 5 focused on the historical stumbling blocks to the negotiation process (i.e. audio-visuals and agriculture), and Chapter 6 on the issues which became more controversial with the launch of negotiations (i.e. chemicals, data protection, environmental protection, workers' rights, and public services). The analysis of these seven sectors offers useful empirical material for assessing how the interaction between the actors, on the basis of opposing frames, impacted on the EU negotiating position, to what extent, and why. When considering the process of negotiating TTIP, the main frames adopted are those concerned with the economic potential of the agreement (i.e. Frame 3 above) and also the protection of the EU model (i.e. Frame 4 above). The first step is to explore in detail the content of the frames and their rootedness in the EU in order to explain their appeal.

Chapter 5 explores the case of audio-visuals (see section 5.2) and agri-food (see section 5.3). The initial intention to include audio-visuals within TTIP, as expressed by the Commission, raised concerns within the EP, civil society, and France (i.e. Level II and III). Arguments concerning the notion of cultural exceptionalism, which is deeply-rooted in the EU integration process, were used successfully to request the exclusion of the sector from the negotiations.

The high degree of reflectiveness of frames, shaped during the decades of EU integration and also rooted in French culture, allowed for these frames to become increasingly salient. The argument here is that, in the case of audio-visuals, the high degree of homogeneity of preferences in France and the situational and structural position of the cultural industry (i.e. French Level III) reinforced the salience of arguments requesting the exclusion of the sector from the TTIP negotiations. France found in the EP a supportive veto player, which further legitimised the French concerns by appealing to the notion of cultural identity and diversity. This combination of elements forced France to threaten to exercise its veto power within the Council (i.e. Intra-institutional negotiation, Level II). Audio-visuals were excluded from the negotiations.

In the case of agriculture (see section 5.3) the outcomes of the TTIP negotiation process were mixed. The need to protect agriculture based on the societal functions (i.e. high safety standards, animal welfare, etc.) performed has been long-debated within the EU. When analysing TTIP negotiations, it is necessary to take two main arguments related to the agri-food sector into account: the multi-functional discourse and the wise liberalisation argument. The multifunctional discourse makes the need to safeguard the agri-food sector (as developed and understood within the Union) imperative, given the societal function it performs. The wise liberalisation stance has only more recently been developed by the Commission. Since 2008, the historical defensive approach of the Commission with regard to the inclusion of agriculture within trade agreements has been replaced by a more proactive strategy (see European Commission, 2017). The recent pro-liberalisation attitude, that was applied to the TTIP negotiations also, has emerged as a result of the Financial Crisis and aims to ensure, given the structural adjustments globally, the competitiveness of the EU agricultural sector. The debate over agriculture during the TTIP negotiations developed around these discourses.

At the beginning of the negotiation process, the heterogeneity of preferences in the agricultural sector (see Tables 4.2 and Table 4.3) (i.e. Level III), also determined by structural changes, positively affected the salience of the economic-based frames attached to the TTIP debate. On the other hand, frames expressing concerns over regulatory downgrading based on the multi-functional discourse, which were initially set aside, soon re-emerged. Frames concerned with the safeguarding of the EU model gained their salience from the high degree of reflectiveness and credibility of the proposed arguments. The credibility of these frames was also supported by the divergence between the EU and US' approach, especially with regard to GMOs, cloned meat and hormone-injected beef. The salience of the frames was also positively affected by a number of focusing events (e.g. the Commission and Council's attempt to modify the EU legislation on cloning).

Although the EU negotiator declared that TTIP was not going to affect the existing level of protection and EU legislation, the Commission's attempts to alter the EU legislation negatively affected its credibility, causing concerns within Levels II and III. In fact, although the Commission

declared that cloned meat and hormone-injected beef were not up for negotiation, in 2015 the EP decided through a resolution to lay down several red lines and make the risk of involuntary defection more apparent if certain recommendations were disregarded (i.e. inter-institutional negotiations, Level II).

With the launch of negotiations, in addition to agriculture and audio-visuals, other sectors appeared controversial (i.e. chemicals, environmental protection, workers' rights, data protection and public services),<sup>37</sup> as explored in Chapter 6. Concerns for these sectors reflect values that are deeply-rooted within the EU fabric (e.g. the precautionary principle, the fundamental right of privacy, the myths of a Social and a Green Europe).

In the case of chemicals (see section 6.2.1), the Commission's position had been flexible since the pre-negotiation phase of 2011-12. Conscious of opposition at Level III from civil society and the EP (i.e. Level II), the original EU proposal was to facilitate the exchange of information and cooperation over future issues (e.g. endocrine disruptors). Thus, the awareness of this opposition had a restraining effect on the Commission, even prior to the launch of negotiations. Despite this, any negotiation on this sector appeared controversial. Differences between the EU system (REACH), based on the precautionary principle, and the US system (TASC) combined with a focusing event related to endocrine disruptors (i.e. leaked documents fed fears that the EU's delayed adoption of the new regulation was designed to please the US) (see the Guardian, 2015a), increased the salience of the frame concerned with the safeguarding of EU standards. Recent EU documents on chemicals fail to refer to cooperation on endocrine disruptors.

In the case of data protection (see section 6.2.2), the Commission had declared since 2013 its decision to exclude its negotiation from the TTIP. As in the case of chemicals, the impact on the EU negotiating position occurred during the process leading to the development of the EU position. However, a number of events raised concerns, and the necessity to renegotiate the Safe-Harbour

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<sup>37</sup> See European Parliament, 2012a;2012b; 2013a; 2013b, 2014; 2015a; 2015b. see Armanovica and Bendini, 2014.



agreement led to increasing concerns regarding data protection. These concerns were increased by the difference in approach to data privacy by the EU and US, respectively, and also a focusing event: the Snowden scandal.

As in the case of chemicals, the cases of environmental protection, workers' rights and public services, concerns for EU standards were legitimised by the difference in the respective approaches of the EU and US. Especially with regard to environmental protection and public services, concerns also focused on the ISDS. A number of focusing events made this issue more salient (e.g. Lone Pine Resources Inc. v Canada; Schuepbach v France, etc.). The intention to include an ISDS in the TTIP was considered to pose a clear threat to the EU model. The Commission, faced with strong pressure at Levels III and II, replaced the mechanism with the proposed ICS, despite the dissatisfaction of the US and the business industry (i.e. Level I and III).

In the case of workers' rights, requests from Levels II and III (i.e. trade unions) focused on the need to ensure the ratification by the US of six of the eight fundamental ILO conventions. In this case, pressure at Level III was exercised transatlantically and saw the alliance of the main EU and US trade unions (i.e. ALF-CIO and ETUC). The Commission, although it implemented several of the requests from the EP at Level II and Trade Unions at Level III (see table 6.1), did not request the ratification of the Conventions to the US, fearing that it might compromise the possibility of agreement. The Commission's intention to discuss the inclusion sanctions was only made explicit in 2015. Although the Commission's temporising could be attributed to different preferences among the business community, the increasing pressures at Level II and III made the Commission more open to considering the inclusion of sanctions within TTIP. Again, the need to strike a balance to avoid involuntary defection appeared to be a clear concern for the Commission.

The main finding is that the high reflectiveness of the frames, combined with focusing events, appears to explain the increase in the salience of the frames concerned with EU standards and the impact of these on the EU negotiating position. Moreover, when the Commission is confronted with relatively high homogenous preferences (e.g. as in the case of audio-visuals), especially within

Member States, a focusing event appears to be less necessary to affect the EU position. Another factor that affects the salience of the frames by having an impact on credibility (see Benford and Snow, 1988; 2000) was the perceived degree of divergence between the EU and the US' regulatory approach. The awareness of this difference, often also confirmed by the Commission, further increased the credibility of certain frames and thus their salience.

**II. Findings and pathways for future research.** The analysis so far has led to the identification of the elements or combinations of elements, which can affect the salience of the frames and thus their capacity to affect a negotiation outcome. These considerations, although elaborated with regard to the TTIP negotiations and with a specific focus on the EU, may be applied to the analysis of other negotiations and thus verify their applicability to other case studies. This section will explore the main findings, the contribution to originality and, finally, the possible policy implications stemming from the study.

The analysis of TTIP negotiations and in particular the attempt to understand what affected the EU position led to a number of findings, which can be summarised under seven main points.

- *When the increase in the salience of the frames is dependent on a high degree of reflectiveness of values and focusing events, the frames appear to exercise the strongest restraining power on the Commission.*

The high reflectiveness of the frames is affected by the extent to which certain frames can connect to everyday life and the centrality of certain values to the target of mobilisation (see Benford & Snow, 1988; 2000). The centrality of values also appears to be affected by the fact that the frames concerned with the EU model were anchored to the myths of a Green and Social Europe and EU principles (e.g. the precautionary principle, right to privacy, cultural exceptionalism, etc.) that are deeply-rooted in the EU integration process. Focusing events, such as investor-state disputes, leaked documents and attempts to change the EU regulations might increase the salience of the frames. This has been the case for chemicals, environment, agriculture, and data protection.

- *The credibility of the frames has been affected by the degree of divergence in the transatlantic approach to regulations*

The level of salience of frames has been affected by the credibility of the frames (see Benford & Snow, 1988; 2000) expressing concerns for EU standards which found, in the degree of divergence in the regulatory approach between the EU and US, solid evidence. The perceived strength of the US bargaining power (see García-Duran & Eliasson, 2017), combined with an awareness of the difference in regulatory approaches, often also confirmed by the Commission, further increased the credibility of certain frames and thus their salience. This element appeared so pervasive within the TTIP discourse that it led the EP to request the Commission to exclude from negotiations all of the sectors which presented an excessive divergence in approach. The adoption of a Maximum Divergence Criterion (MDC) became a guide when assessing the TTIP negotiations and legitimising the requests to exclude certain elements from negotiations.

- *Strategic and geopolitical based frames appeared to have a limited impact on the public (Level III) when confronted with an increase in the salience of the frames concerned with daily life-related issues.*

Although focusing events might alter the salience of the strategic and economic frames, the effect tended to be temporary if no change in belief occurred. This is not to deny that in order to achieve the strategic objective, the Commission and the Council might have decided to disregard domestic concerns or to conclude a deal delivering only limited economic benefits. A clear example has been that of the Australia-US FTA, where despite domestic opposition against the agreement and limited economic significance of the deal, policy-makers have pushed for ratification given the geopolitical spill-over effects stemming from the agreement (Ravenhill, 2016). The argument here is instead that such geopolitical elements, although relevant to policy-makers, might not be useful for gaining support at home for a trade agreement.

- *Homogeneity of preferences within a Member State, even in the absence of focusing events, increases its bargaining power among the Level II pressure groups.*

Putnam (1988) argued that a homogeneity of preferences by tying the hand of the negotiators is likely to increase the bargaining position of the negotiator at Level I (i.e. the “Schelling Conjecture”). Subsequent scholarship (see Moravcsik, 1993; Evans, 1993; Meunier, 2000) has questioned this claim, arguing that, in most cases, the restriction imposed by Level II does not necessarily increase the bargaining power of the negotiator with its counterpart. However, the original formulation by Putnam (1988) might be true when considering a Three Level Game, and particularly with regard to interactions between Level III and Level II. The empirical case of audio-visuals has shown that homogeneity of preferences might increase the bargaining power of certain actors at Level II. Also, the institutional arrangements of the EU make this a possibility. Although the argument appeared to be verified in the case of audio-visuals, it might be useful for future research to explore this consideration further.

- *The emergence of an osmotic process affecting the credibility of the Commission’s frames.*

The degree of contestation and concern with regard to certain sectors has affected the credibility of the Commission overall. The credibility of the source of the frame is one of the three elements that affect the overall credibility of the argument and thus negatively affect the likelihood of its resonance (see Benford and Snow, 2000, see Chapter 2). A number of focusing events (e.g. cloning legislation; endocrine cases, etc.) offered (real or perceived) evidence in favour of those concerned with the protection of EU standards. The accusation that transparency was absent from the negotiations further affected the credibility of the Commission as a source of frames. Moreover, claims regarding the intention to set global standards further focused attention on the Commission’s behaviour. Concerns detrimental to the credibility of the Commission ended up: 1.) affecting not only the sector directly interested in the negotiation process but also those upon which the Commission had declared no intention to compromise or even negotiate (e.g. GMOs, hormone-injected beef) ; 2.) affecting sectors for which no focusing events took place (e.g. Sustainable Development chapter when regarding labour rights) since the stand of the Commission appeared to have been compromised already.

- *The Commission is inclined to welcome requests provided that the risk of involuntary defection does not compromise any possibility of compromise with the other party.*

This complex interplay of Levels was originally explored by Putnam (1988). Given the analysis conducted, changes in the salience of the frames might lead to was balanced by the Commission vis-à-vis the risk of an absence of agreement. In other words, the Commission, during the TTIP negotiations, attempted to balance carefully the need to adopt the changes manifested in the frames to avoid voluntary defection, while also avoiding risking no agreement being reached at Level I. This is not to argue that the Commission was left with no choice but to implement the changes advocated by other actors; rather, the point is different. The analysis suggests that the Commission seemed to favour compromise when possible. It is also the argument here that given the stringent sensitivity of the sectors analysed, the EU negotiator had less room for manoeuvre than what it usually enjoys in other sectors and in other negotiations. However, the Commission also adopted certain tactics to increase its room of manoeuvre. A case in point is the decision to inform the EP of the intention to include a negative list the day before the vote on the 2015 resolution on TTIP. The halting of negotiations make it difficult, however, to evaluate the extent to which the Commission might have been willing to resist requests to ensure compromise with the US.

- *High Permeability of the Commission.*

In contrast with Meunier (2005), the argument here is that insulation from societal pressures appears difficult (see Dür & Lechener, 2016), despite the EU's institutional design, which would shield it from pressure groups. In addition, the role of the EP as a new veto player, often leaning towards civil society's requests, forced the Commission to pay attention to the requests issued by the EU institution. The EP, in particular, has functioned as the main transmission belt between civil society and the EU negotiator.

The seven considerations explored above can, in fact, be tested with regard to ongoing or concluded negotiations to verify the extensibility of the claims and further elements that might affect the salience of the frames in different contexts. For instance, the case of TTIP is considered to be a

negotiation between equals. It might be useful to explore these findings (when possible), therefore, with regard to negotiations involving countries with diverging levels of development and different political ties in regard to other, non-trade related matters (e.g. the environment, aid, etc.).

This overview of the main findings of the thesis makes it possible to explain with greater clarity how the thesis intended to contribute to existing knowledge. Firstly, it added to the analysis of the complex relations among the actors during the TTIP negotiations and how they used competing frames during the negotiation process. Secondly, the thesis has also explored what affected the salience and effectiveness of the frames. Although the analysis of the TTIP frames is not new (see DeVille & Siles-Brüge, 2015; 2016; García-Duran & Eliasson, 2017), the thesis contributes to existing knowledge: 1.) by exploring the process of consensus building, focusing on the shift in the salience of the frames since the 1990s; and 2) by avoiding attaching any moral superiority to certain actors vis-à-vis others. Moreover, despite the fact that the existing literature has attempted to focus on the factors affecting the salience of the frames and normative considerations during the negotiations (see, for instance, Benford & Snow, 1988; 2000, Woolcock & Bayne, 2011), by combining existing scholarship (see Benford & Snow, 2000, Busby, 2007; Chorev, 2007; Putnam, 1988), the analysis attempts to offer a fresh look at the resonance of the frames.

Thirdly, the thesis adds to existing knowledge by moving beyond the analysis of the reasons behind civil society and the public's mobilisation to capture also the impact on the EU negotiating position. The existing literature focuses mainly on the ISDS and the decision by the Commission to propose an alternative system, which appears to be most widely-explored aspect of the TTIP negotiations (see De Ville & Siles-Brüge, 2015; Gheyle, 2016; Strange, 2016; Chan & Crawford, 2015; Bellera, 2015; García-Duran & Eliasson, 2017; De Bièvre & Poletti, 2017). Other issues explored in the existing literature on TTIP concern the emergence of controversies with regard to regulatory cooperation, the liberalisation of public services (De Ville & Siles-Brüge, 2015; Bellera, 2015), consumer safety and environmental standards (Strange, 2016; Bellera, 2015; Garcia-Duran & Eliasson, 2017). However, there has been insufficient assessment of how similar concerns for EU

standards have generated a differentiated impact on the EU position in negotiations and why. Although Aggarwal and Evernett (2016; 2017) explore the issue of GMOs and data privacy, and how these disappear from the negotiations, the thesis here analyses the overall agricultural sector and explores the question of data protection by focusing on the role of frames and the relevance of certain beliefs within the EU societal fabric. The overarching point is that the thesis explores and compares seven different cases within the TTIP negotiations and tests the impact of the frames on the EU negotiating position. Although some scholars have attempted to undertake similar, although not identical, evaluations, differences in the theoretical model, the number of cases considered, and the reliance on new data, enable this research to make a contribution to existing knowledge.

Finally, the thesis attempts to bridge the institutional and domestic-oriented approaches and, by doing so, also contribute to the scholarship focused on negotiation processes and understanding the EU trade policy in a new era of growing civil society engagement and institutional and global changes. The existing analysis of TTIP has mainly focused on the interactions between civil society and the Commission (see DeVille & Siles-Brügge, 2015; 2016).

There are also additional elements which emerged from the analysis. Although these elements were not strictly relevant to the purpose of the analysis, these could become the object of future studies. The presumed mixed nature of the agreement has been increasingly part of the debate. This issue was addressed to a limited extent in the EP debates<sup>38</sup> but soon became a hot topic. The demand for “mixity” has in time become ‘purely political’ and linked to Member States’ necessity to maintain their visibility at the international level (Schütze, 2014, p. 203). It is equally important to highlight that requests for mixed agreements appear, more recently, to also be motivated by emerging domestic conflicts. Governments are increasingly put under pressure by national parliaments (see, for instance, the French Assembly and the UK Parliament) and the general public demanding more control over the EU external powers. Conflicting interpretation between Member States and the Commission led

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<sup>38</sup> The mixed nature of TTIP was addressed in the 2014 EP debate by Elman Brok. The MEP appeared concerned with the complications stemming from the ratification process of a mixed agreement.

the latter to request the Court of Justice's opinion on competences in trade policy (European Commission, 2017b). The ECJ Opinion 2/15 of 16 May 2017 on the Singapore Agreement has important implications for EU trade policy. The Opinion clarifies that the EU does not have exclusive but shared competence over Investor-state dispute settlements and portfolio investments (Clifford Chance, 2017). So far, shared competences did not require mixed agreements (see Schütze, 2014). However, the Opinion of the Court specifies that 'it follows that Section A of Chapter 9 [which deals with non-direct foreign investment] of the envisaged [i.e. EU-Singapore FTA] agreement cannot be approved by the European Union alone' (Opinion 2/15, para. 244). Although commentators disagree on the exact implication stemming from such wording (see Cremona, 2018), the Opinion seems to imply that the trade agreements covering these issues, which follow in the realm of shared competences, should be concluded as a mixed agreement. A possible "solution" to these further complications would be to include provisions covering such matters in Bilateral Investment Treaties (Clifford Chance, 2017). This seems to be the pattern chosen in the EU-Singapore FTA, where the Commission has presented an FTA and Investment Protection Agreement to the Council for approval (see European Commission, 2018b). Such a choice would reduce complications for the ratification of trade agreements and the number of veto players (38 between national and regional parliaments would be required to approve a mixed agreement) involved in negotiations. This might be the pattern followed if TTIP negotiations resumed.

The analysis has also shown that the positions adopted by the Member States outside the Council and the Trade Policy Committee (TPC) do not necessarily reflect the position expressed within these institutional bodies. This has emerged from interviews and written questions by MEPs (i.e. Hybrid-institutional negotiations, Level II) (see Malmström, 2016b). The majority of interactions between the Commission and Member States take place through the TPC (and sometimes through Working Party on Transatlantic Relations (COTRA))<sup>39</sup> (i.e. Hybrid-institutional negotiations, Level

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<sup>39</sup> The TPC is involved in more technical considerations and is consulted before and after each negotiation round, while COTRA tends to be a more political body (Interview 15042016).



II) and, given the secrecy of these meetings, they are more difficult to explore. Thus, declarations made outside these institutional bodies do not necessarily reflect the preferences expressed within them. These considerations might offer additional insights that make it possible to explore further the principal-agent relationship (see, for instance, Damro, 2007; Kerremans, 2006; Meunier, 2007) between the Commission and the Council. These considerations raise interesting questions regarding how the Member States can exploit their position as “principals” vis-à-vis the agent (i.e. the Commission) in order for them to be shielded from a backlash while pursuing their preferences through the TPC.

In terms of policy implications, there are three main elements to take into account. The first policy consideration stems from the public backlash against the agreement. It would be myopic to deny that the backlash was at least partially caused by the political and economic stand of the US, which has been seen as posing a threat to the EU way of life. Moreover, the economic difficulties of the Union and the consequent questioning of the validity of the EU policies are likely to have negatively affected the Commission’s stand. One of the issues with regard to the negotiations has been the economic model adopted (i.e. CGE). The argued benefits stemming from the agreement could, in fact, be easily subjected to criticism (as has been the case). This is not to diminish the relevance of the model, but simply to point out that its underlying assumptions (see Section 1.2) make it an easy target for sceptics. One of the initial arguments made was, in fact, that TTIP was going to deliver €545 per family. Benefits will not be *erga omnes*. One of the main recommendations stemming from this consideration is to frame a possible transatlantic or any agreement with countries sharing similar levels of development to highlight the benefits for SMEs. Although attention to SMEs has been an element in the TTIP debate, the attention has tended to focus on this aspect only slightly. The CERP study, which was endorsed by the Commission and published in March 2013, does not even mention SMEs. Moreover, the only PC addressing SMEs’ preferences took place in 2014-15, which showed a pro-TTIP attitude, and was the last one to be launched by the Commission. Attention on SMEs appears less easily questionable and something to which the public can more easily relate.

A second policy recommendation would be better coordination between the Commission and the Council. This might be an auspicious outcome for two main reasons: 1.) it could increase the ability to use trade agreements for strategic purposes; and 2.) it might reduce the public backlash against any future attempt to renegotiate a transatlantic deal. As examined by Peterson (2016), the EU has struggled to use its economic power for political or strategic purposes. With the advent of the Trump administration, negotiations were frozen and, despite the EU's attempts to revive them, the results appear meagre (Ibid). On certain occasions the single Member States publicly assumed a more critical stand on the agreement. However, even the more sceptical States appeared to remain in favour of the agreement behind closed doors. Evidence of these elements has emerged from the analysis of the written questions<sup>40</sup> and from the field work. The absence of clear statements or a supportive campaign strategy by the Member States in favour of TTIP increased the distrust displayed towards the Commission. The external mismatch between the preferences, often dictated by political necessity, has led to a boomerang effect. On the one hand, the public has seen its distrust of the EU "bureaucrats" legitimised, which in turn has made the achievement of policy a less easy target to meet. Moreover, although this strategy might be successful in avoiding complications at home in the Member States, it seems in the long run: 1.) to undermine further the trust in the EU and, by doing so, 2.) to give further space to populist movements, which in turn are likely to lead to problems at home. In short, the main policy recommendations stemming from this consideration is to achieve a better coordination between Council and Commission.

A third policy recommendation stems from the necessity to adopt better channels of communication between the Commission and civil society organisations and also between the civil society organisations and the public. Even when the NGOs' recommendations were followed in the

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<sup>40</sup>On the 11th of May 2016, MEP Edouard Ferrand directed the following written question to the Commission: French Minister of State for Foreign Trade Matthias Fekl recently said, referring to TTIP, that 'none of our interests is being taken into account in the way we would like' [...] Does the Commission plan to reconsider its position on TTIP and terminate the negotiations? (see Ferrand, 2016, p.1). Malmström replied that 'Member States have reaffirmed their support for this objective on multiple occasions, and they have encouraged the Commission to make timely progress on this basis' (2016b, p.1).

textual proposal of the Commission or more generally in the Commission's attitude, the stand against the agreement remained mainly unchanged. The main recommendation would be to work with civil society organisations to improve the flow of information from bottom-up (from the public to the Commission) and vice versa (from the Commission to the public) through NGOs.

The negotiations of the 21st century types of agreement<sup>41</sup> are likely to be an increasing challenge due not only to the intrinsic difficulties to negotiate more complex issues but also the necessity to illustrate the possible benefits stemming from the conclusion of this new generation of mega-deals. This thesis aimed to explore and also contribute to, hopefully with interesting insights, the debates that are likely to characterise the future analysis of EU trade policy and EU Economic Diplomacy.

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<sup>41</sup> The concept refers to a new trend in negotiating agreements that goes beyond the reduction of tariffs in order to address issues not usually negotiated upon in previous trade deals such as competition, digital trade, NTBs, labour standards, regulatory cooperation, etc.

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## List of Respondents

Interviews were carried out in Brussels (April 2016) and Washington DC (April 2017) with relevant stakeholders. Given that negotiations for TTIP were not concluded, in several circumstances respondents required some information regarding their role and seniority to be omitted.

Interview Number	Respondent	Location & Time
Interview 01042016	Trade Policy Advisor to the S&D Group	Brussels, April 2016
Interview 02042016	Advisor to MEP	Brussels, April 2016
Interview 03042016	Member of the European Parliament	Brussels, April 2016
Interview 04042016	Political Advisor to S&D MEP	Brussels, April 2016
Interview 05042016	EU Official	Brussels, April 2016
Interview 06042016	EU Official	Brussels, April 2016
Interview 07042016	Consumer Association	Brussels, April 2016
Interview 08042016	NGOs	Brussels, April 2016
Interview 09042016	Parliamentary Assistant	Brussels, April 2016
Interview 10042016	Parliamentary Advisor to MEP (S&D)	Brussels, April 2016
Interview 11042016	Member of European Parliament	Brussels, April 2016
Interview 12042016	MEP Jude Kirton-Darling, (S&D)	Brussels, April 2016
Interview 13042016	Parliamentary Assistant to MEP Jude Kirton-Darling, (S&D)	Brussels, April 2016
Interview 14042016	Member of European Parliament	Brussels, April 2016
Interview 15042016	EU Official	Brussels, April 2016
Interview 16042016	Parliamentary Assistant to MEP Emma McClarking, (ECR)	Brussels, April 2016
Interview 17042016	Member of European Parliament, (EPP)	Personal Correspondence, April 2016
Interview 18042016	Member of European Parliament, (S&D)	Personal Correspondence, April 2016
Interview 19042016	EU Official	Brussels, April, 2016
Interview 20042016	Parliamentary Assistant	Brussels, April 2016
Interview 21042016	E!Sharp	Brussels, April 2016
Interview 22042016	Member of European Parliament	Brussels, April 2016
Interview 23042016	Parliamentary Assistant to MEP Maria Arena (S&D)	Brussels, April 2016
Interview 24042016	Business Association	Brussels, April 2016
Interview 25042016	Business Association	Brussels, April 2016
Interview 26042016	Business Association	Brussels, April 2016
Interview 27042016	EU Official	Brussels, April 2016
Interview 28042016	Member of European Parliament	Brussels, April 2016
Interview 29042016	EU Trade Union	Brussels, April 2016
Interview 30042016	EU Official	Brussels, April 2016
Interview 31042016	Diplomat	Brussels, April 2016
Interview 32042017	Former Congress Staffer	Washington DC, April 2017